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10 IN THE UNITED STATES DISTRICT COURT  
11 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
12 SAN FRANCISCO DIVISION

14 **FELICE PACE; WILDERNESS WATCH,**  
15  
16 Plaintiffs,  
17  
18 **CHARLTON H. BONHAM; STAFFORD LEHR,**  
19 Defendants.

Case No. C-12-5610-WHO-NJV

**STIPULATION AND ORDER  
RESOLVING PENDING MOTION FOR  
LEAVE TO FILE MOTION FOR  
RECONSIDERATION**

Dept: 2  
Judge: Honorable W.H. Orrick  
Trial Date: None Set  
Action Filed: November 1, 2012

1           On October 25, 2013, Plaintiffs Felice Pace and Wilderness Watch filed a Motion for Leave  
2 to File a Motion for Reconsideration of the Court’s September 30, 2013, Order Granting Motion  
3 to Strike. The Court’s Order Granting Motion to Strike resolved defendants Charlton H. Bonham  
4 and Stafford Lehr’s Motion to Dismiss or Strike Portions of Second Amended Complaint (filed  
5 May 10, 2013). Defendants oppose Plaintiffs’ pending motion.

6           In order to resolve Plaintiffs’ pending motion, resolve this case in an efficient manner, and  
7 facilitate decision and review of the substantive issue decided by the Court’s Order Granting  
8 Motion to Strike, the parties agree to the following:

9           1. Plaintiffs’ pending Motion for Leave to File a Motion for Reconsideration should be  
10 granted, Plaintiffs’ pending Motion for Leave to File a Motion for Reconsideration should be  
11 treated as a motion for reconsideration, and reconsideration should be granted on the procedural  
12 question of whether a motion to strike should have been granted.

13           2. Any allegations about dead fish are removed from this case, and specifically the  
14 sentence “Mortality rates from the aerial stocking of fish often approach 50%, as a result of  
15 transport, the drop, or because these stocked fish do not feed or survive well after stocking.”  
16 found in paragraph 10 at lines 4 to 5 of page 4 is stricken from the Second Amended Complaint.

17           3. Reconsideration granted, Defendants’ Motion to Dismiss or Strike Portions of Second  
18 Amended Complaint will be pending before the Court. That motion shall be treated as a motion  
19 under Rule 12(b)(6) to dismiss all the allegations in the Second Amended Complaint (as modified  
20 by agreement of the parties in paragraph 2 above). The parties respectfully request that the Court  
21 rule on that motion based on the papers already filed, although they will submit additional  
22 briefing and/or appear at a hearing if the Court requests.

23           4. While Plaintiffs do not agree with the Court’s substantive ruling in its Order Granting  
24 Motion to Strike (and preserve their right to challenge that ruling), the parties understand that that  
25 substantive ruling applied to a pending motion to dismiss would likely mean the Court would  
26 grant Defendants’ motion to dismiss the Second Amended Complaint.

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2 5. Given these stipulations, and to efficiently and effectively resolve this case and place  
3 it in a posture for appeal, the parties respectfully request that the Court enter the following order.

4 IT IS SO STIPULATED.

5 Dated: October 29, 2013

6 Respectfully Submitted,

7 WESTERN ENVIRONMENTAL LAW CENTER

8 /s/ Peter M.K. Frost (as authorized)

9 PETER M.K. FROST  
10 *Attorneys for Plaintiffs Felice Pace and  
Wilderness Watch*

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15 /s/ Marc N. Melnick

16 MARC N. MELNICK  
17 Deputy Attorney General  
18 *Attorneys for Charlton H. Bonham and  
Stafford Lehr*

19 PURSUANT TO STIPULATION, **as modified**, and GOOD CAUSE APPEARING, the  
20 Court orders as follows:

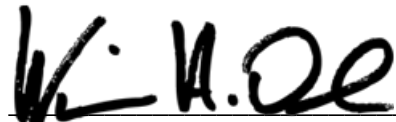
- 21 1. On or before November 4, 2013, Plaintiffs shall file a "Second Amended Complaint  
22 (Revised)" which deletes the sentence "Mortality rates from the aerial stocking of fish  
23 often approach 50%, as a result of transport, the drop, or because these stocked fish  
24 do not feed or survive well after stocking," found in paragraph 10 at lines 4 to 5 of  
25 page 4 in the Second Amended Complaint. In all other respects, the Second  
26 Amended Complaint (Revised) shall remain the same as the Second Amended  
27 Complaint.  
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2. Plaintiffs' pending Motion for Leave to File a Motion for Reconsideration is GRANTED. The Court VACATES its September 30, 2013, Order Granting Motion to Strike.
3. The Court will consider Defendants' previously filed Motion to Dismiss or Strike Portions of the Second Amended Complaint, and the briefs filed by all parties, as applicable to the Second Amended Complaint (Revised), will treat the motion as if it were a motion to dismiss all of the allegations in the Second Amended Complaint (Revised) under Rule 12(b)(6), and will rule on said motion to dismiss without further briefing or argument of counsel.
4. If any party wishes to be heard regarding the Court's modification of the Stipulation, it should advise Ms. Jean Davis, Courtroom Deputy, on or before the close of business on Friday, November 1, 2013.

IT IS SO ORDERED.

DATED: October 29, 2013



WILLIAM H. ORRICK  
U.S. District Judge

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