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

10 TRI-VALLEY CARES,	}	Case No.
11 12 Plaintiff,	}	COMPLAINT FOR DECLARATORY AND
13 14 v.	}	INJUNCTIVE RELIEF
15 UNITED STATES DEPARTMENT OF	}	
16 ENERGY and NATIONAL NUCLEAR	}	
17 SECURITY ADMINISTRATION,	}	
18 19 Defendants.	}	

I. INTRODUCTION

20 1. Plaintiff Tri-Valley CAREs (Communities Against a Radioactive Environment)
21 (hereinafter "TVC") brings this action to redress violations of the Freedom of Information Act
22 (hereinafter "FOIA"), 5 U.S.C. § 552, as amended, and the Administrative Procedure Act
23 (hereinafter "APA"), 5 U.S.C. §§ 701-706. Congress enacted FOIA to provide that members of
24 the public have the right of access to federal agency records, except for those records (or portions
25 thereof) that are protected from disclosure by exemptions and exclusions. Plaintiff challenges the
26 failure of defendants United States Department of Energy (hereinafter "DOE") and National
27 Nuclear Security Administration (hereinafter "NNSA") to provide all responsive, non-exempt and
28 non-excluded records (or portions thereof) requested by plaintiff in FOIA requests made to

1 defendants seeking agency records pertaining to NNSA's operations and activities. Defendants
2 have a pattern and practice of not responding to FOIA requests in a timely manner, as provided by
3 the statute, and this conduct amounts to a constructive denial of these requests.

4 **II. JURISDICTION, VENUE, AND BASIS FOR RELIEF**

5 2. This Court has jurisdiction over this matter pursuant to 5 U.S.C. § 552(a)(4)(B) (FOIA
6 citizen suit provision) and 28 U.S.C. § 1331 (federal question) because this action arises under
7 FOIA, the APA, and the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*

8 3. Venue in this Court is proper because plaintiff's principal place of business is in this
9 district. *See* 5 U.S.C. § 552(a)(4)(B); 28 U.S.C. § 1391(e).

10 4. Declaratory relief is appropriate under 28 U.S.C. § 2201 and 5 U.S.C. § 552(a)(4)(F).

11 5. Injunctive relief is appropriate pursuant to 28 U.S.C. § 2202.

12 **III. PARTIES**

13 6. Plaintiff Tri-Valley CAREs is a non-profit public benefit corporation organized under
14 the laws of the State of California. TVC's office is located at 2582 Old First Street in Livermore,
15 California. TVC is a community-based environmental organization that was founded in 1983 by
16 concerned neighbors living around Lawrence Livermore National Laboratory (hereinafter
17 "LLNL"), where research, design, and development of nuclear weapons is conducted. A major,
18 founding goal of TVC is to investigate and achieve remedies for the public health and
19 environmental threats posed by LLNL. To that end, TVC monitors nuclear weapons and
20 environmental cleanup activities throughout the U.S. nuclear weapons complex, with a special
21 focus on LLNL and the surrounding communities. TVC holds two technical assistance grants
22 from the U.S. Environmental Protection Agency to monitor environmental cleanup at LLNL's
23 main site and its Site 300 Experimental Test Site, both of which are on the federal "Superfund" list
24 of the most contaminated sites in the nation. TVC publishes and distributes a free monthly
25 newsletter, as well as fliers, fact sheets, and technical reports; and information derived from FOIA
26 requests is regularly used in the preparation of these materials. In addition, as part of its
27 commitment to public outreach and education, TVC maintains a community "reading room" at its
28 office in Livermore and a website at www.trivalleycares.org. TVC currently has more than 5,000

1 members, the majority of whom reside or work in the vicinity of LLNL. TVC brings this action
2 on its own behalf and on behalf of its adversely affected members.

3 7. Plaintiff and its members suffer an informational harm by being denied access to the
4 requested records, which are critical in order for plaintiff to carry out its educational, advocacy,
5 and oversight activities regarding NNSA and the nuclear weapons complex. Plaintiff's injuries
6 can be redressed by this suit and granting of the remedies requested herein.

7 8. Defendant United States Department of Energy is a federal agency whose overarching
8 mission is to advance the national, economic, and energy security of the nation; to promote
9 scientific and technological innovation in support of that mission; and to ensure the environmental
10 cleanup of the national nuclear weapons complex. DOE is in possession and control of the records
11 sought by plaintiff. As an agency of the executive branch of the United States government, DOE
12 is subject to FOIA pursuant to 5 U.S.C. § 552(f).

13 9. Defendant National Nuclear Security Administration, a separately organized agency
14 within the U.S. Department of Energy, is responsible for the management and security of the
15 nation's nuclear weapons, nuclear nonproliferation, and naval reactor programs. NNSA is in
16 possession and control of the records sought by plaintiff. As an agency of the executive branch of
17 the United States government, NNSA is subject to FOIA pursuant to 5 U.S.C. § 552(f).

18 **IV. LEGAL FRAMEWORK OF FOIA RELEVANT TO ALL CLAIMS**

19 10. FOIA requires, *inter alia*, that all federal agencies must promptly provide copies of all
20 non-exempt and non-excluded agency records (or portions thereof) to those persons who make
21 requests for records that reasonably describe such records and are made in conformance with
22 applicable rules and procedures. *See* 5 U.S.C. § 552(a)(3)(A).

23 11. FOIA requires a federal agency to make a final determination on all FOIA requests
24 that it receives within twenty days (excepting Saturdays, Sundays, and legal public holidays) after
25 the receipt of such request, unless the agency provides notice to the requester of "unusual
26 circumstances" meriting additional time for responding to a FOIA request. 5 U.S.C. §
27 552(a)(6)(A)-(B).

