

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

OCEANA, INC.,

Plaintiff,

v.

GINA RAIMONDO, in her official
capacity as Secretary of Commerce;
NATIONAL OCEANIC AND
ATMOSPHERIC ADMINISTRATION;
and NATIONAL MARINE FISHERIES
SERVICE,

Defendants.

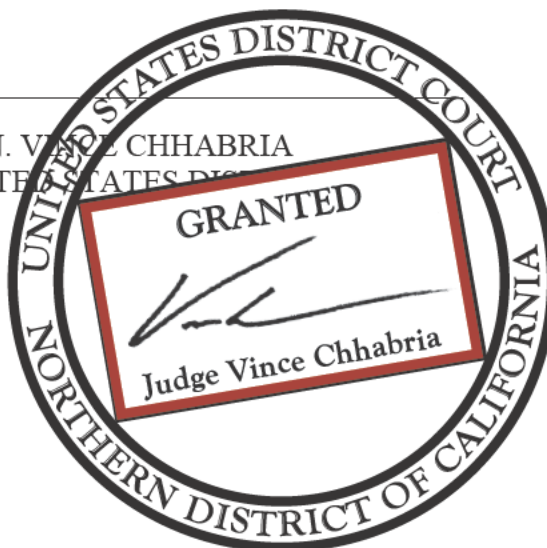
No. 3:19-cv-03809-VC

~~PROPOSED~~ ORDER ON JOINT
STIPULATION TO RESOLVE
PLAINTIFF'S CLAIM FOR ATTORNEYS'
FEES AND COSTS

The Court hereby approves and enters as an order of the Court the March 10, 2022 Joint Stipulation to Resolve Plaintiff's Claim for Attorneys' Fees and Costs filed by Plaintiff and Defendants in the above-referenced case.

DATED: March 16, 2022

HON. VINCE CHHABRIA
UNITED STATES DISTRICT COURT



TODD KIM, Assistant Attorney General
 SETH M. BARSKY, Section Chief
 MEREDITH L. FLAX, Assistant Section Chief
 CLIFFORD E. STEVENS, JR., Senior Trial Attorney (D.C. Bar No. 463906)
 U.S. Department of Justice
 Environment & Natural Resources Division
 Wildlife & Marine Resources Section
 Ben Franklin Station, P.O. Box 7611
 Washington, D.C. 20044-7611
 Telephone: (202) 353-7548
 Facsimile: (202) 305-0275
 Email: clifford.stevens@usdoj.gov

Attorneys for Defendants

**IN THE UNITED STATES DISTRICT COURT
 FOR THE NORTHERN DISTRICT OF CALIFORNIA**

OCEANA, INC.,

Plaintiff,

v.

GINA RAIMONDO, in her official
 capacity as Secretary of Commerce;
 NATIONAL OCEANIC AND
 ATMOSPHERIC ADMINISTRATION;
 and NATIONAL MARINE FISHERIES
 SERVICE,

Defendants.

No. 3:19-cv-03809-VC

**JOINT STIPULATION TO RESOLVE
 PLAINTIFF’S CLAIM FOR ATTORNEYS’
 FEES AND COSTS AND [PROPOSED]
 ORDER**

Plaintiff Oceana, Inc. (“Plaintiff”) brought this lawsuit against Defendants the Secretary of Commerce, the National Oceanic and Atmospheric Administration, and the National Marine Fisheries Service (collectively, “Defendants”) challenging the annual catch limit and two other reference points established under the Magnuson-Stevens Fishery Conservation and

JOINT STIPULATION TO RESOLVE CLAIM FOR ATTORNEYS’ FEES AND COSTS
Oceana, Inc. v. Ross, et al., Case No. 3:19-cv-03809-VC

1 Management Act for the central subpopulation of northern anchovy. *See* ECF No. 1; *Fisheries*
 2 *Off W. Coast States; Coastal Pelagic Species Fisheries; Multi-Year Harvest Specifications for*
 3 *the Cent. Subpopulation of N. Anchovy*, 84 Fed. Reg. 25,196 (May 31, 2019). On September 2,
 4 2020, the Court entered judgment for Plaintiff. ECF Nos. 77, 78. On August 11, 2021, Plaintiff
 5 filed a motion for attorneys' fees and costs. ECF No. 100. On the same date, Plaintiff and
 6 Defendants (the "Parties") filed a joint stipulation to extend the date for briefing on the motion in
 7 the event that settlement efforts on fees were unsuccessful. ECF No. 101. The Parties submitted,
 8 and the Court approved, several stipulations that extended the fee motion deadline from August
 9 11, 2021 to December 27, 2021. ECF Nos. 102, 104. On December 15, 2021, the Parties filed a
 10 joint motion to further extend the deadline from December 27, 2021 to February 10, 2022. ECF
 11 No. 105. On January 31, 2022, the Court terminated without prejudice the motion for attorneys'
 12 fees and costs and ordered that a renewed motion for attorneys' fees and costs or a motion to
 13 extend the deadline is due by March 12, 2022. ECF No. 108.

