

1 Scott J. Yundt (CSB# 242595)
2 TRI-VALLEY CARES
3 2582 Old First Street
4 Livermore, California 94550
5 Telephone: (925) 443-7148
6 Facsimile: (925) 443-0177
7 Email: scott@trivalleycares.org
8 Attorney for Plaintiff

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

11 TRI-VALLEY CARES,) Case No.
12)
13 Plaintiff,)
14) **COMPLAINT FOR DECLARATORY**
15 v.) **AND INJUNCTIVE RELIEF**
16)
17 UNITED STATES DEPARTMENT OF)
18 ENERGY and NATIONAL NUCLEAR)
19 SECURITY ADMINISTRATION, an)
20 agency of the U.S. Department of Energy,)
21)
22 Defendants.)

23 **I. INTRODUCTION**

24 1. Plaintiff Tri-Valley CAREs (Communities Against a Radioactive Environment)
25 (hereinafter “TVC”) brings this action to redress violations of the Freedom of Information Act
26 (hereinafter “FOIA”), 5 U.S.C. § 552 (1966) Congress enacted FOIA to provide members of the
27 public the right of access to federal agency records, except for those records (or portions
28 thereof) that are protected from disclosure by exemptions and exclusions. Plaintiff challenges
the failure of defendants United States Department of Energy (hereinafter “DOE”) and National
Nuclear Security Administration (hereinafter “NNSA”), to provide all responsive, non-exempt,
and non-excluded records (or portions thereof) requested by plaintiff in five separate FOIA

1 requests made to defendants, seeking agency records pertaining to DOE and NNSA operations
2 and activities. Defendants have failed to respond to FOIA requests in a timely manner, as
3 provided by the statute, and this conduct amounts to a constructive denial of these requests.
4 Thus, defendants have improperly withheld agency records from the plaintiff. Additionally, by
5 repeatedly violating FOIA's statutory requirements, defendants exhibit a pattern and practice of
6 violating FOIA.

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

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

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

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

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

15 **III. PARTIES**

16 6. Plaintiff Tri-Valley CAREs is a non-profit public benefit corporation organized under
17 the laws of the State of California. TVC's offices are located at 2582 Old First Street in
18 Livermore, California. TVC is a community-based environmental organization that was
19 founded in 1983 by concerned neighbors living around Lawrence Livermore National
20 Laboratory (hereinafter "LLNL"), a DOE NNSA site where research, design, and development
21 of nuclear weapons is conducted. TVC monitors nuclear weapons and environmental cleanup
22 activities throughout the national nuclear weapons complex, with a special focus on LLNL and
23 the surrounding communities. TVC's overarching mission is to promote peace, justice, and a
24 healthy environment. TVC holds a technical assistance grant from the U.S. Environmental
25 Protection Agency (hereinafter "EPA") to monitor environmental cleanup at LLNL's main site
26 and its Site 300 Experimental Test Site, both of which are on the federal "Superfund" list of the
27 most contaminated sites in the nation. TVC publishes and distributes a free newsletter, as well
28 as fliers, fact sheets, web content and technical reports; information derived from FOIA requests

1 is regularly used in the preparation of these materials. TVC maintains a community “reading
2 room” at its office in Livermore and a website at www.trivalleycares.org as part of its
3 commitment to public outreach and education. A major, founding goal of TVC is to investigate
4 and achieve remedies for the public health and environmental threats posed by LLNL. Tri-
5 Valley CAREs currently has approximately 5,600 members, the majority of whom reside or
6 work in the vicinity of LLNL. TVC brings this action on its own behalf and on behalf of its
7 adversely affected members.

8 7. Plaintiff and its members suffer an informational harm by being denied access to the
9 requested records, which are crucial to the ability of plaintiff and its members to carry out
10 educational and oversight activities regarding DOE, NNSA and the nuclear weapons complex.
11 Plaintiff’s injuries can be redressed by this suit and granting of the remedies requested herein.

