

1 ELISABETH A. HOLMES (Oregon State Bar No. 120254)  
Pro hac vice application forthcoming  
2 BLUE RIVER LAW, P.C.  
P.O. Box 293  
3 Eugene, Oregon 97440  
Telephone: (541) 870-7722  
4 [eli.blueriverlaw@gmail.com](mailto:eli.blueriverlaw@gmail.com)

5 DANIEL C. SNYDER (Oregon State Bar No. 105127)  
Pro hac vice application forthcoming  
6 LAW OFFICES OF CHARLES M. TEBBUTT, P.C.  
941 Lawrence Street  
7 Eugene, Oregon 97401  
Telephone: (541) 344-3505  
8 Facsimile: (541) 344-3516  
[dan@tebbuttlaw.com](mailto:dan@tebbuttlaw.com)

9 LAURA D. BEATON (California State Bar No. 294466)  
10 SHUTE, MIHALY & WEINBERGER LLP  
396 Hayes Street  
11 San Francisco, California 94102  
Telephone: (415) 552-7272  
12 Facsimile: (415) 552-5816  
[Beaton@smwlaw.com](mailto:Beaton@smwlaw.com)

13 Attorneys for HIGH SIERRA HIKERS  
14 ASSOCIATION, INC.

15 **UNITED STATES DISTRICT COURT**

16 **NORTHERN DISTRICT OF CALIFORNIA, SAN FRANCISCO DIVISION**

17 HIGH SIERRA HIKERS ASSOCIATION,  
18 INC.,

19 Plaintiff,

20 v.

21 NATIONAL PARK SERVICE,

22 Defendant.

Case No. 3:16-cv-2609

**FIRST AMENDED COMPLAINT FOR  
DECLARATORY AND INJUNCTIVE  
RELIEF**

Freedom of Information Act  
Administrative Procedure Act

## INTRODUCTION

1  
2           1.       This action, through which Plaintiff High Sierra Hikers Association, Inc.  
3 (“HSHA,” or “Plaintiff”) seeks access to government records relating to the Defendant United  
4 States Department of Interior National Park Service’s Wilderness Stewardship Plan for Sequoia  
5 and Kings Canyon National Parks and the accompanying Final Environmental Impact Statement  
6 (collectively the “WSP”), is premised upon, and consequent to, violations of the federal  
7 Freedom of Information Act (“FOIA”), 5 U.S.C. § 552 et seq. and Department of Interior FOIA  
8 regulations promulgated thereunder, 43 C.F.R. Subtitle A, Part 2, §§ 2.1-2.290, violations  
9 which also constitute agency action unlawfully withheld or unreasonably delayed and/or are  
10 arbitrary, capricious, or otherwise not in accordance with law under the Administrative  
11 Procedure Act (“APA”), 5 U.S.C. § 701 et seq. This action challenges the unlawful failure of the  
12 Defendant, the United States Department of Interior National Park Service and Sequoia and  
13 Kings Canyon National Parks (collectively, “NPS”, the “Agency” or “Defendant”) to abide by  
14 the statutory requirements of the FOIA, and applicable regulatory requirements, and further  
15 challenges the actions and omissions underlying such claims under the APA.

16           2.       Defendant is unlawfully withholding from public disclosure information sought by  
17 HSHA, information to which HSHA is entitled and for which no valid disclosure exemption  
18 applies or has been properly asserted. In particular, Defendant has violated, and remains in  
19 violation of, the statutory mandates imposed by the FOIA and the APA by: (Count I) failing to  
20 provide a timely final determination; (Count II) failing to comply with, and provide, a renewed  
21 estimated completion date; (Count III) failing to conduct a reasonably adequate search; (Count  
22 IV) failing to provide non-exempt public records; (Count V) unlawfully withholding documents  
23 from public disclosure for which no valid disclosure exemption applies or has been properly  
24 asserted, or to provide the reasonably segregable portions of those records; and (Count VI)  
25 taking such actions and omissions detailed in Counts I through V, which, in the alternative,  
26 constitute agency action unlawfully withheld or unreasonably delayed and/or which are  
27 arbitrary, capricious, or otherwise not in accordance with law under the APA, and are therefore  
28 actionable thereunder.



**PARTIES**

12. Plaintiff HSHA is a 501(c)(3) non-profit corporation organized under the laws of the State of California. HSHA is a volunteer organization dedicated to improving management practices on federal lands in the Sierra Nevada.

13. HSHA submitted a FOIA request to NPS on May 2, 2015 seeking nine categories of records regarding and related to the WSP and NPS’s planning process for the WSP, and more specifically focusing in on the issues central to HSHA’s mission: informing its members, public officials, and the public about environmental issues pertaining to the Sierra Nevada. NPS has been developing the WSP for decades; HSHA’s May 2, 2015 FOIA is targeted to assess the factors that NPS considered in its ultimate decision on the WSP.

14. Defendant National Park Service is an agency within the U.S. Department of Interior and is responsible for managing all national parks in the United States, including the Sequoia and Kings Canyon National Parks.

15. Defendant is an “agency” under the FOIA, the records sought are “records” under the FOIA, and as Defendant is in possession and control of the records sought by HSHA, Defendant is subject to the FOIA pursuant to 5 U.S.C. § 552(f).

**LEGAL FRAMEWORK**

16. The FOIA requires U.S. government agencies to promptly make public records available to any person if that person makes a request which (1) reasonably describes the records sought and (2) complies with any applicable agency rules for making such a request. 5 U.S.C. § 552(a)(3)(A).

17. The FOIA requires an agency to issue a final determination on any such information request within twenty business days from the date of its receipt. 5 U.S.C. § 552(a)(6)(A)(i); 43 C.F.R. § 2.16(a). In issuing a final determination, an agency is required to inform the requester of three things: (1) the agency’s determination of whether or not to comply with the request; (2) the reasons for its decision; and (3) notice of the right of the requester to appeal to the head of the agency. 5 U.S.C. § 552(a)(6)(A)(i).

18. The FOIA allows an agency to extend the twenty-day determination deadline,

1 however, by ten working days when “unusual circumstances” exist and when the agency so  
2 notifies a requester in writing. 5 U.S.C. § 552(a)(6)(B)(i)-(iii); 43 C.F.R. §§ 2.16(a), 2.19. A  
3 notice informing a requester of the invocation of the “unusual circumstances” provision must  
4 specify the applicable “unusual circumstances.” 5 U.S.C. § 552(a)(6)(B)(i)-(iii); 43 C.F.R.  
5 § 2.19(a).

6 19. Permissible “unusual circumstances” are limited to: (1) the need to search for and  
7 collect the requested records from field facilities or other establishments that are separate from  
8 the office processing the request; (2) the need to search for, collect, and appropriately examine a  
9 voluminous amount of separate and distinct records which are demanded in a single request; or  
10 (3) the need for consultation, which shall be conducted with all practicable speed, with another  
11 agency having a substantial interest in the determination of the request or among two or more  
12 components of the agency having substantial subject-matter interest therein. 5 U.S.C.  
13 § 552(a)(6)(B)(iii).