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1 12. FOIA also requires a federal agency to make a final determination on FOIA
2 administrative appeals that it receives within twenty days (excepting Saturdays, Sundays, and
3 legal public holidays) after the receipt of such appeal, unless the agency provides notice to the
4 requester of “unusual circumstances” meriting additional time for responding to a FOIA appeal. 5
5 U.S.C. § 552(a)(6)(A)-(B).

6 13. FOIA expressly provides that a person shall be deemed to have exhausted their
7 administrative remedies if the agency fails to comply with the applicable time limitations provided
8 by 5 U.S.C. § 552(a)(6)(A)(i)-(ii). 5 U.S.C. § 552(a)(6)(C).

9 14. FOIA provides that any person who has not been provided records requested pursuant
10 to FOIA, after exhausting their administrative remedies, may seek legal redress from an
11 appropriate federal district court to “enjoin the agency from withholding agency records and to
12 order the production of any agency records improperly withheld from the complainant.” 5 U.S.C.
13 § 552(a)(4)(B).

14 15. Under FOIA, a federal agency has the burden to sustain its actions. 5 U.S.C. §
15 552(a)(4)(B).

16 16. Pursuant to FOIA, this Court may assess attorney fees and other litigation costs against
17 the United States if plaintiff substantially prevails in this action. 5 U.S.C. § 552(a)(4)(E).

18 **V. FACTUAL ALLEGATIONS FOR PLAINTIFF’S FOIA REQUESTS**
19 **Plaintiff’s May 24, 2007, FOIA Request to NNSA: 07-154-C**

20 17. On or about May 24, 2007, plaintiff, by and through its FOIA Officer, Michael
21 Stanker, sent a FOIA request to NNSA seeking records concerning the activities of the
22 Institutional Biosafety Committee (hereinafter “IBC”) at LLNL, including: IBC rosters;
23 qualifications of all members; agendas; minutes; decisional documents; electronic communication
24 concerning the IBC or its activities; rules/procedures under which the IBC operates; written
25 records; and meetings. The request was limited to records created between December 12, 2003,
26 and the date of NNSA’s response. Plaintiff included requests for expedited processing and a
27 waiver of fees in this FOIA request.

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1 18. Plaintiff sought these records in order to provide the public with detailed information
2 regarding the operations and activities of the IBC at LLNL. The IBC is responsible for reviewing
3 LLNL's research involving recombinant DNA and biological materials to ensure compliance with
4 applicable guidelines and regulations. Since the IBC at LLNL is intended to promote transparency
5 in the conduct of such research, disclosure of the requested records is essential to fulfilling this
6 mission. Moreover, the requested records are relevant to LLNL's proposed operation of a
7 Biosafety Level 3 facility at the LLNL main site, which is the subject of litigation pending in
8 federal district court.

9 19. On or about June 11, 2007, Carolyn A. Becknell, FOIA Officer/PA Officer for the
10 NNSA Service Center in Albuquerque, New Mexico (hereinafter "NNSA SC"), sent a response to
11 plaintiff acknowledging receipt of the May 24, 2007, FOIA request. Ms. Becknell's
12 correspondence indicated that TVC's request for expedited processing had been denied. This
13 correspondence further noted that TVC's request for a waiver of fees would be considered if the
14 costs of processing the request exceed \$15.00. Finally, Ms. Becknell's correspondence provided
15 the control number for this FOIA request: 07-154-C.

16 20. On or about October 9, 2007, plaintiff, by and through its Staff Attorney, Robert
17 Schwartz, sent a FOIA request to NNSA seeking copies of all minutes of all meetings of the
18 LLNL IBC and any related subcommittees since November 16, 2005. Plaintiff included requests
19 for expedited processing and a waiver of fees in this FOIA request.

20 21. On or about October 16, 2007, Shirley L. Peterson, Information Programs Specialist
21 for NNSA SC, sent a response to plaintiff acknowledging receipt of the October 9, 2007, FOIA
22 request. Ms. Peterson's correspondence provided the control number for the request: 07-275-P.
23 This correspondence did not provide any response to plaintiff's requests for expedited processing
24 and a waiver of fees.

25 22. On or about November 14, 2007, plaintiff, by and through its Staff Attorney, Loulena
26 Miles, telephoned Ms. Becknell to inquire about merging FOIA requests 07-154-C and 07-275-P.

1 23. On or about November 15, 2007, Ms. Becknell contacted Mr. Schwartz via electronic
2 mail, writing that FOIA requests 07-154-C and 07-275-C had been merged and will be processed
3 under FOIA request 07-154-C.

4 24. On or about July 30, 2008, plaintiff, by and through Mr. Schwartz, sent a letter to
5 NNSA SC noting that NNSA was in violation of FOIA and offering to assist in the release of the
6 requested records.

7 **Plaintiff's June 26, 2007, FOIA Request to NNSA: 07-170-C**

8 25. On or about June 26, 2007, plaintiff, by and through its FOIA Officer, Michael
9 Stanker, sent a FOIA request to NNSA seeking records concerning the use of plutonium at the
10 National Ignition Facility (hereinafter "NIF"), including facility preparations, modifications,
11 modernization, costs, and schedules from January 1, 2003, to the present. Plaintiff included
12 requests for expedited processing and a waiver of fees in this FOIA request.