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

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

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

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

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

6 12. FOIA expressly provides that in instances of “unusual circumstances,” an agency
7 may delay its response to a FOIA request or appeal for up to 10 working days, but must provide
8 written notice and must also provide “the date on which a determination is expected to be
9 dispatched.” 5 U.S.C. § 552(a)(6)(B)(i).

10 13. Agencies are required to establish a telephone line or Internet service for requesters
11 to inquire about the status of FOIA requests in which the agency claims “unusual
12 circumstances.” This service must provide requesters with an estimated date that the agency will
13 complete their action. 5 U.S.C. §552(a)(7)(B)(ii).

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

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

22 16. Under FOIA, a federal agency has the burden to sustain its actions. 5 U.S.C. §
23 552(a)(4)(B).

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

26 18. Pursuant to the Equal Access to Justice Act, this Court may assess the costs of
27 disbursements and costs of litigation, including reasonable attorney and expert witness fees
28 against the United States if plaintiff substantially prevails in this action. 28 U.S.C. § 2412.

1 **V. FACTUAL ALLEGATIONS FOR PLAINTIFF’S FOIA REQUESTS**

2 **Plaintiff’s June 27, 2011 FOIA Request to NSNA: FOIA 11-389-J**

3 19. On or about June 27, 2011, plaintiff, by and through its FOIA Officer, Alexandra
4 Baraff, sent a FOIA request to NNSA seeking records created from June 26, 2007 to the date of
5 the request, June 27, 2011, that concern the use of plutonium and other fissile and/or fissionable
6 materials at the National Ignition Facility (NIF). This request included the following
7 documents:

- 8 • Status
- 9 • Schedule for use of these materials in experiments
- 10 • Scope and purpose of experiments
- 11 • Planned use of fusion fuel with fissile or fissionable materials in the same
12 experiment
- 13 • Environmental questions and reviews
- 14 • Technical issues
- 15 • Equipment needs and issues, including but not limited to distinguishing between
16 fission-generated and fusion-generated neutrons
- 17 • Cost questions and reviews
- 18 • Treaty compliance reviews (e.g., Partial Test Ban Treaty, CTBT, NPT)

19 20. On or about July 12, 2011, Ben C. Jaramillo, Information Programs Specialist at
20 NNSA sent a response to plaintiff acknowledging receipt of the June 27, 2011 request. Mr.
21 Jaramillo’s correspondence provided the control number for the request: FOIA 11-389-J.

22 21. On or about June 5, 2012, plaintiff, by and through its FOIA Officer, Annalisa
23 Batanides, sent a *Notice of Statutory Violation/Offer to Assist Letter* to NNSA stating that
24 defendants were in violation of FOIA, requesting that defendants respond with an estimated
25 date of dispatch and offering to assist in the release of the requested documents.

26 22. On or about June 26, 2012, Ms. Batanides sent a *Second Notice of Statutory*
27 *Violation/Offer to Assist letter* to NNSA stating that defendants were in violation of FOIA,
28

1 requesting that defendants respond with an estimated date of dispatch and offering to assist in
2 the release of the requested documents.

3 23. On or about July 10, 2012, Ms. Batanides sent a *Third Notice of Statutory*
4 *Violation/Notice that Issue is Ripe for Litigation* letter to Mr. Jaramillo, stating that defendants
5 continued to violate FOIA, requesting that defendants respond with an estimated date of
6 dispatch and stating that the issue was ripe for litigation at that time. To date, plaintiff has not
7 received any response to this letter and no responsive documents have been provided.

