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13 Attorney for Plaintiff

14 UNITED STATES DISTRICT COURT  
15 NORTHERN DISTRICT OF CALIFORNIA  
16 SAN FRANCISCO DIVISION

17 JOSE ESPARZA,  
18 Plaintiff,

19 v.

20 TOM VILSACK, Secretary of Agriculture  
for the United States Department of  
21 Agriculture,

22 Defendant.

Case No. 09-0449 JSW

**STIPULATION AND AGREEMENT OF  
COMPROMISE AND [PROPOSED]  
ORDER**

23  
24 IT IS HEREBY STIPULATED AND AGREED by and between plaintiff Jose Esparza  
25 (“Plaintiff”) and defendant Tom Vilsack (hereinafter the “Federal Defendant”) as follows:

26 1. The parties do hereby agree to settle, compromise and dismiss the above-captioned  
27 action (“This Action”) under the terms and conditions set forth herein.

1           2.       The Federal Defendant agrees to pay the sum of Forty Three Thousand Five Hundred  
2 dollars and zero cents (\$43,500) to Plaintiff under the terms and conditions set forth herein. The  
3 Plaintiff and his heirs, executors, administrators, assigns and attorneys hereby agree to accept such  
4 sum in full and final settlement and satisfaction of the claims raised in This Action under the terms  
5 and conditions set forth herein.

6           3.       It is also agreed, by and among the parties, that the settlement sum set forth in  
7 Paragraph 2 represents the entire amount payable to plaintiff and his heirs, executors, administrators,  
8 assigns and attorneys.

9           4.       It is also agreed, by and among the parties, that the settlement sum set forth in  
10 Paragraph 2, shall be made payable to Plaintiff's counsel, Cary Kletter, Esq., and Jose Esparza. The  
11 check will be mailed to Plaintiff's attorney at the following address: Cary Kletter, Esq., Kletter Law  
12 Firm, 22 Battery Street, Suite 202, San Francisco, CA 94111.

13           5.       It is also agreed by and among the parties that neither Plaintiff nor any of his  
14 attorneys may make any additional claims for attorney's fees or other costs against the Federal  
15 Defendant, the United States Department of Agriculture, the United States, their agents, servants, or  
16 employees for any claims related to This Action.

17           6.       In consideration of the payment referred to in Paragraph 2, Plaintiff agrees that,  
18 immediately upon execution of this agreement, he will execute a Stipulation of Dismissal, which  
19 stipulation shall dismiss, with prejudice, all claims asserted in This Action or any claims that could  
20 have been asserted in This Action, which is captioned *Jose Esparza v. Tom Vilsack, Secretary of*  
21 *Agriculture for the United States Department of Agriculture*, C 09-0449 JSW. The fully executed  
22 Stipulation of Dismissal will be held by counsel for the Federal Defendant and will be filed with the  
23 Court upon receipt by Plaintiff's counsel of the settlement sum described in Paragraph 2.

24           7.       In consideration of the payment of the settlement sum set forth in Paragraph 2,  
25 Plaintiff hereby releases and forever discharges the Federal Defendant, the United States Department  
26 of Agriculture, and any and all of its past and present officials, directors, employees, agents,  
27 attorneys, successors, and assigns from any and all obligations, damages, liabilities, causes of action,  
28 claims, and demands of any kind and nature whatsoever, whether suspected or unsuspected, arising

1 in law or equity, arising from or by reason of any and all known, unknown, foreseen, or unforeseen  
2 injuries, and the consequences thereof, resulting from the facts, circumstances and subject matter  
3 that gave rise to This Action, including any violation of Title VII of the Civil Rights Act of 1964,  
4 Rehabilitation Act of 1973 claims, Family and Medical Leave Act of 1993, the Age Discrimination  
5 in Employment Act of 1967; all EEO Complaints, any other claim relating to plaintiff's employment  
6 by the Federal Defendant, or any other claim Plaintiff could have asserted regarding the events of  
7 this lawsuit.

8           8. Plaintiff further agrees that he may not and will not use or rely on the incidents and  
9 actions underlying the Complaint, First Amended Complaint, or the EEO Complaint(s) underlying  
10 This Action to prove any other claims against the Federal Defendant, the United States Department  
11 of Agriculture, the United States, or its agencies and employees, in any other administrative  
12 proceeding, state court action or federal court action.

