

1 MELINDA HAAG (SBN 132612)
 United States Attorney
 2 JOANN M. SWANSON (SBN 88143)
 Chief, Civil Division
 3 ANN MARIE REDING (SBN 226864)
 Assistant United States Attorney

4 450 Golden Gate Avenue, Box 36055
 5 San Francisco, CA 94102-3495
 Telephone: 415 436-6813
 6 Fax: 415 436-6748
 Email: annie.reding@usdoj.gov

7 Attorneys for Defendant

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

12 RAQUEL HERNANDEZ AND CARLOS
 13 HERNANDEZ,

14 Plaintiffs,

15 v.

16 THOMAS J. VILSACK, SECRETARY OF
 THE UNITED STATES DEPARTMENT OF
 17 AGRICULTURE,

18 Defendant.

Docket No. C 10-4198 TEH

**STIPULATION AND AGREEMENT OF
 COMPROMISE AND SETTLEMENT
 AND ~~PROPOSED~~ ORDER**

19 IT IS HEREBY STIPULATED by and between the parties, after full and open
 20 discussion, that this action be settled and compromised on the following terms:

21 WHEREAS, Plaintiffs filed the above-captioned action under Title VII of the Civil
 22 Rights Act of 1964, 42 U.S.C. §2000e-16, as amended;

23 WHEREAS, Plaintiffs have filed the following administrative EEO complaints with the
 24 U.S. Department of Agriculture: FSIS-2009-00236 and FSIS-2009-00214.

25 WHEREAS, Plaintiffs and Defendant wish to avoid any further litigation and
 26 controversy and to settle and compromise fully any and all claims and issues that have been
 27 raised, or could have been raised, arising out of Plaintiffs' employment with Defendant, which
 28 have transpired prior to the execution of this Agreement;

STIPULATION AND AGREEMENT FOR COMPROMISE AND SETTLEMENT
 No. C 10-4198 TEH

1 WHEREAS, on or about February 19, 2009 Plaintiffs filed formal EEOC complaints
2 (FSIS-2009-00236 and FSIS-2009-00214); and on September 16, 2010, Plaintiffs filed a
3 Complaint in the Northern District of California alleging discrimination based on race and/or
4 national origin; hostile work environment on these bases; failure to prevent discrimination;
5 retaliation for engaging in protected activity; violation of the Family Medical Leave Act of
6 1993 (“FMLA”); and constructively termination.

7 NOW, THEREFORE, in consideration of the mutual promises contained in this
8 Agreement, and other good and valuable consideration, receipt of which is hereby
9 acknowledged, the Parties agree as follows:

10 1. **Settlement Amount.** In full and final settlement of all claims in connection with the
11 above-captioned action, defendant shall pay Plaintiffs a total sum of fifty thousand dollars (\$
12 50,000) dollars (“Settlement Amount”). There shall be no withholding from this amount.
13 Plaintiff understands that this payment will be reported to the Internal Revenue Service
14 (“IRS”), and that any questions as to the tax liability, if any, as a result of this payment is a
15 matter solely between Plaintiff and the IRS. The check will be made payable to the Law
16 Offices of M.J. Randle Attorney-Client Trust Account, and will be mailed to Plaintiffs in care
17 of their counsel. Plaintiffs and their attorney have been informed that payment of the
18 Settlement Amount may take sixty (60) days or more from the date that the Court “so orders”
19 this Agreement to process.

20 2. **Release.** In consideration of the payment of the Settlement Amount and the other
21 terms set forth in this Stipulation and Agreement, Plaintiff hereby releases and forever
22 discharges Defendant, the U.S. Department of Agriculture, and any and all of their past and
23 present officials, agents, employees, attorneys, insurers, their successors and assigns, from any
24 and all obligations, damages, liabilities, actions, causes of actions, claims and demands of any
25 kind and nature whatsoever, whether suspected or unsuspected, at law or in equity, known or
26 unknown, or omitted prior to the date they execute this Agreement, which arise from or relate
27 to their employment with the U.S. Department of Agriculture.

28 3. **Attorneys’ Fees.** The parties agree that the Settlement Amount is in full

1 satisfaction of all claims for attorneys' fees and costs arising from work performed by
2 Plaintiffs' counsel at all stages of litigation, including, but not limited to, the processing of
3 Plaintiffs' administrative and district court complaints in connection with the above-captioned
4 action, and any other EEO administrative proceedings which are currently pending.

5 4. **Dismissal.** In consideration of the payment of the Settlement Amount and the other
6 terms of this Stipulation and Agreement, Plaintiffs agree that they will within seven days of
7 this agreement, execute a Stipulation of Dismissal, which stipulation shall dismiss, with
8 prejudice, all claims asserted in this Action or any claims that could have been asserted in this
9 Action. The fully executed Stipulation of Dismissal will be held by counsel for Defendant and
10 will be filed with the Court upon receipt by Plaintiffs' counsel of \$50,000 and the letters of
11 recommendation and Plaintiff Carlos Hernandez's corrected Standard Form 50.

12 5. **Waiver of California Civil Code § 1542.** The provisions of California Civil Code
13 Section 1542 are set forth below:

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

18 Plaintiffs have been apprised of the statutory language of Civil Code Section 1542 by their
19 attorney, and fully understanding the same, nevertheless elects to waive the benefits of any and
20 all rights they may have pursuant to the provision of that statute and any similar provision of
21 federal law. Plaintiffs understand that, if the facts concerning Plaintiffs' claims and the
22 liability of the government for damages pertaining thereto are found hereinafter to be other than
23 or different from the facts now believed by them to be true, this Agreement shall be and remain
24 effective notwithstanding such material difference.

