

September 27, 2018

Hon. Edward M. Chen
District Judge
U.S. District Court Northern District of California
450 Golden Gate Avenue, Courtroom 5-17th Floor
San Francisco, CA 94102

Re: Case No. 17-cv-02162-EMC: Food & Water Watch, et al. v. Environmental Protection Agency, et al. – Discovery Letter Brief

Dear Judge Chen:

Over the past two months, counsel for the Parties (with full and complete authority on discovery matters) have engaged in extensive meet and confers¹ in an attempt to resolve several discovery disputes. Lead trial counsel for the Parties have now concluded that no agreement can be reached. By this letter, Plaintiffs ask this Court to compel Defendants to produce documents in response to certain Requests for Production and to produce a witness in response to Plaintiffs' Amended Notice of 30(b)(6) Deposition.

A) Statement of Plaintiffs' Position on Documents Requests:

On June 8, Plaintiffs served their First (and Only) Set of Requests for Production. (**Exhibit A**). Pursuant to the Court's discovery ruling (ECF No. 53, at 16:13-21), Plaintiffs limited their requests to scientific matters raised by Plaintiffs' Section 21 Petition. To help EPA focus and streamline its document search, Plaintiffs provided targeted requests related to specifically defined studies, papers, and meetings (Nos. 10-29 & 33-34) which are the only requests for production that Plaintiffs ask this Court to compel. For example, Plaintiffs requested EPA documents related to the first-ever NIH-funded study of fluoride and IQ, which was published in September 2017. (Nos. 14, 28, 34). This much anticipated and methodologically rigorous study (*which was funded, in part, by the EPA*) found that fluoride ingestion during pregnancy correlates with significant and sizable IQ loss in children and thus strongly supports Plaintiffs' position. Internal EPA documents showing, *inter alia*, that EPA's own scientists recognize the strength of this study (A) would be probative reliance material for Plaintiffs' experts, (B) would assist the Court in assessing the testimony of EPA's litigation experts, and (C) would help identify potential witnesses. A similar basis for discovery applies to each of the other specific studies, papers, and meetings that Plaintiffs have identified in their requests.

Despite the probative value of EPA's internal assessments of these studies, EPA has taken the sweeping position that any views of its individual scientists are wholesale irrelevant. The only documents EPA has produced, therefore, are official EPA and third-party documents that were already available in the public domain. This runs counter to the Court's discovery ruling which permitted Plaintiffs to discover "evidence [that] would not have been previously available to Plaintiffs but is within the scope of the petition." (ECF No. 53 at 16:19-21.) EPA has not even *searched* for internal documents and, as such, has not produced a privilege log and has yet to assert a privilege for any document. While EPA has indicated it will broadly assert the deliberative process privilege, courts have made clear this privilege is not a blank check: i.e., the privilege does not apply unless the communication is *both* pre-decisional *and* deliberative. *E.g., Assembly of State of Cal. v. U.S. Dep't of Commerce*, 968 F.2d 916, 920-23 (9th Cir. 1992). Plaintiffs ask this Court, therefore, to compel EPA to produce non-privileged internal documents that are responsive

¹ The meet and confers have been telephonic. Under the Court's Civil Standing Order 4(a), there is good cause for not having an in-person meeting because counsel for the Parties are located on different coasts.

to Request Nos. 10 to 29 and 33 to 34, and, to the extent EPA asserts a privilege, a privilege log. Plaintiffs ask that the privilege log provide: (1) the date of the document, (2) author, (3) recipient, (4) subject matter of the document, and (5) basis of privilege.

B) Statement of Plaintiffs' Position on Amended 30(b)(6) Deposition Notice:

Plaintiffs' Amended 30(b)(6) Deposition Notice seeks to clarify whether, and to what extent, EPA's current safety standards (the MCLG and RfD) considered neurotoxicity as a potential risk of fluoride. **(Exhibit B)** Based on the sworn and unsworn representations that Plaintiffs have received so far in this case, it appears EPA's safety standards did not meaningfully consider fluoride neurotoxicity, and, as such, cannot be used to demonstrate a neurological safe level of fluoride. A 30(b)(6) deposition of an EPA representative will help to resolve this material issue. Yet, despite the limited scope of Plaintiffs' Amended Notice, EPA is refusing to produce a witness on the following meritless grounds:

First, EPA contends it is irrelevant that EPA's fluoride safety standards fail to establish a neurologically safe level of fluoride, because such evidence, *by itself*, fails to satisfy Plaintiff's burden of affirmatively proving a risk. The relevance and admissibility of evidence does not depend, however, on whether the evidence proves, by itself, the ultimate conclusion. Second, EPA contends the deposition is unnecessary because the issues have been addressed in prior written discovery and/or publicly available documents. Courts have consistently ruled, however, that this is not a proper basis to avoid the obligations imposed by Rule 30(b)(6). *E.g., Great Am. Ins. Co. of New York v. Vegas Const. Co.*, 251 F.R.D. 534, 539-541 (D. Nev. 2008). Third, EPA suggests that the 30(b)(6) deposition would invade the deliberative process privilege. However, a deposition of an EPA officer about matters already decided and acted upon is, by its nature, post-decisional and non-deliberative and thus not subject to the deliberative process privilege. *See N. L. R. B. v. Sears, Roebuck & Co.*, 421 U.S. 132, 152-53 (1975) ("[T]he public is vitally concerned with the reasons which did supply the basis for an agency policy actually adopted.") Fourth, EPA erroneously claims that the deposition amounts to expert discovery, but Plaintiffs are seeking to find out "the reasons which did supply the basis for an agency policy actually adopted," *id.* at 152-53, which is a factual inquiry, not an expert one. The deposition is thus a proper subject of fact discovery.