8 **Plaintiff's June 28, 2011 FOIA Request to NSNA: FOIA 11-390-H**

9 24. On or about June 28, 2011, plaintiff, by and through its FOIA Officer, Alexandra
10 Baraff, sent a FOIA request to NNSA seeking records of all documents, from January 1, 2010 to
11 the date of the request, June 28, 2011, that concern the status of Category I/II special nuclear
12 materials at LLNL. The request included the following documents:

- 13 • Status and/or schedule of removal of Category I/II special nuclear material
- 14 • Scope of completed removal
- 15 • Environmental questions and reviews
- 16 • Any discussion or analysis of the removal and/or its environmental impacts
- 17 • Studies and/or operations involving the removal of Category I/II special nuclear
18 materials
- 19 • Analysis of security questions/issues raised
- 20 • Analysis of security requirements after Category I/II nuclear materials have been
21 removed

22 25. On or about July 7, 2011, Christina H. Hamblen, Information Programs Specialist at
23 NNSA, sent a response to plaintiff acknowledging receipt of the June 28, 2011 request. Ms.
24 Hamblen's correspondence provided the control number for the request: FOIA 11-00390-H.

25 26. On or about June 5, 2012, plaintiff, by and through its FOIA officer, Annalisa
26 Batanides, sent a *Notice of Statutory Violation/Offer to Assist* letter to Ms. Hamblen stating that
27 defendants were in violation of FOIA, requesting that defendants respond with an estimated
28 date of dispatch and offering to assist in the release of the requested documents.

1 27. On or about June 14, 2012, Ms. Hamblen sent Ms. Batanides a letter stating that
2 LLNL continued to search for responsive documents.

3 28. On or about July 10, 2012, Ms. Batanides sent a *Second Notice of Statutory*
4 *Violation/Offer to Assist* letter to Ms. Hamblen, stating that defendants were in violation of
5 FOIA, requesting that defendants respond with an estimated date of dispatch pursuant to 5
6 U.S.C. § 552(a)(6)(B), and offering to assist in the release of the requested documents.

7 29. On or about July 24, 2012, Ms. Batanides sent a *Third Notice of Statutory*
8 *Violation/Notice that Issue is Ripe for Litigation* letter to Ms. Hamblen, stating that defendants
9 continued to violate FOIA, requesting that defendants respond with an estimated date of
10 dispatch and stating that the issue was ripe for litigation at that time.

11 30. On or about July 25, 2012, Ms. Hamblen sent Ms. Batanides an email stating that the
12 search for records continues. To date, no responsive documents have been provided.

13 **Plaintiff's June 28, 2011 FOIA Request to NSNA: FOIA 11-00391-H**

14 31. On or about June 28, 2011, plaintiff, by and through its FOIA Officer, Alexandra
15 Baraff, sent a FOIA request to NNSA seeking a copy of all documents, from June 26, 2007 to
16 the date of the request, June 28, 2011, that concern the use of plutonium at the NIF. Any
17 documents pertaining to the High Explosives Application Facility (HEAF) expansion plans
18 mentioned in the LLNL Ten Year Site Plan are part of this request, including:

- 19 • Expansion plans
- 20 • Schedule for use of these materials in experiments
- 21 • Scope and purpose of experiments
- 22 • Environmental questions and reviews
- 23 • Proposed NEPA review
- 24 • Any discussion or analysis of the similarities and/or differences between the
25 HEAF annex proposal and the HEAF expansion proposal, etc.
- 26 • Discussion and/or analysis of how plans for HEAF satisfy the NNSA's goal of
27 making the LLNL "smaller, safer, more secure, and more cost-effective"
- 28

- 1 • Studies and/or operations involving high-voltage power; toxic, radioactive,
2 flammable, and corrosive materials; asphyxiants; thermal flux; gravity-mass
3 sources; lasers; ionizing and non-ionizing radiation; cryogenics; and compressed
4 gases
- 5 • Radiation exposure minimization efforts, plans and/or operations

6 32. On or about July 7, 2011, Christina H. Hamblen, Information Programs Specialist at
7 NNSA, sent a response to plaintiff acknowledging receipt of the June 28, 2011 request. Ms.
8 Hamblen's correspondence provided the control number for the request: FOIA 11-00391-H.

