

1 GREGORY C. LOARIE, State Bar No. 215859
2 TAMARA T. ZAKIM, State Bar No. 288912
3 EARTHJUSTICE
4 50 California Street, Suite 500
5 San Francisco, CA 94111
6 T: (415) 217-2000
7 F: (415) 217-2040
8 E: gloarie@earthjustice.org
9 tzakim@earthjustice.org

10 *Counsel for Petitioners and Plaintiffs*

11 IN THE SUPERIOR COURT FOR THE STATE OF CALIFORNIA
12 FOR THE COUNTY OF ALAMEDA

13 PESTICIDE ACTION NETWORK NORTH
14 AMERICA, CENTER FOR FOOD SAFETY, and
15 BEYOND PESTICIDES, non-profit organizations,

16 Petitioners and Plaintiffs,

17 vs.

18 CALIFORNIA DEPARTMENT OF PESTICIDE
19 REGULATION, a state agency; BRIAN R.
20 LEAHY, in his official capacity as Director of
21 Pesticide Regulation; ANN M. PRICHARD, in her
22 official capacity as Branch Chief, Pesticide
23 Registration Branch, and DOES 1 through 10,

24 Respondents and Defendants.

25 and

26 VALENT U.S.A. CORPORATION, MITSUI
27 CHEMICALS AGRO, INC., for-profit
28 corporations; and DOES 11 through 20,

Real Parties in Interest.

ENDORSED
FILED
ALAMEDA COUNTY

JUL - 8 2014

CLERK OF THE SUPERIOR COURT

By Olivia Baker Deputy

Case No.:

RG 14731906

PETITION FOR WRIT OF MANDATE
AND COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF

INTRODUCTION

1. In 2006, honeybees began dying at unprecedented rates. Today, whether honeybees will survive and recover in America is uncertain, and so we have reached the point of agricultural and environmental crisis. About one-third of the food we eat – and an even greater proportion of our overall nutrition – comes from plants that will not make fruit or seed unless they are pollinated by a bee. The crisis is especially acute in California, because we are the largest producer of crops that require honeybees for pollination, including our most valuable crop: almonds.

2. While the reasons for the honeybee collapse are complex, scientists have identified chronic exposure to insecticides as a significant factor. In particular, scientists have pointed to a family of insecticides called “neonicotinoids,” which were developed in the late 1990s and are now ubiquitous in agriculture. Neonicotinoids are long lasting and highly toxic to honeybees, and there is ample scientific evidence that their use has exacerbated – if not triggered – the honeybee crisis.

3. None of this is news to the California Department of Pesticide Regulation (“DPR”). In early 2009, DPR was compelled to initiate a “reevaluation” as to whether use of neonicotinoids should be curtailed, based on evidence that they may be devastating honeybees. Over five years later, DPR’s reevaluation remains ongoing with no end in sight, and DPR has taken no significant steps to protect honeybees. And DPR’s foot-dragging is only part of the problem. Pending its reevaluation, DPR has not hesitated to make the existing problem worse by expanding the use of neonicotinoids without any meaningful analysis of the impact to bees or feasible alternatives, in violation of the California Environmental Quality Act (“CEQA”) and other laws. DPR’s actions are consistent with the agency’s illegal pattern and practice of rubber-stamping applications to approve new pesticides without first complying with laws enacted to ensure that they are safe.

4. By this action, Pesticide Action Network North America, Center for Food Safety, and Beyond Pesticides (collectively, “Petitioners”) challenge DPR’s June 13, 2014 decision to expand the use of two neonicotinoid insecticides – Venom Insecticide and Dinotefuran 20SG – in violation of CEQA and other laws. Petitioners seek a writ of mandate directing DPR to set aside its approval of Venom Insecticide and Dinotefuran 20SG pending the agency’s reevaluation of neonicotinoids and compliance with CEQA, as well as other declaratory and injunctive relief as set forth below.

1

2

7

O

2

4

6

8

2

4

5

1 access to pesticide data and analysis, policy development and other support to its 225 member
2 organizations.

