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E-FILED - 8/12/09

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

11 DOUGLAS F. CARLSON,)	No. C-06-01578 RMW
)	
12 Plaintiff,)	STIPULATION AND [] ORDER
)	RE PARTIAL SETTLEMENT AND
13 v.)	PARTIAL DISMISSAL
)	
14 UNITED STATES POSTAL SERVICE,)	
)	
15 Defendant.)	

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17 IT IS HEREBY STIPULATED AND AGREED by and between plaintiff Douglas Carlson
18 (“Plaintiff”) and defendant United States Postal Service (hereinafter the “Postal Service”) as follows:

- 19 1. The parties do hereby agree to settle, compromise and dismiss certain claims in the
20 above-captioned action (“This Action”) under the terms and conditions set forth herein.
- 21 2. The Postal Service will provide Plaintiff with one complete, updated set of Collection
22 Point Management System (“CPMS”) data in Microsoft Excel format per year for five years or until
23 such time as CPMS ceases to be in operation, whichever is sooner. No fees would be assessed for these
24 data. This does not affect the right of the Postal Service to seek to recover fees relating to CPMS or
25 similar data, should Plaintiff request such data after the five-year period ends. Should CPMS cease to
26 be in operation prior to the completion of the anticipated five-year term of this agreement, the
27 agreement will be voided for any years remaining in the five-year term for which the CPMS data has
28 not yet been provided. The term of this agreement, unless shortened as described above or extended by

1 the parties by further written agreement, is five years commencing October 1, 2008. These time periods
2 coincide with the fiscal years for the Postal Service. Plaintiff acknowledges that the Postal Service has
3 provided a set of CPMS data for the first year of this agreement. For the remaining four years (or any
4 shortened or extended time period as described above), the Postal Service shall provide the CPMS data
5 to Plaintiff as soon as possible upon Plaintiff's request, but not later than 30 days thereafter. The Postal
6 Service shall have no obligation to provide annual CPMS data if Plaintiff does not make such a request.

7 3. With regard to Counts 17C and 17D of the Second Supplemental Complaint, the Postal
8 Service agrees that the FOIA requests underlying those Counts will not be aggregated for fee purposes
9 and that such requests have been or will be processed individually. Plaintiff hereby dismisses without
10 prejudice Counts 17C and 17D from This Action. Plaintiff agrees that, should he later seek judicial
11 review of the FOIA requests underlying counts 17C and/or 17D, he will not claim that the Postal
12 Service improperly aggregated one or more of those FOIA requests for fee purposes.

13 4. Plaintiff hereby dismisses with prejudice Counts 1, 2A, 2B, 3, 6, 7, 10, 12, 13, 15, 16,
14 17A, and 17B from This Action. Counts 4, 5, 8, 9, 11, and 14 remain in This Action.^{1/} Plaintiff hereby
15 releases and forever discharges the Postal Service, any and all of its past and present officials,
16 employees, agents, attorneys, successors, and assigns from any and all obligations, damages, liabilities,
17 causes of actions, claims, and demands of any kind and nature whatsoever, whether suspected or
18 unsuspected, arising in law or equity, arising from or by reason of any and all known, unknown,
19 foreseen, or unforeseen injuries, and the consequences thereof, resulting from the processing of or the
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21 ^{1/} The Postal Service and Plaintiff expect that Counts 4, 5, 9, and 14 will become ripe for
22 dismissal with prejudice upon further action by the Postal Service, as discussed by the parties at the
23 settlement conference and subsequently. Plaintiff has agreed to dismiss each of these counts on the
24 condition that the Postal Service undertake certain actions. In particular, Plaintiff has indicated that
25 Counts 4 and 5 will be considered moot if and when the Postal Service certifies, under oath, that no
26 responsive records exist. Count 9 will be considered moot if and when the Postal Service certifies,
27 under oath, that no responsive records exist except for certain confidential third-party records that the
28 Postal Service has identified to Plaintiff, and that no additional responsive records existed at the time
Plaintiff submitted the FOIA request underlying Count 9. The Postal Service offers to provide a fuller
array of records responsive to Count 14, with redactions to all exempt information except for email
author and recipient names, dates and times of transmission, and subject lines; this proposal is
conditional on Plaintiff's agreement to dismiss Count 14 upon such disclosure. The parties will file an
additional Stipulation and Proposed Order regarding any settlement and/or dismissal of these counts.

