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**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

**CALIFORNIANS FOR HUMANE
FARMS**

1545A Powell Street
San Francisco, CA 94133

Plaintiff,

v.

ED SCHAFFER, Secretary
United States Department of Agriculture
1400 Independence Avenue, S.W.
Washington, DC 20250,

Defendant.

Civ. No. 08-03843 (MHP)

Administrative Procedure Act Case

**Joint Stipulation and Settlement
Agreement Providing for Dismissal
of Claims**

**JOINT STIPULATION AND SETTLEMENT AGREEMENT PROVIDING
FOR DISMISSAL OF CLAIMS**

On August 12, 2008, Plaintiff filed a lawsuit under the Administrative Procedure Act (“APA”) challenging the decision of the Secretary of the United States Department of Agriculture, Ed Schafer (the “Secretary”) to approve the American Egg Board’s revised 2008 annual budget and authorize officials of the Egg Board to disburse funds pursuant to that budget for certain advertising and promotional purposes alleged by Plaintiff to be unlawful.

The United States Department of Agriculture (“USDA”) denies Plaintiff’s allegations and contends that the expenditures and ads at issue in this case are lawful.

On August 18, 2008 Plaintiff filed a Motion for a Temporary Restraining Order and/or Preliminary Injunction seeking to prevent any and all expenditure of

1 the funds at issue prior to the November 4, 2008 election. After considering the
2 parties' respective briefs and oral argument, the Court entered a preliminary
3 injunction on September 29, 2008 prohibiting the USDA, the American Egg Board,
4 and their employees and agents from among other things, authorizing expenditures
5 prior to November 5, 2008 to support activities specifically or substantially targeted
6 at California, and/or activities that may affect voter opinion on the ultimate
7 disposition of California Proposition 2. (See Order filed on September 29, 2008 for a
8 complete description of the injunction and the activities enjoined).

9 The parties have since reached a subsequent agreement that will, by its
10 terms and execution, allow for the prompt dismissal after November 5, 2008 of all
11 claims pending before the Court. Specifically, it is hereby stipulated and agreed
12 between the parties, after full and open discussion, that the above-captioned action
13 be settled and compromised on the following terms:

14 1. The Secretary shall comply with the preliminary injunction entered in
15 the Court's Order filed on September 29, 2008, and shall not seek any appellate
16 review of the preliminary injunction or Order. The parties each agree to bear their
17 own costs and attorneys' fees incurred in preparing for or litigating the above-
18 captioned action, and that neither party will request such costs or attorneys' fees
19 from the Court.

20 2. In consideration for this Joint Stipulation and Agreement and upon
21 the Secretary's compliance with the terms of paragraph 1, Plaintiff agrees that its
22 counsel will execute and e-file a Stipulation of Dismissal and Proposed Order
23 requesting that the entire above-captioned action be dismissed with prejudice
24 consistent with the terms of this Joint Stipulation and Agreement within two (2)
25 business days of November 5, 2008.

26 3. The Defendant's time for filing a responsive pleading in this action is
27 hereby extended 60 days.
28

1 4. The parties acknowledge that neither this Joint Stipulation and
2 Agreement, nor anything herein constitutes an admission of liability or fault on the
3 part of the Secretary, the USDA, or any of their past and present officials, agents,
4 employees, attorneys, or insurers. The parties enter this Joint Stipulation and
5 Agreement for the purpose of compromising disputed claims and avoiding further
6 litigation.

7 5. The Secretary represents and agrees that he controls the activities and
8 expenditures of the American Egg Board that are at issue in this case, and that he
9 will require the Egg Board to comply with the terms of this Joint Stipulation and
10 Agreement.

11 6. Counsel for Plaintiff has been authorized by all parties to execute and
12 file this Joint Stipulation and Agreement on behalf of all parties.

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14 Dated: October 8, 2008

Respectfully submitted,

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17 */s/ Julie A. Arbuckle*

/s/ Peter A. Brandt

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19 JOSEPH P. RUSSONIELLO,
20 United States Attorney (CABN 44332),
21 JOANN M. SWANSON,
22 Chief, Civil Division (CABN 88143)
23 JULIE A. ARBUCKLE,
24 Assistant United States Attorney
(CABN 193425)
25 450 Golden Gate Avenue, Box 36055
26 San Francisco, California 94102
Telephone: (415) 436-7102
Facsimile: (415) 436-6748
Email: julie.arbuckle@usdoj.gov

PETER A. BRANDT
(CABN 241287)
JONATHAN R. LOVVORN
(CABN 187393)
2100 L Street, NW
Washington, DC 20037
Telephone: (240) 388-5023
Facsimile: (202) 778-6132
Email: pbrandt@hsus.org

*Attorneys for Plaintiff Californians for
Humane Farms*

27 *Attorneys for Defendant Ed Schafer,*
28 *Secretary, United States Department of*
Agriculture

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3 **PURSUANT TO THE ABOVE STIPULATION AND SETTLEMENT**
4 **AGREEMENT, APPROVED AND SO ORDERED:**
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6 Dated: October 9, 2008:
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