3 14. Petitioner and plaintiff CENTER FOR FOOD SAFETY (“CFS”) is a national non-
4 profit public interest and environmental advocacy organization working to protect human health and
5 the environment by curbing the use of harmful food production technologies and by promoting
6 organic and other forms of sustainable agriculture. CFS also educates consumers concerning the
7 definition of organic food and products. CFS uses legal actions, groundbreaking scientific and
8 policy reports, books and other educational materials, market pressure and grass roots campaigns
9 through its True Food Network.

10 15. Petitioner and plaintiff BEYOND PESTICIDES (“BP”) (formerly National Coalition
11 Against the Misuse of Pesticides) is a nonprofit organization headquartered in Washington, D.C. that
12 works with allies in protecting public health and the environment to lead the transition to a world
13 free of toxic pesticides. The founders, who established Beyond Pesticides in 1981, felt that without
14 the existence of such an organized, national network, local, state and national pesticide policy would
15 become, under chemical industry pressure, increasingly unresponsive to public health and
16 environmental concerns. The organization’s primary goal is to effect change through local action,
17 assisting individuals and community-based organizations to stimulate discussion on the hazards of
18 toxic pesticides, while providing information of safe alternatives.

19 16. Consistent with their organizational missions and on behalf of their members and
20 supporters, all Petitioners have engaged in longstanding campaigns to protect honeybees and other
21 pollinators from pesticides, including neonicotinoids. Among other things, Petitioners have worked
22 to reform DPR’s pesticide registration and reevaluation processes so that pesticides that are harmful
23 to bees are subject to adequate and legally required restriction and oversight.

24 17. Petitioners bring this action on their own behalf and on behalf of their members,
25 employees, and supporters who are residents and taxpayers of the state of California, and who are
26 adversely affected by the actions of DPR as described herein. As a result of DPR’s failures to
27 comply with its legal obligations, Petitioners, their members, and the public at large have suffered
28 injury and will continue to be injured by DPR’s unlawful actions, unless and until this Court

1 provides the relief requested. In particular, DPR's pattern and practice of registering neonicotinoids
2 – including Venom Insecticide and Dinotefuran 20SG – in the absence of appropriate environmental
3 review causes permanent or long-lasting impacts to honeybees and important food crops. DPR's
4 illegal actions have had and will continue to have an adverse impact on Petitioners' members'
5 health, as well as their financial, environmental, recreational, and agricultural interests.

6 18. By this action, Petitioners seek to protect the above-described interests of their
7 members, employees, and supporters and the general public and to enforce a public duty owed to
8 them by DPR. Petitioners and their staff and members have a right to, and a beneficial interest in,
9 DPR's performance of its duties under CEQA and the Food and Agricultural Code. These interests
10 have been threatened by DPR's actions with respect to neonicotinoids generally and Venom
11 Insecticide and Dinotefuran 20SG specifically.

12 19. Respondent and defendant CALIFORNIA DEPARTMENT OF PESTICIDE
13 REGULATION is a department within the California Environmental Protection Agency. DPR is
14 charged with enforcing state and federal laws regulating pesticide use in California. DPR is
15 responsible for registering and reevaluating all pesticides used in California.

16 20. Respondent and defendant BRIAN R. LEAHY is the Director of Pesticide Regulation
17 at DPR and is being sued in his official capacity.

18 21. Respondent and defendant ANN M. PRICHARD is Chief of DPR's Pesticide
19 Registration Branch and is being sued in her official capacity. Ms. Prichard signed DPR's Notice of
20 Final Decision to Register Venom Insecticide and Dinotefuran 20SG.

21 22. The true names and capacities of respondent and defendant DOES 1 through 10 are
22 not presently known to Petitioners. Petitioners may amend this petition and complaint to add the
23 true names and capacities of respondent and defendant Does at such time as they are discovered.

24 23. Real party in interest VALENT U.S.A. CORPORATION is a for-profit corporation
25 headquartered in Walnut Creek, California and the registrant for Venom Insecticide.

