

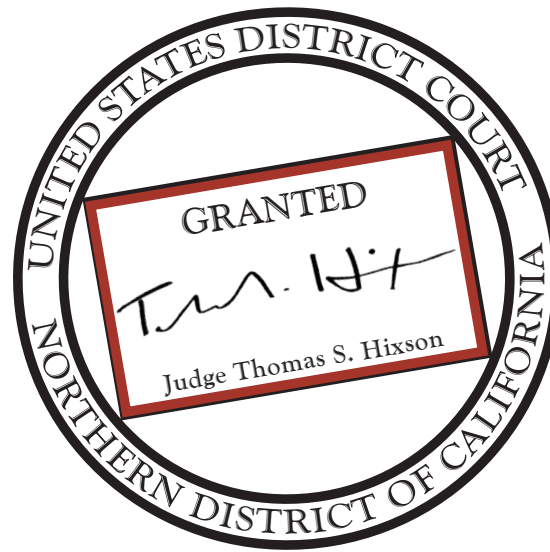
1 DAVID L. ANDERSON (CABN 149604)  
United States Attorney

2 SARA WINSLOW (DCBN 457643)  
3 Chief, Civil Division

4 JENNIFER S WANG (CABN 233155))  
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9 Attorneys for Defendants  
10 UNITED STATES DEPARTMENT OF  
ENERGY and NATIONAL NUCLEAR  
11 SECURITY ADMINISTRATION, an  
agency of the U.S. Department of Energy,



GRANTED. Case is Dismissed with Prejudice.  
The Clerk shall close the file.  
DATED: 3/7/2019

12 UNITED STATES DISTRICT COURT  
13 NORTHERN DISTRICT OF CALIFORNIA  
14 SAN FRANCISCO DIVISION

16 ANTHONY RIVERA,

17 Plaintiff,

18 v.

19 UNITED STATES DEPARTMENT OF  
20 ENERGY and NATIONAL NUCLEAR  
SECURITY ADMINISTRATION,

21  
22 Defendants.

) Case No. 3:18-cv-1016 TSH RMI  
)  
)  
)

**STIPULATION OF SETTLEMENT AND  
DISMISSAL WITH PREJUDICE**

23  
24 Plaintiff Anthony Rivera (“plaintiff”) and defendants United States Department of Energy and  
25 National Nuclear Security Administration (“defendants”) hereby enter into this Stipulation of Settlement  
26 and Dismissal with Prejudice (“Stipulation”), as follows:

27 WHEREAS, on February 15, 2018, plaintiff filed his Complaint under the Freedom of  
28 Information Act (“FOIA”), 5 U.S.C. § 552, as amended;

1           WHEREAS, plaintiff and defendants wish to avoid any further litigation and controversy and  
2 compromise fully any and all claims and issues that have been raised, or could have been raised in this  
3 action;

4           NOW, THEREFORE, in consideration of the mutual promises contained in this Stipulation, and  
5 other good and valuable consideration, receipt of which is hereby anticipated, the parties agree as  
6 follows:

7           1.       The parties do hereby agree to settle and compromise each and every claim of any kind,  
8 whether known or unknown, arising directly or indirectly from the acts or omissions that gave rise to the  
9 above-captioned action under the terms and conditions set forth in this Stipulation.

10          2.       Defendants agree to provide to plaintiff the executed declarations of National Nuclear  
11 Security Administration (NNSA) FOIA Officer, John Weckerle, attached hereto as Exhibits A and B.  
12 Defendants further agree to pay to plaintiff the amount of nine thousand dollars and zero cents  
13 (\$9,000.00) (“Settlement Amount”), in full and complete satisfaction of plaintiff’s claims for attorney’s  
14 fees, costs, and litigation expenses under the FOIA, 5 U.S.C. § 552, in the above-captioned matter. This  
15 payment shall constitute full and final satisfaction of any and all of plaintiff’s claims for attorneys’ fees,  
16 costs, and litigation expenses in the above-captioned matter, and is inclusive of any interest. Payment  
17 will be made by electronic funds transfer, and plaintiff agrees to promptly furnish defendants’ counsel  
18 with the information necessary to effectuate payment, including but not limited to, bank name and  
19 address, wire transfer number, ABA number, routing number, account number, name of account, and  
20 federal taxpayer identification number. Defendants’ counsel agrees to submit all paperwork necessary  
21 to effectuate the electronic funds transfer to NNSA within fourteen calendar days of either entry of this  
22 Stipulation onto the Court’s docket, or receipt from plaintiff of the information described in this  
23 Paragraph, whichever is later. Payment shall be made as promptly as practicable, consistent with normal  
24 processing procedures followed by NNSA, after plaintiff provides the necessary information for the  
25 electronic funds transfer to the undersigned Assistant United States Attorney. Counsel for plaintiff  
26 agrees to send confirmation of the receipt of the payment to counsel for defendants within fourteen  
27 calendar days of such payment.

