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

12 ASBESTOS DISEASE AWARENESS  
13 ORGANIZATION, et al.,

14 *Plaintiffs,*

15 v.

16 U.S. ENVIRONMENTAL PROTECTION  
17 AGENCY, et al.,

18 *Defendants.*

Case No. 3:19-CV-00871-EMC

**STIPULATION AND [PROPOSED]  
ORDER REGARDING EPA’S  
MOTION TO ALTER OR AMEND  
JUDGMENT UNDER RULE 59 OR  
FOR RELIEF UNDER RULE 60**

20 STATE OF CALIFORNIA, by and through  
21 Attorney General Rob Bonta, et al.,

22 *Plaintiffs,*

23 v.

24 U.S. ENVIRONMENTAL PROTECTION  
25 AGENCY, et al.,

26 *Defendants.*

Case No. 3:19-CV-03807-EMC

1 WHEREAS, on February 19, 2019, Asbestos Disease Awareness Organization, American  
2 Public Health Association, Center for Environmental Health, Environmental Working Group,  
3 Environmental Health Strategy Center, and Safer Chemicals Healthy Families (“ADAO  
4 Plaintiffs”) filed an amended complaint in the U.S. District Court for the Northern District of  
5 California against Andrew Wheeler, as Acting Administrator of the United States Environmental  
6 Protection Agency, and the United States Environmental Protection Agency (collectively,  
7 “EPA”) for declaratory and injunctive relief captioned *Asbestos Disease Awareness*  
8 *Organization v. EPA*, No. 19-CV-00871 (“ADAO Case”);

9 WHEREAS, on June 28, 2019, the State of California, by and through then Attorney  
10 General Xavier Becerra, the Commonwealth of Massachusetts, by and through Attorney General  
11 Maura Healey, and the States of Connecticut, Hawaii, Maine, Maryland, Minnesota, New Jersey,  
12 Oregon, Washington, and the District of Columbia (“AGs,” together with the ADAO Plaintiffs,  
13 “Plaintiffs”) filed a complaint in the U.S. District Court for the Northern District of California  
14 against EPA for declaratory and injunctive relief captioned *State of California v. EPA*, No. 19-  
15 CV-03807 (“AGs’ Case”);

16 WHEREAS, the above-referenced cases were consolidated per a stipulated order  
17 (“Consolidated Cases”);

18 WHEREAS, in the Consolidated Cases, the Court construed Plaintiffs’ administrative  
19 petitions brought under section 21(a) of the Toxic Substances Control Act (“TSCA”) as seeking  
20 amendments to the Chemical Data Reporting (“CDR”) rule to require additional reporting on  
21 asbestos and asbestos-containing products;

22 WHEREAS, on December 22, 2020, after full briefing and oral argument, the Court  
23 issued an opinion granting summary judgment to Plaintiffs and denying summary judgment to  
24 EPA (“Summary Judgment Order”);

25 WHEREAS, the Summary Judgment Order directed EPA to “amend its CDR reporting  
26 rule pursuant to its authority under 15 U.S.C. § 2607(a)(1)(A) (i.e., under Section 8(a) of TSCA),  
27  
28

1 to address the information-gathering deficiencies identified herein” (Summary Judgment Order  
2 35);

3 WHEREAS, on January 5, 2021, the Court entered judgment pursuant to Federal Rule of  
4 Civil Procedure 58 in favor of Plaintiffs (“Judgment”);

5 WHEREAS, on February 2, 2021, EPA filed a Motion to Alter or Amend Judgment  
6 Under Rule 59 or For Relief Under Rule 60 (“EPA’s Motion,” ADAO Case ECF No. 62; AGs’  
7 Case ECF No. 74);

8 WHEREAS, EPA’s Motion asked the Court to alter or modify the Judgment or otherwise  
9 grant relief consistent with the remedy available under section 706(2) of the Administrative  
10 Procedure Act (“APA”) by, among other things, vacating a specific instruction that EPA amend  
11 the CDR rule;

12 WHEREAS, Plaintiffs opposed EPA’s Motion (ADAO Case ECF No. 67; AGs’ Case  
13 ECF No. 79) on the grounds that the remedy ordered by the Court was authorized under section  
14 21(b)(4)(A) of TSCA and section 706(1) of the APA;

15 WHEREAS, the parties to the ADAO Case and the AGs’ Case agree that section  
16 21(b)(4)(A) of TSCA authorizes the Court to direct EPA “to initiate a rulemaking proceeding as  
17 requested in the petition”;

18 WHEREAS, the parties to the ADAO Case and the AGs’ Case also agree that where a  
19 petition under TSCA section 21(a) seeks amendment of an existing rule, denial of the petition is  
20 judicially reviewable under section 21(b)(4)(A) subject to the scope and standard of review  
21 provided in section 706(2) of the APA;

22 WHEREAS, pursuant to Rule 15(b) of the FRCP, the ADAO Plaintiffs and the AGs have  
23 moved for leave to file amended complaints expressly stating such causes of action under TSCA  
24 section 21(b)(4)(A) and removing their causes of action under the APA;

25 WHEREAS, EPA does not oppose such motions for leave to file amended complaints; and

26 WHEREAS, the parties have entered into the attached Settlement Agreement under which  
27 EPA has agreed to initiate a rulemaking proceeding to require reporting under TSCA section 8(a)  
28

1 on asbestos in a manner that addresses the information-gathering deficiencies identified in the  
2 Court's Summary Judgment Order;

3 WHEREAS, the parties agree not to appeal or otherwise seek modification of the January  
4 5, 2021 Judgment in this case if this Stipulation and Order is approved by the Court.

5 **NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED**, by and among  
6 the parties to the ADAO Case and the AGs' Case, that:

- 7 1. Plaintiffs' unopposed motions to amend their complaints are granted;
- 8 2. The Court's instruction on page 35 of the December 22, 2020 Summary Judgment  
9 Order, that EPA "amend its CDR reporting rule pursuant to its authority under 15  
10 U.S.C. § 2607(a)(1)(A) (*i.e.*, under Section 8(a) of TSCA), to address the  
11 information-gathering deficiencies identified therein" is **VACATED**;
- 12 3. The Court's December 22, 2020 Summary Judgment Order is **AMENDED** to read  
13 as follows: "The EPA is directed to initiate a rulemaking proceeding to require  
14 reporting on asbestos under 15 U.S.C. § 2607(a)(1)(A) (*i.e.*, under Section 8(a) of  
15 TSCA) that addresses the information-gathering deficiencies identified herein";
- 16 4. The Court **DENIES AS MOOT and DISMISSES WITH PREJUDICE** EPA's  
17 Motion to Alter or Amend Judgment Under Rule 59 or For Relief Under Rule 60  
18 (ADAO Case ECF No. 62 and AGs' Case ECF No. 74); and
- 19 5. The Court retains jurisdiction for purposes of ensuring compliance with its Orders.

20  
21 Respectfully submitted,

22 Dated: June 7, 2021

/s/ Robert M. Sussman (with permission)

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\* \* \*

**PURSUANT TO STIPULATION, IT IS SO ORDERED.**

DATED:

\_\_\_\_\_  
Edward M. Chen  
United States District Judge

**CERTIFICATE OF SERVICE**

I hereby certify that on this 7th day of June, 2021, a true and correct copy of the foregoing Stipulation and [Proposed] Order Regarding EPA’s Motion to Alter or Amend Judgment Under Rule 59 or For Relief Under Rule 60 was filed electronically with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is being served on all counsel of record via transmission of Notices of Electronic Filing generated by CM/ECF.

/s/ Brandon N. Adkins  
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