9 33. On or about May 30, 2012, plaintiff, by and through its FOIA officer, Annalisa
10 Batanides, sent Ms. Hamblen a *Notice of Statutory Violation/Offer to Assist* letter stating that
11 defendants were in violation of FOIA , requesting that defendants respond with an estimated
12 date of dispatch and offering to assist in the release of the requested documents.

13 34. On or about June 8, 2012, Ms. Hamblen sent Ms. Batanides a letter stating that
14 LLNL continues to search for responsive documents.

15 35. On or about June 21, 2012, Ms. Batanides sent Ms. Hamblen a *Second Notice of*
16 *Statutory Violation/Offer to Assist* letter stating that defendants were in violation of FOIA,
17 requesting that defendants respond with an estimated date of dispatch and offering to assist in
18 the release of the requested documents.

19 36. On or about July 24, 2012, Ms. Batanides sent Ms. Hamblen a *Third Notice of*
20 *Statutory Violation/Notice that Issue is Ripe for Litigation* letter, stating that defendants
21 continued to violate FOIA, requesting that defendants respond with an estimated date of
22 dispatch and stating that the issue was ripe for litigation at that time.

23 37. On or about July 25, 2012, Ms. Hamblen sent Ms. Batanides an email stating that the
24 search for records continues. To date, no responsive documents have been provided.

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27 **Plaintiff's June 8, 2012 FOIA Request to NSNA: HQ-2012-01484-F**

1 38. On or about June 8, 2012, plaintiff, by and through its Staff Attorney, Scott Yundt,
2 sent a FOIA request to the Department of Energy's Office of Inspector General, seeking a copy
3 of all documents regarding Case Number 108LL010, which was previously identified as
4 responsive to our earlier FOIA request (2009-00581) which asked for all records concerning
5 occupational exposures to beryllium at the Lawrence Livermore National Laboratory from 2000
6 until June 2, 2009. In response to that request, defendant informed plaintiff that Case Number
7 108LL010 was responsive to its request, but was withheld in its entirety pursuant to Exemption
8 7(A). Exemption 7(A) permits the withholding of records when they could reasonably be
9 expected to interfere with enforcement proceedings. 5 U.S.C. § 552(b)(7)(A). At the time of the
10 June 2009 request, defendant claimed that this document pertained to an ongoing investigation,
11 so it was exempt from release under 7(A). After receiving notice from defendant that a final
12 determination in the investigation was reached, plaintiff submitted its June 8, 2012 request.

13 39. On or about June 18, 2012, Alexander Morris, FOIA Officer at DOE's Office of
14 Information Resources, sent a response to plaintiff acknowledging receipt of the June 8, 2012
15 request and notifying plaintiff of the request's assignment to the Office of Inspector General.
16 Mr. Morris's correspondence provided the control number for the request: HQ-2012-01484-F.

17 40. On or about March 27, 2013 plaintiff, by and through its Staff Attorney Mr. Yundt,
18 sent Ms. Martin a *Notice of Statutory Violation/ offer to assist letter* stating that defendants were
19 in violation of FOIA, requesting that defendants respond with an estimated date of dispatch and
20 offering to assist in the release of the requested documents.

21 41. On or about April 18, 2013 Ms. Martin responded via email to Mr. Yundt stating that
22 the responsive documents in the investigative case file were under review and due to the
23 voluminous amount of documents in the case file, in the near future a partial response will be
24 provided. There was no expected date of determination provided. To date, no responsive
25 documents have been provided.