13 26. Plaintiff sought these records in order to provide the public with detailed information
14 regarding the use of plutonium at the NIF, which is located at the LLNL main site. Plutonium use
15 at the NIF could significantly increase the amount of radioactive emissions from LLNL, thereby
16 endangering public health and safety, and environmental quality, in the San Francisco Bay Area.
17 Exposure to plutonium is known to cause lung, liver, and bone cancers, as well as impacts to the
18 immune system. Furthermore, since the original design for the NIF did not include the use of
19 plutonium, this change may have been made to better facilitate the design of new and modified
20 nuclear weapons.

21 27. On or about July 11, 2007, Carolyn A. Becknell, FOIA Officer/PA Officer for NNSA
22 SC, sent a response to plaintiff acknowledging receipt of the June 26, 2007, FOIA request. Ms.
23 Becknell's correspondence indicated that TVC's request for expedited processing had been
24 denied. This correspondence further noted that TVC's request for a waiver of fees would be
25 considered if the costs of processing the request exceed \$15.00. Finally, Ms. Becknell's
26 correspondence provided the control number for this FOIA request: 07-170-C.

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1 28. On or about December 3, 2007, plaintiff, by and through its Staff Attorney, Loulena
2 Miles, sent a letter to NNSA SC noting that NNSA was in violation of FOIA and offering to assist
3 in the release of the requested records.

4 **Plaintiff's June 26, 2007, FOIA Request to NNSA: 07-171-P**

5 29. On or about June 26, 2007, plaintiff, by and through its FOIA Officer, Michael
6 Stanker, sent a FOIA request to NNSA seeking records concerning the Tritium Facility
7 Modernization Project (hereinafter "TFMP"), including documents related to programs, projects,
8 reports, schedules, letters, notes, and memos. Plaintiff included requests for expedited processing
9 and a waiver of fees in this FOIA request.

10 30. Plaintiff sought these records in order to provide the public with detailed information
11 regarding the TFMP, which is a building modification and equipment upgrade project at LLNL.
12 Tritium, a radioactive isotope of hydrogen used in the production of nuclear weapons, presents
13 health risks when inhaled, ingested via food or water, or absorbed through the skin. Potential
14 impacts associated with the TFMP at LLNL include worker exposure to hazardous and radioactive
15 substances, harmful releases resulting from demolition and construction activities, air emissions
16 from routine operations, and accidents, among others. Accordingly, the TFMP at LLNL may
17 contribute to future impacts to public health and environmental quality in the San Francisco Bay
18 Area. In addition, there are significant public policy and national security implications associated
19 with the TFMP.

20 31. On or about July 11, 2007, Carolyn A. Becknell, FOIA Officer/PA Officer for NNSA
21 SC, sent a response to plaintiff acknowledging receipt of the June 26, 2007, FOIA request. Ms.
22 Becknell's correspondence indicated that TVC's request for expedited processing had been
23 denied. This correspondence further noted that TVC's request for a waiver of fees would be
24 considered if the costs of processing the request exceed \$15.00. Finally, Ms. Becknell's
25 correspondence provided the control number for this FOIA request: 07-171-P.

26 32. On or about July 27, 2007, Shirley L. Peterson, Information Program Specialist for
27 NNSA SC, contacted Mr. Stanker via electronic mail, inquiring as to the dates of the information
28 sought in plaintiff's FOIA request. Ms. Peterson's correspondence noted that the requested

1 information had already been provided to plaintiff for the January 2004 – May 2005 time period.
2 Ms. Peterson sought approval for narrowing the request to May 2005 to the “present date.”

3 33. On or about July 31, 2007, plaintiff, by and through its Staff Attorney, Loulena Miles,
4 contacted Ms. Peterson via electronic mail to express plaintiff’s approval for narrowing the time
5 period for the June 26, 2007, FOIA request, as outlined above.

6 34. On or about August 1, 2007, Ms. Peterson contacted Ms. Miles via electronic mail,
7 acknowledging receipt of her correspondence and noting that NNSA SC will continue to process
8 the June 26, 2007, FOIA request.

9 35. On or about October 11, 2007, plaintiff, by and through its Staff Attorney, Robert
10 Schwartz, sent a FOIA request to NNSA seeking records concerning the Tritium Facility
11 Modernization Project at LLNL. The request included, but was not limited to, budget documents,
12 technical assessments, construction plans, environmental review documents, statements of purpose
13 and need, hazard assessments, operational assessments, memoranda, agency publications,
14 manifests, schedules, and correspondence, whether in hard copy or electronic form. Plaintiff
15 included requests for expedited processing and a waiver of fees in this FOIA request.

16 36. On or about October 18, 2007, Ms. Peterson contacted Mr. Schwartz via electronic
17 mail, inquiring whether the October 11, 2007, FOIA request was a duplicate request.

18 37. On or about October 24, 2007, Mr. Schwartz contacted Ms. Peterson via electronic
19 mail to express plaintiff’s approval for merging the June 26, 2007, and October 11, 2007, FOIA
20 requests.

21 38. On or about October 24, 2007, Ms. Peterson contacted Mr. Schwartz via electronic
22 mail, writing that the two FOIA requests will be merged.

23 39. On or about December 3, 2007, plaintiff, by and through Ms. Miles, sent a letter to
24 NNSA SC noting that NNSA was in violation of FOIA and offering to assist in the release of the
25 requested records.