14 20. An agency is entitled to one ten-business day extension. 5 U.S.C.  
15 § 552(a)(6)(B)(i). The written notice provided to the requester must specify the specific unusual  
16 circumstances justifying the extension and the date on which a final determination is expected to  
17 be dispatched. *Id.*; 43 C.F.R. § 2.19(a).

18 21. In some circumstances, the FOIA allows an agency to invoke an extension beyond  
19 ten days. To invoke a longer extension, the FOIA requires an agency to provide written  
20 notification to the requester that (1) offers the requester an opportunity to limit the scope of the  
21 request so that it may be processed within that time limit, or (2) offers the requester an  
22 opportunity to arrange with the agency an “alternative time frame” for processing the request. 5  
23 U.S.C. § 552(a)(6)(B)(ii); 43 C.F.R. § 2.19(b).

24 22. As part of invoking an “alternative time frame” extension, the agency must also  
25 make available to the requester its FOIA Public Liaison, who is tasked to resolve any dispute  
26 between the requester and the agency. 5 U.S.C. § 552(a)(6)(B)(ii); 43 C.F.R. § 2.19(b)(2).

27 23. FOIA Public Liaisons “shall serve as supervisory officials” and “shall be  
28 responsible for assisting in reducing delays, increasing transparency and understanding of the

1 status of requests, and assisting in the resolution of disputes.” 5 U.S.C. § 552(l); 43 C.F.R.  
2 § 2.66(c).

3 24. Even when an “unusual circumstances” extension is made, the agency must still  
4 notify the requester of its expected date on which a final determination will be dispatched. 5  
5 U.S.C. § 552(a)(6)(B)(i).

6 25. “Exceptional circumstances” for failure to comply with applicable time limits  
7 “does not include a delay that results from predictable agency workload of requests under this  
8 section, unless the agency demonstrates reasonable progress in reducing its backlog of pending  
9 requests.” 5 U.S.C. § 552(a)(6)(C)(ii).

10 26. NPS regulations allow for a “temporary” suspension of the FOIA’s twenty-day  
11 determination deadline when the agency reasonably asks a requester for clarifying information.  
12 43 C.F.R. § 2.18(a). This “temporary” suspension is limited to the time it takes a requestor to  
13 respond to one (1) written communication from the agency. *Id.*

14 27. The FOIA permits agencies to promulgate regulations “providing for multitrack  
15 processing of requests for records based on the amount of work or time (or both) involved in  
16 processing requests.” 5 U.S.C. § 552(a)(6)(D)(i).

17 28. Agency regulations “may provide a person making a request that does not qualify  
18 for the fastest multitrack processing an opportunity to limit the scope of the request in order to  
19 qualify for faster processing.” 5 U.S.C. § 552(a)(6)(D)(ii); 43 C.F.R. § 2.15(e).

20 29. Multitrack processing “shall not be considered to affect” the due diligence  
21 requirements of an agency’s duties to respond within the applicable time limits. 5 U.S.C.  
22 § 552(a)(6)(D)(iii); *see also* 43 C.F.R. § 2.15(f).

23 30. NPS regulations have established four basic processing tracks, based on factors  
24 “such as the number of pages involved in processing the request or the need for consultations.”  
25 43 C.F.R. § 2.15(b), (c).

26 31. Final determinations by NPS concerning the granting or denial of a FOIA request  
27 must be made in writing. 43 C.F.R. § 2.21(a). If an agency fails to provide a final determination  
28 on a FOIA request within the statutory timeframe, the requester is deemed to have exhausted its

1 administrative remedies and may immediately file suit against the agency. 5 U.S.C.  
2 § 552(a)(6)(C)(i).

3 32. The FOIA also requires agencies to provide “an estimated date on which the  
4 agency will complete action on the request.” 5 U.S.C. § 552(a)(7)(B)(ii); *see also* 5 U.S.C.  
5 § 552(a)(6)(B)(i).

6 33. Agencies shall make reasonable efforts to maintain their records so they are  
7 reproducible for FOIA purposes, and “shall make reasonable search efforts” for responsive  
8 records. 5 U.S.C. § 552(a)(3)(B), (C). The term “search” “means to review, manually or by  
9 automated means, agency records for the purpose of locating those records which are responsive  
10 to a request.” 5 U.S.C. § 552(a)(3)(D).

11 34. In furnishing records responsive to a request under the FOIA, an agency may, for a  
12 limited set of categories of information, exclude or withhold such information from disclosure.  
13 5 U.S.C. § 552(b). However, even where proper justification exists for withholding such  
14 information, the agency must provide the remaining portions of records that are reasonably  
15 segregable from the properly withheld portions thereof. *Id.*

16 35. Except in certain circumstances, when an agency produces a record in response to  
17 a FOIA request but withholds a portion thereof, the agency must indicate the volume of  
18 information withheld and the exemption under which such information has been withheld. *Id.*;  
19 5 U.S.C. § 552(a)(6)(F).

20 36. An agency that withholds public records from a requestor under the FOIA bears  
21 the burden of sustaining the legality of its action. 5 U.S.C. § 552(a)(4)(B).

## 22 **STATEMENT OF OPERATIVE FACTS**

23 37. In 1964 Congress passed the Wilderness Act, 16 U.S.C. § 1131 et seq., Pub. L. 88-  
24 577 (Sept. 3, 1964). The Wilderness Act authorizes Congress to designate “wilderness areas”  
25 that “shall be administered for the use and enjoyment of the American people in such manner as  
26 will leave them unimpaired for future use as wilderness, and so as to provide for the protection  
27 of these areas, the preservation of their wilderness character, and for the gathering and  
28 dissemination of information regarding their use and enjoyment as wilderness....” 16 U.S.C.



1 § 1131(a). In 1984 Congress passed the California Wilderness Act, Pub. L. 98-425 (Sept. 28,  
2 1984) § 105, amended by Pub. L. 103-437 (Nov. 2, 1994), thereby designating the Sierra Crest  
3 portion of the Sequoia and Kings Canyon National Parks as “wilderness.” *See* 16 U.S.C. § 80. In  
4 2009, Congress expanded the Sequoia and Kings Canyon Wilderness Area, and designated the  
5 John Krebs Wilderness Area. *See* Omnibus Public Land Management Act of 2009 Pub. L. 111-  
6 11 (Mar. 30, 2009). The Sequoia and Kings Canyon total designated wilderness area is now  
7 808,078 acres, or approximately 93.3% of the total park acreage of 865,964 acres. Sequoia and  
8 Kings Canyon National Parks also contain several “proposed” wilderness and “designated as  
9 proposed” wilderness areas. In total, 97% of the Sequoia and Kings Canyon National Parks’  
10 acreage is designated, or proposed, wilderness area.

11 38. Pursuant to the Wilderness Act, NPS is the agency that administers the Sequoia  
12 and Kings Canyon National Parks, and NPS is to develop special protections for wilderness  
13 areas to preserve their wilderness character. *See* 16 U.S.C. § 1133(b). Over nearly a 45-year  
14 period, NPS developed several management plans; and, HSHA has only twice sought  
15 information regarding these management plans from NPS through the FOIA.

