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15 *Attorneys for Defendants*

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

20 CENTER FOR BIOLOGICAL DIVERSITY,

21 Plaintiff,

22 v.

23 GINA RAIMONDO, in her official capacity as
24 Secretary of Commerce; and NATIONAL
25 MARINE FISHERIES SERVICE,

26 Defendants.

Case No: 3:22-cv-00117-JD

STIPULATED FEE SETTLEMENT

Judge: James Donato

27 Plaintiff, the Center for Biological Diversity, and Defendants, Gina Raimondo, in her
28 official capacity as Secretary of Commerce, and the National Marine Fisheries Service (“NMFS”),
(collectively, “the Parties”) enter into the following Stipulated Fee Settlement Agreement
 (“Agreement”) and state as follows:

WHEREAS, Plaintiff filed a complaint on January 9, 2022, alleging (among other things)
that NMFS’s Marine Mammal Protection Act (“MMPA”) permit authorizing the incidental take
of humpback whales due to sablefish pot gear fishery operations was unlawful. ECF 1 ¶ 130.

1 Specifically, Plaintiff alleged that NMFS issued the permit without having developed, or been in
2 the process of developing, a take reduction plan. *Id.*; see 16 U.S.C. § 1371(a)(5)(E)(i)(III).

3 WHEREAS, Plaintiff and Defendants filed motions for summary judgment with the Court
4 briefing this claim and the other claims in Plaintiff's complaint. ECF 282, 283.

5 WHEREAS, the Court issued an order granting Plaintiff's motion for summary judgment
6 as to the claim regarding the take reduction plan, holding that NMFS's determination that a take
7 reduction plan was in development was arbitrary and capricious. ECF 288 at 8.

8 WHEREAS, the Court directed the Parties to confer regarding a mutually agreeable
9 remedy with respect to its summary judgment order. ECF 291.

10 WHEREAS, the Parties came to an agreement on the proper remedy for this case. ECF
11 297.

12 WHEREAS, the Parties have also reached an agreement that obviates the need for any
13 litigation regarding Plaintiff's claim for attorneys' fees and costs.

14 NOW, THEREFORE, IN THE INTERESTS OF THE PUBLIC, THE PARTIES, AND
15 JUDICIAL ECONOMY, IT IS STIPULATED BY AND BETWEEN THE PARTIES AS
16 FOLLOWS:

17 1. Defendants shall pay Plaintiff a total of \$165,000.00 for attorneys' fees, costs, and
18 other litigation expenses for this lawsuit.

19 2. Defendants shall make the payment required by Paragraph 1 and the agreed order
20 below by electronic funds transfer.

21 3. Plaintiff agrees to furnish Defendants with the account information necessary to
22 effectuate the payment required by Paragraph 1 of this stipulation. Defendants agree to submit all
23 necessary paperwork for the processing of the attorneys' fees award within 10 business days of
24 the Court's approval of this Agreement or the receipt of the information described in this
25 Paragraph, whichever is later. Plaintiff agrees to send confirmation of the receipt of payment of
26 the fee award to counsel for Defendants within 10 business days of such payment.

1 4. Plaintiff agrees to accept Defendants' payment of \$165,000.00 in full satisfaction
2 of any and all claims for attorneys' fees and costs of litigation incurred in this matter to date.
3 Plaintiff agrees that receipt of this payment from Defendants shall operate as a release of
4 Plaintiff's claims for attorney's fees and costs in this matter to date.

5 5. Plaintiff acknowledges that under 31 U.S.C. §§ 3711, 3716, 26 U.S.C. § 6402(d),
6 31 C.F.R. §§ 285.5, 901.3, and other authorities, the United States will offset against the attorney
7 fee award Plaintiff's delinquent debts to the United States, if any. *See Astrue v. Ratliff*, 560 U.S.
8 586 (2010).

9 6. Plaintiff reserves the right to seek additional fees and costs incurred subsequent to
10 the Court's approval of this Agreement arising in any future litigation or continuation of the
11 present action. Defendants reserve the right to contest fees claimed by Plaintiff or Plaintiff's
12 counsel, including hourly rates and the number of hours billed, in any future litigation or
13 continuation of the present action. Further, this Agreement as to attorneys' fees and costs has no
14 precedential value and shall not be used as evidence in any other attorneys' fees litigation.

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

19 8. This Agreement shall be binding on the parties and their successors, agents,
20 designees, employees, and all those acting by and through their authority. The parties agree that
21 this Agreement was negotiated in good faith and that this Agreement constitutes a resolution of
22 claims that were denied and disputed by the parties. By entering into this Agreement, the parties
23 do not waive any claim or defense.

24 9. The undersigned representatives of each party certify that they are fully authorized
25 by the parties they represent to agree to the terms and conditions of this Agreement and do hereby
26 agree to the terms herein.

1 10. The parties hereby jointly and respectfully request that the Court review and
2 approve the terms of this Agreement, and retain jurisdiction to enforce its terms. *See Kokkonen v.*
3 *Guardian Life Ins. Co. of America*, 511 U.S. 375 (1994).

4 Date: June 12, 2024 Respectfully submitted,

5 TODD KIM, Assistant Attorney General
6 S. JAY GOVINDAN, Chief
7 MEREDITH L. FLAX, Deputy Chief

8 /s/ Rickey D. Turner, Jr.
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2 *Attorneys for Plaintiff Center for Biological Diversity*

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5 PURSUANT TO STIPULATION, IT IS SO ORDERED

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8 Dated: June 13, 2024

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10 JAMES DONATO
11 U.S. District Court Judge
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ATTESTATION OF CONCURRENCE

In accordance with Civil Local Rule 5-1(h)(3), I hereby attest that I obtained concurrence in the filing for the signatures of all counsel indicated by a conformed signature (“/s/”) within this e-filed document.

/s/ Christian H. Carrara
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