26 **Plaintiff’s October 24, 2007, FOIA Request to NNSA: 07-327-P**

27 40. On or about October 24, 2007, plaintiff, by and through its Staff Attorney, Robert
28 Schwartz, sent a FOIA request to NNSA seeking records concerning the segmentation of the

1 Tritium Facility (Building 331) at LLNL into two Nuclear Hazard Category 3 facilities. The
2 request included, but was not limited to, the preliminary documented safety analysis; the
3 documented safety analysis; the Quality Assurance Program; the safety management system; the
4 technical safety requirements; the safety management program; the safety evaluation report; the
5 safety basis for the facility; any documents relating to the unreviewed safety question process; the
6 June 20, 2006, approval by the Livermore Site Office of the future segmentation of the Tritium
7 Facility into two Category 3 nuclear facilities; and any other relevant documents, whether in hard
8 copy or electronic form. Plaintiff included requests for expedited processing and a waiver of fees
9 in this FOIA request.

10 41. Plaintiff sought these records in order to provide the public with detailed information
11 regarding the potentially improper segmentation of the Tritium Facility (Building 331) at LLNL
12 into two Nuclear Hazard Category 3 facilities, rather than a single Nuclear Hazard Category 2
13 facility. Nuclear Hazard Category 2 facilities represent a level of hazard for which significant
14 management attention is warranted and thus require on-site emergency planning. Since the
15 Tritium Facility was segmented into two Nuclear Hazard Category 3 facilities, no such on-site
16 emergency planning is required. Accordingly, in the unfortunate event of an accident or terrorist
17 attack, the segmentation of the Tritium Facility at LLNL into two Nuclear Hazard Category 3
18 facilities may result in significant impacts to public health and safety, as well as the environment.

19 42. On or about October 31, 2007, Shirley Peterson, Information Programs Specialist for
20 NNSA SC, sent a response to plaintiff acknowledging receipt of the October 24, 2007, FOIA
21 request. Ms. Peterson's correspondence provided the control number for the request: 07-327-P.
22 This correspondence did not provide any response to plaintiff's requests for expedited processing
23 and a waiver of fees.

24 43. On or about July 30, 2008, plaintiff, by and through Mr. Schwartz, sent a letter to
25 NNSA SC noting that defendant was in violation of FOIA and offering to assist in the release of
26 the requested records.

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1 **Plaintiff's May 22, 2008, FOIA Request to NNSA: 08-192-P**

2 44. On or about May 22, 2008, plaintiff, by and through its Staff Attorney, Robert
3 Schwartz, sent a FOIA request to NNSA seeking records concerning the 2008 assessment of the
4 security programs at LLNL conducted by DOE's Office of Health, Safety and Security
5 (hereinafter "HSS"). The request included, but was not limited to, HSS's preliminary and final
6 inspection reports; security, technical, operational, and hazard assessments; debriefing materials;
7 memoranda; schedules; and correspondence, whether in hard copy or electronic form. Plaintiff
8 included requests for expedited processing and a waiver of fees in this FOIA request.

9 45. Plaintiff sought these records in order to provide the public with detailed information
10 regarding the 2008 assessment of the security programs at LLNL. Media reports have indicated
11 that LLNL failed portions of the security assessment, which included force-on-force exercises
12 where a tactical security team plays the role of terrorist attackers in a simulation drill. The success
13 of the mock terrorists in achieving their objectives indicates that LLNL may not be able to prevent
14 or repel a terrorist attack on the facility. Such an attack could have devastating consequences,
15 both locally and nationally, with impacts to public health and safety, as well as environmental
16 quality. Disclosure of the requested records and dissemination by plaintiff will contribute
17 significantly to public understanding of defendants' ability to secure nuclear and other hazardous
18 materials at LLNL.

19 46. On or about July 30, 2008, Mr. Schwartz contacted Carolyn Becknell, FOIA
20 Officer/PA Officer for NNSA SC, via electronic mail, seeking the control number for the May 22,
21 2008, FOIA request.

22 47. On or about July 30, 2008, Ms. Becknell contacted Mr. Schwartz via electronic mail,
23 providing the control number for the May 22, 2008, FOIA request: 08-192-P. Ms. Becknell also
24 provided the name of the specialist in charge of this request: Shirley Peterson.

25 48. On or about November 6, 2008, plaintiff, by and through Mr. Schwartz, sent a letter to
26 NNSA SC noting that NNSA was in violation of FOIA and offering to assist in the release of the
27 requested records.

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Plaintiff's July 2, 2008, FOIA Request to DOE: 08-225-P

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2 49. On or about July 2, 2008, plaintiff, by and through its FOIA Officer, Michael
3 Mutalipassi, sent a FOIA request to DOE seeking records concerning “work for others” activities
4 by DOE at LLNL’s Site 300 on behalf of the Department of Homeland Security and the
5 Department of Defense. The request included, but was not limited to, all records concerning
6 permitting, hazardous wastes, explosives testing, and the transfer or closure of Site 300. Plaintiff
7 included requests for expedited processing and a waiver of fees in this FOIA request.

8 50. Plaintiff sought these records in order to provide the public with detailed information
9 regarding DOE’s “work for others” operations and activities at LLNL’s Site 300, an experimental
10 test site located in the eastern Altamont Hills near Tracy, California. Past activities at Site 300,
11 such as the open-air testing of high explosives, have resulted in extensive contamination. Future
12 activities at Site 300, including DOE’s “work for others” activities on behalf of the Department of
13 Homeland Security and the Department of Defense, may contribute to future environmental
14 degradation at the site. In addition, these activities may impact defendants’ plans for the transfer
15 or closure of Site 300. Accordingly, further information regarding “work for others” activities at
16 Site 300 will enable the public to better understand any potential environmental impacts associated
17 with these activities.

