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7 ATTORNEYS FOR UNITED STATES OF AMERICA

8 IN THE UNITED STATES DISTRICT COURT
 9 FOR THE NORTHERN DISTRICT OF CALIFORNIA
 10 SAN FRANCISCO DIVISION

11 UNITED STATES OF AMERICA,)	No. 08-3674 TEH
12)	
13 Plaintiff,)	STIPULATION AND PROPOSED
14 v.)	ORDER REGARDING SETTLEMENT
15 KARLA A. FIX, PETER CHRISTOPHER)	
16 KIRSCH,)	
17 Defendants.)	

18 This Stipulation and Proposed Order Regarding Settlement (hereinafter, "Stipulation") is
 19 entered into by the United States of America, acting through the United States Attorney's Office for
 20 the Northern District of California and on behalf of the United States Department of Agriculture,
 21 Forest Service (collectively, "the United States"), on the one hand, and defendants Karla A. Fix and
 22 Peter Christopher Kirsch, on the other hand, through their authorized representative(s). Ms. Fix and
 23 Mr. Kirsch are hereinafter referred to collectively as "the Defendants." The United States, Karla Fix
 24 and Peter Kirsch are hereinafter collectively referred to as "the Parties."

25 **RECITALS**

26 WHEREAS, on August 10-11, 2002, a fire known as the "Boardman Fire" began in the
 27 vicinity of the Boardman Ridge, near the Soda Creek Fire Station of the Mendocino National Forest,
 28 located in Lake County, California;

1 WHEREAS, the United States contends that the Boardman Fire ignited as a result of a fire
2 emanating from a 1999 Dodge Pickup, owned by Ms. Fix and operated by Mr. Kirsch. The United
3 States further contends that the tortious acts and/or omissions of Ms. Fix and Mr. Kirsch caused the
4 Boardman Fire, and that they are jointly and severally responsible for all damages incurred by the
5 United States due to the Boardman Fire, including claims for fire suppression costs, resource
6 damages, and other costs and expenses arising out of the Boardman Fire;

7 WHEREAS, Ms. Fix and Mr. Kirsch dispute the United States' claims;

8 WHEREAS, in order to avoid the delay, uncertainty, inconvenience and expense of further
9 litigation, the Parties mutually desire to reach a full and final settlement of the dispute in United
10 States v. Karla Fix and Christopher Peter Kirsch, Case No. 08-3674 TEH, pursuant to the terms and
11 conditions set forth below.

12 NOW, THEREFORE, in consideration of the mutual conditions, terms, and obligations set
13 forth below, the Parties agree to settle this matter as follows:

- 14 1. In consideration of the obligations of the United States and the Defendants set forth in
15 this Stipulation, Defendants Fix and Kirsch jointly and severally agree to pay Fifty
16 Thousand Dollars (\$50,000) to the United States (the "Settlement Amount"). The
17 Defendants shall pay the full Settlement Amount to the United States by electronic
18 funds transfer pursuant to written instructions to be provided by the United States
19 Attorney's Office for the Northern District of California. The Defendants agree to
20 make this electronic funds transfer no later than fourteen (14) days after the Effective
21 Date of this Stipulation, as defined in paragraph 22 below.
- 22 2. Subject to the exceptions in Paragraph 3 below, in consideration of the obligations of
23 the Defendants in this Stipulation, and conditioned upon the full payment by the
24 Defendants of the Settlement Amount, the United States (on behalf of itself, its
25 officers, agents, agencies, and departments) agrees to release the Defendants, each of
26 them, and each of their heirs, executors, administrators, or assigns from all liability for
27 any civil claims, demands, obligations, actions, causes of action, damages, costs,
28 losses, attorney's fees, and expenses, including any claims for compensatory or

1 punitive damages, which the United States has or may have relating to the subject
2 matter described in the United States' Complaint, filed in United States v. Karla Fix
3 and Christopher Peter Kirsch, Case No. 08-3674 TEH.

4 3. Notwithstanding any term of this Stipulation, specifically reserved and excluded from
5 the scope and terms of this Stipulation as to any entity or person (including Ms. Fix
6 and Mr. Kirsch) are the following claims or potential claims of the United States:

- 7 A. Any civil, criminal, or administrative liability arising under Title 26,
8 U.S. Code (Internal Revenue Code);
- 9 B. Any criminal liability;
- 10 C. Any liability to the United States (or its agencies) for any conduct other
11 than the acts, errors, or omissions described in the United States'
12 Complaint, filed in United States v. Karla Fix and Christopher Peter
13 Kirsch, Case No. 08-3674 TEH;
- 14 D. Any liability based upon such obligations as are created by this
15 Agreement.

16 4. In consideration of the obligations of the United States set forth in this Stipulation,
17 Defendant Fix and Defendant Kirsch hereby release the United States and its
18 employees, agents, agencies, and departments from all liability for any civil claims,
19 demands, obligations, actions, causes of action, damages, costs, losses, attorney's fees,
20 and expenses, including any claims for compensatory or punitive damages, which
21 Defendant Fix and/or Defendant Kirsch have or may have with respect to the
22 Boardman Fire, including without limitation concerning the United States'
23 investigation and litigation of the United States' claims in United States v. Karla Fix
24 and Christopher Peter Kirsch, Case No. 08-3674 TEH.

