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

13 PINEROS Y CAMPESINOS UNIDOS DEL)
14 NOROESTE, UNITED FARM WORKERS,)
FARMWORKER ASSOCIATION OF FLORIDA,)
15 CALIFORNIA RURAL LEGAL ASSISTANCE)
FOUNDATION, and PESTICIDE ACTION)
16 NETWORK NORTH AMERICA,)

17 Plaintiffs,)

18 v.)

19 E. SCOTT PRUITT, in his official capacity as)
Administrator of the U.S. Environmental Protection)
20 Agency; and U.S. ENVIRONMENTAL)
PROTECTION AGENCY,)

21 Defendants.)
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Case No:

**COMPLAINT FOR DECLARATORY
RELIEF**

INTRODUCTION

1
2 1. Plaintiffs PINEROS Y CAMPESINOS UNIDOS DEL NOROESTE, UNITED
3 FARM WORKERS, FARMWORKER ASSOCIATION OF FLORIDA, CALIFORNIA RURAL
4 LEGAL ASSISTANCE FOUNDATION, and PESTICIDE ACTION NETWORK NORTH
5 AMERICA (“Plaintiffs”) assert violations of the Administrative Procedure Act (“APA”) and the
6 Federal Insecticide Fungicide, and Rodenticide Act (“FIFRA”) by defendants E. SCOTT PRUITT,
7 Administrator of the United States Environmental Protection Agency, and the UNITED STATES
8 ENVIRONMENTAL PROTECTION AGENCY (collectively “EPA”) for EPA’s repeated and
9 unlawful delays of the effective date of the Certification of Pesticide Applicators Rule, 82 Fed. Reg.
10 952 (Jan. 4, 2017) (“CPA Rule”).¹ The CPA Rule, as currently enacted, provides much needed and
11 long overdue protections for those exposed to the most toxic pesticides, called restricted use
12 pesticides (“RUPs”), by ensuring those who handle and apply these pesticides are properly trained
13 and certified and thus know how, when, and where to apply the most dangerous pesticides on the
14 market. The glaring need for the new CPA Rule is highlighted by the widespread, nationwide
15 incidences of serious harm, including death, that have occurred over the years because of the
16 improper application of RUPs in agricultural fields and in our homes.

17 2. EPA updated and finalized the CPA Rule after a multi-year process that included
18 extensive stakeholder review and input from interested parties. The final rule, which updated a 40+-
19 year-old regulation, was published in the Federal Register on January 4, 2017, with an effective date
20 of March 6, 2017. Under the final rule, both States and other certifying authorities would have three
21 years after the rule’s effective date to prepare and submit a compliance plan to EPA. EPA would
22 then have up to two years to consider and approve the compliance plan.

23 3. On January 26, 2017, EPA issued a notice in the Federal Register stating that it was
24 delaying the effective date of the CPA Rule for 60 days until March 22, 2017. EPA based this delay
25 on a White House memorandum issued on January 20, 2017 and signed by the Assistant to the
26 President and Chief of Staff, Reince Priebus, directing all federal agencies to, among other things,

27
28 ¹ A copy of the CPA Rule is attached hereto as Exhibit A.

1 temporarily postpone, for 60 days, all final rules whose effective date had not yet come to fruition.
2 The memo asserted that the delays were to allow the new heads of federal agencies time to review
3 the rules for possible revision. The memo stated that should an agency delay a rule pursuant to its
4 direction, it should consider providing an opportunity for notice and public comment before issuing
5 the delay, especially if the agency ended up delaying the rule after the initial 60 days.

6 4. The Federal Insecticide, Fungicide, and Rodenticide Act (“FIFRA”), 7 U.S.C. § 136
7 *et seq.*, requires EPA to ensure that the use of pesticides does not pose “unreasonable adverse
8 effects” to human health or the environment. *See* 7 U.S.C. § 136a(a). When EPA adopted the CPA
9 Rule less than six months ago, it found that the rule was needed to help ensure that RUPs “do not
10 cause unreasonable adverse effects to applicators, workers, the public, or the environment.” 82 Fed.
11 Reg. at 952, Ex. A.