16 39. Several NPS plans proposed preparing further plans, including a 2006 proposal to  
17 prepare a wilderness stewardship plan. *See, e.g.*, NPS, Management Policies at Ch. 6 (2006)  
18 available at <https://www.nps.gov/policy/mp2006.pdf>. The wilderness stewardship plan would  
19 focus on implementing wilderness stewardship as well as stock use practices within wilderness.  
20 *Id.* at Ch. 4, 6, 8.

21 40. In April 2015 the NPS finally issued the WSP, and on May 27, 2015 NPS issued  
22 the WSP’s Record of Decision (“ROD”), finalizing the WSP. The WSP puts forth a framework  
23 for NPS’s management and preservation of the Sequoia and Kings Canyon National Parks for  
24 the next 15 to 20 years in order for NPS to meet the mandates of the 1964 Wilderness Act and  
25 the 1984 California Wilderness Act. The WSP contains provisions relating to the commercial,  
26 administrative, and private use of stock animals (horses, mules, burros, llamas) in the High  
27 Sierra, activities and policies that are of particular interest to HSHA.

28 41. On May 2, 2015, HSHA sent a FOIA request to the Freedom of Information Act



1 Officer at the Sequoia and Kings Canyon National Parks setting forth an enumerated nine-part  
2 request for records regarding and related to the WSP, and more specifically focusing in on the  
3 issues central to HSHA's mission as stated above. *See* ¶ 13. Despite the long history of the  
4 WSP, HSHA limited its request to records dating from 2004 and 2009 to 2015. HSHA included  
5 a Request for Fee Waiver with its May 2, 2015 FOIA request. A true and correct copy of this  
6 FOIA request is attached to this Complaint as **Exhibit A**.

7 42. By letter dated May 29, 2015, NPS stated that it had received HSHA's FOIA  
8 request on May 4, 2015. A true and correct copy of this letter is attached to this Complaint as  
9 **Exhibit B**.

10 43. By letter dated May 29, 2015, NPS:

11 a. Assigned HSHA's FOIA request tracking number NPS-2015-00581. **Ex. B**  
12 **at 1**.

13 b. Informed HSHA that "unusual circumstances" prevented NPS from  
14 responding within the twenty-day timeframe mandated by the FOIA. *Id.* NPS generally asserted  
15 that "such circumstances exist" but did not specify what the "unusual circumstances" were that  
16 prevented issuance of a final determination. **Ex. B**.

17 c. Assigned HSHA's FOIA request to NPS's "Exceptional/Voluminous"  
18 track. *Id.* at 5; 43 C.F.R. § 2.15(c)(4) (reserved for "very complex processing challenges").

19 d. Granted HSHA's request for a fee waiver. **Ex. B at 5**.

20 e. Requested that HSHA clarify and limit its FOIA request for eight of the  
21 nine categories of records requested. **Ex. B at 1** (referencing all categories but Category # 4).

22 f. Indicated that the twenty-day statutory timeframe mandated by the FOIA  
23 would be suspended pending HSHA's response pursuant to 43 C.F.R. § 2.18(a), and that  
24 HSHA's requests would take "more than sixty workdays to process." **Ex. B at 1, 5**.

25 g. Stated that once NPS received the requested "clarifying information" that it  
26 would then process the FOIA request and "transmit responsive records on a rolling basis." **Ex. B**  
27 **at 5**.

28 44. NPS's May 29, 2015 letter did not include a date certain by which HSHA could

1 expect NPS to dispatch a final determination with respect to its FOIA requests. This omission  
2 violated the statutory mandates of the FOIA. 5 U.S.C. § 552(a)(6)(B)(i) (when invoking  
3 “unusual circumstances,” an agency must specify “the date on which a determination is expected  
4 to be dispatched”); *see also* 43 C.F.R. §§ 2.16(a), 2.19(a)(2).

5 45. NPS’s May 29, 2015 letter did not inform HSHA that a FOIA Public Liaison was  
6 being made available to it. This omission violated the statutory mandates of the FOIA. 5 U.S.C.  
7 § 552(a)(6)(B)(ii) (when invoking “unusual circumstances,” an agency must “make available its  
8 FOIA Public Liaison”); 43 C.F.R. § 2.19(b)(2).

9 46. Pursuant to the FOIA, Defendant was required to issue a final determination on the  
10 FOIA request within twenty business days, or by June 2, 2015. 5 U.S.C. § 552(a)(6)(A)(i); 43  
11 C.F.R. § 2.16(a).

12 47. Defendant’s May 29, 2015 letter sought to narrow HSHA’s request. **Ex. B at 2-5.**  
13 The request to narrow the search temporarily suspended the timeframe for NPS to respond to  
14 HSHA’s FOIA request. 5 U.S.C. § 552(a)(6)(B)(ii).

15 48. On August 11, 2015 HSHA clarified and limited the scope of its FOIA request by  
16 agreeing to certain search terms. *See Ex. C at 2.*

17 49. HSHA did not receive communication from NPS that its FOIA request had been  
18 re-classified to a different processing track as a result of HSHA’s willingness to narrow its  
19 request.

20 50. Under the FOIA, Defendant had ten working days from August 11, 2015 to issue  
21 its final determination, or until August 25, 2015. 5 U.S.C. § (a)(6)(B)(i).

22 51. Defendant failed to issue a timely final determination on HSHA’s FOIA request  
23 by August 25, 2015.

24 52. By letter dated November 4, 2015, NPS indicated that it was issuing an “interim  
25 response” to HSHA’s FOIA request. A true and correct copy of this letter is attached to this  
26 Complaint as **Exhibit C**. This interim response addressed the production of records, exemptions  
27 claimed, an estimated date of completion extension, and information on how to conduct an  
28 administrative appeal. **Ex. C.**

1 53. By the November 4, 2015 “interim response” letter, NPS informed HSHA that  
2 NPS was taking a “ninety workday extension” pursuant to 43 C.F.R. § 2.19(b) due to the “need  
3 to search for, collect, and examine a voluminous amount of separate and distinct records  
4 demanded in a single request.” **Ex. C at 5.**

5 54. NPS’s November 4, 2015 letter did not inform HSHA whether a FOIA Public  
6 Liaison was being made available to HSHA when Defendant invoked a ninety workday  
7 extension. This omission violated the statutory mandates of the FOIA and the requirements of  
8 the NPS Regulations. 5 U.S.C. § 552(a)(6)(B)(ii) (when invoking “unusual circumstances,” an  
9 agency must “make available its FOIA Public Liaison”); 43 C.F.R. § 2.19(b)(2).

10 55. NPS indicated in the November 4, 2015 “interim response” letter that it would issue  
11 a final determination of HSHA’s FOIA request on or before March 21, 2016. **Ex. C at 5.**

12 56. NPS’s November 4, 2015 letter claimed to have produced and enclosed 692 pages  
13 of documents in response to the HSHA’s FOIA Request Category # 4. **Ex. C at 2.** NPS  
14 described Category # 4 documents as being “released in part” and noted that portions of the  
15 documents released were withheld pursuant FOIA exemptions (b)(3), (b)(5), (b)(6), and  
16 (b)(7)(F). **Ex. C at 2.** NPS’s letter also indicated that 314 pages of material were being withheld  
17 in their entirety, but did not clarify whether these records were the same, or different, from the  
18 “released in part” records. **Ex. C at 2.**

19 57. NPS’s November 4, 2015 letter in fact did not enclose any responsive records.