25 6. **Agreement as a Complete Defense.** This Agreement may be pleaded as a full and
26 complete defense to any subsequent action or other proceeding involving any person or party
27 which arises out of the claims released and discharged by the Agreement.

28 7. **No Admission of Liability.** This is a compromise settlement of a disputed claim
and demand, which settlement does not constitute an admission of liability or fault on the part

1 of the Defendant, the U.S. Department of Agriculture, or any of their past and present officials,
2 agents, employees, attorneys, or insurers on account of the events described in Plaintiffs'
3 complaints in these actions.

4 8. **Tax Liability.** If any withholding or income tax liability is imposed upon Plaintiffs
5 or Plaintiffs' counsel based on payment of the settlement sum received herein, Plaintiffs or
6 Plaintiffs' counsel shall be solely responsible for paying any such determined liability from any
7 government agency thereof.

8 9. **Enforcement Sole Remedy.** The parties agree that should any dispute arise with
9 respect to the implementation of the terms of this Agreement, Plaintiffs shall not seek to
10 rescind the Agreement and pursue their original causes of action. Plaintiffs' sole remedy in
11 such a dispute is an action to enforce the Agreement in the United States District Court for the
12 Northern District of California.

13 10. **Construction.** Each party hereby stipulates that it has been represented by and has
14 relied upon independent counsel in the negotiations for the preparation of this Agreement, that
15 it has had the contents of the Agreement fully explained to it by such counsel, and is fully
16 aware of and understands all of the terms of the Agreement and the legal consequences thereof.
17 For purposes of construction, this Agreement shall be deemed to have been drafted by all
18 Parties to this Agreement and shall not, therefore, be construed against any Party for that reason
19 in any subsequent dispute.

20 11. **Severability.** If any provision of this Agreement shall be invalid, illegal, or
21 unenforceable, the validity, legality, and enforceability of the remaining provision shall not in
22 any way be affected or impaired thereby.

23 12. **Integration.** This instrument shall constitute the entire Agreement between the
24 parties, and it is expressly understood and agreed that the Agreement has been freely and
25 voluntarily entered into by the parties hereto with the advice of counsel, who have explained
26 the legal effect of this Agreement. The parties further acknowledge that no warranties or
27 representations have been made on any subject other than as set forth in this Agreement. This
28 Agreement may not be altered, modified or otherwise changed in any respect except by writing,

1 duly executed by all of the parties or their authorized representatives.

2 13. **Authority.** The signatories to this Agreement have actual authority to bind the
3 parties.

4 14. **Additional Settlement Terms.** In addition to the terms described in paragraph 1
5 above, Defendant agrees to provide the following within sixty (60) days from the date that the
6 Court “so orders” this Agreement to process:

7 (A) Defendant shall process the paperwork for Plaintiff Carlos Hernandez’s promotion
8 from GS-11 to GS-12, effective as of July 19, 2009. Defendant shall also process the
9 paperwork to issue Plaintiff Carlos Hernandez a paycheck for any outstanding difference in
10 salary from July 19, 2009 to July 24, 2009, for this change in grade and salary. A Standard
11 Form 50 reflecting this promotion will be added to Plaintiff Carlos Hernandez’s Official
12 Personnel File.

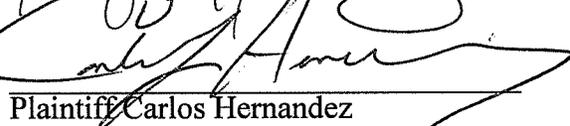
13 (B) Defendant shall provide both Plaintiff Carlos Hernandez and Plaintiff Raquel
14 Hernandez with “to whom it may concern” letters of recommendation signed by Dr. Vivian
15 Chen.

16 (C) Defendant shall provide Plaintiff Raquel Hernandez with personalized letters of
17 recommendation (up to twelve over the next twelve months from the date this settlement
18 agreement is signed) from Dr. Vivian Chen.

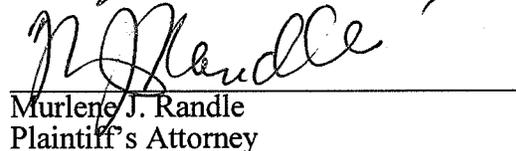
19
20 DATED: October 19, 2011


Plaintiff Raquel Hernandez

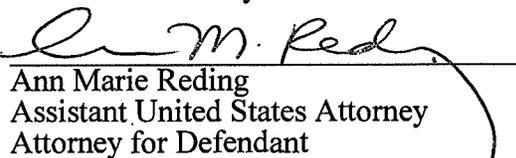
21
22 DATED: October 19, 2011


Plaintiff Carlos Hernandez

23
24 DATED: October 19, 2011


Murlene J. Randle
Plaintiff's Attorney

25
26 DATED: October 19, 2011


Ann Marie Reding
Assistant United States Attorney
Attorney for Defendant

1 DATED: October 19, 2011

Vivian Z Chen

Dr. Vivian Chen
Deputy Assistant Administrator, FSIS, USDA

2

3

4

PURSUANT TO STIPULATION, IT IS SO ORDERED.

5

Dated: 10/20/2011

6

HON. THELTON E. HENDERSON
United States District Judge



7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28