18 51. On or about July 9, 2008, Verlette L. Gatlin, Deputy Director of DOE’s FOIA and
19 Privacy Act Office, sent a response to plaintiff acknowledging receipt of the July 2, 2008, FOIA
20 request. Mr. Gatlin’s correspondence noted that any documents that may exist at DOE that are
21 responsive to this request are under the jurisdiction of NNSA SC. As such, this correspondence
22 indicated that the request had been sent to Carolyn Becknell, FOIA Officer/PA Officer for NNSA
23 SC, to conduct a records search. Mr. Gatlin’s correspondence also noted that the twenty day
24 response time under FOIA would begin when NNSA SC has received the request. In addition,
25 this correspondence noted that Ms. Becknell would provide a response to plaintiff about the
26 releasability of any responsive documents that are located, as well determinations about plaintiff’s
27 requests for expedited processing and a fee waiver. Finally, Mr. Gatlin’s correspondence provided
28 DOE’s control number for this request: FOIA-2008-000387.

1 **Count II: Violation of the Administrative Procedure Act: 07-154-C**

2 61. The allegations made in all preceding paragraphs are realleged and incorporated by
3 reference herein.

4 62. Defendants' failure to disclose records responsive to plaintiff's May 24, 2007, FOIA
5 request to NNSA (07-154-C) constitutes agency action unlawfully withheld and unreasonably
6 delayed, in violation of the Administrative Procedure Act, 5 U.S.C. §§ 701-706. Defendants'
7 failure in this manner is arbitrary, capricious, an abuse of discretion, not in accordance with the
8 law, and without observance of procedure required by law; all in violation of the APA.

9 63. Plaintiff has suffered a legal wrong as a result of defendants' failure to comply with
10 the mandates of FOIA. Defendants' failure to disclose all non-exempt and non-excluded records
11 (or portions thereof) responsive to plaintiff's May 24, 2007, FOIA request to NNSA (07-154-C)
12 has injured plaintiff's interest in public oversight of governmental operations and constitutes a
13 violation of defendants' statutory duties under the APA.

14 64. Plaintiff is entitled to judicial review under the Administrative Procedure Act. 5
15 U.S.C. §§ 702, 706.

16 65. Plaintiff is entitled to costs of disbursements and costs of litigation, including
17 reasonable attorney and expert witness fees, under the Equal Access to Justice Act, 28 U.S.C. §
18 2412.

19 **Count III: Violation of the Freedom of Information Act: 07-170-C**

20 66. The allegations made in all preceding paragraphs are realleged and incorporated by
21 reference herein.

22 67. Defendants have violated FOIA by failing to provide plaintiff with all responsive, non-
23 exempt and non-excluded records (or portions thereof) requested by plaintiff in its June 26, 2007,
24 FOIA request to NNSA (07-170-C).

25 68. By failing to provide plaintiff with all records responsive to June 26, 2007, FOIA
26 request to NNSA (07-170-C), defendants have denied plaintiff's right to this information provided
27 by law under FOIA.

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1 69. Unless enjoined by this Court, defendants will continue to violate plaintiff's legal right
2 to access the records requested in its June 26, 2007, FOIA request to NNSA (07-170-C).

3 70. Plaintiff is directly and adversely affected and aggrieved by defendants' failure to
4 provide all non-exempt and non-excluded records (or portions thereof) responsive to its June 26,
5 2007, FOIA request to NNSA (07-170-C).

6 71. Plaintiff has fully exhausted all administrative remedies required by FOIA prior to
7 seeking judicial review of defendants' failure to provide all non-exempt and non-excluded records
8 (or portions thereof) responsive to its June 26, 2007, FOIA request to NNSA (07-170-C).

9 72. Plaintiff is entitled to reasonable costs of litigation, including attorney fees pursuant to
10 FOIA. 5 U.S.C. § 552(a)(4)(E).

11 **Count IV: Violation of the Administrative Procedure Act: 07-170-C**

12 73. The allegations made in all preceding paragraphs are realleged and incorporated by
13 reference herein.

14 74. Defendants' failure to disclose records responsive to plaintiff's June 26, 2007, FOIA
15 request to NNSA (07-170-C) constitutes agency action unlawfully withheld and unreasonably
16 delayed, in violation of the Administrative Procedure Act, 5 U.S.C. §§ 701-706. Defendants'
17 failure in this manner is arbitrary, capricious, an abuse of discretion, not in accordance with the
18 law, and without observance of procedure required by law; all in violation of the APA.

19 75. Plaintiff has suffered a legal wrong as a result of defendants' failure to comply with
20 the mandates of FOIA. Defendants' failure to disclose all non-exempt and non-excluded records
21 (or portions thereof) responsive to plaintiff's June 26, 2007, FOIA request to NNSA (07-170-C)
22 has injured plaintiff's interest in public oversight of governmental operations and constitutes a
23 violation of defendants' statutory duties under the APA.

24 76. Plaintiff is entitled to judicial review under the Administrative Procedure Act. 5
25 U.S.C. §§ 702, 706.

26 77. Plaintiff is entitled to costs of disbursements and costs of litigation, including
27 reasonable attorney and expert witness fees, under the Equal Access to Justice Act, 28 U.S.C. §
28 2412.

1 **Count V: Violation of the Freedom of Information Act: 07-171-P**

2 78. The allegations made in all preceding paragraphs are realleged and incorporated by
3 reference herein.

4 79. Defendants have violated FOIA by failing to provide plaintiff with all responsive, non-
5 exempt and non-excluded records (or portions thereof) requested by plaintiff in its June 26, 2007,
6 FOIA request to NNSA (07-171-P).