13           9. The provisions of California Civil Code Section 1542 are set forth below:

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

17           The Plaintiff having been apprised of the statutory language of Civil Code Section 1542 by  
18 his attorneys, and fully understanding the same, nevertheless elects to waive the benefits of any and  
19 all rights he may have pursuant to the provision of that statute and any similar provision of federal  
20 law. The Plaintiff understands that if the facts concerning the Plaintiff's alleged injury and the  
21 liability of the Federal Defendant, or the Federal Defendant's agents, servants, or employees, for  
22 damages pertaining thereto, are found hereafter to be other than or different from the facts now  
23 believed by them to be true, this agreement shall be and remain effective notwithstanding such  
24 material difference.

25           10. The parties acknowledge that neither this agreement nor anything contained herein  
26 shall constitute an admission of liability or fault on the part of the Federal Defendant, the United  
27 States Department of Agriculture, the United States of America, or their agents, servants, or  
28 employees. This agreement is entered into by the parties for the purpose of compromising disputed

1 claims, and avoiding the expenses and risks of litigation.

2  
3 11. This agreement may be pled as a full and complete defense to any action or other  
4 proceeding, including any local, state or federal administrative action, involving any person or party  
5 which arises out of the claims released and discharged by this agreement.

6 12. The parties agree that the District Court shall retain jurisdiction over this matter for  
7 the purposes of resolving any dispute alleging a breach of this agreement.

8 13. If any withholding or income tax liability is imposed upon plaintiff based on payment  
9 of the settlement sum as set forth herein, plaintiff shall be solely responsible for paying any such  
10 liability. Plaintiff, and his attorney, will indemnify and hold harmless the Federal Defendant from  
11 any liability the Federal Defendant may incur from any government agency arising out of any failure  
12 by plaintiff to pay any tax liability he might be responsible for from any government agency.

13 14. Plaintiff and his attorneys have been informed that payment of the settlement amount  
14 may take 90 days or more to process. Undersigned counsel for the Federal Defendant will submit a  
15 request for the payment referred to in Paragraph 2 within one week of filing by the District Court of  
16 Stipulation and Agreement of Compromise and Order in this Action.

17 15. All parties acknowledge that they have been represented by and have relied upon  
18 independent counsel in negotiating, preparing and entering into this agreement and that they have  
19 had the contents of this agreement fully explained by counsel and that they are fully aware of and  
20 understand all of the terms of the agreement and the legal consequences thereof. It is further  
21 acknowledged that the parties have mutually participated in the drafting of this agreement and it is  
22 agreed that no provision herein shall be construed against any party hereto by virtue of the drafting  
23 of this agreement.

24 16. Plaintiff further acknowledges that he has been given a reasonable time within which  
25 to review and consider this agreement and represents that he is represented by counsel in this action,  
26 has conferred with his attorney prior to executing this agreement, has examined and understands the  
27 provisions of 29 U.S.C. § 626(f)(1)(A-E), and that the requirements of those provisions are fully met  
28 and satisfied in connection with this agreement.

1 17. If any provision of this agreement shall be held invalid, illegal, or unenforceable, the  
2 validity, legality, or enforceability of the remaining provisions shall not in any way be affected or  
3 impaired thereby.

4 18. This instrument shall constitute the entire agreement between the parties, and it is  
5 expressly understood and agreed that this agreement has been freely and voluntarily entered into by  
6 the parties hereto with the advice of counsel, who have explained the legal effect of this agreement.  
7 The parties further acknowledge that no warranties or representations have been made on any subject  
8 other than as set forth in this agreement.

9 19. This agreement may not be altered, modified or otherwise changed in any respect  
10 except in writing, duly executed by all of the parties or their authorized representatives.

11 Dated: October 2, 2009



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14 JOSE ESPARZA  
Plaintiff

15 Dated: October 2, 2009

16 KLETTER LAW FIRM



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18 CARY S. KLETTER  
Attorney for Plaintiff

19 Dated: October 2, 2009

20 JOSEPH P. RUSSONIELLO  
United States Attorney



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22 JENNIFER S. WANG  
Assistant United States Attorney  
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~~PROPOSED~~ ORDER

PURSUANT TO THE ABOVE STIPULATION AND AGREEMENT, APPROVED  
AND SO ORDERED.

Dated: October 6, 2009

  
HON. JEFFREY S. WHITE  
UNITED STATES DISTRICT COURT JUDGE