26 24. Real party in interest MITSUI CHEMICALS AGRO, INC. is a for-profit corporation
27 headquartered in Tokyo, Japan and the registrant for Dinotefuran 20SG.

25. The true names and capacities of real party DOES 11 through 20 are not presently known to Petitioners. Petitioners may amend this petition and complaint to add the true names and capacities of real party Does at such time as they are discovered.

LEGAL BACKGROUND

26. California law requires “[e]very manufacturer of, importer of, or dealer in any pesticide” to obtain a certificate of registration from DPR before the pesticide is offered for sale. (Food & Agr. Code § 12811.) Before a pesticide is registered, it must undergo a “thorough and timely evaluation” by DPR. (*Id.*, § 12824.) During its evaluation, DPR must “give special attention” to a number of factors, including but not limited to: “potential for environmental damage;” “toxicity to aquatic biota or wildlife;” and “the availability of feasible alternatives.” (Cal. Code Regs., tit. 3, § 6158.) “If any of these factors are anticipated to result in significant adverse impacts which cannot be avoided or adequately mitigated, registration will not be granted unless [DPR] makes a written finding that the anticipated benefits of registration clearly outweigh the risks.” (*Ibid.*)

27. DPR's pesticide registration process operates as a "certified regulatory program" for purposes of CEQA. (Cal. Code Regs., tit. 14, § 15251, subd. (i)(1).) Accordingly, in lieu of the environmental impact report ("EIR") or negative declaration that CEQA normally requires, DPR must prepare and make available for public comment a "public report" for any proposed registration decision. (Cal. Code Regs., tit. 3, § 6253.) As the "functional equivalent" of an EIR or negative declaration, DPR's public report must include "a description of the proposed action, a statement of any significant adverse environmental effect that can reasonably be expected to occur, directly or indirectly, from implementing the proposal, and a statement of any reasonable mitigation measures that are available to minimize significant adverse environmental impact." (*Id.*, § 6254.) The report must "also contain a statement and discussion of reasonable alternatives which would reduce any significant environmental impact." (*Id.*, § 6254, subd. (a).)

28. California law also directs DPR to “develop an orderly program for the continuous evaluation of all pesticides actually registered.” (Food & Agr. Code § 12824.) To this end, regulations promulgated by DPR direct the agency to “investigate all reported episodes and

information received by the [agency] that indicate a pesticide may have caused, or is likely to cause, a significant adverse impact, or that indicate there is an alternative that may significantly reduce an adverse environmental impact.” (Cal. Code Regs., tit. 3, § 6220.) “If [DPR] finds from the investigation that a significant adverse impact has occurred or is likely to occur or that such an alternative is available, the pesticide involved shall be reevaluated.” (*Ibid.*)

29. If DPR determines that reevaluation is warranted, the agency must require the registrant to submit “all data required for registration of a new pesticide by the U.S. EPA and by [DPR] which is relevant to the focus of the reevaluation and has not previously been submitted to the department. (*Id.*, § 6222, subd. (a).) DPR may “allow a reasonable time for the development and submission of such data, not to exceed a period of two years.” (*Ibid.*) “Notwithstanding the lack of such data the director shall act expeditiously to protect against risks to human health and the environment.” (*Ibid.*) At the conclusion of its reevaluation, DPR must “determine if the pesticide should be classified as a restricted material . . . and if additional restrictions on use are necessary, or if action [to suspend and/or cancel registration] should be taken.” (*Id.*, § 6224.)

FACTUAL BACKGROUND

30. The term “neonicotinoid” is used to describe a family of insecticides that interfere with the nicotinic receptor in the central nervous system of insects, causing tremors, paralysis and death at extremely low doses. Neonicotinoids are systemic insecticides, meaning they are absorbed into the treated plant and distributed via the plant’s vascular system. As a result, spraying a plant – or even a just a seed – with neonicotinoids not only kills insects that come into direct contact with spray droplets, but also renders the growing plant itself, including the leaves, stem, flowers, nectar and pollen, highly toxic to insects for many days thereafter.