12 5. Despite EPA’s finding that the CPA Rule is necessary to comply with its obligations
13 under FIFRA, and despite allowing States, Tribes, and applicators several years to come into
14 compliance with the CPA Rule’s requirements, EPA has now delayed the CPA Rule through five
15 different rulemakings. First, EPA delayed the rule for 60 days with no notice or opportunity for
16 public comment. EPA then enacted an additional 62-day delay, again providing no notice or
17 opportunity for public comment. EPA then announced a one-year delay and provided the public
18 only four days to comment on this lengthy delay. The APA generally requires a minimum comment
19 period of thirty days. EPA then issued a rule moving the effective date to June 5, 2017 to give itself
20 an additional two weeks to review the comments it received in the earlier 4-day comment period.
21 Finally, EPA issued a rule delaying the effective date of the CPA Rule an entire year to May 22,
22 2018.

23 6. With each delay rule, EPA failed to provide the reasoned decision making required
24 for such agency action. In particular, EPA failed to provide any analysis of, or adequate justification
25 for, the “unreasonable adverse effects to applicators, workers, the public, or the environment,” 82
26 Fed. Reg. at 952, Ex. A, which EPA said the CPA Rule would help prevent, but that will now persist
27 due to the 14-month delay of the rule.

1 provides free legal services and policy advocacy for California’s rural poor. CRLAF’s mission is to
2 achieve social justice and equity in partnership with farmworkers and all low-wage workers and their
3 families in rural communities through community, legislative and legal advocacy. CRLAF engages
4 in community education and outreach, impact litigation, legislative and administrative advocacy, and
5 public policy leadership to address labor rights, housing, education equity, health care access,
6 pesticide exposure, work safety, immigration, and environmental justice.

7 11. Plaintiff FARMWORKER ASSOCIATION OF FLORIDA, INC. (“FWAF”) is a non-
8 profit organization, based in Florida. More than 8,000 families are members of FWAF, which has
9 five locations throughout Central and South Florida. FWAF conducts programs and activities that
10 build leadership and activist skills among low-income communities of color who are
11 disproportionately affected by pesticide exposure and health problems as well as environmental
12 contamination, racism, exploitation, and political under-representation. FWAF’s long-standing
13 mission is to build power among farmworker and rural low-income communities to respond to the
14 myriad of workplace, economic, health, and environmental justice issues that impact their lives. In
15 line with its mission, FWAF works to protect the health and safety of its members and their families
16 from the risk of harm from exposure to RUPs.

17 12. Plaintiff PESTICIDE ACTION NETWORK NORTH AMERICA (“PANNA”) is a
18 non-profit organization that serves as an independent regional center for Pesticide Action Network
19 International, a coalition of over 600 public interest organizations in more than 90 countries.
20 PANNA provides scientific expertise, public education, access to pesticide data and analysis, policy
21 development and other support to its 225 member organizations. PANNA works in coalition with
22 farmworker groups in California and across the country, pushing for federal and state policy change
23 to protect farmworkers and their families from pesticide exposure. For the past 30 years, PANNA
24 has worked alongside groups serving, representing, and advocating for farmworkers to improve state
25 and federal rules addressing workplace safety, pesticide regulation, immigration policy,
26 and pesticide drift. PANNA submitted comments to EPA during its rulemaking process for the
27 revised CPA Rule. PANNA’s principal place of business is Oakland, California.

1 13. Members of PCUN, UFW, CRLAF and FWAF use, purchase, work with, or are
2 otherwise exposed to RUPs or products to which RUPs have been applied; they live in communities,
3 have children that attend schools, and work in buildings and environments where RUPs are applied,
4 and own or rent homes where RUPs could be improperly applied, causing serious harm. Plaintiffs'
5 members have a compelling need to know that the persons who apply these RUPs are properly
6 trained and certified in order to best protect themselves, their families, their crops and livelihoods,
7 the environment, and their communities from the improper application of RUPs and the death,
8 serious bodily injury, illness and other injuries that too often result from improper exposure to RUPs.

