

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

FOOD & WATER WATCH, INC. *et al.*,

Plaintiffs,

v.

U.S. ENVIRONMENTAL PROTECTION
AGENCY *et al.*,

Defendants.

Civil Action No. 3:17-cv-02162-EMC

**STIPULATION AND ~~PROPOSED~~ ORDER
REGARDING PLAINTIFFS' SUBPOENA TO
NIEHS DATED JANUARY 17, 2023.**

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1 As previously reported to the Court, Plaintiffs served non-party National Institute for
2 Environmental Health Sciences (“NIEHS”) with a subpoena requesting the production of agency
3 comments, NTP’s responses thereto, and other documents related to NTP’s determinations regarding
4 publication of the May 2022 prepublication fluoride monograph and the related meta-analysis. *See*
5 *generally* Dkt. No. 343. In response to the subpoena, NIEHS produced, among other things, the agency
6 comments sought by the subpoena but with certain attribution information redacted.

7 Having met and conferred regarding these redactions, Plaintiffs and NIEHS, through their
8 undersigned counsel, stipulate to and jointly request an order providing the following:

- 9 • NIEHS shall produce to Plaintiffs a reference table that will allow Plaintiffs to identify
10 the names of the agencies that provided the comments.
- 11 • Plaintiffs shall use the reference table and the information therein for purposes of this
12 litigation only and shall not publicly disclose such materials. These restrictions on use
13 and disclosure shall terminate upon the earlier of the NTP Board of Scientific Counselors
14 making its recommendation regarding the prepublication fluoride monograph and the
15 related meta-analysis to the Director of NTP or the resumption of trial in this matter.
- 16 • Plaintiffs shall not seek disclosure of the names of the individuals who provided the
17 comments.

18 Nothing in this stipulation shall impact the rights or responsibilities of the parties in other
19 litigation, including Plaintiff Kristin Lavelle’s FOIA complaint against the Department of Health and
20 Human Services (Case No. 23-cv-1040).

21 IT IS SO STIPULATED.

22
23 DATED: March 27, 2023

Respectfully submitted,

24 WATERS, KRAUS & PAUL

25 /s/ Michael Connett

26 MICHAEL CONNETT

27 C. ANDREW WATERS

KAY GUNDERSON REEVES (*pro hac vice*)

28 *Attorneys for Plaintiffs*

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DATED: March 27, 2023

Respectfully submitted,

STEPHANIE M. HINDS
United States Attorney

/s/ Emmet P. Ong*
EMMET P. ONG
Assistant United States Attorney

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*Attorneys for Non-Party National Institute of
Environmental Health Sciences*

*In compliance with Civil Local Rule 5-1(h)(3), the
filer of this document attests under penalty of
perjury that concurrence in the filing of the
document has been obtained from the other
Signatory.

~~[PROPOSED]~~ ORDER

Pursuant to stipulation of the parties, IT IS SO ORDERED.

DATED: March 27, 2023



HONORABLE EDWARD M. CHEN
United States Senior District Judge

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