31. The “nitrogaunidine” subclass of neonicotinoids consists of four active ingredients: imidacloprid, clothianidin, thiamethoxam, and dinotefuran. Over the last 15 years, DPR has registered at least 264 individual pesticide products containing one or more of these four active ingredients for use in California. Today, nitrogaunidine neonicotinoids are among the most widely used pesticides in California and the nation.

1 32. The “sulfoxamine” subclass of neonicotinoids currently consists of one active
2 ingredient: sulfoxaflor. DPR has yet to approve any end-use pesticide products containing
3 sulfoxaflor. However, DPR has received applications from Dow AgroSciences to approve two
4 pesticide products (brand-named “Transform” and “Closer”) that contain sulfoxaflor as the active
5 ingredient, and DPR is in the process of evaluating those applications.

6 33. On February 27, 2009, DPR placed all pesticide products within the nitroguanidine
7 class of neonicotinoids into reevaluation based on data indicating that imidacloprid residue levels in
8 ornamental plants exceeded the agency’s levels of concern for honeybees. In September 2009, DPR
9 directed the registrants of the neonicotinoid products in question to submit certain scientific data
10 regarding potential impacts to honeybees.

11 34. After five full years, DPR’s reevaluation of neonicotinoids remains pending. DPR’s
12 most recent semi-annual report regarding pesticides currently under reevaluation indicates that – as
13 of December 31, 2013 – DPR had received and was in the process of analyzing some of the
14 requested data from registrants, but that the agency was still in the process of developing study
15 protocols for the gathering of other data. Thus, DPR has exceed, by more than three years, the
16 maximum time permitted under law, as it has provided registrants with far more than the allowable
17 two years to submit the data required by DPR for its neonicotinoid reevaluation.

18 35. There is now abundant scientific evidence that widespread use of neonicotinoids has
19 caused or contributed to the precipitous decline in honeybees and other insect pollinators. DPR is
20 well aware of the myriad peer-reviewed scientific studies and official reports linking neonicotinoids
21 to pollinator declines and honeybee colony collapse disorder. The administrative record before DPR
22 contains substantial evidence that existing use of neonicotinoids is having a significant adverse
23 impact on honeybees.

24 36. Despite DPR’s ongoing reevaluation of neonicotinoids, DPR has continued to
25 approve applications to register new neonicotinoid products or to register new uses for existing
26 neonicotinoid products. In 2012 and 2013, DPR issued at least 15 final decisions registering new
27 agricultural neonicotinoid products or approving significant new uses for existing agricultural
28 neonicotinoid products. In every case, the public report that accompanied DPR’s registration

1 decision claimed that the new product or use would not have a significant adverse effect on the
2 environment, employing essentially the same boilerplate language. None of DPR's public reports
3 identified or evaluated any feasible alternative to registration.

4 37. On January 10, 2014, DPR proposed to approve new uses for "Dinotefuran 20SG," a
5 pesticide manufactured by Mitsui Chemicals Agro that contains the neonicotinoid dinotefuran. The
6 following week, DPR proposed to approve new uses and revise the application rates for "Venom
7 Insecticide," another pesticide containing dinotefuran manufactured by Valent USA Corp. DPR re-
8 posted the public report for Dinotefuran 20SG on January 24, 2014, because the original report "did
9 not contain a complete description of the proposed amendments to the product's label."

10 38. The public reports that accompanied DPR's proposed decisions with respect to
11 Dinotefuran 20SG and Venom Insecticide contain precisely the same boilerplate that DPR has used
12 repeatedly in the past regarding environmental effects and alternatives, and they reach the same
13 conclusion:

14 DPR evaluated the new labels for their potential to create adverse environmental
15 effects to human health, water, air, and non-target species (checklist). After review of
16 the new labels for the above-identified registered products, DPR has determined that
17 use of each product in a manner consistent with its new label will have no direct or
indirect significant adverse environmental impact, and therefore no alternatives or
mitigation measures are proposed to avoid or reduce any significant effects on the
environment.