C) Statement of EPA's Positions:

Under amended Rule 26(b), relevance alone will not justify discovery; discovery must also be proportional to the needs of the case. *See Fed. R. Civ. P. 26(b); see also Fed. R. Civ. P. 26 committee notes.* This Court has already determined that "discovery should be focused on *scientific evidence and expert discovery* regarding the risk of injury to health or the environment posed by the chemical substances at issue in Plaintiffs' petition." (ECF No. 53 at 16) (emphasis added). Instead, Plaintiffs' discovery unnecessarily focuses on internal discussion and the personal opinions of agency personnel. Given the scope of discovery already defined by the Court, EPA searched for and produced responsive documents relevant to the existence of scientific studies and data rather than EPA's interpretation of that data.

Specifically, Plaintiffs' RFPs 10-11 seek "[a]ll documents and correspondence that relate to the September 8, 2014 meeting" between Plaintiffs and EPA. Such requests are immaterial and not proportional to the needs of the case because this Court has already determined that the "sufficiency of the EPA's reasons for denying the petition or the correctness of the EPA's analysis or conclusion" are not at issue. (ECF No. 53 at 9).

Next, Plaintiffs' RFPs 12-29 and 33-34 seek "[a]ll documents and correspondence that relate to" specifically defined studies. To the extent Plaintiffs' requests sought information that reflects upon EPA's

internal discussion of those studies, EPA objected on the grounds that any discovery concerning the interpretation of scientific or technical issues that require specialized knowledge falls under the scope of Fed.R.Civ.Evid. 702 and Fed.R.Civ.P. 26(a). EPA will produce such information during expert discovery pursuant to the scheduling Order. Additionally, EPA flagged for Plaintiffs the potential that such requests likely impinge on EPA's deliberative process privilege. Even assuming there is correspondence reflecting statements that contradict EPA policy, the deliberative process privilege "prevent[s] injury to the quality of agency decisions' by ensuring that the 'frank discussion of legal or policy matters' in writing, within the agency, is not inhibited by public disclosure." *Maricopa Audubon Soc. v. U.S. Forest Serv.*, 108 F.3d 1089, 1092 (9th Cir. 1997) (citation omitted). The privilege does not exclude factual information and "allow[s] agencies freely to explore possibilities, engage in internal debates, or play devil's advocate without fear of public scrutiny." *Assembly of State of Cal. v. U.S. Dep't of Commerce*, 968 F.2d 916, 920 (9th Cir. 1992), *as amended on denial of reh'g* (Sept. 17, 1992). Nevertheless, Plaintiffs implicitly reflect their desire to harm the agency by attacking its credibility through compelled testimony of its own scientists. In any case, EPA has not asserted the privilege because the information sought by Plaintiffs is immaterial in the first instance. Because this discovery seeks to reflect on the correctness of EPA's conclusions, the issue is not germane to a claim or defense. "Rather, the purpose of judicial review is to establish 'to the satisfaction of the court by a preponderance of the evidence' that there is in fact [scientific] evidence of an unreasonable risk of harm." (ECF No. 53 at 9). Thus, EPA will defend against the sufficiency of Plaintiffs' scientific contentions through expert testimony.

EPA also objected to Plaintiffs' deposition notice on grounds similar to those addressed above. The amended notice states that Plaintiffs will withdraw Topics 3-4 if EPA provides sworn statements confirming what it has already established through written discovery and party conferences. *See* Exhibit B. Plaintiffs have not identified any legal or logical need for a sworn statement that justifies the burden to EPA of designating a representative to testify on these topics. Given the emphasis placed on proportionality and the tailoring of discovery under amended Rule 26(b), *Great Am. Ins. Co. of New York* does not carry substantial weight. While there may be circumstances where dual-pronged discovery tactics might be justified, Topics 3-4 are not reasonably tailored to the needs of this case and are unnecessarily duplicative.

Plaintiffs assert that Topics 1-2 seek to clarify questions related to EPA's MCLG for fluoride and associated reviews under the Safe Drinking Water Act. While EPA takes the position as a matter of policy that neurotoxicity is not a risk of concern at doses below those associated with the MCLG and RfD, EPA is not required to defend that policy position in this litigation. Moreover, in public documents addressing the issue which have already been provided to Plaintiffs, EPA has noted that the available data on neurotoxicity are not sufficient to assess the public health relevance to the U.S. population. Thus, Plaintiffs are unable to identify how inquiry into the MCLG for fluoride is relevant to the availability and existence of scientific studies and data necessary to demonstrate an unreasonable risk. Even if the Court were to find the MCLG an arguably relevant topic of inquiry, Plaintiffs' attempt to discover facts supporting contentions made and positions taken by EPA through a Rule 30(b)(6) deposition is inefficient and unreasonable because the factual and scientific predicates for EPA's denial of the petition are publicly expressed and identified in the document denying the petition. Under Rule 26, courts shall limit discovery if that which is sought is obtainable from some other source that is more convenient, less burdensome, or less expensive. Fed. R. Civ. P. 26(b)(2)(C)(i).