1           3.       Upon the execution of this Stipulation, plaintiff, having received the records he  
2 requested, hereby releases and forever discharges defendants, their successors, the United States of  
3 America, and any department, agency, or establishment of the United States, and any officers,  
4 employees, agents, successors, or assigns of such department, agency, or establishment, from any and all  
5 claims and causes of action that plaintiff asserts or could have asserted in this litigation, or which  
6 hereafter could be asserted by reason of, or with respect to, or in connection with, or which arise out of,  
7 the FOIA requests on which this action is based or any other matter alleged in the Complaint, including  
8 but not limited to all past, present, or future claims for attorneys' fees, costs, or litigation expenses in  
9 connection with the above-captioned litigation.

10           4.       Execution of this Stipulation by counsel for the parties shall constitute a dismissal of all  
11 claims in this action with prejudice, effective upon entry of this stipulation onto the Court's docket,  
12 pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(ii).

13           5.       This Stipulation shall not constitute an admission of liability or fault on the part of the  
14 defendants or the United States or their agents, agencies, servants, or employees, and is entered into by  
15 both parties for the sole purpose of compromising disputed claims and avoiding the expenses and risks  
16 of further litigation. This Stipulation shall not be construed as evidence or as an admission on the part of  
17 defendants, the United States, its agents, servants, or employees regarding any issues of law or fact, or  
18 regarding the truth or validity of any allegation or claim raised in this action, or as evidence or as an  
19 admission by the defendants regarding plaintiff's entitlement to attorney's fees, costs, or other litigation  
20 expenses under FOIA. This Stipulation shall not be used in any manner to establish liability for fees or  
21 costs in any other case or proceeding involving defendants.

22           6.       This Stipulation may be pled as a full and complete defense to any action or other  
23 proceeding, including any local, state or federal administrative action, involving any person or party  
24 which arises out of the claims released and discharged by this Stipulation.

25           7.       This Stipulation is binding upon and inures to the benefit of the parties hereto and their  
26 respective successors and assigns.

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

4           9.       This Stipulation shall constitute the entire agreement between the parties, and it is  
5 expressly understood and agreed that this Stipulation has been freely and voluntarily entered into by the  
6 parties hereto. The parties further acknowledge that no warranties or representations have been made on  
7 any subject other than as set forth in this Stipulation.

8           10.      The persons signing this Stipulation warrant and represent that they possess full authority  
9 to bind the persons on whose behalf they are signing to the terms of the Stipulation.

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

11           “A general release does not extend to claims which the creditor does not know or suspect to exist  
12 in his or her favor at the time of executing the release, which if known by him or her must have  
13 materially affected his or her settlement with the debtor.”

14 Plaintiff, having, been apprised of the statutory language of Civil Code Section 1542, and fully  
15 understanding the same, nevertheless elects to waive the benefits of any and all rights he may have  
16 pursuant to the provision of that statute and any similar provision of federal law. Plaintiff understands  
17 that, if the facts concerning plaintiff’s claim and the liability of the government for damages pertaining  
18 thereto are found hereinafter to be other than or different from the facts now believed by it to be true, the  
19 Stipulation shall be and remain effective notwithstanding such material difference.

20          12.      If any withholding or income tax liability is imposed upon plaintiff or plaintiff’s counsel  
21 based on the Settlement Amount or any other term of this Stipulation, plaintiff and plaintiff’s counsel  
22 shall be solely responsible for paying any such determined liability from any government agency.  
23 Nothing in this Stipulation constitutes an agreement by defendants concerning the characterization of the  
24 Settlement Amount for the purposes of the Internal Revenue Code, Title 26 of the United States Code.

