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12 Attorneys for Plaintiff
 13 FRIENDS OF OCEANO DUNES, INC.

14 UNITED STATES DISTRICT COURT
 15 NORTHERN DISTRICT OF CALIFORNIA
 16 SAN FRANCISCO DIVISION

FRIENDS OF OCEANO DUNES, INC.)	Case No. C 11-1476 EMC
)	
Plaintiff,)	STIPULATION AND [PROPOSED] ORDER REGARDING SETTLEMENT
v.)	
KEN SALAZAR, et al.)	
Defendants.)	

23 Plaintiff FRIENDS OF OCEANO DUNES, INC. (“Plaintiff”) and Defendants KEN
 24 SALAZAR, in his official capacity as Secretary of the Interior; ROWAN GOULD, in his official
 25 capacity as Director, U.S. Fish and Wildlife Service, U.S. DEPARTMENT OF THE INTERIOR,
 26 and the UNITED STATES FISH AND WILDLIFE SERVICE (collectively “Defendant”), by and
 27

28 STIPULATION AND [PROPOSED] ORDER
 REGARDING SETTLEMENT
 C 11-1476 EMC

1 through their undersigned counsel, hereby enter into this Stipulation and [Proposed] Order Re
2 Settlement and Dismissal With Prejudice (the “Stipulation”) as follows:

3 1. Defendant shall pay to Plaintiff the amount of twenty-five thousand five hundred
4 fifty-five U.S. dollars and eleven cents (\$25,551.11) in full and complete satisfaction of
5 Plaintiff’s claims for attorneys’ fees, costs, and litigation expenses under the Freedom of
6 Information Act (“FOIA”) in the above-captioned matter (the “Settlement Amount”). This
7 payment shall constitute full and final satisfaction of any and all of Plaintiff’s claims for
8 attorneys’ fees, costs, and litigation expenses in the above-captioned matter, and is inclusive of
9 any interest. Defendant makes no representation as to any tax consequences or liabilities Plaintiff
10 or its attorney may incur as a result of this settlement. Payment of this money will be made by
11 electronic funds transfer, and Plaintiff’s counsel will provide the necessary information to
12 Defendant’s counsel to effectuate the transfer. Defendant will make all reasonable efforts to
13 make payment within sixty (60) days of the date that Plaintiff’s counsel provides the necessary
14 information for the electronic funds transfer and this Stipulation is approved by the Court,
15 whichever is later, but cannot guarantee payment within that time frame. If Plaintiff is not paid
16 within sixty (60) days of the date that Plaintiff’s counsel provides the necessary information for
17 the electronic funds transfer and this Stipulation is approved by the Court, whichever is later,
18 Plaintiff may re-new his motion for attorney’s fees.

19 2. Defendant will return Plaintiff’s two uncashed checks in the amount of \$1,374.40
20 and \$2,446.60 within thirty (30) days of the date that this Stipulation is approved by the Court.

21 3. In consideration of the payment of the Settlement Amount and the other terms of
22 this Agreement, Plaintiff shall immediately upon execution of this Agreement also execute a
23 Stipulation of Dismissal, a copy of which is attached hereto as Exhibit A. The Stipulation of
24 Dismissal shall dismiss, with prejudice, all claims asserted in this action, or that could have been
25 asserted in this action. The fully executed Stipulation of Dismissal will be held by Defendant’s
26 attorney and will be filed within five (5) business days of receipt by Plaintiff’s attorney of the
27 Settlement Amount.

1 4. The parties acknowledge that this Stipulation is entered into solely for the purpose
2 of settling and compromising any remaining claims in this action without further litigation, and it
3 shall not be construed as evidence or as an admission on the part of Defendant, the United States,
4 its agents, servants, or employees regarding any issue of law or fact, or regarding the truth or
5 validity of any allegation or claim raised in this action, or as evidence or as an admission by the
6 Defendant regarding Plaintiff's entitlement to attorneys' fees or other litigation costs under
7 FOIA. This Stipulation shall not be used in any manner to establish liability for fees, amounts, or
8 hourly rates in any other case or proceeding involving Defendant.

9 5. This Stipulation is binding upon and inures to the benefit of the parties hereto and
10 their respective successors and assigns.

11 6. If any provision of this Stipulation shall be held invalid, illegal, or unenforceable,
12 the validity, legality, and enforceability of the remaining provisions shall not in any way be
13 affected or impaired thereby.

14 7. The Court shall retain jurisdiction over the parties and the subject
15 matter to enforce the Stipulation.

16 8. This Stipulation shall constitute the entire agreement between the parties, and it is
17 expressly understood and agreed that this Stipulation has been freely and voluntarily entered into
18 by the parties hereto. The parties further acknowledge that no warranties or representations have
19 been made on any subject other than as set forth in this Stipulation.

20 9. The persons signing this Stipulation warrant and represent that they possess full
21 authority to bind the persons on whose behalf they are signing to the terms of the Stipulation.

22 10. This Stipulation may not be altered, modified or otherwise changed in any respect
23 except in writing, duly executed by all of the parties or their authorized representatives.

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1 11. This Stipulation may be executed in counterparts and is effective on the date by which
2 both parties' counsel have executed the Stipulation.
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4 Dated: January 23, 2012

Respectfully Submitted,

5 MELINDA HAAG
6 United States Attorney

7 /s/

8 JUAN D. WALKER¹
9 Assistant United States Attorney
Attorneys for Federal Defendant

10 Dated: January 23, 2012

LAW OFFICES OF THOMAS D. ROTH
11 /s/

12 THOMAS D. ROTH
13 Attorneys for Plaintiff

14 **[PROPOSED] ORDER**

15 **PURSUANT TO STIPULATION, IT IS SO ORDERED.**

16
17
18
19 Dated: 1/24/12



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26 ¹I, Juan D. Walker, hereby attest, in accordance with the Northern District of California's
27 General Order No. 45, Section X(B), the concurrence in the filing of this document has been
28 obtained from the other signatory listed on this document.

STIPULATION AND [PROPOSED] ORDER
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