Plaintiffs have not provided a convincing explanation of how the disputed discovery relates to the only fact "of consequence" in this litigation—whether there is scientific evidence of an unreasonable risk of injury. *See* Fed.R.Evid. 401. Accordingly, the Court should deny Plaintiffs' request.

Respectfully submitted,

/s/ Michael Connett
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/s/ Debra J. Carfora
(by permission)
DEBRA J. CARFORA
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Attorneys for Defendants

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served by Notice of Electronic Filing this 27th day of September, 2018, upon all ECF registered counsel of record using the Court's CM/ECF system.

/s/ Michael Connett
MICHAEL CONNETT
Attorney for Plaintiffs

EXHIBIT A

1 MICHAEL CONNETT, ESQ., CA Bar No. 300314
2 CHRIS NIDEL, ESQ., D.C. Bar No. 497059
3 FOOD & WATER WATCH
4 1814 Franklin St., Suite 1100
5 Oakland, California 94612
6 Telephone: (510) 922-0720
7 Facsimile: (310) 922-0723

8 *Attorneys for Plaintiffs*

9
10 **IN THE UNITED STATES DISTRICT COURT**
11 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**
12 **AT SAN FRANCISCO**

13 FOOD & WATER WATCH, et al.,)
14)
15 Plaintiffs,)
16 vs.) Civ. No. 17-CV-02162-EMC
17)
18 U.S. ENVIRONMENTAL PROTECTION) **PLAINTIFFS' FIRST SET OF**
19 AGENCY, et al.) **REQUESTS FOR PRODUCTION OF**
20) **DOCUMENTS**
21 Defendants.)
22)
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27)
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29 Pursuant to Rule 34 of the Federal Rules of Civil Procedure, Plaintiffs hereby request Defendants
30 to produce and permit inspection and copying of the documents listed in this request. The inspection and
31 performance of related acts shall be made at a site agreed upon by the parties, within 30 days of service
32 of this request.

33 **INSTRUCTIONS:**

- 34 1. Unless otherwise specified, the documents called for by these document requests are
35 documents in Defendants' possession, custody, and control, including documents in the possession of the
36 Defendants' officers, employees, agents, servants, representatives, attorneys, or other persons directly or
37 indirectly employed or retained by them, or anyone else acting on Defendants' behalf or otherwise subject
38 to their control.
- 39 2. Documents that were provided to Defendants by the Plaintiffs as Exhibits to their November

1 2016 Citizen Petition, including the Petition itself, need not be produced, unless they contain writings,
2 notes, or alterations that have been added by Defendants. Similarly, documents previously provided to
3 Defendants by Fluoride Action Network (FAN) need not be produced, unless they contain writings, notes,
4 or alterations that have been added by Defendants.

5 3. Pursuant to Fed. R. Civ. P. 26(e), you are under a continuing duty to supplement or amend any
6 response to this request for production for which you learn that the response is in some material respect
7 incomplete or incorrect.

8 4. All documents that are responsive, in whole *or in part*, to any of these document requests shall
9 be produced in their entirety, including all attachments and enclosures.

10 5. In your response to each document request herein, **identify the Bates Numbers** of the
11 documents that are responsive to said request.

12 5. In producing documents consisting of electronically stored data in machine-readable form in
13 response to any document request herein, provide such data in a form that does not require specialized or
14 proprietary hardware or software.

15 6. For any document withheld under a claim of privilege, submit a sworn or certified statement
16 from your counsel or one of your employees in which you (A) identify the document by author, addressee,
17 date, number of pages, and subject matter; (B) specify the nature and basis of the claimed privilege and
18 the paragraph of this demand for documents to which the document is responsive; and (C) identify each
19 person to whom the document or its contents, or any part thereof, has been disclosed.

20 7. For any document responsive to these document requests which is known to have been
21 destroyed or lost, or is otherwise unavailable, identify each such document by author, addressee, date,
22 number of pages, and subject matter; and explain in detail the events leading to the destruction or loss, or
23 the reason for the unavailability of such document, including the location of such document when last in
24 your possession, custody, or control, and the date and manner of its disposition.
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DEFINITIONS:

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2 2010 RISK ASSESSMENT means the risk assessment that EPA published in December 2010,
3 titled “Fluoride: Dose-Response Analysis for Non-Cancer Effects” (820-10-019).

4 AGGEBORN STUDY means the Swedish study of fluoride and IQ authored by Linuz Aggeborn
5 and Mattias Ohman, which was first published on June 27, 2016, and published again on October 24,
6 2017, under the title “The Effects of Fluoride in the Drinking Water.”
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8 BARBERIO STUDIES means the following studies co-authored by (among others) Amanda
9 Barberio and Lindsay McLaren: (1) a 2017 *Canadian Journal of Public Health* paper titled “Fluoride
10 exposure and reported learning disability diagnosis among Canadian children: Implications for
11 community water fluoridation”; (2) a 2017 *Journal of Epidemiology & Community Health* paper titled
12 “Fluoride exposure and indicators of thyroid functioning in the Canadian population: implications for
13 community water fluoridation”; and (3) a 2016 Masters Degree Thesis titled “A Canadian Population-
14 based Study of the Relationship between Fluoride Exposure and Indicators of Cognitive and Thyroid
15 Functioning; Implications for Community Water Fluoridation.”
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17 BASHASH STUDY means the 2017 paper co-authored by (among others) Morteza Bashash,
18 Deena Thomas, Karen Paterson, and Howard Hu, titled “Prenatal Fluoride Exposure and Cognitive
19 Outcomes in Children at 4 and 6–12 Years of Age in Mexico,” that was published in *Environmental*
20 *Health Perspectives*.
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22 BROADBENT STUDY means the 2015 study co-authored by (among others) Michael
23 Broadbent, titled “Community Water Fluoridation and Intelligence: Prospective Study in New Zealand,”
24 which was published in the *American Journal of Public Health*.
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26 CHOI META REVIEW means the 2012 study co-authored by (among others) Anna Choi and
27 Philippe Grandjean, titled “Developmental fluoride neurotoxicity: a systematic review and meta-
28 analysis,” published in *Environmental Health Perspectives*.