26 **Plaintiff's July 17, 2012 FOIA Request to NSNA: 12-00258-K**

27 42. On or about July 17, 2012, plaintiff, by and through its Staff Attorney, Scott Yundt,
28 sent a FOIA request to NNSA requesting a copy of all documents containing information

1 pertaining to the National Nuclear Security Administration's Revised Plutonium Strategy and/or
2 the Alternative Plutonium Strategy. Documents were attached to the request to clarify the
3 information requested. This request included but was not limited to:

- 4 • All notes pertaining to the Revised (and/or Alternative) Plutonium Strategy,
- 5 • All decisional documents pertaining to the Revised (and/or Alternative) Plutonium
6 Strategy
- 7 • Electronic Communications concerning the Revised (and/or Alternative) Plutonium
8 Strategy
- 9 • All information pertaining to the Revised (and/or Alternative) Plutonium Strategy,
- 10 • All information pertaining to the consideration for sharing material characterization
11 workload between PF-4 at Los Alamos National Laboratory (LANL) and facilities
12 at Lawrence Livermore National Laboratory (LLNL)
- 13 • All Laboratory correspondence, reports, meeting minutes, and memorandums
14 regarding the Revised (and/or Alternative) Plutonium Strategy
- 15 • All interagency correspondence regarding the Revised (and/or Alternative)
16 Plutonium Strategy
- 17 • Any other significant information regarding the Revised (and/or Alternative)
18 Plutonium Strategy

19 43. On or about July 24, 2012, Karen Laney, Information Programs Specialist at NNSA,
20 sent a response to plaintiff acknowledging receipt of the July 17, 2012 request. Ms. Laney's
21 correspondence provided the control number for the request: FOIA 12-00258-K.

22 44. On or about March 27, 2013, Mr. Yundt, sent Ms. Laney a *Notice of Statutory*
23 *Violation/Offer to Assist letter* stating that defendants were in violation of FOIA and offering to
24 assist in the release of the requested documents. Additionally, Plaintiff requested that NNSA
25 provide them with the status and expected date of determination of the request. To date, plaintiff
26 has not received any response to this letter and no responsive documents have been provided.

1 **VI. CLAIMS FOR RELIEF**

2 **Count I: Violation of the Freedom of Information Act: FOIA 11-389-J**

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

5 46. Defendants violated FOIA by failing to provide plaintiff with any responsive, non-
6 exempt records, and non-excluded records (or portions thereof), requested by plaintiff in its
7 June 27, 2011 FOIA request to NNSA in a manner consistent with the 20-day statutory period,
8 or within 10 additional days if defendant claimed unusual circumstances existed.

9 47. By failing to provide plaintiff with all records responsive to its June 27, 2011 FOIA
10 request to NNSA, defendants have denied plaintiff's right to this information provided by law
11 under the Freedom of Information Act.

12 48. Unless enjoined by this Court, defendants will continue to violate plaintiff's legal
13 rights to access the records requested in plaintiff's June 27, 2011 FOIA request to NNSA.

14 49. Plaintiff is directly and adversely affected and aggrieved by defendants' failure to
15 provide all non-exempt and non-excluded records (or portions thereof) responsive to its June 27,
16 2011 FOIA request to NNSA.

17 50. Defendants violated FOIA by failing to provide plaintiff with an estimated date of
18 dispatch of the record as requested by plaintiff in its June 5, 2012, June 26, 2012 and July 10,
19 2012 correspondence. 5 U.S.C. §552(a)(6)(B)(i).

20 51. Defendants violated FOIA by failing to establish a telephone line or Internet service
21 for plaintiff to inquire about the status of this FOIA request that would specifically provide
22 plaintiff with an estimated date by which the agency would complete its action on this request. 5
23 U.S.C. §552(a)(7)(B)(ii).

24 52. Plaintiff has fully exhausted all administrative remedies required by FOIA prior to
25 seeking judicial review of defendants' failure to provide all non-exempt and non-excluded
26 records (or portions thereof) responsive to its June 27, 2011 FOIA request to NNSA.

27 53. Plaintiff has suffered a legal wrong as a result of defendants' failure to comply with
28 the mandates of FOIA. Defendants' failure to disclose all non-exempt and non-excluded

1 records (or portions thereof) responsive to plaintiff's June 27, 2011 request to NNSA has
2 injured plaintiff's interests in public oversight of governmental operations.