18 (See Notice of Proposed and Final Decisions and Public Rpts [Vol. 2014-3] at 5; Notice of Proposed
19 and Final Decisions and Public Rpts [Vol. 2014-4] at 2.)

20 39. Petitioners submitted extensive written comments in response to DPR's proposed
21 decisions with respect to Dinotefuran 20SG and Venom Insecticide by letter dated February 13,
22 2014. (See Exhibit C hereto.) Petitioners' comments cited substantial scientific evidence that use of
23 neonicotinoids has caused or contributed to the nationwide collapse of honeybees, and therefore
24 approving new uses for Venom Insecticide and Dinotefuran 20SG will have a significant
25 environmental effect. Petitioners urged DPR not to finalize its proposed decisions with respect to
26 Dinotefuran 20SG and Venom Insecticide until the agency completes its reevaluation of
27 neonicotinoids and complies with CEQA by disclosing environmental effects and alternatives.
28

1 40. One week after receiving Petitioners' comments, DPR proposed on February 21,
2 2014 to register sulfoxaflor for use in manufacturing other end-use pesticide products. (See Notice
3 of Proposed and Final Decisions and Public Rpts [Vol. 2014-8].) The public report that
4 accompanied DPR's proposed decision with respect to sulfoxaflor again employed the same
5 boilerplate language regarding environmental effects and alternatives.

6 41. Petitioners submitted additional comments to DPR on February 21, 2014, pointing
7 out, among other things, that use of sulfoxaflor and existing neonicotinoids, including Dinotefuran
8 20SG and Venom Insecticide, would have a significant adverse cumulative impact on honeybees
9 requiring analysis under CEQA. (See Exhibit D hereto.)

10 42. DPR dismissed Petitioners' comments by letter dated May 27, 2014. DPR's letter
11 advised that the agency intended to proceed with its proposed decisions with respect to Dinotefuran
12 20SG, Venom Insecticide, and sulfoxaflor.

13 43. By letter dated June 12, 2014, Petitioners acknowledged receipt of DPR's response to
14 their comments and reiterated that the agency had not complied with CEQA in proposing to register
15 Dinotefuran 20SG, Venom Insecticide, and sulfoxaflor. (See Exhibit E hereto.) Petitioners once
16 again urged DPR to withdraw its proposed registration decisions, or else face legal action.

17 44. DPR issued final decisions registering Dinotefuran 20SG, Venom Insecticide and
18 sulfoxaflor as proposed on June 13, 2014. (See Notice of Proposed and Final Decisions and Public
19 Rpt. [Vol. 2014-24].) Like the public reports that accompanied DPR's proposed decisions, the final
20 decisions conclude, without meaningful analysis, that registration will not have a significant adverse
21 environmental effect. The final decisions do not identify or analyze any feasible alternatives;
22 instead, the final decisions state incorrectly that no alternatives analysis is required under CEQA.

23 **FIRST CAUSE OF ACTION**

24 **(Violation of CEQA: Illegal Finding of No Significant Environmental Effect)**

25 45. Petitioners re-allege, as if fully set forth herein, each and every allegation contained
26 in the preceding paragraphs.

27 46. The public reports that accompany DPR's proposed decisions with respect to Venom
28 Insecticide and Dinotefuran 20SG indicate that DPR completed an environmental "checklist" in

1 connection with the proposals. The public reports employ the same boilerplate “analysis,” and they
2 conclude that the proposals “will have no direct or indirect significant adverse environmental
3 impact.” DPR’s public reports therefore purport to be the “functional equivalent” of a negative
4 declaration for purposes of CEQA. (See Cal. Code Reg., tit. 14, § 15252, subd. (b).)

