IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

ASSOCIATION OF IRRITATED RESIDENTS, an unincorporated association, Plaintiff, v. UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, LISA JACKSON, in her official capacity as Administrator of the United States Environmental Protection Agency, and JARED BLUMENFELD, in his official capacity as Regional Administrator for Region IX of the United States Environmental Protection Agency, Defendants.	Case No. 3:10-CV-03051-WHA **STIPULATION and [PROPOSED] ORDER**

WHEREAS, on July 12, 2010, the Association of Irritated Residents filed the complaint in the above-captioned matter against the United States Environmental Protection Agency, Lisa Jackson, in her official capacity as Administrator of the United States Environmental Protection Agency, and Jared Blumenfeld, in his official capacity as Regional Administrator for Region IX of the United States Environmental Protection Agency (collectively, "EPA"), alleging that EPA has failed to undertake certain nondiscretionary duties under section 304(a)(2) of the Clean Air Act, 42 U.S.C. § 7604(a)(2);

WHEREAS, Plaintiff's claims in this matter, other than the costs of litigation and

1 reasonable attorneys' fees, were resolved by a Consent Decree entered by the Court on January

2 12, 2011, see Dkt. 25;

3   WHEREAS, Plaintiff and EPA wish to settle Plaintiff's claims for costs of litigation in

4 this matter, including reasonable attorneys' fees, in order to avoid unnecessary litigation and

5 without any admission of fact or law;

6   NOW THEREFORE, the parties, by and through their undersigned counsel, hereby

7 stipulate to the entry of an order that:

8   1.   The United States shall pay, within 90 days, $19,000 to the Center on Race,

9 Poverty & the Environment by electronic funds transfer in accordance with instructions provided

10 to Defense counsel by Plaintiff's counsel.

11   2.   Any obligation of the United States to expend funds under this settlement

12 agreement are subject to the availability of appropriations in accordance with the

13 Anti-Deficiency Act, 31 U.S.C. § 1341. This settlement agreement shall not be construed to

14 require the United States to obligate or pay funds in contravention of said Anti-Deficiency Act,

15 31 U.S.C. § 1341.

16   3.   Payment pursuant to Paragraph 1 within 90 days of the date on which the Court

17 enters this Stipulation and Order (or after 90 days if Plaintiff accepts payment after that date)

18 will constitute full and final payment of costs of litigation, including reasonable attorneys' fees,

19 incurred by Plaintiff in connection with this case prior to the Court's entry of the Consent Decree

20 and in negotiating this Stipulation and Order. Upon payment within 90 days of the date on

21 which the Court enters this Stipulation and Order (or upon payment after 90 days if Plaintiff

22 accepts payment), Plaintiff releases the United States, including EPA, from any claims regarding

23 such fees and costs incurred by Plaintiff in connection with this case prior to the Court's entry of

24 the Consent Decree and the preparation and attendance at the Case Management Conference

25 held on January 20, 2011, and in negotiating this Stipulation and Order. The payment pursuant

26 to Paragraph 1 does not affect Plaintiff's right to seek to recover reasonable costs and attorneys'

27 fees that Plaintiff may incur to enforce the Consent Decree, nor does it affect the right of EPA to

28 oppose any such request for fees and costs, as provided in Paragraph 10 of the Consent Decree.

4.   In the event the United States fails to pay the sum specified in Paragraph 1 within 90 days of the date on which the Court enters this Stipulation and Order, Plaintiff may file a motion with the Court for its costs of litigation, including reasonable attorneys' fees. Such motion shall be filed no later than 150 days after the date the Court enters this Stipulation and Order. The parties agree that, in litigation over such fee application, the United States reserves any defenses it may have to a fee application.

                                        Respectfully submitted,

COUNSEL FOR PLAINTIFFS:

Dated: April 1, 2011   /s/ Brent Newell (with permission)
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COUNSEL FOR DEFENDANTS:

Dated: April 1, 2011   IGNACIA S. MORENO
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                                        /s/ Michelle R. Lambert
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                                        Counsel for Defendants

PURSUANT TO STIPULATION, IT IS SO ORDERED.

Dated: April 4, 2011.   _____
                                        WILLIAM   ALSUP
                                        UNITED STATES DISTRICT JUDGE