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 8 DEPARTMENT OF AGRICULTURE

9 UNITED STATES DISTRICT COURT
 10 NORTHERN DISTRICT OF CALIFORNIA
 11 SAN FRANCISCO DIVISION

13	FRANK ZEIDEN,)	C 04-5278 WHA
14	Plaintiff,)	
15	v.)	STIPULATION AND PROPOSED
16	UNITED STATES DEPARTMENT OF)	ORDER APPROVING COMPROMISE
17	AGRICULTURE,)	SETTLEMENT
18	Defendant.)	

19 IT IS HEREBY STIPULATED by and between Plaintiff Frank Zeiden ("Plaintiff"), and
 20 Defendant United States Department of Agriculture, as follows:

21 1. The parties hereby agree to settle and compromise the above-entitled action under
 22 the terms and conditions set forth herein, which shall be in full settlement and satisfaction of any
 23 and all claims, demands, rights, and causes of action of whatsoever kind and nature, arising from
 24 and by reason of any and all known and unknown, foreseen and unforeseen, bodily and personal
 25 injuries and the consequences thereof, resulting, and to result, from the same subject matter that
 26 gave rise to the above-captioned lawsuit, for which Plaintiff Frank Zeiden or his heirs, executors,
 27 administrators, or assigns, and each of them, now have or may hereafter acquire against the
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STIPULATION AND ~~PROPOSED~~ ORDER APPROVING COMPROMISE SETTLEMENT
 C 04-5278 WHA

1 United States of America, its agencies, agents, servants, and employees.

2 2. Plaintiff will dismiss this action with prejudice.

3 3. Both parties agree to bear their own costs and fees.

4 4. The disqualification of plaintiff's business from the Food Stamp Program remains
5 in place and is not affected by this agreement.

6 5. Defendant agrees not to make an affirmative report to another agency of plaintiff's
7 disqualification from the Food Stamp Program, unless required by law including but not limited
8 to the Freedom of Information Act or in the event of an unanticipated need to defend. Defendant
9 will notify plaintiff a reasonable amount of time before such disclosure.

10 6. Regarding the affirmative reports described in the preceding paragraph, the parties
11 negotiated the terms of this agreement on October 19, 2005. As of that date, Defendant believed
12 that no affirmative reports of Mr. Zeiden's disqualification, that would fall within this agreement
13 have been made to date.

14 7. If plaintiff sells or otherwise changes legal title of the business, defendant agrees
15 that any resulting civil penalty shall be reduced to 2/3 of its applicable level.

16 8. Mr. Zeiden acknowledges that the USDA gathered information which suggests
17 that activity in his business did not comply with applicable regulations. However, Mr. Zeiden
18 acknowledges no personal wrongdoing.

19 9. The parties agree that should any dispute arise with respect to the implementation
20 of the terms of this Agreement, Plaintiff shall not seek to rescind the Agreement and pursue its
21 original causes of action. Plaintiff's sole remedy in such a dispute is an action to enforce the
22 Agreement in district court. The parties agree that the district court will retain jurisdiction over
23 this matter* for the purposes of resolving any dispute alleging a breach of this Agreement.

24 10. Plaintiff hereby releases and forever discharges the United States and any and all
25 of its past and present officials, employees, agencies, agents, attorneys, their successors and
26 assigns, from any and all obligations, damages, liabilities, actions, causes of action, claims and
27 demands of any kind and nature whatsoever, whether suspected or unsuspected, at law or in
28 equity, known or unknown, arising out of the allegations set forth in the pleadings in this action.

* until November 17, 2006,

1 11. The provisions of California Civil Code Section 1542 are set forth below:

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

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

12 12. This instrument shall constitute the entire Agreement between the parties, and it is
13 expressly understood and agreed that the Agreement has been freely and voluntarily entered into
14 by the parties with the advice of counsel, who have explained the legal effect of this Agreement.
15 The parties further acknowledge that no warranties or representations have been
16 made on any subject other than as set forth in this Agreement. This Agreement may not be

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1 altered, modified or otherwise changed in any respect except by writing, duly executed by all of
2 the parties or their authorized representatives.

3
4 Dated: November 9, 2005 
5 FRANK ZEIDEN
6 Plaintiff

7 Dated: November 2, 2005 FINLEY & DEATON
8 
9 STEVEN FINLEY
Attorneys for Plaintiff FRANK ZEIDEN

10 Dated: November __, 2005
11 _____ U.S. DEPARTMENT OF AGRICULTURE
12 Defendant

13 Dated: November __, 2005 KEVIN V. RYAN
14 United States Attorney

15 JONATHAN U. LEE
16 Assistant United States Attorney
17 Attorneys for Defendant USA

~~PROPOSED~~ ORDER

20 APPROVED AND SO ORDERED.

21 Dated: November 17, 2005
22 
23 THE HONORABLE WILLIAM H. ALSUP
24 United States District Court Judge

25 The Clerk is directed to close the case
26 file.

1 altered, modified or otherwise changed in any respect except by writing, duly executed by all of
2 the parties or their authorized representatives.

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Dated: November __, 2005

FRANK ZEIDEN
Plaintiff

Dated: November __, 2005

FINLEY & DEATON

STEVEN FINLEY
Attorneys for Plaintiff FRANK ZEIDEN


Dated: November 4, 2005



U.S. DEPARTMENT OF AGRICULTURE
Defendant

Dated: November 14, 2005

KEVIN V. RYAN
United States Attorney



JONATHAN U. LEE
Assistant United States Attorney
Attorneys for Defendant USA

~~PROPOSED~~ ORDER

APPROVED AND SO ORDERED.

Dated: _____

THE HONORABLE WILLIAM H. ALSUP
United States District Court Judge