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17 Attorneys for Federal Defendants

18 UNITED STATES DISTRICT COURT
 19 FOR THE NORTHERN DISTRICT OF CALIFORNIA
 20 SAN FRANCISCO DIVISION

21 CENTER FOR BIOLOGICAL DIVERSITY,)
 SIERRA FOREST LEGACY, ENVIRONMENTAL)
 22 PROTECTION INFORMATION CENTER, and)
 KLAMATH-SISKIYOU WILDLANDS CENTER,)

Case No: C 10-01501 JCS

23 Plaintiffs,)

**STIPULATED SETTLEMENT
 AGREEMENT ON ATTORNEYS' FEES
 AND COSTS**

24 v.)

25 KEN SALAZAR, in his official capacity as)
 26 Secretary of the Interior, DANIEL ASHE,¹ in his)

27 _____
 28 ¹ Plaintiffs named Rowan Gould, in his official capacity as Acting Director of the Service, as a Defendant in this case. On June 30, 2011, Daniel Ashe was confirmed as the Service's Director.

1 official capacity as Director of the United States)
2 Fish and Wildlife Service, and UNITED STATES)
3 FISH & WILDLIFE SERVICE, an agency of the)
4 United States Department of the Interior,)
5 Defendants.)

6 This Stipulated Settlement Agreement (“Agreement”) is entered into by Plaintiffs, Center for
7 Biological Diversity, Sierra Forest Legacy, Environmental Protection Information Center, and
8 Klamath-Siskiyou Wildlands Center (collectively “Plaintiffs”), and Defendants, the United States
9 Fish and Wildlife Service (“the Service”), Daniel M. Ashe, Director of the United States Fish and
10 Wildlife Service, and Ken Salazar, Secretary of the United States Department of the Interior
11 (collectively “Defendants”).

12 WHEREAS Plaintiffs filed their Complaint for Declaratory and Injunctive Relief in the
13 above-captioned case on April 8, 2010. Doc No. 1;

14 WHEREAS Plaintiffs asserted challenges under the Endangered Species Act (“ESA”) and
15 Administrative Procedure Act to findings by the Service that listing the west coast population of the
16 fisher (“fisher”) as an endangered species under the ESA was “warranted but precluded” by other
17 pending listing proposals, and that expeditious progress was being made on those pending proposals.
18 *See* 16 U.S.C. § 1533(b)(3)(B)(iii);

19 WHEREAS this action was dismissed with prejudice on October 6, 2011, pursuant to the
20 Parties’ Stipulation of Dismissal and Order. Doc. No. 49. In the Stipulation of Dismissal and Order,
21 the Plaintiffs and Defendants agreed that, notwithstanding dismissal of this action, the Court retained
22 jurisdiction to consider any stipulation or motion concerning an award of costs and attorneys’ fees
23 pursuant to section 11(g)(4) of the ESA, 16 U.S.C. § 1540(g)(4). Doc. 49 at 2;

24 WHEREAS Defendants and Plaintiffs have now resolved Plaintiffs’ claims for attorneys’
25 fees and costs in this case;

26
27 Director Ashe therefore is substituted for Mr. Gould pursuant to Federal Rule of Civil Procedure
28 25(d).

1 DEFENDANTS AND PLAINTIFFS ACCORDINGLY STIPULATE AND AGREE AS
2 FOLLOWS:

3 1. Defendants agree to settle all of Plaintiffs' claims for costs and attorneys' fees in the
4 above-captioned litigation for a total of forty-eight thousand dollars (\$48,000.00) in full and
5 complete satisfaction of any and all claims, demands, rights, and causes of action, pursuant to
6 Section 11(g) of the ESA, 16 U.S.C. § 1540(g), the Equal Access to Justice Act ("EAJA"), 28 U.S.C.
7 § 2412(d), or any other statute and/or common law theory, for attorneys' fees and costs incurred by
8 Plaintiffs through and including the date of this Agreement in connection with the claims in the
9 above-captioned action. A check will be made payable in that amount to Earthjustice c/o Elizabeth
10 Ottinger and transmitted to Earthjustice, California Regional Office, 426 17th Street, 5th Floor,
11 Oakland, CA 94612-2820.

12
13 2. Defendants agree to submit all necessary paperwork for the processing of the attorneys'
14 fee award to the Department of the Treasury's Judgment Fund Office, pursuant to 16 U.S.C. §
15 1540(g)(4), within ten (10) business days of receipt of the court order approving this Agreement.
16 Plaintiffs agree to provide all necessary information for the processing of the attorneys' fee award to
17 Defendants in a timely fashion.

18
19 3. Plaintiffs agree to accept payment of \$48,000 in full satisfaction of any and all claims for
20 attorneys' fees and costs of litigation to which Plaintiffs are entitled in the above-captioned
21 litigation, up to and including the date of this Agreement. Plaintiffs agree that receipt of this payment
22 from Defendants shall operate as a release of Plaintiffs' claims for attorneys' fees and costs in this
23 matter, through and including the date of this Agreement.

24
25 4. By this agreement, Defendants do not waive any right to contest fees claimed by
26 Plaintiffs or Plaintiffs' counsel, including the hourly rate, in any future litigation.
27
28

1 5. Nothing in this Agreement shall be interpreted as, or shall constitute, a requirement
2 that the Federal Defendants are obligated to pay any funds exceeding those available, or take any
3 action in contravention of the Anti-Deficiency Act, 31 U.S.C. § 1341, or any other appropriations
4 law.

5
6 6. The parties agree that this Agreement was negotiated in good faith and constitutes a
7 settlement of claims that were disputed by the parties. By entering into this Agreement no party
8 waives any claim or defense, except as expressly stated herein.

9 7. This Agreement does not represent an admission by any party to any fact, claim, or
10 defense in any issue in this lawsuit. This Agreement has no precedential value and shall not be used
11 as evidence of such in any litigation except litigation to enforce the terms of this Agreement.
12

13 8. The undersigned representatives of each party certify that they are fully authorized by
14 the party or parties they represent to agree to the Court's entry of the terms and conditions of this
15 Stipulation and do hereby agree to the terms herein.

16 9. This terms of this Agreement shall become effective upon entry of an order by the
17 Court approving this Agreement.
18

19 10. The Court shall retain jurisdiction to enforce and oversee compliance with the terms
20 and conditions of this Agreement and Court Order. *See Kokkonen v. Guardian Life Ins. Co. of*
21 *America*, 511 U.S. 375 (1994).

22 Respectfully submitted this 6th day of February, 2012.
23
24

25 /s/ George M. Torgun (with permission)
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27 GEORGE M. TORGUN
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14 /s/ Daniel Pollak
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26 Attorneys for Federal Defendants

27 **[PROPOSED] ORDER**

28 PURSUANT TO STIPULATION, IT IS SO ORDERED.

DATED: Feb. 7, 2012

THE HONORABLE
UNITED STATES DISTRICT JUDGE