7 80. By failing to provide plaintiff with all records responsive to its June 26, 2007, FOIA
8 request to NNSA (07-171-P), defendants have denied plaintiff's right to this information provided
9 by law under FOIA.

10 81. Unless enjoined by this Court, defendants will continue to violate plaintiff's legal right
11 to access the records requested in its June 26, 2007, FOIA request to NNSA (07-171-P).

12 82. Plaintiff is directly and adversely affected and aggrieved by defendants' failure to
13 provide all non-exempt and non-excluded records (or portions thereof) responsive to its June 26,
14 2007, FOIA request to NNSA (07-171-P).

15 83. Plaintiff has fully exhausted all administrative remedies required by FOIA prior to
16 seeking judicial review of defendants' failure to provide all non-exempt and non-excluded records
17 (or portions thereof) responsive to its June 26, 2007, FOIA request to NNSA (07-171-P).

18 84. Plaintiff is entitled to reasonable costs of litigation, including attorney fees pursuant to
19 FOIA. 5 U.S.C. § 552(a)(4)(E).

20 **Count VI: Violation of the Administrative Procedure Act: 07-171-P**

21 85. The allegations made in all preceding paragraphs are realleged and incorporated by
22 reference herein.

23 86. Defendants' failure to disclose records responsive to plaintiff's June 26, 2007, FOIA
24 request to NNSA (07-171-P) constitutes agency action unlawfully withheld and unreasonably
25 delayed, in violation of the Administrative Procedure Act, 5 U.S.C. §§ 701-706. Defendants'
26 failure in this manner is arbitrary, capricious, an abuse of discretion, not in accordance with the
27 law, and without observance of procedure required by law; all in violation of the APA.
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1 87. Plaintiff has suffered a legal wrong as a result of defendants' failure to comply with
2 the mandates of FOIA. Defendants' failure to disclose all non-exempt and non-excluded records
3 (or portions thereof) responsive to plaintiff's June 26, 2007, FOIA request to NNSA (07-171-P)
4 has injured plaintiff's interest in public oversight of governmental operations and constitutes a
5 violation of defendants' statutory duties under the APA.

6 88. Plaintiff is entitled to judicial review under the Administrative Procedure Act. 5
7 U.S.C. §§ 702, 706.

8 89. Plaintiff is entitled to costs of disbursements and costs of litigation, including
9 reasonable attorney and expert witness fees, under the Equal Access to Justice Act, 28 U.S.C. §
10 2412.

11 **Count VII: Violation of the Freedom of Information Act: 07-327-P**

12 90. The allegations made in all preceding paragraphs are realleged and incorporated by
13 reference herein.

14 91. Defendants have violated FOIA by failing to provide plaintiff with all responsive, non-
15 exempt and non-excluded records (or portions thereof) requested by plaintiff in its October 24,
16 2007, FOIA request to NNSA (07-327-P).

17 92. By failing to provide plaintiff with all records responsive to its October 24, 2007,
18 FOIA request to NNSA (07-327-P), defendants have denied plaintiff's right to this information
19 provided by law under FOIA.

20 93. Unless enjoined by this Court, defendants will continue to violate plaintiff's legal right
21 to access the records requested in its October 24, 2007, FOIA request to NNSA (07-327-P).

22 94. Plaintiff is directly and adversely affected and aggrieved by defendants' failure to
23 provide all non-exempt and non-excluded records (or portions thereof) responsive to its October
24 24, 2007, FOIA request to NNSA (07-327-P).

25 95. Plaintiff has fully exhausted all administrative remedies required by FOIA prior to
26 seeking judicial review of defendants' failure to provide all non-exempt and non-excluded records
27 (or portions thereof) responsive to its October 24, 2007, FOIA request to NNSA (07-327-P).

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1 96. Plaintiff is entitled to reasonable costs of litigation, including attorney fees pursuant to
2 FOIA. 5 U.S.C. § 552(a)(4)(E).

3 **Count VIII: Violation of the Administrative Procedure Act: 07-327-P**

4 97. The allegations made in all preceding paragraphs are realleged and incorporated by
5 reference herein.

6 98. Defendants' failure to disclose records responsive to plaintiff's October 24, 2007,
7 FOIA request to NNSA (07-327-P) constitutes agency action unlawfully withheld and
8 unreasonably delayed, in violation of the Administrative Procedure Act, 5 U.S.C. §§ 701-706.
9 Defendants' failure in this manner is arbitrary, capricious, an abuse of discretion, not in
10 accordance with the law, and without observance of procedure required by law; all in violation of
11 the APA.

12 99. Plaintiff has suffered a legal wrong as a result of defendants' failure to comply with
13 the mandates of FOIA. Defendants' failure to disclose all non-exempt and non-excluded records
14 (or portions thereof) responsive to plaintiff's October 24, 2007, FOIA request to NNSA (07-327-
15 P) has injured plaintiff's interest in public oversight of governmental operations and constitutes a
16 violation of defendants' statutory duties under the APA.

17 100. Plaintiff is entitled to judicial review under the Administrative Procedure Act. 5
18 U.S.C. §§ 702, 706.

19 101. Plaintiff is entitled to costs of disbursements and costs of litigation, including
20 reasonable attorney and expert witness fees, under the Equal Access to Justice Act, 28 U.S.C. §
21 2412.

22 **Count IX: Violation of the Freedom of Information Act: 08-192-P**

23 102. The allegations made in all preceding paragraphs are realleged and incorporated by
24 reference herein.