9 14. Plaintiffs submitted or joined comments supporting EPA's draft CPA Rule. Plaintiffs
10 and their members are adversely affected by EPA's failure to implement the CPA Rule as initially
11 enacted and on the established timetable. They are adversely affected not only by the failure of EPA
12 to provide proper notice and comment regarding the numerous final rules that have delayed the
13 effective date of the CPA Rule, but by the harm that results from delaying implementation of much-
14 needed protections included in the updated CPA Rule, including actual or threatened harm to
15 Plaintiffs' health, the health of their families, and their professional, educational, and economic
16 interests.

17 15. The legal violations alleged in this Complaint have injured and continue to injure the
18 interests of Plaintiffs and their members. Granting the relief requested in this lawsuit would redress
19 these injuries.

20 16. Defendant E. SCOTT PRUITT is the Administrator of the UNITED STATES
21 ENVIRONMENTAL PROTECTION AGENCY. He is responsible for the implementation,
22 enforcement, and administration of EPA's legal duties under both the APA and FIFRA, and is sued
23 in his official capacity. 5 U.S.C. § 706; 7 U.S.C. §§ 136(w) and 136a(b).

24 17. Defendant UNITED STATES ENVIRONMENTAL PROTECTION AGENCY is the
25 federal agency charged with administering and implementing FIFRA's substantive, regulatory
26 requirements and conducting lawful rulemaking pursuant to the APA.

1 **JURISDICTION AND VENUE**

2 18. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331, 7 U.S.C. §
3 136n and 5 U.S.C. § 702.

4 19. Each of EPA’s rules delaying the effective date of the CPA Rule constitutes final
5 agency action subject to judicial review. 5 U.S.C. §§ 702, 704, 706.

6 20. An actual controversy exists between the parties within the meaning of 28 U.S.C. §
7 2201. This Court has authority to issue the relief requested under 28 U.S.C. §§ 2201-02 (declaratory
8 judgment and further relief).

9 21. The requested relief would redress the harm to Plaintiffs and their members caused by
10 EPA’s unlawful delay of the CPA Rule.

11 22. Venue is proper in this district because plaintiff PANNA resides and has its principal
12 place of business in this judicial district, and UFW has offices in this judicial district. 28 U.S.C. §
13 1391(c)(2).

14 **LEGAL BACKGROUND**

15 The APA

16 23. The APA defines “rule making” as the “agency process for formulating, amending, or
17 repealing a rule.” 5 U.S.C. § 551(5). The APA defines “rule” to include “the whole or a part of an
18 agency statement of general or particular applicability and future effect designed to implement,
19 interpret, or prescribe law or policy.” *Id.* § 551(4).

20 24. The APA requires agencies to engage in a notice and public comment process prior to
21 formulating, amending, or repealing a rule. 5 U.S.C. §§ 551(5), 553. This process is designed to
22 “give interested persons an opportunity to participate in the rule making through submission of
23 written data, views, or arguments.” *Id.* § 553(c).

24 25. The APA permits an agency to forego notice and comment requirements if “good
25 cause” exists that notice and comment is “impracticable, unnecessary, or contrary to the public
26 interest.” 5 U.S.C. § 553(b)(B). The “good cause” exception is narrowly construed.

1 31. FIFRA requires EPA to develop standards for certification of applicators, 7 U.S.C. §
2 136i(a)(1), and allows States to certify applicators under a certification plan submitted to and
3 approved by EPA. *Id.* § 136i(a)(2).

4 32. On January 4, 2017, EPA updated its regulations concerning the certification of, and
5 training requirements for, individuals who apply RUPs. 82 Fed. Reg. 952-1050, Ex. A. These
6 updates constituted the most significant revision of the rule in over 40 years since the rule’s initial
7 implementation. *See id.* The new CPA Rule imposed stricter standards to protect human health and
8 the environment and reduce risk to those applying pesticides, including certified commercial and
9 private pesticide applicators, non-certified pesticide applicators, in both agricultural and non-
10 agricultural settings. *Id.* It also established minimum standards that apply to all States, Tribes, and
11 federal agencies, in an effort to streamline RUP use across the country. 82 Fed. Reg. at 965, Ex. A.

