

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

ANIMAL WELFARE INSTITUTE
and FARM SANCTUARY

Plaintiffs

18-CV-6626

vs.

UNITED STATES DEPARTMENT
OF AGRICULTURE and FOOD SAFETY
AND INSPECTION SERVICE

Defendants

STIPULATION FOR COMPROMISE SETTLEMENT AND RELEASE

It is hereby stipulated by and between the undersigned Plaintiffs, Animal Welfare Institute and Farm Sanctuary ("Plaintiffs"), and the Defendants, United States Department of Agriculture ("USDA") and the Food Safety and Inspection Service ("FSIS"), including the agents, servants, and employees of USDA and FSIS, (hereinafter the "Government"), collectively, "the parties," by and through their respective attorneys, as follows:

1. The parties to this Stipulation for Compromise Settlement and Release (hereinafter "Stipulation") do hereby agree to settle and compromise each and every claim of any kind, whether known or unknown, including claims arising directly or indirectly from the acts or omissions that gave rise to the above-captioned action under the terms and conditions set forth in this Stipulation.

2. This Stipulation is not, is in no way intended to be, and should not be, construed as an admission of liability or fault on the part of the Government, its agents, servants, or employees, and it is specifically denied that they are liable to Plaintiffs. This

settlement is entered into by all parties for the purpose of compromising disputed claims and avoiding the expenses and risks of further litigation.

3. In consideration for Plaintiffs' agreement to accept the terms and conditions of this Stipulation, the Government agrees to the following:

- a. FSIS has made a determination that the specific records responsive to Plaintiff's FOIA Request 18-328 at issue in this litigation meet the requirements for publication in an electronic format pursuant to 5 U.S.C. §§ 552(a)(2)(D). As such, FSIS has already posted these records to the FSIS public reading room.
- b. FSIS will begin proactively posting online Noncompliance Records and Memoranda of Interview prepared pursuant to the Humane Methods of Slaughter Act and the Poultry Products Inspection Act on a quarterly basis, subject to redactions to protect confidential business information and personal privacy interests. This quarterly online posting will continue for a period of at least three years from the date of this agreement. FSIS will post a set of instructions on its website informing the public about how to access Noncompliance Records and Memoranda of Interview prepared pursuant to the Humane Methods of Slaughter Act and the Poultry Products Inspection Act within the agency's online postings.
- c. The proactive posting of Noncompliance Records and Memoranda of Interview described in section 3(b) above is being undertaken as a matter of agency discretion to resolve this lawsuit and not pursuant to any

FOIA requirement. FSIS will publish such records consistent with its existing “FSIS Establishment Specific Data Release Strategic Plan” (the “Plan”). The process for posting new datasets includes a 6-week public comment period on the sample data set and data dictionary. Pursuant to the Plan, FSIS will post the first data set within 11 weeks of the execution of this Stipulation. Going forward, these data will be posted quarterly, with each posting being made one quarter in arrears. The data will be posted to the FSIS Data Sets and Visualizations webpage. Each dataset posted will be available on this webpage for a period of at least five (5) years.

- d. The Government agrees to pay Plaintiffs attorneys’ fees and other litigation costs reasonably incurred in this matter (the “Settlement Payment”) in the amount of \$30,000. The Settlement Payment shall be made by an electronic funds transfer as specified in instructions provided to Government counsel by Plaintiffs in writing. The Government will effectuate the payment promptly after the receipt of such instructions by counsel, making their best efforts to effectuate payment within 60 days of receipt of such instructions.

4. Upon receipt of the Settlement Payment, Plaintiffs and Plaintiffs’ counsel agree and consent to Defendants’ counsel filing a Stipulation of Dismissal signed by all parties with the Court, and such filing shall constitute a request for the Court to enter an Order incorporating this Agreement and dismissing this action with prejudice pursuant to Federal Rule of Civil Procedure 41(a)(2).

5. Upon entry of the Stipulation of Dismissal, this case shall be dismissed except that the Court will retain jurisdiction for three years solely to entertain any motions to enforce the Stipulation for good cause shown. In the event of any dispute between the parties within this three-year period with respect to any of the items set forth above, the parties claiming nonperformance shall file written notice to counsel for the other party of the claimed nonperformance. Following the notice, the parties will engage in good faith discussions in an effort to resolve the dispute. If the parties are unable to do so within 30 days an appropriate motion may be filed seeking enforcement of this Stipulation. After the Court's three-year retention of jurisdiction to enforce the terms of this Stipulation elapses, nothing in this Stipulation is intended to, or should be construed to, limit Plaintiff's ability to file a new lawsuit under the Freedom of Information Act regarding the information at issue in this case, namely Noncompliance Records and Memoranda of Interview prepared pursuant to the Humane Methods of Slaughter Act and the Poultry Products Inspection Act.