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

5 55. Plaintiff is entitled to costs of disbursements and costs of litigation, including
6 reasonable attorney and expert witness fees, under the Equal Access to Justice Act, 28 U.S.C. §
7 2412.

8 **Count II: Violation of the Freedom of Information Act: FOIA 11-390-H**

9 56. The allegations made in all preceding paragraphs are realleged and incorporated by
10 reference herein.

11 57. Defendants have violated FOIA by failing to provide plaintiff with all responsive,
12 non-exempt and non-excluded records (or portions thereof), requested by plaintiff in its June 28,
13 2011 FOIA request to NNSA in a manner consistent with the 20 day statutory time period, or
14 within 10 additional days if defendant claimed unusual circumstances existed.

15 58. By failing to provide plaintiff with all records responsive to its June 28, 2011 FOIA
16 request to NNSA, defendants have denied plaintiff's right to this information provided by law
17 under the Freedom of Information Act.

18 59. Unless enjoined by this Court, defendants will continue to violate plaintiff's legal
19 rights to access the records requested in plaintiff's June 28, 2011 FOIA request to NNSA.

20 60. Plaintiff is directly and adversely affected and aggrieved by defendants' failure to
21 provide all non-exempt and non-excluded records (or portions thereof) responsive to its June 28,
22 2011 FOIA request to NNSA.

23 61. Defendants violated FOIA by failing to provide plaintiff with an estimated date of
24 dispatch of the record as requested by plaintiff in its June 5, 2012, July 10, 2012 and July 24,
25 2012 correspondence. 5 U.S.C. §552(a)(6)(B)(i).

26 62. Defendants violated FOIA by failing to establish a telephone line or Internet service
27 for plaintiff to inquire about the status of this FOIA request that would specifically provide
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1 plaintiff with an estimated date by which the agency would complete its action on this request. 5
2 U.S.C. §552(a)(7)(B)(ii).

3 63. Plaintiff has fully exhausted all administrative remedies required by FOIA prior to
4 seeking judicial review of defendants' failure to provide all non-exempt and non-excluded
5 records (or portions thereof) responsive to its June 28, 2011 FOIA request to NNSA.

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

8 65. 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 III: Violation of the Freedom of Information Act: FOIA 11-00391-H**

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

14 67. Defendants have violated FOIA by failing to provide plaintiff with all responsive,
15 non-exempt and non-excluded records (or portions thereof), requested by plaintiff in its June 28,
16 2011 FOIA request to NNSA in a manner consistent with the 20 day statutory time period, or
17 within 10 additional days if defendant claimed unusual circumstances existed..

18 68. By failing to provide plaintiff with all records responsive to its June 28, 2011 FOIA
19 request to NNSA, defendants have denied plaintiff's right to this information provided by law
20 under the Freedom of Information Act.

21 69. Unless enjoined by this Court, defendants will continue to violate plaintiff's legal
22 rights to access the records requested in plaintiff's June 28, 2011 FOIA request to NNSA.

23 70. Plaintiff is directly and adversely affected and aggrieved by defendants' failure to
24 provide all non-exempt and non-excluded records (or portions thereof) responsive to its June 28,
25 2011 FOIA request to NNSA.

26 71. Defendants violated FOIA by failing to provide plaintiff with an estimated date of
27 dispatch of the record as requested by plaintiff in its May 30, 2012, July 10, 2012 and July 24,
28 2012 correspondence. 5 U.S.C. §552(a)(6)(B)(i).

1 72. Defendants violated FOIA by failing to establish a telephone line or Internet service
2 for plaintiff to inquire about the status of this FOIA request that would specifically provide
3 plaintiff with an estimated date by which the agency would complete its action on this request. 5
4 U.S.C. §552(a)(7)(B)(ii).

5 73. Plaintiff has fully exhausted all administrative remedies required by FOIA prior to
6 seeking judicial review of defendants' failure to provide all non-exempt and non-excluded
7 records (or portions thereof) responsive to its June 28, 2011 FOIA request to NNSA.