12 33. One example of a much needed revision to the CPA Rule includes the requirement
13 that non-certified applicators of RUPs must be trained every year and must have received training
14 before they begin using RUPs. *See* 82 Fed. Reg. 952-1050, Ex. A. The training must include (1) the
15 potential dangers of exposure to pesticides; (2) the appropriate use of protective equipment; (3)
16 specific instructions about the particular pesticide used and the site where it will be used; (4) how to
17 prevent environmental contamination such as spills, drift, and runoff; and (5) how to report pesticide
18 safety violations to enforcement agencies. *Id.* Lastly, the training must be presented in a way the
19 non-certified applicator understands, including a translation if needed. *Id.* at 984. EPA’s delays
20 mean that non-certified applicators of RUPs are now permitted to apply these pesticides without any
21 training, or if they have received past training, without recent or updated training.

22 34. Another example of a critical safety gap that the new rule fixes concerns spray
23 applications. Spray applications, particularly from aircraft, often result in pesticide drift that exposes
24 non-target plants, animals, and bystanders to potentially severe harm. *See* 82 Fed. Reg. at 963, 977,
25 Ex. A. EPA found that 37%-68% of acute pesticide-related illnesses in agricultural workers were
26 caused by spray drift, including both ground-based and aerial spray applications. *Id.* at 963. Thus,
27 the updated CPA Rule created a new category for training “commercial and private applicators
28 performing aerial application, soil fumigation, and non-soil fumigation.” *Id.* EPA’s delays mean that

1 RUPs can be sprayed by applicators who have not received special training to perform this high-risk
2 job.

3 35. The CPA Rule also established a minimum age requirement for applicators of RUPs.
4 82 Fed. Reg. at 952, Ex. A. The revised CPA Rule specifically prohibits children from applying
5 RUPs. *Id.* at 998 (“the final rule prohibits persons under 18 years old from becoming certified to
6 apply RUPs”). In finalizing its revisions to the CPA Rule, EPA explained that a minimum age
7 requirement is needed to avert unreasonable adverse effects from RUP use because children may not
8 have the capacity to make decisions and weigh risks properly — qualities that are critical to proper
9 application of RUPs. *Id.* at 998-99. EPA found that not only are children more likely to mis-apply
10 RUPs because they are still developing, they are more susceptible to risks associated with RUP
11 exposure. *Id.* at 957. EPA’s delays of the CPA Rule mean that children can continue to handle and
12 apply RUPs.

13 Rulemaking under FIFRA

14 36. Pursuant to FIFRA, before promulgating a regulation, EPA must provide the
15 Secretary of the United States Department of Agriculture (“USDA”) a copy of the regulation at least
16 60 days prior to its publication. 7 U.S.C. § 136w(a)(2)(A). If the USDA provides comments on the
17 regulation within 30 days after receiving it, EPA must publish the comments and EPA’s response in
18 the Federal Register. *Id.* If the USDA does not provide comments within 30 days after receiving it,
19 EPA may sign the regulation for publication in the Federal Register any time after such 30-day
20 period notwithstanding the foregoing 60-day time requirement. *Id.*

21 37. For a final regulation, EPA must provide a copy to the USDA at least 30 days prior to
22 signing the final regulation. 7 U.S.C. § 136w(a)(2)(B). If the USDA provides comments within 15
23 days of receiving a copy of the regulation, EPA must publish the comments and EPA’s response in
24 the Federal Register. *Id.* If the USDA does not provide comments within 15 days after receiving it,
25 EPA may sign the regulation for publication in the Federal Register any time after such 15-day
26 period notwithstanding the foregoing 30-day time requirement. *Id.*