1 CHOI STUDY means the 2015 study co-authored by (among others) Anna Choi, titled
2 “Association of lifetime exposure to fluoride and cognitive functions in Chinese children: a pilot study,”
3 published in *Neurotoxicology & Teratology*.

4 CORRESPONDENCE means all written communications to ENVIRONMENTAL
5 PROTECTION AGENCY from THIRD PARTIES, and all written communications from
6 ENVIRONMENTAL PROTECTION AGENCY to THIRD PARTIES, including, but not limited to,
7 electronic mail (email).

8 DOCUMENTS means any written, recorded, or graphic material of any kind, whether prepared
9 by you or by any other person, that is in your possession, custody, or control. The term includes: electronic
10 mail (email); inter-office communications; memoranda; drafts, whether or not they resulted in a final
11 document; minutes of meetings, conferences, and telephone or other conversations or communications;
12 notations of any conversations (including, without limitation, telephone calls, meetings, and other
13 communications); recordings; published or unpublished articles; statistics; data, including but not limited
14 to excel spreadsheets; published or unpublished speeches; microfilm; microfiche; tape or disc recordings;
15 computer print-outs; records; charts; and/or graphs. The term DOCUMENTS includes all drafts of a
16 document and all copies that differ in any respect from the original, including any notation, underlining,
17 marking, or information not on the original. The term also includes information stored in, or accessible
18 through, computer or other information retrieval systems. A document is deemed to be in your control if
19 you have the right to secure the document or a copy thereof from another person.
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22 ECONOMIC IMPACT OF IQ LOSS means research on the economic impact to individuals
23 and/or society from reductions in IQ, including, but not limited to, estimations of the loss in lifelong
24 individual earnings potential from the loss of a single IQ point.
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26 ENVIRONMENTAL PROTECTION AGENCY means all offices, divisions, and branches of the
27 U.S. Environmental Protection Agency (including, but not limited to, the Office of Water, Office of
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1 Pesticide Programs, and Office of Chemical Safety and Pollution Prevention), including all employees of
2 said offices, divisions, and branches, as well as all outside contractors who EPA has hired to do research
3 on FLUORIDE, including, but not limited to, EVALUATIONS and/or studies that have collected F-
4 BIOMONITORING DATA.

5 EXTERNAL RISK ASSESSMENTS means all EVALUATIONS conducted by THIRD
6 PARTIES.

7 EVALUATIONS means all analyses, discussions, reviews, risk assessments, risk evaluations,
8 and/or summaries, including, *but not limited to*, all DOCUMENTS which identify a Benchmark Dose
9 (BMD), Lowest Observable Adverse Effect Level (LOAEL), No Observable Adverse Effect Level
10 (NOAEL), No Observable Effect Level (NOEL), and/or Reference Dose (RfD) for either F-
11 NEUROTOXICITY or F-THYROID. The term EVALUATIONS includes both draft and final
12 manuscripts, as well as both unpublished and published documents.

13 F-BIOMONITORING DATA means data from human populations which reflects on any of the
14 following parameters: (1) the percentage of humans with dental fluorosis; (2) the severity of dental
15 fluorosis in humans; and (3) concentrations of fluoride ion in urine, blood, serum, plasma, saliva,
16 fingernails, toenails, bone, and/or any other bodily tissue or fluid.

17 F-NEUROTOXICITY means FLUORIDE's effect on the brain and/or central nervous system,
18 including but not limited to, FLUORIDE's effect on brain cells, brain receptors, brain tissue, learning,
19 memory, IQ, cognition, behavior, and dementia.

20 F-THYROID means FLUORIDE's impact on the thyroid gland, including but not limited to,
21 FLUORIDE's effect on thyroid hormone levels, FLUORIDE's effect on thyroid cells, FLUORIDE's
22 effect on the incidence of clinical and/or subclinical hypothyroidism, and FLUORIDE's impacts on
23 persons with iodine deficiency and/or suboptimal iodine intake.

24 FLUORIDE shall refer to the following inorganic fluoride compounds: aluminum fluoride
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1 complexes, calcium fluoride (CaF₂), sodium fluoride (NaF), HYDROFLUOROSILICIC ACID, sodium
2 fluorosilicate (Na₂SiF₆), and cryolite (Na₃AlF₆).

3 HIRZY STUDY means the 2016 paper co-authored by (among others) Bill Hirzy, titled
4 “Developmental neurotoxicity of fluoride: A quantitative risk analysis towards establishing a safe daily
5 dose of fluoride for children,” published in *Fluoride*.