1 decisions relating to the FOIA requests at issue in Counts 1, 2A, 2B, 3, 6, 7, 10, 12, 13, 15, 16, 17A, or
2 17B of This Action.

3 5. Plaintiff agrees to limit his submission of Freedom of Information Act (“FOIA”)
4 requests to the Postal Service to no more than 20 requests each fiscal year for five years. Such requests
5 shall not exceed three in any period of 15 calendar days, as determined by the requests’ postmark date.
6 If the Postal Service receives more than the maximum number of FOIA requests (either annually or per
7 15 calendar days), the Postal Service will notify Plaintiff that any excess requests will not be processed,
8 though this would be without prejudice to Plaintiff’s right to re-submit such requests during a
9 subsequent time period. If the Postal Service receives requests out of the order in which they were
10 mailed and if the number of such requests exceeds the allowed number for a given fifteen-day period,
11 the Postal Service will process the first three requests that the Postal Service received. In such
12 circumstances, the Postal Service will notify Plaintiff that the fourth-received request will not be
13 processed, though this would be without prejudice to his right to re-submit that request at another time.

14 6. If Plaintiff violates the numerical limits as stated in Paragraph 5, above, on two or more
15 occasions during the duration of this agreement, the Postal Service has the option to cancel this
16 agreement.

17 7. Plaintiff’s FOIA requests to the Postal Service are limited to one subject matter and/or
18 one discrete set of data (*i.e.*, the numerical limit may not be overcome by including in one request what
19 would more appropriately be submitted as several requests). All such requests shall be submitted to the
20 appropriate FOIA Requester Service Center, in accordance with USPS Handbook AS-353, *Guide to*
21 *Privacy, the Freedom of Information Act, and Records Management* (“Handbook AS-353”) § 4-2.4 (as
22 amended, 12/20/07). This provision applies to FOIA requests directed to any component of the Postal
23 Service, including, but not limited to, the Office of the Inspector General, the Postal Inspection Service,
24 the Office of the Board of Governors, and any other office at Headquarters or elsewhere.

25 8. The following do not count as FOIA requests for the purposes of the numerical
26 limitations as stated in Paragraph 5, above: service complaints, requests for records solely under one or
27 more statutes or regulations that confer a right of access independent of the FOIA, civil or
28 administrative discovery requests, and correspondence in the form of questions or comments.

1 9. Plaintiff agrees not to circumvent the numerical limitation on FOIA requests, as stated in
2 Paragraph 5, above, by requesting other persons to make requests on his behalf.

3 10. The parties acknowledge that neither this agreement nor anything contained herein shall
4 constitute an admission of liability or fault on the part of the Postal Service or its agents, servants, or
5 employees. This agreement is entered into by the parties for the purpose of compromising disputed
6 claims and avoiding the expenses and risks of litigation.

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

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

12 13. If any provision of this agreement shall be held invalid, illegal, or unenforceable, the
13 validity, legality, and enforceability of the remaining provisions shall not in any way be affected or
14 impaired thereby.

15 14. This instrument shall constitute the entire agreement between the parties, and it is
16 expressly understood and agreed that this agreement has been freely and voluntarily entered into by the
17 parties hereto. The parties further acknowledge that no warranties or representations have been made
18 on any subject other than as set forth in this agreement.

19 15. The persons signing this agreement warrant and represent that they possess full authority
20 to bind the persons on whose behalf they are signing to the terms of the settlement.

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

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IT IS SO STIPULATED.

DATED: August 4, 2009

Respectfully submitted,
JOSEPH P. RUSSONIELLO
United States Attorney


CLAIRE T. CORMIER
Assistant United States Attorney

DATED: August 3, 2009


DOUGLAS F. CARLSON
Plaintiff

~~PROPOSED~~ ORDER

Upon stipulation of the parties and good cause appearing, IT IS HEREBY ORDERED THAT Counts 1, 2A, 2B, 3, 6, 7, 10, 12, 13, 15, 16, 17A, and 17B are hereby dismissed from This Action with prejudice on the terms described in the above agreement between the parties. In addition, Counts 17C and 17D are hereby dismissed from This Action without prejudice on the terms described in the above agreement between the parties.

IT IS SO ORDERED.

Dated: 8/12, 2009


Ronald M. Whyte
United States District Court Judge