27 38. In addition to providing a copy of any proposed or final regulation to the USDA for
28 review and comment, EPA must also provide a copy to the Scientific Advisory Panel so that the

1 panel may review and comment “as to the impact on health and the environment of the action
2 proposed.” 7 U.S.C. § 136w(d)(1). The same timelines applicable to submission to the USDA apply
3 to submissions of any proposed or final regulation to the Scientific Advisory Panel. *Id.*

4 39. EPA must also provide a copy of any proposed and final rule or regulation to the
5 Committee on Agriculture of the House of Representatives and the Committee on Agriculture,
6 Nutrition, and Forestry of the Senate, and a copy to the Secretary of the Senate and the Clerk of the
7 House of Representatives. 7 U.S. C. § 136w(a)(3), (4). The rule or regulation shall not become
8 effective until the passage of 60 calendar days after the rule or regulation is so transmitted. *Id.* §
9 136w(a)(3), (4).

10 **FACTUAL BACKGROUND**

11 CPA Rulemaking

12 40. In 2015, in response to years of concern from those who apply and are otherwise
13 exposed to RUPs, EPA issued a notice of proposed rulemaking to update the original CPA Rule. *See*
14 Proposed CPA Rule, 80 Fed Reg. 51355-51422 (August 24, 2015). For the proposed rule, EPA
15 provided proper notice and a three-month comment period that was extended for a total of 150 days.
16 *See id.* at 51456.

17 41. During the public comment period, EPA received and reviewed over 700 unique
18 comments including from farmworker advocates, public health advocates, certifying authorities,
19 States and Tribes, university extension programs, growers and grower organizations and other
20 groups, such as individual members of the public.

21 42. On January 4, 2017, EPA published the final rule revising the CPA Rule. 82 Fed.
22 Reg. 952, Ex. A.

23 43. In issuing the final rule, EPA noted several factors that prompted EPA to propose the
24 changes to the existing CPA Rule, which had not been updated since its enactment in 1974. These
25 factors included “[t]he changing nature of pesticide labeling, risks associated with specific methods
26 for applying pesticides, adverse human health and ecological incidents, inadequate protections for
27 noncertified applicators of RUPs, an uneven regulatory landscape, and outdated and obsolete
28

1 provisions in the rule related to the administration of certification programs by Tribes and Federal
2 agencies.” 82 Fed. Reg. at 963, Ex. A.

3 44. In finalizing the rule, EPA noted that “[i]n addition to the hundreds of potentially
4 avoidable acute health incidents related to RUP exposure reported each year” –a number plaintiffs
5 contend does not reflect actual incidents due to underreporting – “several major incidents ha[d]
6 occurred that demonstrate[d] that a single or limited misapplication of an RUP can have widespread
7 and serious effects.” 82 Fed. Reg. at 963, Ex. A.

8 45. EPA cited in its rulemaking several instances of unreasonable and avoidable harm
9 resulting from improper RUP use, including the widespread, nationwide misuse of a RUP in the
10 mid-1990s that was designated only to be used on cotton crops. *See* 82 Fed. Reg. at 963, Ex. A. The
11 RUP was used in people’s homes leading to widespread contamination of hundreds of homes,
12 significant exposure and adverse health effects for hundreds of homeowners and children, and
13 millions in cleanup costs. *Id.*

14 46. In another incident EPA cited as part of rulemaking, an applicator used a RUP
15 improperly in a house, causing the death of two young children and serious illness to the rest of the
16 family. 82 Fed. Reg. at 963, Ex. A.

17 47. EPA also cited a 2015 incident where the improper use of a RUP in the American
18 Virgin Islands caused serious injury, including paralysis to the father and children, to a family who
19 had rented a villa for their vacation where a RUP was improperly used. 82 Fed. Reg. at 963, Ex. A.

