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20 Attorneys for Defendant, CALIFORNIA ENERGY COMMISSION

21
 22 **UNITED STATES DISTRICT COURT FOR THE**
 23 **EASTERN DISTRICT OF CALIFORNIA**

24
 25 NATIONAL ELECTRICAL
 26 MANUFACTURERS ASSOCIATION,

27 Plaintiff,

Case No. 2:17-cv-01625-KJM-AC

**STIPULATION AND ORDER OF
 DISMISSAL PURSUANT TO FED. R.
 CIV. P. 41(a)(1)(A)(ii)**

1
2 v.
3 CALIFORNIA ENERGY COMMISSION,
4 Defendant.

Hearing Date: n/a
Hearing Time: n/a
Courtroom: 3, 15th Floor
Judge: Hon. Kimberly J. Mueller
Complaint Filed: August 4, 2017
Trial Date: Not Scheduled

5
6 WHEREAS, this Stipulation and Order of Dismissal is entered into by the National
7 Electrical Manufacturers Association (NEMA) and the California Energy Commission (CEC)
8 through their authorized representatives;

9 WHEREAS, NEMA filed this action on August 4, 2017 challenging the constitutionality
10 of three light bulb energy efficiency standards promulgated by the CEC and asserting claims for
11 preemption under, and non-compliance with, 42 U.S.C. § 6295(i)(6)(A)(vi) and § 6297(b);

12 WHEREAS, NEMA moved for judgment on the pleadings on September 19, 2017;

13 WHEREAS, the California Energy Commission (CEC) opposed NEMA's motion for
14 judgment on the pleadings on October 20, 2017;

15 WHEREAS, the Court, after holding a hearing on the motion for judgment on the
16 pleadings, issued its decision denying the motion on December 22, 2017;

17 WHEREAS, the United States Department of Energy is continuing to examine issues
18 relevant to this dispute, as indicated by its August 15, 2017 Request for Data, *see Energy*
19 *Conservation Program: General Service Incandescent Lamps and Other Incandescent Lamps*
20 *Request for Data*, 82 Fed. Reg. 38,613, 38,613-14 (Aug. 15, 2017);

21 WHEREAS, the parties have, through this stipulation, reached a mutually agreeable
22 resolution addressing NEMA's claims, subject to the following terms and conditions, and subject
23 to the approval of the Court:

- 24 1. NEMA agrees to dismiss its complaint without prejudice.
25 2. Each party shall bear its own costs.
26 3. Although the dismissal of NEMA's complaint is without prejudice, NEMA will
27 not re-file its claims under 42 U.S.C. §§ 6295(i)(6)(A) and 6297(b) that the three CEC light bulb
28

1 energy efficiency standards that NEMA challenged are preempted by the general rule of
2 preemption for energy conservation standards before a Federal standard becomes effective for a
3 covered product.

4 Dated: April 6, 2018

HOGAN LOVELLS US LLP

5 By /s/ Michael M. Maddigan
6 Michael M. Maddigan
7 Jessica L. Ellsworth (*pro hac*)
8 Sachin S. Desai (*pro hac*)

9 Attorneys for National Electrical Manufacturers
10 Association

and

11 Xavier Becerra
12 Attorney General of California
13 Randy L. Barrow
14 Supervising Deputy Attorney General

15 /s/ Linda Gándara
16 Linda Gándara
17 Deputy Attorney General

18 Attorneys for Defendant California Energy
19 Commission

20 IT IS SO ORDERED.

21 DATED: April 10, 2018.

22 
23 _____
24 UNITED STATES DISTRICT JUDGE
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27
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