6 HYDROFLUOROSILICIC ACID means the chemical hydrofluorosilicic acid (H₂SiF₆), which
7 may also be referred to as: hexafluorosilicic acid, HFS, fluorosilicic acid, fluosilicic acid, FSA, sodium
8 silicofluoride, and silicofluoride.

9 INTERNAL RISK ASSESSMENTS means all EVALUATIONS conducted by the
10 ENVIRONMENTAL PROTECTION AGENCY.

11 JIMENEZ STUDY means the 2017 paper co-authored by (among others) L. Valdez Jimenez and
12 Diana Rocha-Amador, titled “In Utero Exposure to Fluoride and Cognitive Development Delay in
13 Infants,” published in *Neurotoxicology*.

14 LEVY STUDIES means any study on fluoride, dental fluorosis, or tooth decay co-authored by
15 Steven Levy from the University of Iowa, including, but not limited to, the 2009 *Journal of Public Health*
16 *Dentistry* paper titled “Considerations on Optimal Fluoride Intake using Dental Fluorosis and Dental
17 Caries Outcomes – A Longitudinal Study.”

18 MULLENIX STUDY means the 1995 paper co-authored by (among others) Phyllis Mullenix,
19 titled “Neurotoxicity of Sodium Fluoride in Rats,” published in *Neurotoxicology & Teratology*.

20 NATIONAL INSTITUTE OF ENVIRONMENTAL HEALTH SCIENCES means the U.S.
21 National Institute of Environmental Health Studies and any of its employees or agents, including, but not
22 limited to, Linda Birnbaum, John Bucher, Jean Harry, Christopher McPherson, and Kristina Thayer.
23

24 NATIONAL TOXICOLOGY PROGRAM means the U.S. National Toxicology Program and any
25 of its employees or agents, including, but not limited to, Linda Birnbaum, John Bucher, Jean Harry,
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1 Christopher McPherson, and Kristina Thayer.

2 NHANES F-BIOMONITORING STUDIES means the F-BIOMONITORING DATA (i.e., dental
3 fluorosis and plasma fluoride) from 1999 to the present that has been collected by the CDC's National
4 Health and Nutrition Examination Surveys during its 1999-2004 surveys, 2011-2012 survey, 2013-2014
5 survey, and 2015-2016 survey.

6 NIEHS FUNDED F-STUDIES means the following studies that the U.S. National Institute of
7 Environmental Health Sciences has funded: (1) NIH ANIMAL F-STUDY, (2) NIH CANADA F-IQ
8 STUDY, and (3) NIH MEXICO F-IQ STUDY.

9
10 NIH ANIMAL F-STUDY means the animal study investigating F-NEUROTOXICITY led by
11 Principal Investigator Pamela Den Besten from the University of California-San Francisco, which was
12 funded from approximately 2010 to 2012 by the U.S. National Institute of Environmental Health Sciences
13 under Project Numbers R21 ES017813-01 and R21 ES017813-02.

14 NIH CANADA F-IQ STUDY means the ongoing study on F-NEUOTOXICITY led by Principal
15 Investigator Christine Till from York University that was funded from approximately 2010 to 2012 by
16 the U.S. National Institute of Environmental Health Sciences under Project Numbers R21 ES027044-01,
17 R21 ES027044-02, and R21 ES027044-02S1.

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19 NIH MEXICO F-IQ STUDY means the ongoing study on F-NEUROTOXICITY led by Principal
20 Investigators Howard Hu (from University of Toronto) and Karen Peterson (from University of
21 Michigan) that has been funded by the U.S. National Institute of Environmental Health Sciences under
22 Project Numbers R01 ES021446 01, R01 ES021446 02, R01 ES021446 03, R01 ES021446 04, and R01
23 ES021446 05.

24
25 NTP F-MEETINGS means any conference, teleconference call, meeting, or webinar that the U.S.
26 National Toxicology Program has held on the NTP F-STUDIES, including, but not limited to, the
27 teleconference call held on July 15, 2016 whose participants included EPA employee Crystal Rodgers-

Jenkins.

NTP F-STUDIES means the following studies that the U.S. National Toxicology Program has conducted and/or is still conducting on F-NEUROTOXICITY: (1) “Systematic Review on the Effects of Fluoride on Learning and Memory in Animal Studies,” published in July 2016; (2) “An Evaluation of Neurotoxicity Following Fluoride Exposure from Gestational Through Adult Ages in Long-Evans Hooded Rats,” published in 2018 by Christopher McPherson, et.al.; and (3) the ongoing systematic review of the human epidemiological evidence, which is described in a June 2017 NTP report titled “Protocol for Systematic Review of Effects of Fluoride Exposure on Neurodevelopment.”

PECKHAM STUDY means the 2015 study co-authored by (among others) Steven Peckham, titled “Are fluoride levels in drinking water associated with hypothyroidism prevalence in England? A large observational study of GP practice data and fluoride levels in drinking water,” which was published in the *Journal of Epidemiology & Community Health*.

PETITION means the Citizen Petition that the Plaintiffs filed with the Environmental Protection Agency on November 22, 2016.

RELATE means relevant in any way to the matter identified in the document request, including documents that—in whole or in part—discuss, refer to, mention, or concern said matter.

SEPTEMBER 8, 2014 MEETING means the meeting held on September 8, 2014 in Washington D.C., where Bill Hirzy, Paul Connett, Christopher Neurath, and Quanyong Xiang presented information on F-NEUROTOXICITY to Peter Gravitt and other employees of the ENVIRONMENTAL PROTECTION AGENCY.