20 58. On December 4, 2015 HSHA informed NPS of its failure to enclose the records  
21 with the November 4, 2015 letter. A true and correct copy of HSHA’s letter is attached to this  
22 Complaint as **Exhibit D.**

23 59. On December 10, 2015 NPS sent hyperlinks to HSHA with electronically  
24 downloadable records for Category # 4 (*see Exhibit E*, a true and accurate copy of the e-mail to  
25 HSHA dated December 10, 2015 with the hyperlinks), stating in the accompanying email that  
26 “[d]ue to an oversight, the CD containing the released records listed in the letter was not  
27 included.” **Ex. E.**

28 60. NPS’s December 10, 2015 production of Category # 4 records did not include any

1 records from 2010, 2014, or 2015.

2 61. Failure to indicate whether responsive records are disclosed violates the statutory  
3 mandates of the FOIA. 5 U.S.C. §§ 552(a)(6)(A)(i), (a)(6)(F) (in denying a request for records,  
4 in whole or in part, the agency shall make a reasonable effort to estimate the volume denied  
5 records); 43 C.F.R. § 2.21 (requiring agencies to indicate whether documents sent to a  
6 requesting party constitute all of the records in the agency's files responsive or whether the  
7 agency intends to partially grant the request or withhold any records).

8 62. The Category # 4 records produced were heavily redacted, including the redaction  
9 of entire pages of records.

10 63. NPS redacted and withheld information, for which no valid exemption applies,  
11 from the documents produced by NPS and described in NPS's November 4, 2015 letter. This  
12 action and omission violated the statutory mandates of the FOIA. 5 U.S.C. § 552(a)(3).

13 64. By Defendant's improper and overly broad redaction of the documents, Defendant  
14 has failed to provide reasonably segregable portions of responsive records with respect to  
15 Category # 4. These actions and omissions violate the mandates of the FOIA. 5 U.S.C. § 552(b).

16 65. By letter dated December 17, 2015, NPS informed HSHA that it was providing a  
17 second "interim response" to HSHA's FOIA request. HSHA received this letter via email on  
18 December 21, 2015. A true and correct copy of the letter is attached to this Complaint as  
19 **Exhibit F**.

20 66. NPS's December 17, 2015 letter claimed to have enclosed 873 pages of  
21 documents as a "partial response" to Category # 6. **Ex. F at 2**.

22 67. In its December 17, 2015 letter, NPS stated that certain documents were, again,  
23 being withheld: 156 pages withheld pursuant to exemption (b)(5) and 11 pages withheld  
24 pursuant to exemption (b)(6). **Ex. F at 2**.

25 68. NPS made the Category # 6 documents released under its second "interim  
26 response" available to HSHA via email dated December 21, 2015. A true and correct copy of the  
27 email is attached to this Complaint as **Exhibit G**. These documents NPS produced also were  
28 heavily redacted, including pages redacted in their entirety.

1           69.     Although NPS’s December 17, 2015 letter stated that portions of the materials  
2 disclosed were being withheld, it did not specify whether any other responsive documents were  
3 being withheld.

4           70.     NPS’s failure to indicate whether documents sent to a requesting party constitute  
5 all of the records in the agency’s files responsive or whether the agency intends to withhold any  
6 records violates the statutory mandates of the FOIA, 5 U.S.C. § 552(a)(6)(a)(1) and NPS  
7 regulations, 43 C.F.R. § 2.21.

8           71.     NPS redacted and withheld information, for which no valid exemption applies,  
9 from the documents produced by NPS and described in NPS’s December 17, 2015 letter. This  
10 action and omission violated the statutory mandates of the FOIA. 5 U.S.C. § 552(a)(3).

11           72.     By Defendant’s improper and overly broad redaction of the documents described  
12 in NPS’s December 17, 2015 letter, NPS has failed and refused to provide reasonably segregable  
13 portions of responsive records with respect to Category # 6. These actions and omissions violate  
14 the mandates of the FOIA. 5 U.S.C. § 552(b).

15           73.     Defendant’s productions of Category #4, #5 (discussed in ¶ 89 *infra*), and #6  
16 records are incomplete in that they skip years covered by the request, appear to have pages  
17 missing from the record productions, and are ambiguous as to records withheld versus records  
18 produced in redacted format.

19           74.     Although NPS acknowledged in the second “interim response” letter dated  
20 December 17, 2015 that the response described therein was only partial and “interim,” as  
21 opposed to a final determination of HSHA’s FOIA request, the letter also instructed HSHA that  
22 it had the right to appeal the interim determinations included therein. **Ex. F at 4.**

23           75.     On January 8, 2016 HSHA spoke with NPS staff Mr. Jason Watkins at the NPS  
24 Three Rivers, California Office and Mr. Andrew Muñoz at the Seattle Office. HSHA was  
25 directed to contact Ms. Deborah Bardwick, Assistant Field Solicitor for the Department of the  
26 Interior. With each of these individuals, HSHA discussed (a) the administrative appeal deadline,  
27 (b) the substance of the exemptions claimed to date, and (c) the “rolling basis” schedule for  
28 completion of the record production by March 21, 2016.

1           76. On January 19, 2016 HSHA and Ms. Bardwick conferred telephonically. Later  
2 that day, HSHA emailed Ms. Bardwick memorializing: (1) NPS's representation that it would  
3 send a letter confirming that the administrative appeals were not yet ripe as the production was  
4 not final; (2) concern that NPS would not meet its own 90-day extension deadline for  
5 production; in keeping with this concern, HSHA requested dates for subsequent productions so  
6 NPS would demonstrate its ability to meet its own deadline; (3) HSHA's need for clarification  
7 regarding documents withheld versus documents redacted; (4) HSHA's request for a Vaughn  
8 index; (5) HSHA's concern that NPS had applied FOIA exemptions in an improper and overly  
9 broad manner. HSHA requested confirmation from Ms. Bardwick of the substance of the  
10 discussion. A true and correct copy of this email is attached hereto as **Exhibit H at 2-4**. HSHA  
11 did not receive any confirmation, or rejection, from Ms. Bardwick of the telephone conference  
12 or email.

13           77. By January 25, 2016, one day before the purported administrative appeal deadline,  
14 HSHA had not received a response to its inquiries, including the issue regarding the  
15 administrative appeal. HSHA thus incurred attorney time preparing an administrative appeal to  
16 preserve its rights. After subsequent emails from HSHA, and less than two hours before an  
17 administrative appeal would be due, **Ex. C at 5** (noting administrative appeals are due by  
18 5:00 p.m. Eastern), HSHA and Ms. Bardwick spoke via telephone on January 26, 2016. During  
19 this telephone conference, NPS agreed that an administrative appeal was not yet due, inasmuch  
20 as Category # 4 and # 6 responses were interim and incomplete responses, and that documents  
21 for the remaining seven categories had not yet been produced. In reliance on this statement,  
22 HSHA agreed not to file an administrative appeal.