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

10 75. 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 IV: Violation of the Freedom of Information Act: FOIA HQ-2012-01484-F**

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

16 77. Defendants have violated FOIA by failing to provide plaintiff with all responsive,
17 non-exempt records and non-excluded records (or portions thereof), requested by plaintiff in its
18 June 8, 2012 FOIA request to NNSA in a manner consistent with the 20 day statutory time
19 period, or within 10 additional days if defendant claimed unusual circumstances existed..

20 78. By failing to provide plaintiff with all records responsive to its June 8, 2012 FOIA
21 request to NNSA, defendants have denied plaintiff's right to this information provided by law
22 under the Freedom of Information Act.

23 79. Unless enjoined by this Court, defendants will continue to violate plaintiff's legal
24 rights to access the records requested in plaintiff's June 8, 2012 FOIA request to NNSA.

25 80. Plaintiff is directly and adversely affected and aggrieved by defendants' failure to
26 provide all non-exempt and non-excluded records (or portions thereof) responsive to its June 8,
27 2012 FOIA request to NNSA.

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1 81. Defendants violated FOIA by failing to provide plaintiff with an estimated date of
2 dispatch of the record as requested by plaintiff in its March 27, 2013 correspondence. 5 U.S.C.
3 §552 (a)(6)(B)(i).

4 82. Defendants violated FOIA by failing to establish a telephone line or Internet service
5 for plaintiff to inquire about the status of this FOIA request that would specifically provide
6 plaintiff with an estimated date by which the agency would complete its action on this request. 5
7 U.S.C. §552(a)(7)(B)(ii).

8 83. Plaintiff has fully exhausted all administrative remedies required by FOIA prior to
9 seeking judicial review of defendants' failure to provide all non-exempt and non-excluded
10 records (or portions thereof) responsive to its June 8, 2012 FOIA request to NNSA.

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

13 85. Plaintiff is entitled to costs of disbursements and costs of litigation, including
14 reasonable attorney and expert witness fees, under the Equal Access to Justice Act, 28 U.S.C. §
15 2412.

16 **Count V: Violation of the Freedom of Information Act: FOIA 12-00258-K**

17 86. The allegations made in all preceding paragraphs are realleged and incorporated by
18 reference herein.

19 87. Defendants have violated FOIA by failing to provide plaintiff with all responsive,
20 non-exempt records and non-excluded records (or portions thereof), requested by plaintiff in its
21 July 17, 2012 FOIA request to NNSA in a manner consistent with the 20 day statutory time
22 period, or within 10 additional days if defendant claimed unusual circumstances existed..

23 88. By failing to provide plaintiff with all records responsive to its July 17, 2012 FOIA
24 request to NNSA, defendants have denied plaintiff's right to this information provided by law
25 under the Freedom of Information Act.

26 89. Unless enjoined by this Court, defendants will continue to violate plaintiff's legal
27 rights to access the records requested in plaintiff's July 17, 2012 FOIA request to NNSA.
28

1 90. Plaintiff is directly and adversely affected and aggrieved by defendants' failure to
2 provide all non-exempt and non-excluded records (or portions thereof) responsive to its July 17,
3 2012 FOIA request to NNSA.

4 91. Defendants violated FOIA by failing to provide plaintiff with an estimated date of
5 dispatch of the record as requested by plaintiff in its March 27, 2013 correspondence. 5 U.S.C.
6 §552 (a)(6)(B)(i).

7 92. Defendants violated FOIA by failing to establish a telephone line or Internet service
8 for plaintiff to inquire about the status of this FOIA request that would specifically provide
9 plaintiff with an estimated date by which the agency would complete its action on this request. 5
10 U.S.C. §552(a)(7)(B)(ii).

11 93. Plaintiff has fully exhausted all administrative remedies required by FOIA prior to
12 seeking judicial review of defendants' failure to provide all non-exempt and non-excluded
13 records (or portions thereof) responsive to its July 17, 2012 FOIA request to NNSA.