SILICOFLUORIDE/LEAD ISSUE means the relationship between the addition of silicofluoride compounds (i.e., HYDROFLUOROSILIC ACID and sodium hexafluorosilicate (NaF[SiF₆])) to municipal water supplies and (1) lead levels in said water supplies and/or (2) lead levels in the blood of humans drinking said water supplies.

1 THIRD PARTIES means any person, association, organization, company, or federal agency other
2 than the ENVIRONMENTAL PROTECTION AGENCY, including, *but not limited to*, the American
3 Dental Association, American Fluoridation Society, Campaign for Dental Health, Centers for Disease
4 Control, Children’s Dental Health Project, *ilikemyteeth.org*, National Institute of Dental & Craniofacial
5 Research, Pew Charitable Trusts, William Bailey, Michael Broadbent, Jean Harry, Matt Jacob, Johnny
6 Johnson, Steven Levy, William Maas, Jane McGinley, Christopher McPherson, Ken Perrott, Howard
7 Pollick, Steve Slott, Marie Sutton, and Gary Whitford.

8
9 VARNER STUDIES means the following papers co-authored by (among others) Julie Varner and
10 Robert Isaacson: (1) a 1998 *Brain Research* paper co-authored with EPA employee Karl Jenson titled
11 “Chronic administration of aluminum-fluoride or sodium-fluoride to rats in drinking water: alterations in
12 neuronal and cerebrovascular integrity”; (2) a 1997 *Annals of the NY Academy of Science* paper co-
13 authored with EPA employee Karl Jenson, titled “Toxin-induced blood vessel inclusions caused by the
14 chronic administration of aluminum and sodium fluoride and their implications for dementia”; and (3) a
15 1994 *Behavioral and Neural Biology* paper titled “Chronic aluminum fluoride administration: I.
16 Behavioral observations.”

17
18 WIENER STUDY means the 2018 paper co-authored by (among others) RC Weiner, titled
19 “Dental Fluorosis Over Time: A Comparison of National Health and Nutrition Examination Survey data
20 from 2001-2002 and 2011-2012,” published in the *Journal of Dental Hygiene*.

21 YU STUDY means the June 2018 paper co-authored by (among others) Yu, titled “Threshold
22 effects of moderately excessive fluoride exposure on children's health: A potential association between
23 dental fluorosis and loss of excellent intelligence,” published in *Environment International*.

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DOCUMENT REQUESTS

- 1) All DOCUMENTS and CORRESPONDENCE that RELATE to F-NEUOROTOXICITY.
- 2) All DOCUMENTS and CORRESPONDENCE that RELATE to F-THYROID.
- 3) All DOCUMENTS and CORRESPONDENCE that RELATE to F-BIOMONITORING DATA, including all DOCUMENTS and CORRESPONDENCE that RELATE to F-BIOMONITORING DATA from the NHANES F-BIOMONITORING STUDIES.
- 4) All INTERNAL RISK ASSESSMENTS of F-NEUROTOXICITY, including, but not limited to, any INTERNAL RISK ASSESSMENTS of F-NEUROTOXICITY that were conducted in conjunction with: (A) EPA's assessment of the PETITION; (B) EPA's drafting of its response to the PETITION; (C) EPA's three Six Year Reviews of Drinking Water Standards; (D) EPA's 2010 RISK ASSESSMENT; (E) assessments of the safety of sulfuryl fluoride as a post-harvest fumigant; and (F) assessments of the safety of cryolite as a pesticide on food.
- 5) All INTERNAL RISK ASSESSMENTS of F-THYROID including, but not limited to, any INTERNAL RISK ASSESSMENTS of F-THYROID that were conducted in conjunction with: (A) EPA's assessment of the PETITION; (B) EPA's drafting of its response to the PETITION; (C) EPA's three Six Year Reviews of Drinking Water Standards; (D) EPA's 2010 RISK ASSESSMENT; (E) assessments of the safety of sulfuryl fluoride as a post-harvest fumigant; and (F) assessments of the safety of cryolite as a pesticide on food.
- 6) All EXTERNAL RISK ASSESSMENTS of F-NEUROTOXICITY.
- 7) All EXTERNAL RISK ASSESSMENTS of F-THYROID.
- 8) All CORRESPONDENCE that the ENVIRONMENTAL PROTECTION AGENCY has had with THIRD PARTIES that RELATE to the PETITION.
- 9) All DOCUMENTS that the ENVIRONMENTAL PROTECTION AGENCY received from THIRD PARTIES that RELATE to the PETITION.
- 10) All DOCUMENTS and CORRESPONDENCE that RELATE to the SEPTEMBER 8, 2014 MEETING.**
- 11) ALL DOCUMENTS prepared by the ENVIRONMENTAL PROTECTION AGENCY after the SEPTEMBER 8, 2014 MEETING which RELATE to said meeting.**
- 12) All DOCUMENTS and CORRESPONDENCE that RELATE to the AGGEBORN STUDY.**
- 13) All DOCUMENTS and CORRESPONDENCE that RELATE to the BARBERIO STUDIES.**
- 14) All DOCUMENTS and CORRESPONDENCE that RELATE to the BASHASH STUDY.**
- 15) All DOCUMENTS and CORRESPONDENCE that RELATE to the BROADBENT STUDY.**