23           78. NPS followed-up to this telephone conference by email on January 26, 2016 at  
24 12:41 p.m. stating that confirmation regarding the administrative appeal not being due until a  
25 final determination had been made would be forthcoming in writing "within the next hour."  
26 **Ex. H at 2.**

27           79. Only 36 minutes before an administrative appeal would be due, Ms. Bardwick  
28 wrote to HSHA at 1:24 p.m. on January 26, 2016 that "[b]y this email, NPS agrees that no



1 administrative appeal will be due until, as is set forth in the regulations, the final production is  
2 complete.” *Id.*

3 80. Despite not mentioning this delay during their telephone conference moments  
4 earlier, Ms. Bardwick also now indicated in her email that NPS would not be able to meet its  
5 March 21, 2016 estimated completion date. **Ex. H at 1** (“Since our last letter to you, which  
6 anticipated that the final production would be completed by March 21, 2016, it has become  
7 apparent that another extension will be needed. The Park will contact you by letter revising its  
8 determination date.”).

9 81. Had HSHA known that NPS would, moments later, seek to revoke its March 21,  
10 2016 deadline, HSHA would not have agreed to refrain from filing its administrative appeal.

11 82. HSHA engaged in follow-up emails with NPS between January 26, 2016 and  
12 January 29, 2016 regarding the estimated date of completion, but received no response. *Id.*

13 83. Since the January 26, 2016 email, HSHA has not received an estimated date of  
14 completion, a final determination, nor has it received further correspondence regarding its  
15 concerns.

16 84. Ms. Bardwick’s January 26, 2016 email also informed HSHA that NPS  
17 “apologizes for leaving out the name of our FOIA liaison” and, albeit well outside the statutory  
18 timeframe, provided the FOIA Liaison’s contact information. *Id.*

19 85. On February 19, 2016, FOIA Liaison Ms. Charis Wilson and HSHA spoke by  
20 telephone. HSHA reiterated the issues of (1) incomplete productions of Categories # 4 and # 6;  
21 (2) overly broad and improperly claimed exemptions in Category # 4 and # 6 productions; (3)  
22 documents improperly withheld from the productions; (4) NPS’s failure to provide a renewed  
23 estimated date of completion for production and final determination; and (5) NPS’s failure to  
24 produce any documents since the December 17, 2015 interim response for the remainder of the  
25 Categories of records sought. In this discussion, HSHA agreed to prioritize its enumerated  
26 requests in an effort to assist NPS in responding, and to provide the FOIA Liaison with  
27 examples of overly broad redacted records. The FOIA Liaison agreed to investigate within the  
28 Agency regarding the exemptions claimed in the productions of Categories # 4 and # 6.



1 86. On March 11, 2016, HSHA left a voicemail for the FOIA Liaison; as of the date of  
2 this Complaint, there has been no response from the FOIA Liaison.

3 87. On March 13, 2016, HSHA provided HSHA's "priority list" to the FOIA Liaison  
4 and memorialized the substance of the February 13, 2016 discussion; HSHA also noted that  
5 NPS had not issued a renewed estimated date of completion. A true and correct copy of this  
6 letter is attached to this Complaint as **Exhibit I**.

7 88. On April 14, 2016, HSHA provided examples of improper redactions to the FOIA  
8 Liaison and Ms. Bardwick, requested an estimated date of completion, and indicated it would be  
9 filing suit to enforce its rights under FOIA and the APA. A true and correct copy of this letter is  
10 attached to this Complaint as **Exhibit J**.

11 89. On April 22, 2016, NPS produced 168 pages of records "released in part, in partial  
12 response to item 5." NPS's letter stated that "Portions of this material have been withheld under  
13 FOIA exemption 5 (27 pages), FOIA exemption 6 (nine pages), and 1 page under FOIA  
14 exemption 7 (A)." A true and correct copy of the letter accompanying this production is attached  
15 to this Complaint as **Exhibit K**.

16 90. As of the date of this complaint, HSHA has not received any further  
17 communication from NPS or the FOIA Liaison, nor has HSHA received any further document  
18 productions, or the new estimated date of completion letter promised on January 26, 2016.

19 91. The Agency has not shown due diligence in responding to the request. 5 U.S.C.  
20 § 552(a)(6)(C)(i).

21 92. To date, HSHA has not received a final determination on its FOIA request  
22 containing (1) NPS's determination of whether or not to comply with the request; (2) the reasons  
23 for NPS's decision; and (3) notice of the right to appeal to the head of the agency, particularly  
24 since HSHA agreed on January 26, 2016 not to administratively appeal because the March 21,  
25 2016 deadline was still intact. These failures violate the statutory mandates of the FOIA.  
26 5 U.S.C. §§ 552(a)(6)(A)(i), (a)(7)(B)(ii).

27 93. HSHA is deemed to have constructively exhausted its administrative remedies.  
28 *See* 5 U.S.C. §§ 552(a)(6)(A)(i), (a)(6)(C)(i).

1 94. No responsive documents were produced to HSHA until seven months after  
2 receipt of its FOIA request.

3 95. Defendant produced incomplete documents in December 2015. Defendant did not  
4 produce any other documents for a four-month period, even though such documents were to be  
5 provided on a rolling basis per Defendant's own representations. Defendant belatedly produced  
6 partial documents in response only to Category #5 in April, 2016. These failures violate the  
7 statutory mandates of the FOIA. 5 U.S.C. § 552(a)(3).

8 96. The March 21, 2016 estimated completion date has passed, without "completion."

9 97. Defendant has improperly and unlawfully failed to meet NPS's own estimated  
10 date of completion. This action and omission violates the statutory mandates of the FOIA.  
11 5 U.S.C. § 552(a)(7)(B)(ii); *see also* 5 U.S.C. § 552(a)(6)(B)(i).

12 98. Defendant has improperly and unlawfully failed to issue a renewed estimated date  
13 of completion. This action and omission violates the statutory mandates of the FOIA. *Id.*

14 99. Defendant has failed to conduct a reasonably adequate search. This action and  
15 omission violates the statutory mandates of the FOIA. 5 U.S.C. § 552(a)(3).

16 100. Defendant has improperly and unlawfully withheld documents responsive to  
17 HSHA's FOIA request. This action and omission violates the statutory mandates of the FOIA.  
18 5 U.S.C. § 552(a)(3).

19 101. Defendant has improperly and unlawfully failed to produce reasonably segregable  
20 records in response to HSHA's FOIA request. This action and omission violates the statutory  
21 mandates of the FOIA. 5 U.S.C. §§ 552(a)(3) and 552(b).

22 102. Defendant has failed to produce non-exempt records. This action and omission  
23 violates the statutory mandates of the FOIA. 5 U.S.C. §§ 552(a)(3)(A), (a)(6)(F), and 552(b).

24 103. Defendant has failed to issue a final determination of HSHA's FOIA request by  
25 the deadline of March 21, 2016 as set forth in its letter dated November 4, 2016. This failure  
26 violates the statutory mandates of the FOIA. 5 U.S.C. § 552(a)(6)(A)(i), (B).

27 104. Defendant's actions constitute agency action unlawfully withheld and  
28 unreasonably delayed, 5 U.S.C. § 706(1), and/or arbitrary, capricious, an abuse of discretion, or

1 otherwise not in accordance with law, 5 U.S.C. § 706(2), in violation of the APA.