25 103. Defendants have violated FOIA by failing to provide plaintiff with all responsive,
26 non-exempt and non-excluded records (or portions thereof) requested by plaintiff in its May 22,
27 2008, FOIA request to NNSA (08-192-P).

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1 104. By failing to provide plaintiff with all records responsive to its May 22, 2008, FOIA
2 request to NNSA (08-192-P), defendants have denied plaintiff's right to this information provided
3 by law under FOIA.

4 105. Unless enjoined by this Court, defendants will continue to violate plaintiff's legal
5 right to access the records requested in its May 22, 2008, FOIA request to NNSA (08-192-P).

6 106. Plaintiff is directly and adversely affected and aggrieved by defendants' failure to
7 provide all non-exempt and non-excluded records (or portions thereof) responsive to its May 22,
8 2008, FOIA request to NNSA (08-192-P).

9 107. Plaintiff has fully exhausted all administrative remedies required by FOIA prior to
10 seeking judicial review of defendants' failure to provide all non-exempt and non-excluded records
11 (or portions thereof) responsive to its May 22, 2008, FOIA request to NNSA (08-192-P).

12 108. Plaintiff is entitled to reasonable costs of litigation, including attorney fees pursuant
13 to FOIA. 5 U.S.C. § 552(a)(4)(E).

14 **Count X: Violation of the Administrative Procedure Act: 08-192-P**

15 109. The allegations made in all preceding paragraphs are realleged and incorporated by
16 reference herein.

17 110. Defendants' failure to disclose records responsive to plaintiff's May 22, 2008, FOIA
18 request to NNSA (08-192-P) constitutes agency action unlawfully withheld and unreasonably
19 delayed, in violation of the Administrative Procedure Act, 5 U.S.C. §§ 701-706. Defendants'
20 failure in this manner is arbitrary, capricious, an abuse of discretion, not in accordance with the
21 law, and without observance of procedure required by law; all in violation of the APA.

22 111. Plaintiff has suffered a legal wrong as a result of defendants' failure to comply with
23 the mandates of FOIA. Defendants' failure to disclose all non-exempt and non-excluded records
24 (or portions thereof) responsive to plaintiff's May 22, 2008, FOIA request to NNSA (08-192-P)
25 has injured plaintiff's interest in public oversight of governmental operations and constitutes a
26 violation of defendants' statutory duties under the APA.

27 112. Plaintiff is entitled to judicial review under the Administrative Procedure Act. 5
28 U.S.C. §§ 702, 706.

1 113. Plaintiff is entitled to costs of disbursements and costs of litigation, including
2 reasonable attorney and expert witness fees, under the Equal Access to Justice Act, 28 U.S.C. §
3 2412.

4 **Count XI: Violation of the Freedom of Information Act: 08-225-P**

5 114. The allegations made in all preceding paragraphs are realleged and incorporated by
6 reference herein.

7 115. Defendants have violated FOIA by failing to provide plaintiff with all responsive,
8 non-exempt and non-excluded records (or portions thereof) requested by plaintiff in its July 2,
9 2008, FOIA request to DOE (08-225-P).

10 116. By failing to provide plaintiff with all records responsive to its July 2, 2008, FOIA
11 request to DOE (08-225-P), defendants have denied plaintiff's right to this information provided
12 by law under FOIA.

13 117. Unless enjoined by this Court, defendants will continue to violate plaintiff's legal
14 right to access the records requested in its July 2, 2008, FOIA request to DOE (08-225-P).

15 118. Plaintiff is directly and adversely affected and aggrieved by defendants' failure to
16 provide all non-exempt and non-excluded records (or portions thereof) responsive to its July 2,
17 2008, FOIA request to DOE (08-225-P).

18 119. Plaintiff has fully exhausted all administrative remedies required by FOIA prior to
19 seeking judicial review of defendants' failure to provide all non-exempt and non-excluded records
20 (or portions thereof) responsive to its July 2, 2008, FOIA request to DOE (08-225-P).

21 120. Plaintiff is entitled to reasonable costs of litigation, including attorney fees pursuant
22 to FOIA. 5 U.S.C. § 552(a)(4)(E).

23 **Count XII: Violation of the Administrative Procedure Act: 08-225-P**

24 121. The allegations made in all preceding paragraphs are realleged and incorporated by
25 reference herein.

26 122. Defendants' failure to disclose records responsive to plaintiff's July 2, 2008, FOIA
27 request to DOE (08-225-P) constitutes agency action unlawfully withheld and unreasonably
28 delayed, in violation of the Administrative Procedure Act, 5 U.S.C. §§ 701-706. Defendants'

1 failure in this manner is arbitrary, capricious, an abuse of discretion, not in accordance with the
2 law, and without observance of procedure required by law; all in violation of the APA.

3 123. Plaintiff has suffered a legal wrong as a result of defendants' failure to comply with
4 the mandates of FOIA. Defendants' failure to disclose all non-exempt and non-excluded records
5 (or portions thereof) responsive to plaintiff's July 2, 2008, FOIA request to DOE (08-225-P) has
6 injured plaintiff's interest in public oversight of governmental operations and constitutes a
7 violation of defendants' statutory duties under the APA.

8 124. Plaintiff is entitled to judicial review under the Administrative Procedure Act. 5
9 U.S.C. §§ 702, 706.

10 125. Plaintiff is entitled to costs of disbursements and costs of litigation, including
11 reasonable attorney and expert witness fees, under the Equal Access to Justice Act, 28 U.S.C. §
12 2412.

13 **Count XIII: Violation of FOIA and the APA**

14 126. The allegations made in all preceding paragraphs are realleged and incorporated by
15 reference herein.

