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

13 STATE OF CALIFORNIA, *et al.*,  
14 Plaintiffs,  
15 v.  
16 JOSEPH R. BIDEN, JR., *et al.*,  
17 Defendants.  
18

No. 4:19-cv-00872-HSG  
No. 4:19-cv-00892-HSG  
No. 4:20-cv-01494-HSG  
No. 4:20-cv-01563-HSG

19 **STIPULATION TO WITHDRAW**  
20 **PENDING CROSS-MOTIONS FOR**  
21 **PARTIAL SUMMARY JUDGMENT**  
22 **AND REQUEST TO REFER CASES**  
23 **TO A SETTLEMENT**  
24 **CONFERENCE, AND STAY**  
25 **FURTHER PROCEEDINGS**  
26 **PENDING SETTLEMENT**  
27 **DISCUSSIONS**  
28

21 SIERRA CLUB, *et al.*,  
22 Plaintiffs,  
23 v.  
24 JOSEPH R. BIDEN, JR., *et al.*,  
25 Defendants.  
26  
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Pursuant to Local Rules 6-2, 7-12, 16-8 and Alternative Dispute Resolution (ADR) Local Rule 7-2, the Plaintiffs and Defendants in the above-captioned cases stipulate and agree as follows:

1. On June 11, 2021, Defendants notified the Court and parties that the Department of Defense (DoD) and Department of Homeland Security (DHS) completed their plans for the redirection of funds concerning the southern border wall, as directed by Section 2 of Proclamation No. 10142, 86 Fed. Reg. 7225, 7226 (Jan. 20, 2021). *See* ECF Nos. 295 in *California I* (19-CV-872) & 93 in *California II* (20-CV-1563); ECF Nos. 310 in *Sierra Club I* (19-CV-892) & 49 in *Sierra Club II* (20-CV-1494).

2. The DoD plan explains that DoD has cancelled all border wall projects undertaken pursuant to 10 U.S.C. § 284 and 10 U.S.C. § 2808. Additionally, DoD announced it would restore funding to 66 domestic and international military construction projects using \$2.2 billion of available unobligated military construction appropriations.

3. The DHS plan states that DHS will not undertake any new barrier construction work on the former § 284 and § 2808 projects, and will fund remediation work at the § 284 and § 2808 projects sites that are turned over to DHS with its available Fiscal Year 2021 border wall appropriation. The DHS plan also states that DHS will end border wall construction funded by the Treasury Forfeiture Fund and return any excess money to the Fund. The DHS plan states generally that DHS will undertake remediation at the former DoD project sites and lists several categories of potential remediation projects that DHS may perform. Defendants also have identified certain “close out activities” that DoD contractors will perform at some of the project sites as part of the demobilization process. Beyond that, DHS’s plan does not further identify the specific type of remediation that will be performed at the project sites, nor the specific amount of funding that will be used for remediation.

4. In light of these changed circumstances, the parties agree to withdraw, without prejudice to refile at a later date, their respective cross-motions for partial summary judgment in *California II* and *Sierra Club II* addressing the funding and construction of border wall projects undertaken in fiscal year 2020 pursuant to § 284. *See* ECF Nos. 55 & 62 in *California II*; ECF

Nos. 23 & 30 in *Sierra Club II* to allow the parties to discuss possible settlement of this matter as discussed below.

5. The parties also agree to stay further proceedings in these cases and request that the Court refer the cases to a magistrate judge for a settlement conference pursuant to Local Rule 16-8(a) and ADR Local Rule 7-2. While the parties have already initiated discussions to explore the possibility of settlement, the parties believe that a magistrate judge will assist in facilitating these discussions without burdening the resources of this Court. The parties would be amenable to proceeding before any of the following Magistrate Judges, pending their availability: Judge Beeler or Judge Ryu.

6. While the parties participate in a settlement conference, good cause exists to maintain the current stay. A stay would further the interest of judicial economy by allowing the parties to focus their efforts on discussing settlement, free from any competing litigation obligations in these cases and without burdening the Court with potentially unnecessary motions and disputes. *See Landis v. N. Am. Co.*, 299 U.S. 248, 254 (1936) (“[T]he power to stay proceedings is incidental to the power inherent in every court to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants.”).

7. The parties agree to submit a joint status report within 90 days addressing further proceedings in these cases.

8. Approving this stipulation would not impact any other deadlines in these cases.

9. Pursuant to Local Rule 6-2(a), undersigned counsel for Defendants has submitted a declaration and proposed order in support of this stipulation.

DATE: September 13, 2021

Respectfully submitted,

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**DECLARATION**

I declare, under penalty of perjury, that the factual assertions contained in this stipulation are true and correct to the best of my knowledge.

/s/ Andrew I. Warden

ANDREW I. WARDEN

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