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 NATIONAL PARK SERVICE

UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA
 SAN FRANCISCO DIVISION

HIGH SIERRA HIKERS ASSOCIATION,
 INC.,

Plaintiff,

v.

NATIONAL PARK SERVICE,

Defendant.

CASE NO. 16-2609 JSC

STIPULATION AND ~~PROPOSED~~ ORDER OF
 SETTLEMENT

Defendant National Park Service ("Defendant" or "NPS") and Plaintiff High Sierra Hikers Association ("Plaintiff" or "HSHA") (collectively, "Plaintiff and Defendant" or "the Parties"), by and through their respective counsel, hereby stipulate and agree, as follows:

WHEREAS, Plaintiff initiated this lawsuit on May 13, 2016 and filed its First Amended Complaint for Declaratory and Injunctive Relief ("Complaint") on May 17, 2016, alleging violations of the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, *et seq.* and the Administrative Procedure Act ("APA"), 5 U.S.C. § 701 *et seq.*, regarding HSHA's May 2, 2015 FOIA Request ("FOIA Request");

WHEREAS, the FOIA Request upon which this suit is based sought records related to a Wilderness Stewardship Plan for Sequoia and Kings Canyon National Parks and the accompanying Final Environmental Impact Statement (collectively, the "WSP"), and specifically sought nine

1 categories of records regarding and related to the WSP and the planning process for the WSP;

2 WHEREAS, pursuant to the Stipulation and Order on Case Management and FOIA Record
3 Production (ECF No. 25) (the "Order"), Defendant released approximately 400,000 pages records and
4 draft *Vaughn* indices and other information to justify all withholdings made pursuant to one or more
5 FOIA Exemptions. The Parties completed their agreed-upon record release and exemption challenge
6 process on April 23, 2018. *See* Order at ¶¶ 3-8 and Joint Status Report (ECF No. 30 at ¶ 1).

7 WHEREAS, the Order also provided for a meet and confer mechanism for the Parties to address
8 attorneys' fees and costs. Order at ¶ 10. The Parties met and conferred and were able to resolve
9 their disputes about Plaintiff's claim for attorneys' fees and costs; and

10 WHEREAS, Plaintiff and Defendant wish to avoid any further litigation and controversy and
11 to settle and compromise fully any and all claims and issues that have been raised, or could have
12 been raised in this action, which have transpired prior to the execution of this Stipulation and
13 [Proposed] Order of Settlement ("Stipulation").

14 NOW, THEREFORE, in consideration of the mutual promises contained in this Stipulation,
15 and other good and valuable consideration, receipt of which is hereby anticipated, the Parties agree
16 as follows:

17 1. The Parties do hereby agree to settle and compromise each and every claim of any kind,
18 whether known or unknown, arising directly or indirectly from the acts or omissions that gave rise to the
19 above-captioned action under the terms and conditions set forth in this Stipulation.

20 2. Defendant produced to Plaintiff approximately 400,000 pages of responsive records and
21 provided draft *Vaughn* indices and other information to justify withholdings under one or more FOIA
22 Exemptions, and the Parties resolved all disputes regarding the FOIA Request.

23 3. Defendant agrees to pay the sum of \$200,000.00 ("Settlement Amount") to Plaintiff's
24 counsel for Plaintiff's reasonable attorneys' fees and costs, which sum shall be in full and final
25 satisfaction of all of Plaintiff's rights and claims in this case, including but not limited to those for
26 attorneys' fees, costs and other litigation expenses, including interest, and Defendant shall have no
27 further liability for any further amounts, unless, as set forth in Paragraph 4 of this Stipulation, the
28 Court awards fees and costs. The Settlement Amount shall be paid by means of an electronic

1 transfer of funds as follows: \$100,000 shall be paid on or before September 30, 2018 and \$100,000
2 shall be paid on or before November 15, 2018, subject to the availability of funds as set forth in
3 Paragraph 4. Defendant's counsel shall promptly request the electronic funds transfer after
4 notification of the Court's approval of this Stipulation. In anticipation of these payments, on
5 August 15, 2018 Plaintiff's counsel provided Defendant's counsel with the necessary information
6 to effectuate the electronic fund transfers. Plaintiff and Plaintiff's counsel agree to cooperate with
7 Defendant's counsel in promptly providing any additional reasonable information needed for
8 requesting payment and transmission of funds.