16 127. Plaintiff is injured by defendants' pattern and practice of disregarding the statutory
17 timeframe set out in FOIA for the production of requested records. This pattern and practice is
18 arbitrary, capricious, an abuse of discretion, not in accordance with the law, and without
19 observance of procedure required by law; all in violation of the APA.

20 **VII. REQUEST FOR RELIEF**

21 WHEREFORE, plaintiff respectfully requests that this Court enter Judgment for plaintiff
22 providing the following relief:

23 1. Declare that defendants have violated FOIA by failing to provide all non-exempt and
24 non-excluded records (or portions thereof) responsive to plaintiff's May 24, 2007, FOIA request to
25 NNSA (07-154-C).

26 2. Direct by injunction that defendants immediately provide plaintiff with all non-exempt
27 and non-excluded records (or portions thereof) responsive to plaintiff's May 24, 2007, FOIA
28 request to NNSA (07-154-C).

1 3. Issue a written finding that the circumstances surrounding defendants' actions raise
2 questions whether defendants' personnel acted arbitrarily or capriciously with respect to plaintiff's
3 May 24, 2007, FOIA request to NNSA (07-154-C), as provided for by 5 U.S.C. § 552(a)(4)(F).

4 4. Declare that defendants have violated FOIA by failing to provide all non-exempt and
5 non-excluded records (or portions thereof) responsive to plaintiff's June 26, 2007, FOIA request to
6 NNSA (07-170-C).

7 5. Direct by injunction that defendants immediately provide plaintiff with all non-exempt
8 and non-excluded records (or portions thereof) responsive to plaintiff's June 26, 2007, FOIA
9 request to NNSA (07-170-C).

10 6. Issue a written finding that the circumstances surrounding defendants' actions raise
11 questions whether defendants' personnel acted arbitrarily or capriciously with respect to plaintiff's
12 June 26, 2007, FOIA request to NNSA (07-170-C), as provided for by 5 U.S.C. § 552(a)(4)(F).

13 7. Declare that defendants have violated FOIA by failing to provide all non-exempt and
14 non-excluded records (or portions thereof) responsive to plaintiff's June 26, 2007, FOIA request to
15 NNSA (07-171-P).

16 8. Direct by injunction that defendants immediately provide plaintiff with all non-exempt
17 and non-excluded records (or portions thereof) responsive to plaintiff's June 26, 2007, FOIA
18 request to NNSA (07-171-P).

19 9. Issue a written finding that the circumstances surrounding defendants' actions raise
20 questions whether defendants' personnel acted arbitrarily or capriciously with respect to plaintiff's
21 June 26, 2007, FOIA request to NNSA (07-171-P), as provided for by 5 U.S.C. § 552(a)(4)(F).

22 10. Declare that defendants have violated FOIA by failing to provide all non-exempt and
23 non-excluded records (or portions thereof) responsive to plaintiff's October 24, 2007, FOIA
24 request to NNSA (07-327-P).

25 11. Direct by injunction that defendants immediately provide plaintiff with all non-exempt
26 and non-excluded records (or portions thereof) responsive to plaintiff's October 24, 2007, FOIA
27 request to NNSA (07-327-P).

28

1 12. Issue a written finding that the circumstances surrounding defendants' actions raise
2 questions whether defendants' personnel acted arbitrarily or capriciously with respect to plaintiff's
3 October 24, 2007, FOIA request to NNSA (07-327-P), as provided for by 5 U.S.C. § 552(a)(4)(F).

4 13. Declare that defendants have violated FOIA by failing to provide all non-exempt and
5 non-excluded records (or portions thereof) responsive to plaintiff's May 22, 2008, FOIA request to
6 NNSA (08-192-P).

7 14. Direct by injunction that defendants immediately provide plaintiff with all non-exempt
8 and non-excluded records (or portions thereof) responsive to plaintiff's May 22, 2008, FOIA
9 request to NNSA (08-192-P).

10 15. Issue a written finding that the circumstances surrounding defendants' actions raise
11 questions whether defendants' personnel acted arbitrarily or capriciously with respect to plaintiff's
12 May 22, 2008, FOIA request to NNSA (08-192-P), as provided for by 5 U.S.C. § 552(a)(4)(F).

13 16. Declare that defendants have violated FOIA by failing to provide all non-exempt and
14 non-excluded records (or portions thereof) responsive to plaintiff's July 2, 2008, FOIA request to
15 DOE (08-225-P).

16 17. Direct by injunction that defendants immediately provide plaintiff with all non-exempt
17 and non-excluded records (or portions thereof) responsive to plaintiff's July 2, 2008, FOIA request
18 to DOE (08-225-P).

19 18. Issue a written finding that the circumstances surrounding defendants' actions raise
20 questions whether defendants' personnel acted arbitrarily or capriciously with respect to plaintiff's
21 July 2, 2008, FOIA request to DOE (08-225-P), as provided for by 5 U.S.C. § 552(a)(4)(F).

22 19. Direct by injunction that defendants are barred from any and all improper
23 withholdings of agency records.

24 20. Maintain jurisdiction over this action until defendants are in compliance with FOIA,
25 the APA, and every order of this Court.

26 21. Grant plaintiff's costs of litigation, including reasonable attorney fees, as provided by
27 FOIA, 5 U.S.C. § 552(a)(4)(E), and the Equal Access to Justice Act, 28 U.S.C. § 2412.

28 22. Provide such other relief as the Court deems just and proper.

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Respectfully submitted this 2nd day of December, 2008

/S/

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