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Attorneys for Plaintiffs

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA
PRESCOTT DIVISION

CENTER FOR BIOLOGICAL
DIVERSITY; SIERRA CLUB; and
GRAND CANYON WILDLANDS
COUNCIL,

Plaintiffs,

vs.

UNITED STATES FOREST SERVICE,

Defendant.

Case No: 3:12-cv-08176-SMM

**UNOPPOSED MOTION FOR
LEAVE TO FILE PLAINTIFFS'
RESPONSE TO THE FOREST
SERVICE'S MOTION TO DISMISS
IN EXCESS OF THE PAGE LIMIT**

COME NOW Plaintiffs Center for Biological Diversity, Sierra Club and Grand
Canyon Wildlands Council (collectively "Plaintiffs"), by and through undersigned

1 counsel, and file this Unopposed Motion for Leave to File Plaintiffs' Response to the
2 Forest Service's Motion to Dismiss in Excess of the Page Limit. Plaintiffs respectfully
3 request that this Court grant Plaintiffs' request to exceed the page limits called for in the
4 Local Rules for its Response to Defendant's Motion to Dismiss. Defendant United
5 States Forest Service ("Forest Service") does not oppose Plaintiffs' request for up to an
6 additional ten pages for their Response.¹ Plaintiffs' Response, which is lodged with the
7 Court simultaneously with this Motion, is 27 pages.

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10 On December 14, 2012, the Forest Service filed a Motion to Dismiss (Doc. 46),
11 pursuant to Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6). Plaintiffs sought
12 and received, on January 16, 2013, a 20-day extension to respond to the Forest Service's
13 motion (Doc. 53). As Plaintiffs indicated in their Motion for Extension of Time (Doc.
14 50), and as demonstrated by the Plaintiffs' lodged Response, the Forest Service's
15 Motion to Dismiss raises numerous and significant legal and factual issues.

16
17 The Forest Service provides two bases for seeking dismissal of Plaintiffs' suit.
18 First, under Rule 12(b)(1), the Forest Service argues that Plaintiffs lack standing to
19 bring suit. To adequately respond to this assertion, Plaintiffs were required to provide
20 details of their members' interests and injuries, explain how they are caused by
21 Defendant's actions, and how this Court can provide redress. In particular, the Forest
22 Service has raised issues of administrative law regarding the potential remedies in this
23 case, which the Plaintiffs were required to address in the context of redressability.
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27 ¹ Through their conferral on this motion, Plaintiffs and Defendant have also agreed that
28 Plaintiffs would not oppose a request by Defendant for up to seven additional pages for
its reply brief, should Defendant seek such an extension.

1 Because this is a jurisdictional motion made under Rule 12(b)(1), Plaintiffs have also
2 provided evidence in the form of declarations to support the contentions in their
3 Response.
4

5 The Forest Service also argues, under Rule 12(b)(6), that Plaintiffs have failed to
6 allege facts sufficient to state a claim under the Resource Conservation and Recovery
7 Act (“RCRA”) against the Forest Service. To adequately respond to the Forest
8 Service’s arguments regarding its lack of authority to address the harm to wildlife from
9 spent lead ammunition in the Kaibab National Forest, Plaintiffs were required to set out
10 the numerous statutory and regulatory provisions that provide the legal backdrop in
11 support of their claims. Additionally, Plaintiffs were required to address the significant
12 body of case law regarding RCRA “imminent and substantial endangerment” claims,
13 which Plaintiffs submit is highly relevant to the questions before the Court. Plaintiffs’
14 Response therefore includes substantial case law analysis. Finally, Plaintiffs are
15 unaware of the application of legal principles illuminated in the body of RCRA case law
16 to the particular factual situation presented by this case—the disposal of spent lead
17 ammunition on federal property that causes an imminent and substantial endangerment.
18 Accordingly, this case raises issues of first impression under RCRA.
19

20 For these reasons, Plaintiffs respectfully request this Court grant the Plaintiffs
21 leave to exceed the page limit for their Response to Defendant’s Motion to Dismiss. A
22 proposed order is attached to this filing, and immediately following the filing of this
23 unopposed motion, Plaintiffs will submit, via electronic mail, the proposed order to
24 chambers. Plaintiffs’ proposed Response and attachments will be lodged
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1 simultaneously with the filing of this Motion.

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3 Respectfully submitted,

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5 Dated: February 5, 2013

/s/ Kevin Cassidy

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CERTIFICATE OF SERVICE

I hereby certify that on February 5, 2013, I electronically transmitted the attached document to the Clerk's Office using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing, which will send notification of such filing to the following:

Dustin Maghamfar, United States Department of Justice, Attorney for Defendant United States Forest Service.

James Odenkirk, Attorney for the State of Arizona.

C.D. Michel

Scott M. Franklin, Attorneys for National Rifle Association.

Douglas S. Burdin

Anna M. Seidman, Attorneys for Safari Club International.

James D. Norman

Jay L. Shapiro, Attorneys for National Shooting Sports Foundation.

Adam Keats

Allison LaPlante, Attorney for Plaintiffs.

/s/ Kevin Cassidy

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA
PRESCOTT DIVISION

Center for Biological Diversity, et al.,
Plaintiffs,
vs.
United States Forest Service,
Defendant.

No. CV-12-8176-PCT-SMM

[PROPOSED] ORDER

Before this Court is Plaintiffs' Unopposed Motion for Leave to File Plaintiffs' Response to the Forest Service's Motion to Dismiss in Excess of the Page Limit. (Doc. 61.) Plaintiffs request up to an additional ten pages for their Response, and assert that Defendant has no objection (Doc. 61 at 2.)

Accordingly, having considered the Motion and good cause appearing,

IT IS HEREBY ORDERED that the Motion for Leave to Exceed the Page Limit for Plaintiffs' Response to the Forest Service's Motion to Dismiss (Doc. 61) is **GRANTED**.

DATED this ___ day of February, 2013.