9 4. Defendant has represented to Plaintiff that funds are currently available through the Sequoia
10 and Kings Canyon National Parks ("SEKI") Fiscal Year 2018 budget to pay \$100,000 by September 30,
11 2018, and Defendant has represented to Plaintiff that it expects to pay the remaining \$100,000 on
12 November 15, 2018 from its Fiscal Year 2019 budget. Defendant makes these representations in good
13 faith, with the intention of honoring its agreed-upon obligations to Plaintiff under this Stipulation, and is
14 not aware of any reason it would not be able to meet its obligations hereunder. However nothing in this
15 Stipulation shall be interpreted as, or shall constitute, a commitment or requirement that SEKI obligate
16 or pay funds, or take any other actions in contravention of the Anti-Deficiency Act, 31 U.S.C. § 1341 or
17 any other applicable appropriations law. Defendant has represented to Plaintiff that it expects to pay the
18 remaining \$100,000 from SEKI's Fiscal Year 2019 budget. Defendant makes these representations in
19 good faith, with the intention of honoring its agreed-upon obligations to Plaintiff under this Stipulation,
20 and is not aware of any reason it may not be able to meet its obligations hereunder. However, to the
21 extent that the expenditure or advance of any money or the performance of any obligation of the United
22 States under this Stipulation requires a further appropriation of funds by Congress, the expenditure,
23 advance, or performance shall be contingent upon the appropriation of funds by Congress that are
24 available for this purpose and the apportionment of such funds by the Office of Management and
25 Budget. No breach of this Stipulation shall result and no liability shall accrue to the United States in the
26 event that further funds are not appropriated or apportioned in the Fiscal Year 2019 appropriations and
27 apportionment processes. Plaintiff's sole remedy for any alleged failure to pay any portion of the
28 Settlement Amount shall be as provided below:

1 a. In the event SEKI does not receive appropriated funds sufficient to meet its obligations
2 under this Stipulation for the Fiscal Year 2019 appropriations and apportionment
3 processes, Defendant's counsel shall notify Plaintiff's counsel in writing within fourteen
4 (14) days of determining SEKI has insufficient funds and shall provide Plaintiff with an
5 explanation of the basis for such a determination. Upon this notification, the Parties
6 agree to discuss the current lack of funds and make a good faith, concerted effort to
7 resolve payment of any remaining amount due under this Stipulation through direct
8 negotiations.

9 b. If the Parties are unable to reach an agreement on a mutually acceptable resolution within
10 twenty-one (21) days, or such other time to which they agree upon, then Plaintiff may file
11 a motion to enforce this Stipulation, with Defendant receiving a credit against any award
12 of attorneys' fees and costs for the amount of the Settlement Amount that has been paid.
13 Plaintiff reserves its right to seek reasonable attorneys' fees and costs incurred in
14 bringing a motion to enforce this Stipulation, and Defendant reserves its right to oppose
15 any request for attorneys' fees and costs. The parties agree to bear their own fees and
16 costs if the parties reach a mutually acceptable resolution as provided above in this
17 Paragraph.

18 5. The Court shall retain jurisdiction for the purposes of enforcing and interpreting this
19 Stipulation.

20 6. Satisfaction of the terms of this Stipulation shall represent full and complete satisfaction of
21 all claims arising from the allegations set forth in the Complaint, including the full and complete
22 satisfaction of all claims for costs, attorneys' fees, search, review or processing fees that have been
23 or could be, made in this case in connection with Plaintiff's FOIA and APA claims. In particular,
24 once satisfied, this Stipulation shall resolve all claims for attorneys' fees and costs, as well as
25 search, review and processing fees incurred by both Plaintiff and Defendant in connection with the
26 administrative FOIA process, the District Court litigation process, and any other proceedings
27 involving the claims raised in this action.

28 7. The Parties shall file a Stipulation dismissing all claims in this action with

1 prejudice pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(ii) after the Settlement Amount
2 has been fully paid to Plaintiff. This Stipulation shall be filed within twenty-one (21) days after
3 Plaintiff has received full payment of the Settlement Amount.