6. Plaintiffs hereby accept the terms and conditions of this Stipulation in full settlement, satisfaction, and release of any and all claims, demands, rights, and causes of action of any kind, whether known or unknown, past or present, legal or equitable, arising out of, or related to, the subject action, including all claims for attorneys' fees and other litigation costs.

7. Plaintiffs, on behalf of themselves, do hereby, for good and valuable consideration, the receipt of which is hereby acknowledged, release and forever discharge the Government, and its respective officials, agencies, representatives, officers, employees, agents, assigns and attorneys, from of any and all claims, demands, rights, and causes of action of any kind, whether known or unknown, past or present, legal or equitable, arising

out of, or related to, the subject action. During the Court's three-year retention of jurisdiction to enforce the terms of this Stipulation, Plaintiffs agree not to file Freedom of Information Act requests regarding the information at issue in this case, namely Noncompliance Records and Memoranda of Interview prepared pursuant to the Humane Methods of Slaughter Act and the Poultry Products Inspection Act.

8. The parties must agree in writing to the terms, conditions, and requirements of this Stipulation. The parties stipulate and agree that the Stipulation and the compromise settlement are null and void in the event the parties cannot agree on the terms, conditions, and requirements of this Stipulation. The terms, conditions, and requirements of this Stipulation are not severable and the failure to agree, fulfill, or comply with any term, condition, or requirement renders the entire Stipulation and the compromise settlement null and void.

9. This Stipulation constitutes the complete understanding of the parties. Plaintiffs acknowledge that they have not relied on any representations, promises, or agreements of any kind made to them in connection with the decision to accept this Stipulation, except for those set forth in this Stipulation. This Stipulation may not be modified, altered, or changed except upon express written consent of the parties. The terms, conditions, and requirements of this Stipulation are not severable and the failure to fulfill or comply with any terms, condition, or requirements renders the Stipulation null and void.

10. The parties agree that this Stipulation, including all the terms and conditions of this compromise settlement and any additional agreements relating thereto, may be made public in their entirety, and Plaintiff expressly consents to such release and disclosure.

11. Plaintiffs represent that they have read, reviewed and understand this

Stipulation, and that they are fully authorized to enter into the terms and conditions of this agreement and that they agree to be bound thereby. Plaintiffs further acknowledge that they enter into this Stipulation freely and voluntarily. Plaintiffs further acknowledge that they have had sufficient opportunity to discuss this Stipulation with their attorneys, who have explained the documents to Plaintiffs, and that Plaintiffs understand all of the terms and conditions of this Stipulation.

12. It is contemplated that this Stipulation may be executed in several counterparts, with a separate signature page for each party. All such counterparts and signature pages, together, shall be deemed to be one document.

WHEREAS, the parties accept the terms of this Stipulation for Compromise Settlement and Release as of the dates written below:

Executed this _____ day of _____, 2021.

By: **MICHAEL CERRONE** Digitally signed by MICHAEL
CERRONE
Date: 2021.11.19 10:16:58 -05'00'

Michael S. Cerrone
Assistant United States Attorney
Attorney for Defendants

Executed this 10th day of November, 2021.

By: /s/ William N. Lawton
William N. Lawton, Esq.
Attorney for Plaintiffs

Executed this 10th day of November, 2021.

By: Cathy Liss
Cathy Liss
On behalf of Plaintiff Animal Welfare Institute

Executed this 11 day of November, 2021.

By: Emily Von Klemperer
Emily Von Klemperer
On behalf of Plaintiff Farm Sanctuary

Executed this 19th day of November, 2021.

By: Dexter Johnson
Digitally signed by Dexter Johnson
Date: 2021.11.19 09:33:39 -05'00'

Dexter Johnson
Director, Freedom of Information Staff
Office of Public Affairs and Consumer Education
Food Safety and Inspection Service, USDA
Washington, DC 20250
On behalf of Defendant Food Safety and Inspection Service