25          13.      This Stipulation may not be altered, modified or otherwise changed in any respect except  
26 in writing, duly executed by all of the parties or their authorized representatives.

27          14.      The Stipulation may be executed in counterparts and is effective on the date by which  
28 both parties have executed the Stipulation.

1 SO STIPULATED AND AGREED.

2 DATED: March 6, 2019

Respectfully submitted,

3 DAV ID L. ANDERSON  
4 United States Attorney

5 /s/  
6 JENNIFER S WANG\*  
7 Assistant United States Attorney  
8 Attorneys for Defendants U.S.  
9 Department of Energy and National  
10 Nuclear Security Administration

11 DATED: March 6, 2019

12 /s/  
13 SCOTT J. YUNDT  
14 Attorney for Plaintiff Anthony  
15 Rivera

16 \* *In compliance with Civil Local Rule 5-1(i), the filer of this document attests that plaintiff has*  
17 *concurred in the filing of this document.*

# Exhibit A

1 DAVID L. ANDERSON (CABN 149604)  
United States Attorney

2 SARA WINSLOW (DCBN 457643)  
3 Chief, Civil Division

4 JENNIFER S WANG (CABN 233155))  
Assistant United States Attorney

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9 Attorneys for Defendants  
10 UNITED STATES DEPARTMENT OF  
ENERGY and NATIONAL NUCLEAR  
11 SECURITY ADMINISTRATION, an  
agency of the U.S. Department of Energy,

12 UNITED STATES DISTRICT COURT  
13 NORTHERN DISTRICT OF CALIFORNIA  
14 SAN FRANCISCO DIVISION

|                              |   |                                       |
|------------------------------|---|---------------------------------------|
| 16 ANTHONY RIVERA,           | ) | Case No. 3:18-cv-1016 TSH RMI         |
|                              | ) |                                       |
| 17 Plaintiff,                | ) |                                       |
|                              | ) |                                       |
| 18 v.                        | ) | DECLARATION OF JOHN WECKERLE          |
|                              | ) | REGARDING FOIA REQUEST NO. 18-00016-R |
| 19 UNITED STATES OF AMERICA, | ) |                                       |
|                              | ) |                                       |
| 20 Defendant.                | ) |                                       |
|                              | ) |                                       |

22 I, John Weckerle, declare and state as follows:

23 1. I am currently the Freedom of Information Act (FOIA) Officer for the National Nuclear  
24 Security Administration (NNSA), which is part of the United States Department of Energy. I have  
25 occupied this position since June 23, 2018. My primary duties include management of requests  
26 submitted to NNSA for records made under both the FOIA, 5 U.S.C. § 552, and the Privacy Act of  
27 1974, 5 U.S.C. § 552a. In that capacity, I oversee NNSA’s receipt and login of incoming FOIA  
28

1 requests, the tasking and coordination of searches for responsive records, and review of out-going  
2 responses. Prior to accepting this position, I worked as a National Environmental Policy Act Compliance  
3 Officer in the NNSA Office of General Counsel (NA-GC), also serving as the Contracting Officer's  
4 Representative for NA-GC's FOIA technical support contract and assisting the FOIA Officer in  
5 administering the NNSA FOIA program.

6         2.         The statements contained in this declaration are based upon my personal knowledge,  
7 upon information provided to me in my official capacity, and upon conclusions and determinations  
8 reached and made in accordance therewith.

9         3.         Around October 17, 2017, NNSA received a FOIA request from Anthony Rivera, seeking  
10 documents relating to an event that occurred on August 30, 2013, at the Lawrence Livermore National  
11 Laboratory (LLNL) High Explosives Applications Facility (HEAF). Mr. Rivera's FOIA request was  
12 assigned control number FOIA 18-00016-R, and on October 23, 2017, NNSA sent a letter to Mr. Rivera,  
13 acknowledging receipt of his FOIA request.