4 8. Plaintiff hereby agrees to accept release of the records described in Paragraph 2 of this
5 Stipulation and the payment of the Settlement Amount in full settlement and satisfaction of all claims,
6 and hereby releases and forever discharges Defendant, its successors, the United States of America,
7 and any department, agency, or establishment of the United States, and any current or former officers,
8 employees, agents, successors or assigns of such department, agency or establishment, from any and
9 all claims and causes of action that Plaintiff asserts or could have asserted in this litigation, or which
10 hereafter could be asserted by reason of, or with respect to, or in connection with, or which arise out of,
11 the FOIA Request on which this action is based or any other matter alleged in the Complaint,
12 including but not limited to all past, present or future claims for attorneys' fees or costs, or litigation
13 expenses in connection with the above-captioned litigation. This Stipulation is understood not to
14 preclude or prevent Plaintiff from seeking through FOIA or other means records not sought in the
15 FOIA Request that gave rise to this action.

16 9. This Stipulation shall not constitute an admission of liability or fault on the part of the
17 Defendant or the United States or their agents, servants, or employees, and is entered into by both
18 Parties for the sole purpose of compromising disputed claims and avoiding the expenses and risks of
19 further litigation.

20 10. The Parties agree that this Stipulation shall not be used as evidence or otherwise in any
21 pending or future civil or administrative action against Defendant or the United States, or any
22 agency or instrumentality of the United States, except in the event of an action brought by any party
23 hereto to enforce this Stipulation.

24 11. This Stipulation shall be binding on and inure to the benefit of the Parties hereto and their
25 respective successors and assigns.

26 12. The persons signing this Stipulation warrant and represent that they possess full
27 authority to bind the persons on whose behalf they are signing to the terms of the settlement.

28 13. The provisions of California Civil Code Section 1542 are set forth below:

1 "A general release does not extend to claims which the creditor does not know or
2 suspect to exist in his or her favor at the time of executing the release, which if known
by him or her must have materially affected his or her settlement with the debtor."

3 Plaintiff, having been apprised of the statutory language of Civil Code Section 1542, and fully
4 understanding the same, nevertheless elects to waive the benefits of any and all rights he may have
5 pursuant to the provision of that statute and any similar provision of federal law. Plaintiff
6 understands that, if the facts concerning Plaintiff's claim and the liability of the government for
7 attorneys' fees and/or costs pertaining thereto are found hereinafter to be other than or different
8 from the facts now believed by them to be true, the Stipulation shall be and remain effective
9 notwithstanding such material difference.

10 14. If any withholding or income tax liability is imposed upon Plaintiff or Plaintiff's
11 counsel based on the Settlement Amount or any other term of this Stipulation, Plaintiff shall be
12 solely responsible for paying any such determined liability from any government agency. Nothing
13 in this Stipulation constitutes an agreement by Defendant concerning the characterization of the
14 Settlement Amount for the purposes of the Internal Revenue Code, Title 26 of the United States
15 Code.

16 15. If any provision of this Stipulation shall be invalid, illegal, or unenforceable, the
17 validity, legality, and enforceability of the remaining provision shall not in any way be affected or
18 impaired thereby.

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

23 17. This Stipulation may not be altered, modified, or otherwise changed in any respect
24 except in writing, duly executed by all Parties or their authorized representatives.


25 18. This Stipulation may be executed in counterparts and is effective on the date by which
26 both Parties have executed the Stipulation.

1 IT IS SO STIPULATED.

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3 Date: August 20, 2018

Respectfully submitted,

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5 ALEX G. TSE
United States Attorney

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7 MICHAEL T. PYLE
8 Assistant United States Attorney
9 Attorneys for Defendant

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11 Date: August 20, 2018

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Attorneys for Plaintiff
HIGH SIERRA HIKERS ASSOCIATION

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2 Date: August 20, 2018

Respectfully submitted,

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4 ALEX G. TSE
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6 MICHAEL T. PYLE
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7 Attorneys for Defendant

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10 Date: August 20, 2018

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27 Attorneys for Plaintiff
28 HIGH SIERRA HIKERS ASSOCIATION

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2 Date: August 20, 2018

Respectfully submitted,

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6 MICHAEL T. PYLE
7 Assistant United States Attorney
8 Attorneys for Defendant
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10 Date: August 20, 2018

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PURSUANT TO STIPULATION OF SETTLEMENT, IT IS HEREBY ORDERED:

Dated: August 21, 2018


Hon. JACQUELINE SCOTT CORLEY
United States Magistrate Judge