20 48. In addition to these non-agricultural exposures, there is the widespread and continued
21 exposure of RUPs to the farmworkers who either handle or are exposed to RUPs, along with their
22 families who are exposed either when the farmworker comes home in contaminated clothing or
23 when the families are exposed through drift from improper application. Almost 20% of the millions
24 of farmworkers in the United States regularly handle pesticides in a given year. *See* Attachment G,
25 at Exhibit 4, fn. 3. Of those, 58 out of every 100,000 report acute pesticide poisoning, illness or
26 injury each year. Geoffrey M. Calvert, et al., *Acute Pesticide Poisoning Among Agricultural*
27 *Workers in the United States, 1998-2005*, 51 Am. J. Indus. Med. 883, 890 (2008). A more recent
28 2015 survey of pesticide applicators developed by Farmworker Justice and presented to EPA in

1 recent comments found that one-third of the applicators reported a pesticide-related illness. Again,
2 these numbers do not accurately reflect the number of exposures given that farmworkers often do not
3 report pesticide exposures for fear of retaliation.

4 49. According to EPA, the revised CPA Rule could prevent up to 1,000 acute illnesses
5 each year. *See* EPA, Fact Sheet on Revisions to EPA’s Certification of Pesticide Applicators Rule,
6 https://www.epa.gov/sites/production/files/2016-12/documents/cert_final_rule_factsheet_0.pdf.

7 50. The final rule published on January 4, 2017 had an effective date of March 6, 2017.
8 82 Fed. Reg. at 952, Ex. A. Under the final rule, States and other certifying authorities would have
9 three years after the rule’s effective date to prepare and submit a compliance plan to EPA. *Id.* at
10 953. EPA would then have up to two years to consider and approve the compliance plan. *See id.* at
11 952-953 (explaining that in response to “extensive comments from entities that administer pesticide
12 applicator certification programs,” “[t]he final rule adjusts the proposed implementation timeframe
13 (from 2 to 3 years) to provide additional flexibility.”)

14 51. Prior to adopting the CPA Rule, EPA conducted extensive economic analyses
15 assessing the economic impacts from rulemaking which was reviewed by the Office of Management
16 and Budget (“OMB”). 82 Fed. Reg. at 953-54, Ex. A. These analyses not only justified EPA’s
17 findings regarding the unreasonable risk posed to farmworkers, their families, the environment, and
18 public generally without the finalized revisions to the CPA Rule, but also weighed the relative
19 feasibility of implementation across the country. *Id.*

20 Delay of the Effective Date of the CPA Rule

21 52. On January 26, 2017, EPA issued its first rule delaying the effective date of the CPA
22 Rule for 60 days until March 21, 2017. 82 Fed. Reg. 8499-8501 (Jan. 26, 2017) (“First Delay
23 Rule”). A copy of the First Delay Rule is attached hereto as Exhibit B. In issuing the First Delay
24 Rule, EPA did not provide proper notice and opportunity for public comment. *See id.* at 8501.

25 53. EPA stated the First Delay Rule was in response to the “Regulatory Freeze Pending
26 Review” memorandum, written on January 20, 2017, by the Assistant to the President and Chief of
27 Staff, Reince Priebus (“Priebus memo”). 82 Fed. Reg. at 8500, Ex. B. The memorandum directed
28 the heads of Executive Departments and Agencies to temporarily postpone for 60 days from the date

1 of the memorandum the effective dates of all regulations that had been published in the Federal
2 Register but had not yet taken effect. *Id.* The Priebus memo stated that should an agency delay a
3 rule, it should consider providing an opportunity for notice and public comment of the delay,
4 especially if the agency ended up delaying the rule after the initial 60 days.

5 54. EPA asserted that the First Delay Rule was “necessary to give Agency officials the
6 opportunity for further review and consideration of new regulations, consistent with the
7 memorandum.” 82 Fed. Reg. at 8500, Ex. B. EPA denied the public an opportunity to comment on
8 the delay based on a “good cause” exception; specifically, EPA stated seeking public comment
9 would be impracticable, unnecessary and contrary to the public interest because it was a temporary
10 delay of only 60 days and EPA needed the time to review the regulations, not respond to public
11 comments regarding the delay itself. *Id.*

12 55. In issuing the First Delay Rule, EPA said nothing about the ongoing unreasonable
13 adverse effects posed by use of RUPs under a set of regulations that the agency had recently found
14 inadequate to satisfy the requirements of FIFRA.

