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9 Attorneys for Plaintiff

10 **UNITED STATES DISTRICT COURT**  
 11 **NORTHERN DISTRICT OF CALIFORNIA**  
 12 **SAN FRANCISCO DIVISION**

14 )  
 15 CENTER FOR BIOLOGICAL )  
 DIVERSITY, a non-profit corporation; )  
 16 )  
 Plaintiff, )  
 17 )  
 v. )  
 18 )  
 ENVIRONMENTAL PROTECTION )  
 AGENCY *et al.*, )  
 19 )  
 Defendants. )  
 20 \_\_\_\_\_ )  
 21 )

Case No: C-07-02794-JCS

**ELEVENTH JOINT CASE  
 MANAGEMENT STATEMENT AND  
 REQUEST FOR CONTINUANCE;  
 PROPOSED ORDER**

Date: February 13, 2009  
 Time: 1:30 p.m.  
 Courtroom A, 15<sup>th</sup> Floor

Honorable Joseph C. Spero

**ELEVENTH JOINT CASE MANAGEMENT STATEMENT**

23 The parties to the above-entitled action submit this Eleventh Joint Case Management  
 24 Statement, Request for Continuance, and Proposed Order and request the Court to adopt it as its  
 25 Case Management Order in this case.

**REQUEST FOR CMC CONTINUANCE**

27 On September 21, 2007, the Court held a case management conference in this matter. At the

1 CMC, counsel for plaintiff and defendants stated their preference for pursuing settlement rather than  
2 moving forward with briefing on the allegations in Plaintiff's complaint that Defendants are  
3 currently in violation of Section 7 of the Endangered Species Act ("ESA"), 16 U.S.C. § 1536(a)(2),  
4 regarding the impacts of certain pesticide registrations (as specifically identified in the Complaint)  
5 on eleven endangered and threatened species occurring in the San Francisco Bay Area.

6 Since the September 21, 2007 CMC, the parties have exchanged settlement proposals and  
7 discussed the potential for settlement of this case. On October 16, 2007, the parties submitted a  
8 Second Joint Case Management Statement and requested additional time for settlement discussions.  
9 On October 22, 2007, the Court continued the case management conference until November 30,  
10 2007. On November 20, 2007, the parties submitted their Third Joint Case Management Statement  
11 requesting additional time to negotiate settlement, and on November 21, 2007, the Court continued  
12 the case management conference until January 18, 2008. On January 11, 2008, the parties submitted  
13 their Fourth Joint Case Management Statement requesting additional time to negotiate settlement,  
14 and on January 14, 2008, the Court continued the case management conference until March 14,  
15 2008.

16 On March 14, 2008, a Case Management Conference was held, as well as a Motion Hearing  
17 on Proposed Intervenor Defendants' Motions to Intervene. On March 19, 2008, the Court issued an  
18 Order granting in part and denying in part the Motions to Intervene and consequently, Intervenor  
19 Defendants CropLife America, RISE-Responsible Industry for a Sound Environment, and Reckitt  
20 Benckiser are now involved in the remedy phase of this case.

21 Since March, the parties have discussed further settlement proposals and believe significant  
22 progress has been made. In May, July, and September, and November, and January, the parties  
23 submitted their Sixth, Seventh, Eighth, Ninth, and Tenth Case Management Statements which the  
24 Court adopted. Since then, further discussions have been held and additional progress made.

25 Plaintiff and Federal Defendants believe that they are close to agreement on a draft  
26 settlement. Once a draft settlement is agreed upon, the Plaintiff and Federal Defendants have agreed  
27 that the Federal Defendants will submit a draft of the settlement agreement to the Federal Register in  
28

1 order to solicit and receive public comment. The Parties intend to make their best efforts to reach  
2 agreement on the draft settlement in time for the Federal Defendants to submit the draft settlement to  
3 the Federal Register by March 13, 2009. The public comment period will last 15 days, and  
4 afterwards, the Parties will need additional time to address any public comments received before  
5 finalizing an agreement to submit to this court. Therefore, the Parties respectfully request that the  
6 Case Management Conference be postponed from February 13, 2009, to April 10, 2009.

7  
8 DATED: February 6, 2009

/s/ Justin Augustine  
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Attorneys for Intervenor-Defendant  
CropLife America and  
RISE-Responsible Industry for a Sound Environment

**CASE MANAGEMENT ORDER**

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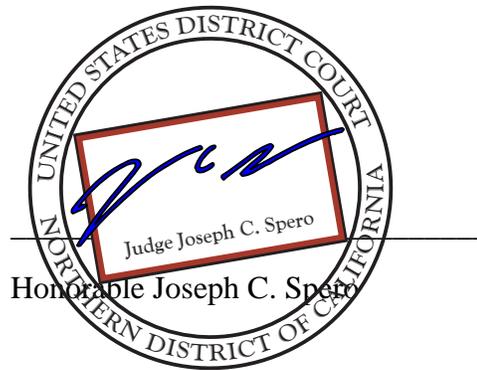
The Case Management Statement and Proposed Order is hereby adopted by the Court as the Case Management Order for the case.

IT IS HEREBY ORDERED THAT:

1. The case management conference scheduled for February 13, 2009 is continued to April 10, 2009 at 1:30 p.m..
2. An updated joint case management conference statement shall be due by April 3, 2009.

IT IS SO ORDERED

Dated: February 9, 2009.



Honorable Joseph C. Spero