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Counsel for Plaintiffs

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

PATRICK FEHILY and DAVID T.
MALLEY,

Plaintiffs,

v.

JOSEPH R. BIDEN, JR., et al.,

Defendants,

and

CONSERVATION LAW
FOUNDATION, et al.,

Defendant-Intervenors.

No. 3:22-cv-02120-GC-TJB

**STIPULATION FOR
DISMISSAL WITHOUT
PREJUDICE**

Judge: Hon. Georgette Castner

Pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(ii), all Parties in these proceedings hereby stipulate to the dismissal without prejudice of all Plaintiffs' claims against all Defendants, subject to the conditions set forth below. For purposes of this stipulation, "Plaintiffs" means Patrick Fehily and David T. Malley. Defendants means Joseph R. Biden, Jr., in his official capacity as President of the United States; Gina Raimondo, in her official capacity as Secretary of the United States Department of Commerce; and Deb Haaland, in her official capacity as Secretary of the United States Department of the Interior. Defendant-Intervenors means the Conservation Law Foundation; Natural Resources Defense Council, Inc.; Center for Biological Diversity; and R. Zach Klyver. "The Parties" means Plaintiffs, Defendants, and Defendant-Intervenors.

1. Plaintiffs, or their privies, successors, or assigns shall not file another lawsuit against Defendants or Defendant-Intervenors that arises out of or relates to the events and facts set forth in Plaintiffs' Complaint, filed April 12, 2022 (Dkt. # 1), or their Amended Complaint, filed September 12, 2022 (Dkt. # 34).

2. The Parties intend that this Stipulation shall have the same effect, with respect to any future litigation brought by Plaintiffs, or their privies, successors, or assigns against Defendants or Defendant-Intervenors, that asserts claims arising out of or relating to the events and facts set forth in the Complaint or Amended Complaint, as a dismissal with prejudice. The Stipulation is framed as a conditioned dismissal without prejudice, rather than a dismissal with prejudice, which would operate as a decision on the merits, solely because the Plaintiffs wish to avoid possible collateral consequences unrelated to and distinct from a bar on future litigation (i.e., consequences such as adverse effects on Plaintiffs' ability to pursue future employment).

3. Plaintiffs further agree not to take any steps that are deliberately intended to litigate through a proxy or proxies the claims that arise out of or relate to the events and facts set forth in the Complaint or Amended Complaint.

4. Plaintiffs shall preserve all documents (including paper documents and electronically stored information, including but not limited to information stored on computers, phones, or other electronic devices) within their possession, custody, or control that are responsive

to any discovery request pertaining to Defendant-Intervenors' affirmative defense of collateral estoppel, by providing all such documents to their counsel at Pacific Legal Foundation within 60 days of the date of this Stipulation. Pacific Legal Foundation shall oversee the collection of the documents and preserve them for seven years from the date of this Stipulation.

5. All parties shall bear their own costs and fees.

DATED: March 13, 2023.

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Respectfully submitted,

/s/ Jonathan M. Houghton
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Certificate of Service

I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the United States District Court for the District of New Jersey by using the CM/ECF system.

I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

/s/ Jonathan M. Houghton
JONATHAN M. HOUGHTON

Date: 3/14/2023

"So ordered."

s/Georgette Castner

U.S. District Judge