15 56. In issuing the First Delay Rule, EPA did not state whether it had consulted with
16 USDA or the Scientific Advisory Panel or submitted a copy to Congress or obtained a waiver to
17 avoid these requirements.

18 57. On March 20, 2017, EPA issued its second rule delaying the effective date of the
19 CPA Rule for an additional 62 days until May 22, 2017. 82 Fed. Reg. 14324-25 (March 20, 2017)
20 (“Second Delay Rule”). A copy of the Second Delay Rule is attached hereto as Exhibit C. Again,
21 EPA failed to provide any opportunity for notice or public comment for the Second Delay Rule.

22 58. EPA justified the Second Delay Rule based on its desire to “give Agency officials the
23 opportunity to decide whether they would like to conduct a substantive review of the five
24 regulations, consistent with the January 20 Memo.” 82 Fed. Reg. at 14325, Ex. C. EPA again argued
25 “good cause” existed to deny the public the opportunity to comment on the delay. *See id.*
26 Inexplicably, EPA also claimed that allowing these regulations to go into effect now “without first
27 deciding whether to undertake a substantive review may create public confusion.” *Id.*

28

1 59. In issuing the Second Delay Rule, EPA said nothing about the ongoing unreasonable
2 adverse effects posed by use of RUPs under a set of regulations that the agency had recently found
3 inadequate to satisfy the requirements of FIFRA.

4 60. In issuing the Second Delay Rule, EPA did not state it had consulted with the USDA
5 or the Scientific Advisory Panel or submitted a copy to Congress or obtained a waiver to avoid these
6 requirements.

7 61. For both delays, EPA also argued that to the extent the extension was seen as a
8 procedural rule, it would be exempt from notice and comment under 5 U.S.C. § 553(b)(A). 82 Fed.
9 Reg. at 8500, Ex. B; 82 Fed. Reg. at 14325, Ex. C.

10 62. On May 15, 2017, EPA issued its third rule delaying the effective date of the CPA
11 Rule. 82 Fed. Reg. 22294-96 (May 15, 2017) (“Third Delay Rule”). A copy of the Third Delay
12 Rule is attached hereto as Exhibit D. EPA stated the effective date would now be delayed over a
13 year to May 22, 2018. *Id.* at 22294. This time, EPA provided a 4-day window for public comment
14 as to whether implementation of the CPA Rule should be delayed for one year to allow the EPA to
15 conduct a “substantive review” of the rule it had just adopted. *Id.* The 4-day window ended on
16 Friday, May 19, thus ostensibly giving EPA the weekend to read, review and respond to the
17 comments received given the Monday, May 22 effective date. *Id.*

18 63. EPA stated “good cause” again warranted a shortened comment period, noting that a
19 30-day comment period would be impractical, unnecessary and contrary to the public interest
20 because it would extend beyond the May 22 effective date and thus require States, Tribes, and the
21 regulated community to adopt new measures to comply with a regulation EPA intends to
22 substantively review, and possibly revise. 82 Fed. Reg. at 22295, Ex. D.

23 64. In issuing the Third Delay Rule, EPA said nothing about the ongoing unreasonable
24 adverse effects posed by use of RUPs under a set of regulations that the agency had recently found
25 inadequate to satisfy the requirements of FIFRA.

26 65. In issuing the Third Delay Rule, EPA did not state it had consulted with the USDA or
27 the Scientific Advisory Panel or submitted a copy to Congress or obtained a waiver to avoid these
28 requirements.

1 66. On May 22, 2017, EPA issued its fourth rule delaying the effective date to June 6,
2 2017. 82 Fed. Reg. 23148-50 (May 22, 2017) (“Fourth Delay Rule”). A copy of the Fourth Delay
3 Rule is attached hereto as Exhibit E. EPA extended the delay an additional two weeks to allow EPA
4 additional time to review the comments it received in the 4-day comment period. *Id.* at 23148. The
5 Fourth Delay Rule did not provide an opportunity for additional public comments. *Id.* at 23149.

