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11 **IN THE UNITED STATES DISTRICT COURT**  
 12 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**  
 13 **OAKLAND DIVISION**

15 CENTER FOR ENVIRONMENTAL )  
 16 HEALTH, et al., )  
 17 )  
 18 Plaintiffs, )  
 19 )  
 20 v. )  
 21 MICHAEL S. REGAN, in his official )  
 22 capacity as Administrator of the U.S. )  
 23 Environmental Protection Agency, et al., )  
 24 )  
 25 Defendants, )  
 26 )  
 27 and )  
 28 )  
 CROPLIFE AMERICA, )  
 )  
 Intervenor-Defendant. )  
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 )  
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CASE NO. 4:18-cv-03197-SBA

**JOINT UNOPPOSED MOTION TO  
 EXTEND TIME TO FILE A MOTION FOR  
 AWARD OF ATTORNEYS' FEES AND  
 LITIGATION EXPENSES;  
 [PROPOSED] ORDER**

1 Pursuant to Federal Rule of Civil Procedure 6(b) and Civil Local Rule 6-3 Plaintiffs  
2 (Center for Environmental Health, Center for Biological Diversity, and Californians for Pesticide  
3 Reform) and Federal Defendants (Michael S. Regan, Administrator of the U.S. Environmental  
4 Protection Agency (“EPA”), the EPA, the U.S. Fish and Wildlife Service (“FWS”), and Debra  
5 Haaland, Secretary of the U.S. Department of the Interior) hereby file this joint motion to extend  
6 the time for Plaintiffs to file a motion for attorneys’ fees and litigation expenses by an additional  
7 sixty (60) days to allow Plaintiffs and Federal Defendants further time to attempt to resolve the  
8 matter of attorneys’ fees and costs without Court involvement. The Parties have conferred and  
9 Defendant-Intervenor CropLife America does not oppose the relief sought in this joint motion.

10 Under the applicable rules and attorney-fee award provisions of the Endangered Species  
11 Act, 16 U.S.C. § 1540(g)(4), Plaintiffs must file a motion for attorneys’ fees and bill of costs  
12 within fourteen (14) days of the entry of judgment. Fed. R. Civ. P. 54(d); Civil L.R 54-1(a); Civil  
13 L.R. 54-5(a). The Equal Access to Justice Act further provides that “[a] party seeking an award  
14 of fees and other expenses shall, within thirty (30) days of final judgment in the action, submit to  
15 the court an application for fees and other expenses.” 28 U.S.C. § 2412(d)(1)(B). The Supreme  
16 Court has held that the EAJA filing deadline is not jurisdictional. *Scarborough v. Principi*, 541  
17 U.S. 401, 413-14 (2004); *see also New Life Evangelistic Ctr., Inc. v. Sebelius*, 847 F. Supp. 2d  
18 50, 53 (D.D.C. 2012). That time began to run when the Court entered the Parties’ proposed  
19 order on the Second Stipulated Partial Settlement Agreement (“Second Settlement”) on April 13,  
20 2022. Dkt. 125, ¶ 16.

21 The Parties negotiated a first stipulated partial settlement agreement regarding claims  
22 against EPA, Administrator Regan, FWS, and Secretary Haaland, without any admission of the  
23 allegations or claims, for the alleged violation of their procedural duties concerning completion  
24 of the Final Biological Opinion pursuant to ESA Section 7(a)(2) in Counts 1 and 2 set forth in  
25 the complaint. Dkt. 111. The Court entered an order effectuating the first stipulated partial  
26 settlement on January 4, 2022, and retained jurisdiction to enforce the terms of the settlement  
27 agreement. Dkt. 112.

1 The Parties negotiated a Second Settlement with regard to the remaining claims against  
2 the EPA and Administrator Regan for the alleged failure to comply with their substantive duties  
3 under ESA Section 7(a)(2) by taking final agency actions of registering or reregistering certain  
4 products containing malathion in paragraph 84 of the complaint as set forth in Count 1; the  
5 alleged unlawful withholding and/or unreasonable delay pursuant to Section 706(1) of the  
6 Administrative Procedure Act, 5 U.S.C. § 706(1), of completion of their substantive duties under  
7 ESA Section 7(a)(2) as set forth in Count 2; and the alleged violations of ESA Section 7(d), 16  
8 U.S.C. § 1536(d), as set forth in Count 3. Dkt. 123. The Court entered an order effectuating the  
9 Second Settlement on April 13, 2022, and retained jurisdiction to enforce the terms of the  
10 settlement agreement. Dkt. 125.

11 On April 13, 2022, the Court also entered an order effectuating Plaintiffs' and Federal  
12 Defendants' Joint Unopposed Motion to Extend Time to File a Motion for Attorneys' Fees and  
13 Litigation Expenses by ninety (90) days to July 12, 2022. Dkt. 126.

14 The only outstanding issues remaining in this case are related to Plaintiffs' claim for  
15 attorneys' fees and costs. Plaintiffs and Federal Defendants have been actively involved in  
16 settlement discussions and have exchanged settlement proposals.

17 To provide additional time for Plaintiffs and Federal Defendants to resolve the matter of  
18 attorneys' fees and litigation costs absent any further involvement from this Court, Plaintiffs and  
19 Federal Defendants respectfully request that the Court extend the time for Plaintiffs to file any  
20 such motion for an additional sixty (60) days, through and including September 12, 2022.  
21 Providing the Parties additional time to attempt to resolve the issue of attorneys' fees and costs  
22 would reduce or avoid waste of resources to the Parties and the Court that would be incurred by  
23 unnecessary motion practice and additional costs, and may allow for more efficient resolution of  
24 the remaining issues in the case.

25 By agreeing to this request for additional time, Federal Defendants are not conceding that  
26 Plaintiffs are entitled to fees. Federal Defendants reserve all rights and defenses to entitlement  
27 and reasonableness of any fee request. As set forth in the attached proposed order, the Parties  
28

1 request that this Court extend the deadline for Plaintiffs' motion for attorneys' fees and litigation  
2 costs by sixty (60) days from the current deadline, through and including September 12, 2022.

3  
4 Respectfully submitted this 1st day of July, 2022.

5  
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**ORDER**

On April 13, 2022, the Court entered an order effectuating the parties' Second Stipulated Partial Settlement Agreement in the above captioned case resolving the remaining claims in Counts 1, 2, and 3 of the Second Amended Complaint.

Good cause having been shown, it is hereby ORDERED that Plaintiffs' deadline to file a motion for attorneys' fees and costs and a bill of costs shall be extended by sixty (60) days, through and including September 12, 2022.

**IT IS SO ORDERED.**

Dated: July, 8, 2022

 RS  
Richard Seeborg for Sandra Brown Armstrong  
United States District Judge