2 105. HSHA has been forced to retain the services of counsel and to expend funds  
3 litigating NPS's unlawful actions and omissions under the FOIA and the APA.

4 **CAUSES OF ACTION**

5 **COUNT I**

6 **VIOLATIONS OF THE FREEDOM OF INFORMATION ACT**  
7 **AND NATIONAL PARK SERVICE REGULATIONS:**

8 **FAILURE TO PROVIDE TIMELY FINAL DETERMINATION**

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

11 107. HSHA has a statutory right to have Defendant process its FOIA request in a  
12 manner that complies with the FOIA. HSHA's rights in this regard were violated by NPS's  
13 failure to provide a timely and legally adequate final determination.

14 108. It has been more than one year since HSHA submitted its FOIA request to NPS,  
15 and HSHA is still awaiting a final determination and production of records.

16 109. NPS has partially responded to Categories # 4, # 5, and # 6 but NPS has neither  
17 produced records for the remaining six categories of HSHA's FOIA request nor offered any  
18 explanation for its failure to disclose any of the remaining records requested.

19 110. NPS failed to properly invoke and comply with the "unusual circumstances"  
20 exception of the FOIA, and NPS failed to comply with the agreed-upon "alternative time for  
21 processing" under NPS Regulations. 5 U.S.C. § 552(a)(6)(B); 43 C.F.R. §§ 2.19 and 2.19(b)(1)  
22 (an "alternative time for processing" may be reached by agreement).

23 111. NPS is well outside the time limits for lawfully responding to and providing a final  
24 determination on HSHA's request. 5 U.S.C. §§ 552(a)(6)(A), (B).

25 112. NPS's actions in responding to HSHA's request have been untimely. For example,  
26 beyond failing to provide NPS with a timely final determination, NPS has failed to provide  
27 HSHA with any schedule for its production of responsive records despite HSHA's requests;  
28

1 NPS has failed to confirm what is keeping NPS from meeting its statutory obligations of timely  
2 response and record production under the FOIA.

3 113. There is no reasonable basis for NPS's failure to issue a timely final determination  
4 on HSHA's requests and to fully produce all responsive, non-exempt records.

5 114. When an agency invokes the "unusual circumstances" exception, it must provide  
6 written notification to the requester containing, inter alia, "the date on which a determination is  
7 expected to be dispatched." 5 U.S.C. § 552(a)(6)(B)(i); 43 C.F.R. § 2.19(a). A notice informing  
8 a requester of the invocation of the "unusual circumstances" provision must specify the  
9 applicable "unusual circumstances." *Id.* Under the FOIA, permissible "unusual circumstances"  
10 are limited to: (1) the need to search for and collect the requested records from field facilities or  
11 other establishments that are separate from the office processing the request; (2) the need to  
12 search for, collect, and appropriately examine a voluminous amount of separate and distinct  
13 records which are demanded in a single request; or (3) the need for consultation, which shall be  
14 conducted with all practicable speed, with another agency having a substantial interest in the  
15 determination of the request or among two or more components of the agency having substantial  
16 subject-matter interest therein. 5 U.S.C. § 552(a)(6)(B); *see also* 43 C.F.R. §§ 2.16, 2.19(a).

17 115. NPS Regulations further allow for the "basic time limit" to be "temporarily  
18 suspended" for the time it takes a requestor "to respond to one written communication from the  
19 bureau reasonably asking for clarifying information." 43 C.F.R. § 2.18(a).

20 116. When invoking "unusual circumstances," the agency shall also make available to  
21 the requester its FOIA Public Liaison. 5 U.S.C. § 552(a)(6)(B)(ii); 43 C.F.R. § 2.19(b)(2).

22 117. At the time Defendant invoked the "unusual circumstances" exception on May 29,  
23 2015, it did not specify the "unusual circumstances" justifying the delay of a final determination  
24 of HSHA's FOIA request beyond the statutory twenty-day determination period. Instead,  
25 Defendant referred to NPS's "temporary suspension" regulation, 43 C.F.R. § 2.18, permitting  
26 suspension of the 20-day response time "for the time it takes you to respond to one written  
27 communication from the bureau reasonably asking for clarifying information." HSHA provided  
28 the requested clarifying information on August 11, 2015. NPS's November 4, 2015

1 communication did not specify the “unusual circumstances,” but announced the Agency was  
2 taking a 90 workday extension, after HSHA had already provided the clarifying information  
3 requested.

4 118. Defendant’s failures and unlawful actions have prejudiced HSHA’s ability to  
5 timely obtain public records.

6 119. The March 21, 2016 deadline set by NPS for provision of a final determination on  
7 HSHA’s FOIA request has passed. HSHA has been without a date certain by which to expect a  
8 final determination on its FOIA request since Ms. Bardwick announced on January 26, 2016 that  
9 NPS would fail to meet the March 21, 2016 deadline. HSHA still does not know when it should  
10 expect a final determination on its FOIA requests.

11 120. Defendant invoked the “unusual circumstances” exception on May 29, 2015 but  
12 did not provide access to a FOIA Public Liaison until eight months later, on January 26, 2016.  
13 Defendant thus failed to make a FOIA Public Liaison available to HSHA at the time they  
14 invoked the “unusual circumstances” exception, and Defendant’s “unusual circumstances” claim  
15 was contrary to the requirements of the FOIA.

16 121. HSHA has constructively exhausted its administrative remedies with respect to  
17 this claim.

18 122. HSHA is entitled to injunctive relief to compel NPS to provide, and comply with,  
19 a final determination.

20 123. Based on the nature of HSHA’s organizational activities, HSHA will continue to  
21 employ FOIA’s statutory and NPS’s regulatory provisions in information requests to NPS in the  
22 foreseeable future. These activities will be adversely affected if Defendant is allowed to  
23 continue to illegally invoke and apply the “unusual circumstances” and “temporary suspension”  
24 provisions, and to fail to provide a final determination as to HSHA’s FOIA request.

25 124. Unless enjoined and made subject to a declaration of HSHA’s legal rights by this  
26 Court, NPS will continue to violate the rights of HSHA to receive public records under the  
27 FOIA.

28

**COUNT II**

**VIOLATION OF THE FREEDOM OF INFORMATION ACT:  
FAILURE TO COMPLY WITH, AND TO PROVIDE,  
A RENEWED ESTIMATED COMPLETION DATE**

125. The allegations made in all preceding paragraphs are realleged and incorporated by reference herein.

126. HSHA has a statutory right to have Defendant process its FOIA requests in a manner that complies with the FOIA. Defendant violated HSHA's rights by failing to comply with its own estimated date of completion, and by failing to provide a renewed estimated date of completion. 5 U.S.C. § 552(a)(7)(B)(ii), *see also* 5 U.S.C. § 552(a)(6)(B)(i).

127. By letter dated November 4, 2015, NPS proposed the March 21, 2016 estimated date of completion to HSHA.

128. On January 26, 2016, NPS informed HSHA that it would not be complying with NPS's own estimated date of completion of March 21, 2016. Since January 26, 2016, NPS has not provided an updated estimated date of completion, even after HSHA engaged in follow-up communications with NPS on January 26-29, 2016, and requested an estimated date of completion on March 13, 2016, and again on April 14, 2016.