14         4.         The FOIA office contacted the NNSA Livermore Field Office, which has oversight  
15 responsibility for the LLNL, regarding Mr. Rivera's FOIA request. The LLNL HEAF files were  
16 searched for documents responsive to FOIA 18-00016-R, including any post experiment documentation.  
17 Six responsive records were located and released to Mr. Rivera on July 19, 2018, with redactions of  
18 material protected pursuant to FOIA exemptions 5 U.S.C. § 552(b)(3), (b)(6), and (b)(7)(E).  
19 Subsequently, NNSA modified some of the redactions on these six records and sent a revised release to  
20 Mr. Rivera on January 7, 2019. No other responsive documents were located.

21         I declare under penalty of perjury under the laws of the United States that the foregoing is true  
22 and correct.

23         Executed on February 27, 2019 at Albuquerque, New Mexico.

24  
25   
26 JOHN WECKERLE



# Exhibit B

1 DAVID L. ANDERSON (CABN 149604)  
United States Attorney

2 SARA WINSLOW (DCBN 457643)  
3 Chief, Civil Division

4 JENNIFER S WANG (CABN 233155))  
Assistant United States Attorney

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9 Attorneys for Defendants  
10 UNITED STATES DEPARTMENT OF  
ENERGY and NATIONAL NUCLEAR  
11 SECURITY ADMINISTRATION, an  
agency of the U.S. Department of Energy,

12 UNITED STATES DISTRICT COURT  
13 NORTHERN DISTRICT OF CALIFORNIA  
14 SAN FRANCISCO DIVISION

15  
16 ANTHONY RIVERA, ) Case No. 3:18-cv-1016 TSH RMI  
17 Plaintiff, )  
18 v. ) DECLARATION OF JOHN WECKERLE  
REGARDING FOIA REQUEST NO. 18-00022-M  
19 UNITED STATES OF AMERICA, )  
20 Defendant. )  
21

22 I, John Weckerle, declare and state as follows:

23 1. I am currently the Freedom of Information Act (FOIA) Officer for the National Nuclear  
24 Security Administration (NNSA), which is part of the United States Department of Energy. I have  
25 occupied this position since June 23, 2018. My primary duties include management of requests  
26 submitted to NNSA for records made under both the FOIA, 5 U.S.C. § 552, and the Privacy Act of  
27 1974, 5 U.S.C. § 552a. In that capacity, I oversee NNSA’s receipt and login of incoming FOIA  
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1 requests, the tasking and coordination of searches for responsive records, and review of out-going  
2 responses. Prior to accepting this position, I worked as a National Environmental Policy Act  
3 Compliance Officer in the NNSA Office of General Counsel (NA-GC), also serving as the Contracting  
4 Officer's Representative for NA-GC's FOIA technical support contract and assisting the FOIA Officer  
5 in administering the NNSA FOIA program.

6 2. The statements contained in this declaration are based upon my personal knowledge,  
7 upon information provided to me in my official capacity, and upon conclusions and determinations  
8 reached and made in accordance therewith.

9 3. On October 19, 2017, NNSA received a FOIA request from Anthony Rivera, seeking  
10 documents related to reimbursements to Lawrence Livermore National Security (LLNS) associated with  
11 "the DOE 708 Whistleblower Complaint that I, Anthony T. Rivera, filed against LLNS" from January  
12 14, 2017 through October 18, 2017. Mr. Rivera's FOIA request was assigned control number FOIA 18-  
13 00022-M, and on October 20, 2017, NNSA sent Mr. Rivera a letter acknowledging receipt of his FOIA  
14 request.

15 4. NNSA conducted a search for documents responsive to FOIA 18-00022-M, including  
16 "any and all documents related to the related-reimbursements defined as labor charged by internal LLNS  
17 staff." Seven responsive records were located and released to Mr. Rivera on May 4, 2018. One  
18 document was released in its entirety, the other six documents were released with redactions of  
19 information protected pursuant to FOIA exemptions 5 U.S.C. § 552(b)(4), (b)(5), (b)(6). No other  
20 responsive documents were located.

21 I declare under penalty of perjury under the laws of the United States that the foregoing is true and  
22 correct.

23 Executed on February 27, 2019 at Albuquerque, New Mexico.

24  
25   
26 JOHN WECKERLE