- 1 **16) All DOCUMENTS and CORRESPONDENCE that RELATE to the CHOI META REVIEW.**
- 2 **17) All DOCUMENTS and CORRESPONDENCE that RELATE to the CHOI STUDY.**
- 3 **18) All DOCUMENTS and CORRESPONDENCE that RELATE to the HIRZY STUDY.**
- 4 **19) All DOCUMENTS and CORRESPONDENCE that RELATE to the JIMENEZ STUDY.**
- 5 **20) All DOCUMENTS and CORRESPONDENCE that RELATE to the LEVY STUDIES.**
- 6 **21) All DOCUMENTS and CORRESPONDENCE that RELATE to the MULLENIX STUDY.**
- 7 **22) All DOCUMENTS and CORRESPONDENCE that RELATE to the PECKHAM STUDY.**
- 8 **23) All DOCUMENTS and CORRESPONDENCE that RELATE to the VARNER STUDIES.**
- 9 **24) All DOCUMENTS and CORRESPONDENCE that RELATE to the WIENER STUDY.**
- 10 **25) All DOCUMENTS and CORRESPONDENCE that RELATE to the YU STUDY.**
- 11 **26) All DOCUMENTS and CORRESPONDENCE that RELATE to the NIH F-ANIMAL STUDY.**
- 12 **27) All DOCUMENTS and CORRESPONDENCE that RELATE to the NIH CANADA F-IQ**
- 13 **STUDY.**
- 14 **28) All DOCUMENTS and CORRESPONDENCE that RELATE to the NIH MEXICO F-IQ STUDY.**
- 15 **29) All DOCUMENTS and CORRESPONDENCE that RELATE to the NTP F-STUDIES, including,**
- 16 **but not limited to, all DOCUMENTS and CORRESPONDENCE that RELATE to the NTP F-**
- 17 **MEETINGS.**
- 18 **30) All CORRESPONDENCE between the ENVIRONMENTAL PROTECTION AGENCY and**
- 19 **THIRD PARTIES that RELATE to F-NEUROTOXICITY.**
- 20 **31) All CORRESPONDENCE between the ENVIRONMENTAL PROTECTION AGENCY and**
- 21 **THIRD PARTIES that RELATE to F-THYROID.**
- 22 **32) All CORRESPONDENCE between the ENVIRONMENTAL PROTECTION AGENCY and**
- 23 **THIRD PARTIES that RELATE to F-BIOMONITORING DATA.**
- 24 **33) All CORRESPONDENCE between the ENVIRONMENTAL PROTECTION AGENCY and the**
- 25 **NATIONAL TOXICOLOGY PROGRAM that RELATE to the NTP F-STUDIES.**
- 26 **34) All CORRESPONDENCE between the ENVIRONMENTAL PROTECTION AGENCY and the**
- 27 **NATIONAL INSTITUTE OF ENVIRONMENTAL HEALTH SCIENCES that RELATE to the**
- 28 **NIEHS FUNDED F-STUDIES.**

1 35) All DOCUMENTS and CORRESPONDENCE that RELATE to the SILICOFLUORIDE/LEAD
2 ISSUE.

3 36) All DOCUMENTS and CORRESPONDENCE that RELATE to the ECONOMIC IMPACT OF
4 IQ LOSS.

5 37) If one or more of your responses to Plaintiffs' First Set of Requests for Admission is anything other
6 than an unqualified admission, all DOCUMENTS that support said response(s).

7 38) Any DOCUMENTS that you have identified in response to Plaintiffs' Interrogatory No. 4.

8 39) Any primary studies that you have identified in response to Plaintiffs' Interrogatories Nos. 6 to 13.

9 Dated: June 8, 2018

10 /s/ Michael Connett
11 MICHAEL CONNETT
12 Attorney for Plaintiffs
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CERTIFICATE OF SERVICE

Pursuant to Federal Rule of Civil Procedure 5 and the consent of all parties that email to counsel will constitute proper service of discovery, I served a copy of the foregoing *Plaintiff's First Set of Requests for Production of Documents* upon Defendants on June 8, 2018 via email to the following counsel:

Norman Rave
Debra J. Carfora
John T. Do
U.S. Department of Justice
Environment & Natural Resources Division
Environmental Defense Section
P.O. Box 7611
Washington, DC. 20044-7611
norman.rave@usdoj.gov
debra.carfora@usdoj.gov
john.do@usdoj.gov

Attorney for Defendants

Dated: June 8, 2018

/s/ Michael Connett
MICHAEL CONNETT
Attorney for Plaintiffs

EXHIBIT B

1 C. ANDREW WATERS, ESQ., CA Bar No. 147259
2 MICHAEL CONNETT, ESQ., CA Bar No. 300314
3 WATERS, KRAUS & PAUL
4 222 N. Pacific Coast Hwy, Suite 1900
5 El Segundo, CA 90245
6 310-414-8146 Telephone
7 310-414-8156 Facsimile

8 *Attorneys for Plaintiffs*

9
10 **IN THE UNITED STATES DISTRICT COURT**
11 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**
12 **AT SAN FRANCISCO**

13 FOOD & WATER WATCH, et al.,)
14)
15 Plaintiffs,)
16 vs.) Civ. No. 17-CV-02162-EMC
17)
18 U.S. ENVIRONMENTAL PROTECTION) **AMENDED NOTICE OF TAKING**
19 AGENCY, et al.) **RULE 30(b)(6) DEPOSITION DUCES**
20) **TECUM OF ENVIRONMENTAL**
21 Defendants.) **PROTECTION AGENCY**
22)
23 _____)