5 47. Contrary to DPR’s conclusion, the administrative record shows that DPR’s proposed
6 decisions with respect to Venom Insecticide and Dinotefuran 20SG *will* have significant direct,
7 indirect, and cumulative adverse environmental effects, including but not limited to adverse effects
8 to honeybees and other pollinators. Accordingly, DPR’s finding of no significant impact and the
9 agency’s decision to prepare the functional equivalent of negative declarations was an abuse of
10 discretion. (See, e.g., *City of Arcadia v. State Water Res. Ctrl. Bd.* (2006) 135 Cal. App. 4th 1392,
11 1426 [holding that the agency’s reliance on the functional equivalent of a negative declaration was
12 inappropriate where substantial evidence supported a “fair argument” that the proposal “may” have a
13 significant impact]; *Friends of the Old Trees v. Department of Forestry & Fire Prot.* (1997) 52 Cal.
14 App. 4th 1383, 1397 [same].)

15 48. DPR’s conclusion that registering Venom Insecticide and Dinotefuran 20SG will not
16 have a significant environmental effect is unsupported by substantial evidence, and the agency’s
17 failure to prepare the functional equivalent of a full EIR constitutes an abuse of discretion.

18 SECOND CAUSE OF ACTION

19 (Violation of CEQA: Failure to Analyze Direct, Indirect, and Cumulative Impacts)

20 49. Petitioners re-allege, as if fully set forth herein, each and every allegation contained
21 in the preceding paragraphs.

22 50. To implement CEQA, DPR must prepare a public report in conjunction with any
23 proposed pesticide registration decision. Among other things, the public report must provide “a
24 statement of any significant adverse environmental effect that can reasonably be expected to occur,
25 directly or indirectly, from implementing the proposal.” (Cal. Code Regs., tit. 3, § 6254.)

26 51. CEQA’s general policies apply to certified regulatory programs, including DPR’s
27 pesticide registration program. Courts have consistently held that the environmental documentation
28 in a certified regulatory program is subject to the same “substantive standards” as an EIR or negative

declaration. Thus, in *Environmental Protection Information Ctr. v. Johnson* (1985) 170 Cal. App. 3d 604, the court of appeal held that the analysis of environmental impacts in a certified regulatory program extends to “cumulative impacts.” (*Id.*, at 625.) The court explained that by exempting certified regulatory programs only from specific provisions of CEQA, “the Legislature has manifested an intent to retain the applicability of the other provisions of CEQA and of the [CEQA] Guidelines, particularly the substantive criteria and the specific aspects of environmental effect that must be evaluated before a project may proceed.” (*Id.*, at 618.)

52. The public reports that accompany DPR's decisions with respect to Dinotefuran 20SG and Venom Insecticide are not the lawful functional equivalent of a negative declaration or EIR, because they do not satisfy the requisite substantive standards. Contrary to CEQA, DPR's public reports contain no meaningful information regarding environmental effects. Among other things, the public reports fail to analyze the *cumulative* impact to honeybees and other insect pollinators of DPR's decisions with respect to Venom Insecticide and Dinotefuran 20SG when viewed *together* with (a) the numerous other neonicotinoid registration decisions that DPR has issued over the course of the last five years and (b) the various neonicotinoid registration decisions that DPR expects to issue in the foreseeable future (e.g., sulfoxaflor). In violation of CEQA, the environmental "analysis" that accompanies DPR's decisions for Venom Insecticide and Dinotefuran 20SG fails to account for the significant direct, indirect, and cumulative impact that these decisions plus DPR's incremental expansion of neonicotinoid use during the pending reevaluation have had and will have on honeybees and other agricultural and environmental resources.

THIRD CAUSE OF ACTION

(Violation of CEQA: Failure to Analyze Alternatives)

53. Petitioners re-allege, as if fully set forth herein, each and every allegation contained in the preceding paragraphs.

54. CEQA requires that the written documentation in a certified regulatory program include “a description of the proposed activity with alternatives to the activity.” (Pub. Res. Code § 21080.5, subd. (d)(3)(A).) Consistent with CEQA, the California Supreme Court has ruled that “the public agency bears the burden of affirmatively demonstrating that, *notwithstanding a project’s*

1 *impact on the environment*, the agency’s approval of the proposed project followed meaningful
2 consideration of alternatives.” (*Mountain Lion Found. v. Fish & Game Comm’n* (1997) 16 Cal. 4th
3 105, 134, emphasis added.)

