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14 *Attorney for Plaintiffs*

15 **IN THE UNITED STATES DISTRICT COURT**
 16 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**
 17 **OAKLAND DIVISION**

<p>18 CENTER FOR FOOD SAFETY, <i>et al.</i>,</p> <p>19 Plaintiffs,</p> <p>20 v.</p> <p>21 UNITED STATES ENVIRONMENTAL</p> <p>22 PROTECTION AGENCY, <i>et al.</i></p> <p>23 Defendant.</p> <p>24</p>

Case No. 4:22-cv-6001-JST

[PROPOSED] CONSENT DECREE

1 WHEREAS, on October 12, 2022, Plaintiffs Center for Food Safety, Californians
2 for Pesticide Reform, Center for Environmental Health, and Pesticide Action Network
3 North America (collectively, the “Plaintiffs”) filed this lawsuit, Case No. 4:22-cv-6001-
4 JST, against the United States Environmental Protection Agency (“EPA”) and Michael
5 Regan, in his official capacity as Administrator of the EPA (collectively, the
6 “Defendants”), pursuant to the Administrative Procedure Act (“APA”), 5 U.S.C. §§ 702
7 and 706(1);

8 WHEREAS, Plaintiffs allege that EPA has unreasonably delayed responding to a
9 petition, submitted to EPA on or around July 10, 2017, Docket ID EPA-HQ-OPP-2018-
10 0262 (hereinafter, this petition will be referred to as the “2017 Petition”), requesting that
11 EPA (1) revise pesticide registration regulations to take into account all pesticide
12 ingredients (active, inert and adjuvant) and their effects on the environment; (2) revise
13 pesticide registration regulations to require whole pesticide formulation and tank mixture
14 testing to take into account synergistic effects; (3) revise pesticide registration regulations
15 to require inert ingredients and whole pesticide formulations testing for chronic
16 toxicological effects and degradation; (4) revise pesticide registration regulations to
17 require Endangered Species Act (ESA) consultation on the effects of whole pesticide
18 formulations and tank mixtures on threatened and endangered species; and (5) assuming
19 the regulations were revised as petitioners have requested, petitioners also request that
20 EPA apply those revised regulations in conducting statutorily-mandated registration
21 reviews of pesticides (hereinafter, these requests will be referred to as the “2017 Petition
22 Requests”);

23 WHEREAS, in December of 2018, EPA sought public comment on the 2017
24 Petition, *see* Petition Seeking Revised Testing Requirements of Pesticides Prior to
25 Registration; Request for Comment, 83 Fed. Reg. 65672 (Dec. 21, 2018) (the “Request
26 for Comment”);

27 WHEREAS, in response to the Request for Comment, EPA received
28 approximately 564 public comments.

1 WHEREAS, pursuant to the APA, each federal agency has a duty “to conclude a
2 matter presented to it” “within a reasonable time,” 5 U.S.C. § 555(b), and a “reviewing
3 court shall . . . compel agency action” that has been “unreasonably delayed,” *id.* § 706(1);

4 WHEREAS, EPA has yet to respond to the 2017 Petition;

5 WHEREAS, Plaintiffs seek, *inter alia*, an order from this Court to establish a date
6 certain by which EPA will respond to the 2017 Petition;

7 WHEREAS, Plaintiffs and Defendants have agreed to a settlement of this action
8 without admission of any issue of fact or law, except as expressly provided herein;

9 WHEREAS, Plaintiffs and Defendants, by entering into this Consent Decree, do
10 not waive or limit any claim, remedy, or defense, on any grounds, related to any final
11 EPA action;

12 WHEREAS, Plaintiffs and Defendants consider this Consent Decree to be an
13 adequate and equitable resolution of the claims in this case;

14 WHEREAS, Plaintiffs and Defendants agree that resolution of this lawsuit
15 without further litigation is in the best interests of the parties, the public, and judicial
16 economy;

17 WHEREAS, Plaintiffs and Defendants agree that this Court has subject matter
18 jurisdiction over the matters resolved in this Consent Decree pursuant to 28 U.S.C. §
19 1331 and 5 U.S.C. § 702, sufficient for the Court to enter this Consent Decree;

20 WHEREAS, Plaintiffs and Defendants agree that venue is proper in the Northern
21 District of California pursuant to 28 U.S.C. § 1391(e) and Civil L.R. 3-2(c); and

22 WHEREAS, the Court, by entering this Consent Decree, finds that the Consent
23 Decree is fair, reasonable, in the public interest, and consistent with the APA;

24 NOW THEREFORE, before the taking of testimony, without trial or
25 determination of any issues of fact or law, and upon the consent of Plaintiffs and
26 Defendants, it is hereby ORDERED, ADJUDGED, and DECREED as follows:
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1 1. No later than September 29, 2023, the appropriate EPA official shall, by
2 letter, either grant, deny, or grant in part and deny in part each of the 2017 Petition
3 Requests.

4 2. After EPA has granted, denied, or granted in part and denied in part the
5 2017 Petition Requests, and after any claim for costs of litigation (including reasonable
6 attorneys' fees) is resolved, Defendants may move to have this Consent Decree
7 terminated. Plaintiffs shall have 14 days to respond to such motion. The basis of
8 Plaintiffs' opposition to such motion shall be limited to whether EPA has failed to
9 perform or failed to completely perform the actions required by this Consent Decree.