129. Under the FOIA and NPS' regulations, a requestor may qualify for faster processing by limiting the scope of the request. 5 U.S.C. § 552(a)(6)(D)(ii); 43 C.F.R. § 2.15(e). Defendant failed to change the processing track in response to HSHA's compliance with Defendant's request to tailor the FOIA request.

130. Defendant has failed to offer any justification for its inability to not meet the deadline of March 21, 2016, prior or subsequent to the passing of that deadline.

131. NPS's failure to comply with or provide a renewed estimated date of completion on HSHA's FOIA request is unlawful under the FOIA and has prejudiced HSHA's ability to timely obtain public records.

132. HSHA has constructively exhausted its administrative remedies with respect to this claim.

1 133. HSHA is entitled to injunctive relief to compel NPS to provide, and comply with,  
2 an estimated date of completion.

3 134. Based on the nature of HSHA's organizational activities, HSHA will continue to  
4 employ FOIA's statutory and NPS's regulatory provisions in information requests to NPS in the  
5 foreseeable future. These activities will be adversely affected if Defendant is allowed to  
6 continue to fail to adhere to its own estimated date of completion, and to fail to provide renewed  
7 estimated dates of completion.

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

11 **COUNT III**

12 **VIOLATIONS OF THE FREEDOM OF INFORMATION ACT**  
13 **AND NATIONAL PARK SERVICE REGULATIONS:**

14 **FAILURE TO CONDUCT REASONABLY ADEQUATE SEARCH**

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

17 137. HSHA has a statutory right to have Defendant process its FOIA request in a  
18 manner that complies with the FOIA. HSHA's rights in this regard were violated when NPS  
19 failed to conduct a reasonably adequate search for responsive records. 5 U.S.C. § 552(a)(3).

20 138. NPS is required to conduct a search for records that is reasonably calculated to  
21 discover all relevant documents. A review of the records NPS produced in Categories # 4, # 5,  
22 and # 6 demonstrate that NPS failed to disclose records falling into numerous categories and  
23 time periods of information that are responsive to HSHA's FOIA Request.

24 139. NPS has not produced any responsive documents for all other categories of  
25 HSHA's request.

26 140. For all categories of HSHA's request, NPS has not conducted a reasonably  
27 adequate search.

28 141. This failure and unlawful action has prejudiced HSHA's ability to timely obtain



1 public records.

2 142. NPS's failure to conduct a reasonably adequate search is unlawful under the  
3 FOIA, 5 U.S.C. § 552(a)(3).

4 143. HSHA has constructively exhausted its administrative remedies with respect to  
5 this claim.

6 144. HSHA is entitled to injunctive relief to compel NPS to conduct a reasonably  
7 adequate search for responsive records.

8 145. Based on the nature of HSHA's organizational activities, HSHA will continue to  
9 employ FOIA's statutory and NPS's regulatory provisions in information requests to NPS in the  
10 foreseeable future.

11 146. Unless enjoined and made subject to a declaration of HSHA's legal rights by this  
12 Court, NPS will continue to violate the rights of HSHA to receive public records under the  
13 FOIA.

14 **COUNT IV**

15 **VIOLATION OF THE FREEDOM OF INFORMATION ACT:**  
16 **FAILURE TO PROVIDE NON-EXEMPT PUBLIC RECORDS**  
17

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

20 148. HSHA has a statutory right to have Defendant process its FOIA request in a  
21 manner that complies with FOIA.

22 149. HSHA's rights in this regard were violated when Defendant failed to promptly  
23 provide public, non-exempt records to HSHA, 5 U.S.C. § 552(a)(3)(A), § 552(b), and to provide  
24 a reasonable estimate of the volume of withheld records. 5 U.S.C. § 552(a)(6)(F).

25 150. For Categories # 4, # 5, and # 6, Defendant has failed to produce all responsive,  
26 non-exempt records in violation of 5 U.S.C. § 552(a)(3).

27 151. For Categories # 1 through # 3, and # 7 through # 9, Defendant has not produced  
28 records responsive to HSHA's FOIA request, in violation of the statute. 5 U.S.C. § 552(a)(3).

1           152. Defendant is unlawfully withholding public disclosure of information sought by  
2 HSHA, information to which it is entitled and for which no valid disclosure exemption applies.

3           153. Defendant has failed to produce any responsive records for all but two of HSHA's  
4 nine enumerated categories of requests under its FOIA request in violation of 5 U.S.C.  
5 § 552(a)(3).

6           154. Defendant has failed to make a reasonable effort to estimate the volume of  
7 requested, non-exempt records, for Categories # 4, # 5, and # 6 to which HSHA has been denied  
8 access.

9           155. HSHA has constructively exhausted its administrative remedies with respect to  
10 this claim.

11           156. HSHA is entitled to injunctive relief to compel production of all non-exempt,  
12 responsive records.

13           157. Based on the nature of HSHA's organizational activities, it will undoubtedly  
14 continue to employ FOIA's provisions in information requests to Defendant in the foreseeable  
15 future.

16           158. HSHA's organizational activities will be adversely affected if Defendant is  
17 allowed to continue violating FOIA's response deadlines as it has in this case.

18           159. Unless enjoined and made subject to a declaration of HSHA's legal rights by this  
19 Court, Defendant will continue to violate the rights of HSHA to receive public records under the  
20 FOIA.

21 ///

22 ///

23 ///

24 ///

25

26

27

28

**COUNT V**

**VIOLATIONS OF THE FREEDOM OF INFORMATION ACT:**

**UNLAWFUL WITHHOLDING OF RESPONSIVE RECORDS  
AND FAILURE TO PROVIDE REASONABLY SEGREGABLE  
PORTIONS OF RECORDS THAT ARE NOT EXEMPT**

1  
2  
3  
4  
5  
6 160. The allegations made in all preceding paragraphs are realleged and incorporated  
7 by reference herein.

8 161. HSHA has a statutory right to have Defendant process its FOIA request in a  
9 manner that complies with FOIA.

10 162. HSHA's rights in this regard were violated when Defendant unlawfully withheld  
11 and redacted information for which no lawful disclosure exemption applies. 5 U.S.C.  
12 § 552(a)(3); 5 U.S.C. § 552(b).

13 163. NPS also failed to reasonably segregate exempt and non-exempt records by, inter  
14 alia, its use of full-page redactions.

15 164. Under FOIA, NPS bears a heavy burden to establish the claimed exemption  
16 applies to the records that it continues to withhold. 5 U.S.C. § 552(a)(4)(B) (“[T]he burden is on  
17 the agency to sustain its action.”). In the present case, NPS has not met the burden necessary to  
18 justify its withholding of records under the FOIA exemptions claimed (in the productions to  
19 date, being exemptions (b)(3), (b)(5), (b)(6), and (b)(7)(F)), nor has it reasonably or with  
20 specific detail explained how the information withheld logically falls within the claimed  
21 exemption.

22 165. In the event the FOIA exemptions claimed reasonably apply to any of the records  
23 NPS is currently withholding, NPS must provide HSHA with any releasable and reasonably  
24 segregable non-exempt portions of those records. 5 U.S.C. § 552(b).