4 55. Moreover, DPR’s own regulations direct the agency to give “special attention” to the
5 “availability of feasible alternatives” during the registration process. (Cal. Code Regs., tit. 3, 6158.)
6 DPR defines the term “feasible alternative” to mean “other chemical or non-chemical procedures
7 which can reasonably accomplish the same pest control function with comparable effectiveness and
8 reliability, taking into account economic, environmental, social, and technological factors and
9 timeliness of control.” (*Ibid.*, § 6000.)

10 56. Contrary to CEQA and DPR’s own regulations, the public reports that accompany
11 DPR’s decisions with respect to Venom Insecticide and Dinotefuran 20SG do not identify and
12 evaluate alternatives to the proposals. Instead, DPR claims that no alternatives analysis is necessary.
13 DPR’s failure to identify and evaluate feasible alternatives to registering Dinotefuran 20SG and
14 Venom Insecticide as proposed violates CEQA.

15 **FOURTH CAUSE OF ACTION**

16 **(Violation of the Food and Agricultural Code: Illegal Reevaluation of Neonicotinoids)**

17 57. Petitioners re-allege, as if fully set forth herein, each and every allegation contained
18 in the preceding paragraphs.

19 58. As discussed above, California law directs DPR to “develop an orderly program for
20 the continuous evaluation of all pesticides actually registered.” (Food & Agr. Code § 12824.)
21 Regulations promulgated by DPR to implement this statutory mandate provide that a pesticide will
22 be reevaluated whenever DPR “finds from the investigation that a significant adverse impact has
23 occurred or is likely to occur or that . . . an alternative is available.” (Cal. Code Regs., tit. 3, § 6220.)

24 59. Once DPR places a pesticide into reevaluation, the agency may “allow a reasonable
25 time” for the development and submission of data relevant to that reevaluation, “*not to exceed a*
26 *period of two years*.” (Cal. Code Regs., tit. 3, § 6222, subd. (a), emphasis added.)

27 60. DPR placed neonicotinoids into reevaluation in February 2009 – over five full years
28 ago. However, neonicotinoids remain under reevaluation today, and DPR is still in the process of

1 negotiating study protocols for much of the data it directed registrants to submit in 2009. DPR's
2 failure to conduct its reevaluation in a timely manner is contrary to law.

3 61. Moreover, while a pesticide is under reevaluation, notwithstanding the availability of
4 data, DPR must "act expeditiously to protect against risks to human health and the environment."
5 (Cal. Code Regs., tit. 3, § 6222.) Here, there is ample evidence that neonicotinoids have had and
6 will continue to have a substantial and adverse impact on honeybees and other insect pollinators.
7 DPR's failure to act expeditiously to address these environmental impacts pending reevaluation is
8 contrary to law.

9 **FIFTH CAUSE OF ACTION**

10 **(Illegal Pattern and Practice: Failure to Comply with CEQA)**

11 62. Petitioners re-allege, as if fully set forth herein, each and every allegation contained
12 in the preceding paragraphs.

13 63. DPR has a ministerial duty under CEQA to comply with the provisions of CEQA
14 prior to registering pesticides for use in California.

15 64. Petitioners are informed and believe, and thereon allege, that DPR has misinterpreted
16 CEQA not to require that it perform or comply with each and every duty described herein. As a
17 result of its misinterpretation of CEQA, DPR has repeatedly ignored or violated the applicable
18 CEQA statutes and the regulations implementing CEQA. Among other things, DPR has
19 demonstrated an illegal pattern and practice of failing to identify, disclose, and evaluate (a) the
20 environmental impacts of pesticides proposed for registration, and (b) a range of feasible
21 alternatives, including the no-project alternative, as required by CEQA.

22 65. DPR's pattern and practice of failing to disclose and evaluate (a) direct, indirect, and
23 cumulative environmental impacts and (b) a range of feasible alternatives when registering
24 pesticides violates CEQA and regulations adopted by DPR to implement CEQA.