6 67. On June 2, 2017, EPA issued its fifth rule delaying the effective date of the CPA Rule
7 to May 22, 2018. 82 Fed. Reg. 25529-32 (June 2, 2017) (“Fifth Delay Rule”). A copy of the Fifth
8 Delay Rule is attached hereto as Exhibit F. EPA again asserted “good cause” for allowing the
9 effective date of an action to be less than 30 days from its publication date. *Id.* at 25530. EPA
10 further found “good cause” to make the rule effective immediately upon publication. *Id.*

11 68. In issuing the Fifth Delay Rule, EPA cursorily responded to the more than 130
12 comments received in the 4-day window. 82 Fed. Reg. at 25530-32, Ex. F. Plaintiffs were among
13 the groups that submitted comments on May 19, 2017, opposing the one-year delay. Plaintiffs’
14 comments emphasized how the significantly shortened time-frame for public comments precluded
15 Plaintiffs and others from accumulating and providing detailed information about the increased risk
16 of harm that farmworkers, their families and rural communities will face as a result of EPA’s
17 continued delays. *See* Ps.’ Comment Letter (May 19, 2017). A copy of Plaintiffs’ Comment Letter
18 is attached hereto as Exhibit G.

19 69. All but 18 of the comments opposed any further delay of the CPA Rule. 82 Fed. Reg.
20 at 25530, Ex. F. EPA responded to the 130 comments in less than a few paragraphs. *Id.* at 25530-
21 32. As to comments regarding the unreasonable risk of harm to farmworkers, their families, and the
22 public generally from a fourteen month delay of implementation of the rule, EPA failed to address
23 both its earlier findings that the CPA Rule would help avert unreasonable adverse effects as well as
24 the additional harm a delay in implementation would cause. Instead EPA noted that any immediate
25 harm between now and May 22, 2018 would occur anyway given States, Tribes and applicators
26 would be preparing compliance plans during this 14-month window even if the rule was not delayed.
27 *Id.* at 25531. EPA failed to address the additional harm that came from an *additional* 14 months of
28 no action to implement the rule itself.

1 Rule was arbitrary and capricious, an abuse of discretion, not in accordance with law, and in excess
2 of EPA's statutory jurisdiction and authority under 5 U.S.C. §706 and 7 U.S.C. §136 *et seq.*

3 **REQUEST FOR RELIEF**

4 WHEREFORE, Plaintiffs respectfully request this Court grant the following relief:

5 1. DECLARE that EPA's delay of the effective date of the CPA Rule without proper
6 notice or an opportunity for public comment violates 5 U.S.C. § 553;

7 2. DECLARE that EPA's delay of the effective date of the CPA Rule is arbitrary and
8 capricious, not in accordance with law and is in excess of EPA's statutory jurisdiction and authority
9 under 5 U.S.C. § 706 and 7 U.S.C. § 136 *et seq.*;

10 3. VACATE each of the following final rules that unlawfully delayed the effective date
11 for implementation of the CPA Rule:

12 a) 82 Fed. Reg. 8499-501 (Jan. 26, 2017)

13 b) 82 Fed. Reg. 14324-25 (March 20, 2017)

14 c) 82 Fed. Reg. 22294-96 (May 15, 2017)

15 d) 82 Fed. Reg. 23148-50 (May 22, 2017)

16 e) 82 Fed. Reg. 25531-32 (June 2, 2017);

17 4. DECLARE that the CPA Rule, 82 Fed. Reg. 952-1050 (January 4, 2017), is in effect;

18 5. AWARD Plaintiffs their costs of litigation, including reasonable attorney and expert
19 witness fees; and/or

20 6. GRANT such additional relief as the Court may deem just and proper.

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Respectfully submitted,

DATED: June ____, 2017

/s/ Stacey P. Geis
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