25 166. HSHA has constructively exhausted its administrative remedies with respect to  
26 this claim.

27 167. HSHA is entitled to injunctive relief to compel production of all non-exempt,  
28 responsive records.

1 168. Based on the nature of HSHA's organizational activities, it will undoubtedly  
2 continue to employ FOIA's provisions in information requests to Defendant in the foreseeable  
3 future.

4 169. HSHA's organizational activities will be adversely affected if Defendant is  
5 allowed to continue violating the FOIA Liaison statutory duties under the FOIA as it has in this  
6 case.

7 170. Unless enjoined and made subject to a declaration of HSHA's legal rights by this  
8 Court, Defendant will continue to violate the rights of HSHA to receive public records under the  
9 FOIA.

10 **COUNT VI**

11 **(In the Alternative to Counts I through V)**  
12 **VIOLATIONS OF THE ADMINISTRATIVE PROCEDURE ACT**

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

15 172. Defendant has failed to act in an official capacity under color of legal authority by  
16 violating the requirements of the FOIA. In particular, Defendant is: failing to provide a timely  
17 final determination; failing to comply with, and provide, a renewed estimated completion date;  
18 failing to conduct a reasonably adequate search; failing to provide non-exempt public records;  
19 unlawfully withholding documents from public disclosure for which no valid disclosure  
20 exemption applies or has been properly asserted, and unlawfully withholding the reasonably  
21 segregable portions of those records. As a result, Defendant continues to unlawfully withhold  
22 documents from public disclosure and/or unlawfully delay the disclosure thereof.

23 173. Defendant has unlawfully withheld and/or delayed agency action by failing to  
24 comply with the mandates of FOIA consequent to their following actions and omissions: failing  
25 to provide a timely final determination; failing to comply with, and provide, a renewed  
26 estimated completion date; failing to conduct a reasonably adequate search; failing to provide  
27 non-exempt public records; unlawfully withholding documents from public disclosure for which  
28 no valid disclosure exemption applies or has been properly asserted, and unlawfully withholding

1 the reasonably segregable portions of those records.

2 174. HSHA has been adversely affected and aggrieved by Defendant's failure to  
3 comply with the mandates of FOIA and NPS Regulations. Defendant's failure and refusal to  
4 issue a timely final determination on HSHA's information request has injured HSHA's interests  
5 in public oversight of governmental operations and constitute a violation of Defendant's  
6 statutory duties under the APA.

7 175. HSHA has suffered a legal wrong as a result of Defendant's failure to comply with  
8 the mandates of FOIA and applicable regulations. Defendant's failure and refusal to issue a  
9 timely final determination on HSHA's information request has injured HSHA's interests in  
10 public oversight of governmental operations and constitute a violation of Defendant's statutory  
11 and regulatory duties under the FOIA and NPS Regulations, and the APA.

12 176. Defendant's failures and refusal to provide a timely final determination; to comply  
13 with, and provide, a renewed estimated completion date; to conduct a reasonably adequate  
14 search; to provide non-exempt public records; and unlawful withholding documents from public  
15 disclosure for which no valid disclosure exemption applies or has been properly asserted, and  
16 unlawful withholding of the reasonably segregable portions of those records, constitutes agency  
17 action unlawfully withheld or unreasonably delayed and is therefore actionable pursuant to the  
18 APA. 5 U.S.C. § 706(1).

19 177. Alternatively, Defendant's failures and refusal to provide a timely final  
20 determination; to comply with, and provide, a renewed estimated completion date; to conduct a  
21 reasonably adequate search; to provide non-exempt public records; and unlawful withholding of  
22 documents from public disclosure for which no valid disclosure exemption applies or has been  
23 properly asserted, and/or unlawful withholding of the reasonably segregable portions of those  
24 records are each arbitrary, capricious, an abuse of discretion or otherwise not in accordance with  
25 law and are therefore actionable pursuant to the APA. 5 U.S.C. § 706(2).

26 178. HSHA is entitled to judicial review under the APA. 5 U.S.C. §§ 702, 706.

27 179. HSHA is entitled to costs of disbursements and costs of litigation, including  
28 reasonable attorney and expert witness fees, under the Equal Access to Justice Act, 28 U.S.C.

1 § 2412.

2 **REQUEST FOR RELIEF**

3 Wherefore, HSHA prays that this Court:

4 1. Order Defendant to promptly provide HSHA all of the information sought in this  
5 action and to immediately disclose the requested documents in unredacted format unless an  
6 exemption is properly claimed and properly applies.

7 2. Declare Defendant's failure to provide HSHA with a final determination as  
8 unlawful under the FOIA, as well as agency action unlawfully withheld and unreasonably  
9 delayed, 5 U.S.C. § 706(1), and/or arbitrary, capricious, an abuse of discretion, or otherwise not  
10 in accordance with law, 5 U.S.C. § 706(2).

11 3. Declare Defendant's failure to comply with its estimated completion date as  
12 unlawful under the FOIA, as well as agency action unlawfully withheld and unreasonably  
13 delayed, 5 U.S.C. § 706(1), and/or arbitrary, capricious, an abuse of discretion, or otherwise not  
14 in accordance with law, 5 U.S.C. § 706(2).

15 4. Declare Defendant's failure to issue a renewed estimated completion date as  
16 unlawful under the FOIA, as well as agency action unlawfully withheld and unreasonably  
17 delayed, 5 U.S.C. § 706(1), and/or arbitrary, capricious, an abuse of discretion, or otherwise not  
18 in accordance with law, 5 U.S.C. § 706(2).

19 5. Declare Defendant's failure to provide HSHA with non-exempt records as  
20 unlawful under the FOIA, as well as agency action unlawfully withheld and unreasonably  
21 delayed, 5 U.S.C. § 706(1), and/or arbitrary, capricious, an abuse of discretion, or otherwise not  
22 in accordance with law, 5 U.S.C. § 706(2).

23 6. Declare Defendant's unlawful withholding of responsive records from HSHA to  
24 be unlawful under the FOIA, as well as agency action unlawfully withheld and unreasonably  
25 delayed, 5 U.S.C. § 706(1), and/or arbitrary, capricious, an abuse of discretion, or otherwise not  
26 in accordance with law, 5 U.S.C. § 706(2).

27 7. Declare Defendant's failure to disclose the reasonably segregable information in  
28 records requested by HSHA to be unlawful under the FOIA, as well as agency action unlawfully

1 withheld and unreasonably delayed, 5 U.S.C. § 706(1), and/or arbitrary, capricious, an abuse of  
2 discretion, or otherwise not in accordance with law, 5 U.S.C. § 706(2).

3 8. Award HSHA its reasonable attorney's fees and costs pursuant to 5 U.S.C.  
4 § 552(a)(4)(E) or 28 U.S.C. § 2412.

5 9. Grant such other and further relief to HSHA as the Court may deem just and  
6 proper.

7 DATED: May 17, 2016

SHUTE, MIHALY & WEINBERGER LLP

8  
9  
10 By:  /s/  
LAURA D. BEATON

11  
12 Attorneys for HIGH SIERRA HIKERS  
ASSOCIATION, INC.

13 784410.1