10 3. Any provision of this Consent Decree—including any deadline in the
11 Consent Decree—may be modified by (a) written stipulation of Plaintiffs and
12 Defendants filed with the Court, or (b) by the Court upon motion by any party for good
13 cause shown pursuant to the Federal Rules of Civil Procedure and upon consideration of
14 any response by the non-moving party and any reply. Before filing any motion under
15 subsection (b) of this paragraph, the moving party shall follow the dispute resolution
16 process set forth in paragraph 6 below.

17 4. If a lapse in EPA appropriations occurs within 120 days prior to the
18 deadline in Paragraph 1 of this Consent Decree, such deadline shall be extended
19 automatically by one day for each day of the lapse in appropriations. Nothing in this
20 Paragraph shall preclude EPA from seeking an additional extension of time through
21 modification of this Consent Decree pursuant to Paragraph 3.

22 5. Plaintiffs and Defendants agree that this Consent Decree constitutes a
23 complete settlement of all claims in this case, Case No. 4:22-cv-6001-JST, with the
24 exception of any claim Plaintiffs may assert as to the costs of litigation, as provided for
25 in Paragraph 8.

26 6. In the event of a dispute between Plaintiffs and Defendants concerning
27 the interpretation or implementation of any aspect of this Consent Decree, the disputing
28 party shall provide the other party with a written notice, via electronic mail, outlining

1 the nature of the dispute and requesting informal negotiations. The parties shall meet
2 and confer in an attempt to resolve the dispute. If these parties are unable to resolve the
3 dispute within 10 business days after receipt of the notice, either party may petition the
4 Court to resolve the dispute.

5 7. No motion or other proceeding seeking to enforce this Consent Decree or
6 for contempt of Court shall be properly filed unless the procedures set forth in
7 Paragraph 6 have been followed, and the moving party has provided the other party with
8 written notice received at least 10 business days before the filing of such motion or
9 proceeding.

10 8. Plaintiffs reserve the right to seek, subsequent to entry of this Consent
11 Decree, the costs of litigation (including reasonable attorneys' fees) incurred in the
12 above-captioned matter. Defendants reserve the right to oppose any such request for
13 costs of litigation (including attorneys' fees).

14 9. This Court shall retain jurisdiction over this matter to enforce the terms
15 of this Consent Decree and to resolve any requests for costs of litigation (including
16 reasonable attorneys' fees).

17 10. Nothing in this Consent Decree shall be construed to limit or modify any
18 discretion afforded to EPA by law in taking the actions that are the subject of this
19 Consent Decree, including the discretion to alter, amend, or revise any final actions
20 taken pursuant to this Consent Decree consistent with governing law. EPA's obligation
21 to perform each action specified in this Consent Decree does not constitute a limitation
22 or modification of EPA's discretion within the meaning of this Paragraph.

23 11. Except as expressly provided herein, nothing in this Consent Decree shall
24 be construed as an admission of any issue of fact or law, nor to waive or limit any claim,
25 remedy, or defense, on any grounds, related to any final action EPA takes with respect
26 to the actions addressed in this Consent Decree.

27 12. It is hereby expressly understood and agreed that this Consent Decree
28 was jointly drafted by Plaintiffs and Defendants. Accordingly, the parties hereby agree

1 that all rules of construction providing that ambiguity is construed against the drafting
2 party shall be inapplicable in any dispute concerning the terms, meaning, or
3 interpretation of this Consent Decree.

4 13. Any notice required or provided for by this Consent Decree shall be in
5 writing, sent via electronic mail, and sent to the following or to any new address of
6 counsel as filed and listed in the docket of the above-captioned matter, at a future date:

7 For Plaintiffs:

8 Sylvia Shih-Yau Wu
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14 For Defendants:

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23 14. Plaintiffs and Defendants recognize and acknowledge that the obligations
24 imposed upon EPA under this Consent Decree can only be undertaken using
25 appropriated funds legally available for such purpose. No provision of this Consent
26 Decree shall be interpreted as or constitute a commitment or requirement that the United
27 States obligate or pay funds in contravention of the Anti-Deficiency Act, 31 U.S.C. §
28 1341, or any other applicable provision of law.

15 15. If for any reason the Court should decline to approve this Consent Decree
16 in the form presented, this agreement is voidable at the sole discretion of either party
17 and the terms of the proposed Consent Decree may not be used as evidence in any
18 litigation between the parties.

1 The undersigned representatives of Plaintiffs and Defendants certify that they are fully
2 authorized by the party they represent to consent to the Court's entry of the terms and
3 conditions of this Consent Decree.

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5 IT IS FURTHER ORDERED that the August 15, 2023 case management conference is
6 vacated, and the Clerk shall close close the file.

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8 SO ORDERED on this 2nd day of August, 2023.

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12 JON S TIGAR
13 UNITED STATES DISTRICT JUDGE
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*/s Sylvia Shih-Yau Wu (Email auth.
7/31/2023)*

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