25 5. Upon receipt by the United States of the Settlement Amount described in paragraph 1
26 above, the United States and the Defendants shall file a joint stipulation of dismissal
27 with prejudice in United States v. Karla Fix and Christopher Peter Kirsch, Case No.
28 08-3674 TEH, pursuant to Federal Rule of Civil Procedure 41(a)(1).

- 1 6. The Parties to this Stipulation shall bear their own costs, attorney’s fees, and expenses
2 incurred in any manner in connection with the investigation, litigation, and resolution
3 of this matter, including all such costs, attorney’s fees, and expenses in United States
4 v. Karla Fix and Christopher Peter Kirsch, Case No. 08-3674 TEH.
- 5 7. This Stipulation is intended to be for the benefit of the Parties only. The Parties do not
6 release any claims against any other person or entity not expressly released by this
7 Stipulation.
- 8 8. Each individual signing this Stipulation on behalf of the Defendants warrants and
9 represents that he or she has the power, consent, and authorization to execute this
10 Stipulation.
- 11 9. The individual(s) signing on behalf of the United States represent(s) that they are
12 signing this Stipulation in their official capacities and that they are authorized to
13 execute this Stipulation.
- 14 10. Each Party represents and warrants that it has not transferred anything being released
15 under this Stipulation, and is not aware of any such transfer, and that the Party is not
16 aware of any prohibition of any type that prevents the Party from performing the terms
17 of this Stipulation.
- 18 11. The Parties warrant that, in evaluating whether to execute this Stipulation, they (i)
19 have intended that the mutual promises, covenants, and obligations set forth herein
20 constitute a contemporaneous exchange for new value given to the Defendants, within
21 the meaning of 11 U.S.C. 547(c)(1), and (ii) conclude that these mutual promises,
22 covenants, and obligations do, in fact, constitute such a contemporaneous exchange.
23 Further, the Parties warrant that the mutual promises, covenants, and obligations set
24 forth herein are intended and do, in fact, represent a reasonably equivalent exchange of
25 value which is not intended to hinder, delay, or defraud any entity to which the
26 Defendants were or became indebted to on or after the date of this transfer, within the
27 meaning of 11 U.S.C. 548(a)(1).
- 28 12. Nothing in this Stipulation constitutes an agreement by the United States concerning

1 the characterization of the Settlement Amount for purposes of Title 26, United States
2 Code (Internal Revenue Code).

3 13. Each of the Parties warrants that it has been represented by, and has sought and
4 obtained the advice of, independent counsel with regard to the nature, purpose and
5 effect of this Stipulation. The Parties hereby declare that the terms of this Stipulation
6 have been completely read, fully understood, and voluntarily accepted following
7 opportunity for review by legal counsel of their choice.

8 14. The Defendants warrant and represent that each of them is freely and voluntarily
9 entering into this Stipulation without any degree of duress or compulsion whatsoever,
10 after having been apprised of all relevant information by their legal counsel. The
11 Defendants further warrant and represent that no other party or its representative has
12 made any promise, representation, or warranty, express or implied, except as expressly
13 set forth in this Stipulation, and that the Defendants have not relied on any
14 inducements, promises, or representations made by any Party to this Stipulation, or
15 their representatives, or any other person, except as expressly set forth herein.

16 15. This Stipulation was negotiated by the Parties and their respective counsel, each of
17 whom had the opportunity to participate in the drafting thereof. It is therefore the
18 intent of the Parties that the words of this Stipulation shall be construed as a whole so
19 as to effect their fair meaning and not for or against any party, the Parties having
20 waived the benefit of California Civil Code 1654 and similar laws.

21 16. The Parties understand and acknowledge that if the facts with the respect to liability
22 and/or damages with respect to the Boardman Fire are found hereafter to be different
23 from facts now believed by any Party described herein to be true, each Party expressly
24 accepts and assumes the risks of such possible difference in facts and agrees that this
25 Stipulation shall remain effective, notwithstanding any such differences.

26 17. This Stipulation constitutes the complete agreement between the Parties, and
27 supercedes and replaces all prior negotiations and agreements, whether written or oral,
28 regarding the resolution of the Parties' claims against each other Party with respect to

1 **FOR KARLA A. FIX**

2 Dated: January 16, 2009

3 /s/
KARLA A. FIX

4 APPROVED AS TO FORM AND CONTENT:

5
6 Dated: January 26, 2009

TREMBATH, DEICHLER & HERMANSON, LLP

7
8 /s/
9 Robin Y. Trembath, Esq.
10 Attorneys for Karla A. Fix

11 **FOR PETER CHRISTOPHER KIRSCH**

12
13 Dated: January 15, 2009

14 /s/
PETER CHRISTOPHER KIRSCH

15 APPROVED AS TO FORM AND CONTENT:

16
17 Dated: January 21, 2009

TREMBATH, DEICHLER & HERMANSON, LLP

18
19 /s/
20 Robin Y. Trembath, Esq.
21 Attorneys for Peter Christopher Kirsch

22 **~~PROPOSED~~ ORDER**

23 PURSUANT TO STIPULATION, IT IS SO ORDERED:

24
25 Date: January 27, 2009

26 HONORABLE THELTON E. HENDERSON
27 United States District Judge