14 The Parties have resolved Plaintiff's claim for attorneys' fees and costs and hereby agree
 15 and stipulate as follows (the "Agreement"):

16 1. Defendants shall pay and Plaintiff shall accept \$305,000 in full satisfaction of any
 17 and all of Plaintiff's claims, demands, rights, and causes of action, pursuant to the Equal Access
 18 to Justice Act, 28 U.S.C. § 2412(d), or any other statute and/or common law theory, for
 19 attorneys' fees, costs, and expenses incurred in connection with this lawsuit through and
 20 including the date of this Agreement.

21 2. Defendants shall make the payment set forth in Paragraph 1 of this Agreement by
 22 electronic funds transfer to Plaintiff. Counsel for Plaintiff will provide to the undersigned
 23 counsel for Defendants a completed Vendor Profile Form available at
 24 <http://www.corporateservices.noaa.gov/finance/vendorpayfrm.html>. Within twenty (20) business
 25 days after entry of this Stipulation or Plaintiff's provision of the completed Vendor Profile Form,
 26 whichever is later, Defendants shall submit all paperwork necessary for the processing of the
 27 \$305,000 payment required by Paragraph 1 of this Stipulation. Plaintiff shall provide

1 confirmation of the receipt of the payment to undersigned counsel for Defendants within
2 fourteen (14) days of receipt of the payment.

3 3. Plaintiff's acceptance of the \$305,000 payment set forth in Paragraph 1 shall
4 operate as a full release of all of Plaintiff's claims for attorneys' fees and costs arising out of this
5 lawsuit. The Parties agree that this Agreement was negotiated and entered into in good faith and
6 that it constitutes a settlement of claims that were vigorously contested, denied, and disputed by
7 the Parties. This Agreement shall not be offered as evidence in any other judicial proceeding or
8 construed as an admission or concession of any wrongdoing, liability, or any issue of fact or law
9 concerning the claims settled under this Agreement. Except as expressly provided in this
10 Agreement, none of the Parties waive or relinquish any legal rights, claims, or defenses they may
11 have.

12 4. By entering into this Agreement, Defendants do not waive any right to contest
13 fees claimed by Plaintiff, including hourly rates, in any future litigation or continuation of the
14 present action, and Plaintiff does not waive any right to claim such fees or costs. The
15 undersigned Parties agree and acknowledge that this Agreement as to attorneys' fees and costs
16 has no precedential value and shall not be used as evidence in any other attorneys' fees litigation,
17 except as necessary to enforce the terms of this Stipulation.

18 5. No provision of this Agreement shall be interpreted as, or constitute, a
19 commitment or requirement that Defendants are obligated to spend funds in violation of the
20 Anti-Deficiency Act, 31 U.S.C. § 1341, or any other law or regulation.

21 6. The terms of this Agreement constitute the entire agreement of the Parties, and all
22 previous understandings, agreements, and communications concerning settlement of Plaintiff's
23 claims for attorneys' fees, costs, and expenses incurred in this lawsuit that occurred prior to the
24 date hereof, whether express or implied, oral or written, are fully and completely extinguished
25 and superseded by this Agreement. This Agreement may be modified only upon mutual written
26 consent of the Parties and the Court's approval of a joint stipulation to modify this Agreement.
27
28

1 7. The undersigned representatives of Plaintiff and Defendants certify that they are
2 fully authorized by the Parties they represent to enter into the terms and conditions of this
3 Agreement and to legally bind the Parties to it.

4 8. The provisions of this Agreement shall apply to and be binding upon each of the
5 Parties including, but not limited to, their officers, directors, servants, employees, successors,
6 and assigns.

7 9. This Agreement is effective as of the date it is entered by the Court.

8 For all these reasons, the parties respectfully request that the Court approve the
9 Stipulation, as stated above.

10 Respectfully submitted this 10th day of March, 2022.

11
12
13 TODD KIM, Assistant Attorney General
14 SETH M. BARSKY, Section Chief
15 MEREDITH L. FLAX, Assistant Section Chief

16 /s/ Clifford E. Stevens, Jr.
17 CLIFFORD E. STEVENS, JR.
18 Senior Trial Attorney, D.C. Bar No. 463906
19 U.S. Department of Justice
20 Environment & Natural Resources Division
21 Wildlife & Marine Resources Section
22 Ben Franklin Station
23 P.O. Box 7611
24 Washington, DC 20044-7611
25 Phone: (202) 353-0368
26 Fax: (202) 305-0275
27 clifford.stevens@usdoj.gov

28 *Attorneys for Defendants*

/s/ Andrea A. Treece
 Andrea A. Treece, CA Bar No. 237639
 Earthjustice
 50 California Street, Suite 500
 San Francisco, CA 94111
 Telephone: (415) 217-2000 / F: (415) 217-2040
 Email: atreece@earthjustice.org

Stephen D. Mashuda (Pro Hac Vice)
Earthjustice
810 Third Avenue, Suite 610
Seattle, WA 98104
Telephone: (206) 343-7340
Facsimile: (415) 217-2040
Email: smashuda@earthjustice.org

Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that this 10th day of March, 2022, I electronically filed the foregoing document with the Clerk of the Court via CM/ECF system, which will send notification of such to the attorneys of record.

/s/ Clifford E. Stevens, Jr. _____

CLIFFORD E. STEVENS, JR.

