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[Counsel for Plaintiffs and Defendant-Intervenors listed in signature block]

**IN THE UNITED STATES DISTRICT COURT  
 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
 SAN FRANCISCO DIVISION**

STEVE ELLIS, et al.

Plaintiffs,

v.

JACK HOUSENGER, et al.

Defendants,

and

BAYER CROPSCIENCE LP, et al.

Defendant-Intervenors.

Case No. 3:13-cv-1266-MMC

**STIPULATION REGARDING THE  
 ADMINISTRATIVE RECORD**

**AND ORDER THEREON**

1 WHEREAS, Federal Defendants Jack Housenger, in his official capacity as  
2 Director of the Office of Pesticide Programs, and Gina McCarthy, in her official capacity  
3 as Administrator of the United States Environmental Protection Agency (collectively,  
4 “EPA”), are required to lodge the Administrative Record in this case (Dkt. No. 144);

5 WHEREAS, in preparing the Administrative Record, EPA has identified several  
6 voluminous categories of documents that it believes will not bear upon the claims  
7 presented in the Second Amended Complaint (Dkt. No. 126) for which it believes  
8 production of the documents is burdensome on the agency;

9 WHEREAS, the parties have agreed that instead of including copies of these  
10 documents in the Administrative Record, EPA will instead identify the documents  
11 excluded from the Record in the indices pursuant to this stipulation, subject to the  
12 conditions below, and any party may request in writing that EPA include in the  
13 Administrative Record a document listed in the indices;

14 WHEREAS, the parties have agreed to enter into a protective order providing for  
15 disclosure of Administrative Record documents under seal to facilitate record review and  
16 production, since the records may contain confidential business information and  
17 information that is subject to the release restrictions of Federal Insecticide, Fungicide,  
18 and Rodenticide Act Section 10(g); and

19 THEREFORE, the parties hereby stipulate and agree to limit the production of  
20 documents in the Administrative Record as follows:

21 1. EPA will not include copies of the following categories of documents in  
22 the Administrative Record served on the parties or lodged with the Court:

23 a. Registrant data and EPA reviews of such data, except for (1) registrant  
24 data and EPA reviews of such data that relate to the risks to ESA-listed species or their  
25 designated critical habitats for product registrations at issue in Claims 5-6 (Dkt. No. 126);  
26 and (2) registrant data and EPA reviews of such data that relate to the risks to pollinators  
27 and/or honey bees for all product registrations at issue in claims 1-2 (Dkt. No. 126).

1                   b. Product chemistry data, EPA reviews of such data, and any  
2 correspondence regarding such data, including but not limited to, physical chemistry data  
3 such as (boiling point, viscosity, pH, odor, etc.) required pursuant to 40 C.F.R. § 158.300.

4                   c. Acute toxicology data typically used to establish human hazard  
5 warnings on product labeling, EPA reviews of such data, and any correspondence  
6 regarding such data required pursuant to 40 C.F.R. § 158.500.

7                   d. All other data and EPA reviews submitted to assess effects to human  
8 health as required by 40 C.F.R. §§ 158.500, .510, .1000, .1070, .1410, including, but not  
9 limited to, developmental toxicity and reproduction, mutagenicity, and human exposure,  
10 and all data and EPA reviews submitted to assess effects to plants as required by 40  
11 C.F.R. § 158.660 (phytotoxicity studies).

12                  e. All data and EPA reviews submitted for any of the 71 challenged  
13 actions (Dkt. No. 126) that specifically addresses active ingredients in these products  
14 other than clothianidin or thiamethoxam.

15                  f. Data compensation forms used to demonstrate compliance with data  
16 protection requirements of section 3(c)(1)(F) of FIFRA, 7 U.S.C. § 136a(c)(1)(F),  
17 including, but not limited to, certification with respect to data citation form, data matrices  
18 and formulator exemption statement and any correspondence regarding those materials.

19                  g. Confidential statements of formula and any correspondence regarding  
20 the confidential statement of formula.

21                  h. Application completeness checklists completed by EPA contractors to  
22 ensure that applications contain all required elements.

23           2.       For each category of documents excluded above, EPA shall identify the  
24 excluded documents in the certified indices by title and, if available, date. Any party may  
25 request in writing that EPA include any listed document in the Administrative Record.  
26 EPA shall supplement the Administrative Record with the requested document within 30  
27 days of receiving such a request.  
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3. The parties shall confer on and enter into a protective order governing production and use of confidential business information and information subject to the release restrictions of Federal Insecticide, Fungicide, and Rodenticide Act section 10(g) in the course of this action other than in court proceedings.

Respectfully submitted,

Date: October 16, 2014

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19 *America*

1 **[PROPOSED] ORDER**

2 Before the Court is the parties' JOINT STIPULATION REGARDING THE  
3 ADMINISTRATIVE RECORD. Upon due consideration, and for good cause shown, it  
4 is hereby ordered that the Administrative Record be limited as described in the  
5 Stipulation.

6 IT IS SO ORDERED.

7 DATED this 20th day of October, 2014.

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11 MAXINE M. CHESNEY  
12 United States District Judge  
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