24 PLEASE TAKE NOTICE that, pursuant to Rule 30(b)(6) of the Federal Rules of Civil Procedure,
25 Plaintiffs will take the deposition upon oral examination under oath of the designated representative(s)
26 of the United States Environmental Protection Agency (“EPA”). The deposition will be taken before a
27 notary public or other person authorized by law to administer oaths, will be stenographically recorded
28 and videotaped, will take place on **October 8, 2018 at 10 am E.S.T.** at the following location:

29 NIDEL & NACE P.L.L.C.
30 5335 Wisconsin Ave NW
31 Suite 440
32 Washington D.C. 20015
33 Tel: (202) 478-9677

34 Such deposition(s) will be taken for purposes of discovery, for use as evidence at trial, and for
35 any other permissible purpose under the Federal Rules of Civil Procedure and Federal Rules of Evidence.

1 The deposition(s) shall continue from day-to-day, excluding weekends and holidays, until completed.
2 Plaintiffs request that the EPA provide written notice at least five (5) business days before the deposition
3 of the name(s) and employment position(s) of the individual(s) designated to testify on the EPA's behalf.

4 **DEFINITIONS:**

5 POST-NRC STUDIES OF NEUROTOXICITY mean any laboratory or epidemiological study
6 which investigated the neurotoxicity of fluoride (in animals, cell cultures, or humans) that was published
7 in an English-language journal after the release, on March 22, 2006, of the National Research Council's
8 report *Fluoride in Drinking Water: A Scientific Review of EPA's Standards*.
9

10 **TOPICS OF INQUIRY:**

11 1. EPA's basis for establishing 4 mg/L as the Maximum Contaminant Level Goal
12 (MCLG)/Maximum Contaminant Level (MCL) for fluoride in 1985, including (A) the critical adverse
13 health effect that the MCLG/MCL was established to protect against, and (B) whether EPA considered
14 neurotoxicity as a potential risk of fluoride exposure when promulgating the MCLG/MCL.
15

16 2. EPA's basis for concluding that its reference dose for fluoride (0.08 mg/kg/day) is a safe daily
17 dose of fluoride, including (A) the critical adverse health effect that the RfD was established to protect
18 against, and (B) whether EPA independently assessed the public health relevance of any of the existing
19 studies of fluoride and neurotoxicity, including POST-NRC STUDIES OF NEUROTOXICITY.
20

21 3. The fluoride biomonitoring data that that is not otherwise available in the published literature
22 that EPA has in its possession (if any), including but not limited to, data on urinary fluoride levels, serum
23 fluoride levels, and dental fluorosis. (*Plaintiffs will withdraw this Topic of Inquiry as soon as EPA provides*
24 *a sworn statement confirming what it has previously indicated in this litigation, namely: "Other than what*
25 *is available in the published literature, EPA does not have any data on urinary fluoride levels, serum*
26 *fluoride levels, plasma fluoride levels, toenail fluoride levels, fingernail fluoride levels, dental fluorosis*
27 *prevalence, or any other fluoride biomonitoring data."*)
28

1 4. Are the chemicals identified in EPA's Supplemental Response to Interrogatory No. 2 a complete
2 list of chemicals for which EPA has conducted risk assessments pursuant to EPA's Guidelines on
3 Neurotoxicity Risk Assessments, or is the list missing some of the chemicals (e.g., acrylamide, EPA/635/R-
4 07/009F) for which EPA has conducted said neurological risk assessments? (*Plaintiffs will withdraw this*
5 *Topic of Inquiry if EPA amends its Supplemental Response to Interrogatory No. 2 to provide a complete*
6 *list of chemicals.*)

7
8 **DOCUMENTS REQUESTED:**

9 The deponent is requested to bring the following documents to the deposition:

- 10 (1) A copy of the deponent's curriculum vitae.
11 (2) A copy of all documents that the deponent reviewed to prepare for this deposition.

12 Dated: September 21, 2018

13 */s/ Michael Connett*
14 MICHAEL CONNETT
15 Attorney for Plaintiffs
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CERTIFICATE OF SERVICE

1 Pursuant to Federal Rule of Civil Procedure 5 and the consent of all parties that email to counsel
2 will constitute proper service of discovery, I served a copy of the foregoing *Amended Notice of Taking*
3 *Rule 30(b)(6) Deposition Duces Tecum of Environmental Protection Agency* upon Defendants on
4 September 21, 2018 via email to the following counsel:

5 Debra J. Carfora
6 John T. Do
7 U.S. Department of Justice
8 Environment & Natural Resources Division
9 Environmental Defense Section
10 P.O. Box 7611
11 Washington, DC. 20044-7611
12 debra.carfora@usdoj.gov
13 john.do@usdoj.gov

14 *Attorneys for Defendants*

15 Dated: September 21, 2018

16 */s/ Michael Connett*
17 MICHAEL CONNETT
18 Attorney for Plaintiffs
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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing exhibits to the Discovery Letter Brief were served by Notice of Electronic Filing this 28th day of September, 2018, upon all ECF registered counsel of record using the Court's CM/ECF system.

/s/ Michael Connett
MICHAEL CONNETT
Attorney for Plaintiffs