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

16 95. 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 VI: Pattern and Practice of Violating of FOIA**

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

22 97. Plaintiff is injured by defendants' pattern and practice of disregarding the statutory
23 timeframe set out in FOIA for the production of requested records. This pattern and practice is
24 not in accordance with the law, and without observance of procedure required by law, all in
25 violation of FOIA.

26 98. Plaintiff is injured by defendants' pattern and practice of disregarding the statutory
27 requirement to provide an estimated date on which the agency will complete action when the
28

1 agency has claimed “unusual circumstances.” This pattern and practice is not in accordance
2 with the law, and without observance of procedure required by law, all in violation of FOIA.

3 99. Plaintiff is injured by defendants’ pattern and practice of disregarding the statutory
4 requirement to establish a telephone line or Internet service for requesters to inquire about the
5 status of their FOIA request, when the agency has claimed “unusual circumstances,” that would
6 specifically provide plaintiff with an estimated date by which the agency would complete its
7 action on this request. 5 U.S.C. §552(a)(7)(B)(ii).. This pattern and practice is not in accordance
8 with the law, and without observance of procedure required by law, all in violation of FOIA.

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

11 101. Plaintiff is entitled to costs of disbursements and costs of litigation, including
12 reasonable attorney and expert witness fees, under the Equal Access to Justice Act, 28 U.S.C. §
13 2412.

14 **VII. REQUEST FOR RELIEF**

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

17 1. Expedite this case in accordance with 28 U.S.C. §1657(a) so as to resolve this case in
18 time for plaintiff to use the requested information in furtherance of its legitimate objectives.
19 Good cause is shown because “a right under...a Federal Statute would be maintained”. 28
20 U.S.C. §1657(a).

21 2. Declare that defendants have violated FOIA by failing to fully respond to the five
22 FOIA requests that are the subject of this complaint (FOIA-11-389-J, FOIA-11-390-H, FOIA-
23 11-391-H, FOIA HQ-2012-01484-F and FOIA-12-00258).

24 3. Direct by injunction that defendants immediately provide plaintiff with all non-
25 exempt and non-excluded records (or portions thereof), responsive to the five FOIA requests
26 that are the subject of this complaint (FOIA-11-389-J, FOIA-11-390-H, FOIA-11-391-H, FOIA
27 HQ-2012-01484-F and FOIA-12-00258).

1 4. Order the Special Counsel to commence an investigation to determine whether
2 disciplinary action is warranted against any federal employee for the defendants' unlawful
3 pattern and practice of withholding information sought pursuant to FOIA. See 5 U.S.C. §
4 552(a)(4)(F).

5 5. Direct by injunction that defendants comply with the time requirements of FOIA, as
6 provided by both case law and statute, for the production of requested documents to plaintiff.

7 6. Direct by injunction that defendants comply with the requirement of FOIA to provide
8 an estimated date on which the agency will complete action on a request when the agency has
9 claimed "unusual circumstances," as provided by both case law and statute.

10 7. Direct by injunction that defendants comply with the requirement of FOIA to
11 establish a telephone line or Internet service for requestors to inquire about the status of FOIA
12 requests, when the agency has claimed "unusual circumstances," that would specifically provide
13 plaintiff with an estimated date by which the agency would complete its action. 5 U.S.C.
14 §552(a)(7)(B)(ii).

15 8. Direct by injunction that defendants are barred from any and all improper
16 withholdings of agency records.

17 9. Maintain jurisdiction over this action until defendants are in compliance with FOIA
18 and every order of this Court.

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

21 11. Provide such other relief as the Court deems just and proper.

22 Respectfully submitted this 7th day of June, 2013

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SCOTT YUNDT (CSB # 242595)
26 TRI-VALLEY CARES
27 2582 Old First Street
28 Livermore, California 94550
Telephone: (925) 443-7148
Facsimile: (925) 443-0177
Email: scott@trivalleycares.org