25 **SIXTH CAUSE OF ACTION**

26 **(Declaratory Relief)**

27 66. Petitioners re-allege, as if fully set forth herein, each and every allegation contained
28 in the preceding paragraphs.

67. As set forth above, Petitioners contend that DPR's decision to register Venom Insecticide and Dinotefuran 20SG was unlawful. Petitioners also contend that DPR has acted illegally in reevaluating neonicotinoids, and that the agency has engaged in an illegal pattern and practice of violating CEQA when registering pesticides. DPR disputes these contentions.

68. An actual controversy has arisen and now exists between Petitioners and DPR regarding their respective rights and duties. A judicial determination and declaration of the parties' respective rights and duties, including a declaration of whether DPR's decisions violate the law, is necessary and appropriate.

SEVENTH CAUSE OF ACTION

(Injunctive Relief)

69. Petitioners re-allege, as if fully set forth herein, each and every allegation contained in the preceding paragraphs.

70. Unless Petitioners are granted injunctive relief, they will suffer irreparable harm, in that the implementation of DPR's decisions and omissions challenged herein will result in severe adverse impacts to the health and welfare of Petitioners and the environment.

71. Petitioners lack an adequate remedy at law because monetary damages cannot be ascertained and Petitioners and their members and supporters cannot be compensated for the environmental and health degradation caused by the actions of DPR complained of herein.

REQUEST FOR RELIEF

Wherefore, Petitioners respectfully request relief as follows:

1. For (a) a stay of DPR's decision to register Venom Insecticide and Dinotefuran 20SG and (b) a temporary restraining order and preliminary injunction prohibiting DPR from registering any neonicotinoid pesticide product or any other pesticide product that is toxic to honey bees, or from approving amended labels or registering new uses for existing neonicotinoid pesticide products or other pesticide products that are toxic to honeybees, pending trial and a decision on the merits;

2. For an alternative and/or peremptory writ of mandate, directing DPR to vacate and set aside its decision to register Venom Insecticide and Dinotefuran 20SG;

1 3. For a declaratory judgment that (a) DPR's decision to register Venom Insecticide and
2 Dinotefuran 20SG is contrary to law, and (b) DPR has engaged in an illegal pattern and practice of
3 registering pesticides products in violation of CEQA and other applicable laws;

4 4. For a declaratory judgment that DPR has failed to act expeditiously to protect
5 honeybees from exposure to neonicotinoids pending its reevaluation;

6 5. For an alternative and/or peremptory writ of mandate directing DPR to complete its
7 reevaluation of neonicotinoids forthwith by initiating suspension and/or cancellation proceedings or
8 by adopting necessary mitigation measures and/or restrictions on use;

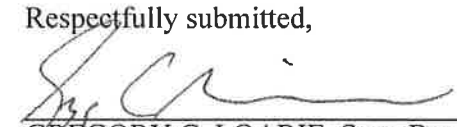
9 6. For permanent injunctive relief prohibiting DPR from registering any neonicotinoid
10 pesticide product or any other pesticide product that is toxic to honey bees, or from approving
11 amended labels or registering new uses for existing neonicotinoid pesticide products or other
12 pesticide products that are toxic to honeybees, unless and until (a) DPR complies with the
13 requirements of CEQA and all other applicable laws and regulations, and (b) DPR completes its
14 reevaluation of neonicotinoids.

15 7. For costs incurred herein, including attorney fees under Code of Civil Procedure
16 section 1021.5 and any other applicable law; and

17 8. For all such other equitable or legal relief that the Court considers just and proper.

18 Respectfully submitted,

19 DATED: July 8, 2014

20 
21 GREGORY C. LOARIE, State Bar No. 215859
22 TAMARA T. ZAKIM, State Bar No. 288912
23 EARTHJUSTICE
24 50 California Street, Suite 500
25 San Francisco, CA 94111
26 T: (415) 217-2000
27 F: (415) 217-2040
28 E: gloarie@earthjustice.org
 tzakim@earthjustice.org

1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8

2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8

3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8

6
7
8
9
0
1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8

9
0
1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8