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 10 UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA
 SAN JOSE DIVISION

12	LA TIENDITA and THANH T. HUYNH,)	Case No. 5:14-cv-01693 HRL
13	Plaintiffs,)	STIPULATION FOR COMPROMISE
14	v.)	SETTLEMENT AND RELEASE;
15	UNITED STATES DEPARTMENT OF)	PROPOSED ORDER
16	AGRICULTURE,)	
17	Defendant.)	

18
 19 It is hereby stipulated by and between the undersigned Plaintiffs La Tiendita and Thanh T. Huynh
 20 (collectively, "Plaintiff") and Defendant United States Departure of Agriculture ("Defendant"), by and
 21 through their respective attorneys, as follows:

22 WHEREAS, Plaintiff and Defendant wish to avoid any further litigation and controversy and to
 23 settle and compromise fully any and all claims and issues that have been raised, or could have been
 24 raised in this action, which have transpired prior to the execution of this agreement;

25
 26 WHEREAS, the parties intend this to be a full, final and complete settlement that resolves all claims
 27 and potential claims that Plaintiff may have arising out of or relating to the subject of Plaintiff's
 28 Complaint and Motion for TRO and Preliminary Injunction, including all claims for discrimination.

STIPULATION FOR COMPROMISE SETTLEMENT AND RELEASE; ~~PROPOSED~~ ORDER
 LA TIENDITA V. USDA, CASE NO. 5:14-CV-01693 HRL

1 NOW, THEREFORE, in consideration of the mutual promises contained in this settlement
2 agreement, and other good and valuable consideration, receipt of which is hereby anticipated, the parties
3 agree as follows:

4 1. Agreement to Compromise Claims. The parties do hereby agree to settle and compromise each
5 and every claim of any kind, whether known or unknown, arising directly or indirectly from the acts or
6 omissions that gave rise to the above-captioned action and motion for TRO and preliminary injunction
7 under the terms and conditions set forth in this settlement agreement.
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9 2. Definition of "Defendant." As used in this agreement, Defendant shall include the United States
10 of America and its current and former agencies, agents, servants, employees, and attorneys.

11 3. Settlement Terms. (1) In lieu of the six-month suspension that is the subject of this action,
12 Plaintiff will pay Defendant a civil monetary penalty ("payment") in the amount of eight thousand,
13 seven hundred forty-two dollars (\$8,742.00). Unless otherwise directed, the check shall be made out to
14 the USDA and sent to AUSA Scharf at his office address, 150 Almaden Boulevard, Suite 900, San Jose,
15 CA 95113. (2) As the parties have not been able to agree on a mutually acceptable due date, the parties
16 have agreed to allow the Court to decide whether the payment is due 120 days, 150 days, or 180 days
17 from the date the Court "so orders" this agreement. (3) If Plaintiff fails to make timely payment(s),
18 Defendant may re-impose the six-month disqualification subject to the terms of this paragraph, and
19 Plaintiff will serve the remaining 159 days of the disqualification period. (4) However, Defendant will
20 notify counsel for Plaintiff of this default ten (10) days before implementing such suspension. During
21 this time, Plaintiff will be permitted to cure the default or to otherwise show that the payment(s) have
22 been made. (5) Defendant will also issue Plaintiff a warning letter regarding the acceptance of SNAP
23 benefits in exchange for ineligible merchandise on four separate occasions between May 7, 2013, and
24 September 24, 2013. The letter may state that Defendant has the right to consider that warning letter in
25 determining the appropriate penalty in any future case concerning a future violation. These terms
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1 constitute full settlement and satisfaction of any and all claims, demands, rights, and causes of action of
2 whatsoever kind and nature, arising from, and by reason of any and all known and unknown, foreseen
3 and unforeseen personal injuries, damage to property and the consequences thereof, resulting, and to
4 result, from the subject matter of this action, for which Plaintiff or her guardians, heirs, executors,
5 administrators, or assigns, and each of them, or the Defendant, may now have or may hereafter acquire
6 against each other.
7

8 4. Mutual Release. Plaintiff and her guardians, heirs, executors, administrators or assigns, and
9 Defendant, hereby agree to accept the Settlement Terms in full settlement and satisfaction of any and all
10 claims, demands, rights, and causes of action of whatsoever kind and nature, arising from, and by reason
11 of any and all known and unknown, foreseen and unforeseen personal injuries, damage to property and
12 the consequences thereof which they may have or hereafter acquire against each other on account of the
13 same subject matter that gave rise to the above-captioned action, including any future claim or lawsuit of
14 any kind or type whatsoever, whether known or unknown, and whether for compensatory or exemplary
15 damages. This paragraph, however, does not prejudice Defendant's right to issue a warning letter and
16 re-impose the suspension, and take other appropriate action regarding same, pursuant to the Settlement
17 Terms.
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19 5. Dismissal of Action. In consideration of the terms of this settlement agreement, Plaintiffs'
20 attorney shall also execute and provide to Defendant's attorney a Stipulation of Dismissal. The
21 Stipulation of Dismissal shall dismiss, with prejudice. This dismissal is intended to include all claims
22 asserted in this action, or that could have been asserted related to the subject matter of this action. The
23 fully executed Stipulation of Dismissal will be filed within seven (7) calendar days of receipt by
24 Defendant's attorney of the above-stated payment. This Court, the Hon. Howard Lloyd, will retain
25 jurisdiction over all matters pertaining to the litigation until the dismissal with prejudice is finally
26 entered.
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1 6. No Admission of Liability. This stipulation for compromise settlement is not, is in no way
 2 intended to be, and should not be construed as, an admission of liability or fault on the part of Plaintiffs
 3 or Defendant, and it is specifically denied that they are liable to each other. This settlement is entered
 4 into by all parties for the purpose of compromising disputed claims and avoiding the expenses and risks
 5 of further litigation. This paragraph, however, does not prejudice Defendant's right to issue a warning
 6 letter and re-impose the suspension, and take other appropriate action regarding same, pursuant to the
 7 Settlement Terms.

9 7. Parties Bear Their Own Costs. It is also agreed, by and among the parties, that the respective
 10 parties will each bear their own costs, fees, and expenses.

11 8. Authority. The persons signing this agreement warrant and represent that they possess full
 12 authority to bind the persons or entities on whose behalf they are signing to the terms of the settlement.

14 10. Waiver of California Civil Code Section 1542. The provisions of California Civil Code Section
 15 1542 are set forth below:

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

19 Plaintiff and Defendant having been apprised of the statutory language of Civil Code Section 1542 by
 20 their attorneys, and fully understanding the same, nevertheless elects to waive the benefits of any and all
 21 rights they may have pursuant to the provision of that statute and any similar provision of federal law.
 22 The parties understand that, if the facts concerning the parties' liability and the liability of the parties for
 23 damages pertaining thereto are found hereinafter to be other than or different from the facts now
 24 believed by them to be true, the agreement shall be and remain effective notwithstanding such material
 25 difference.
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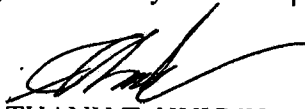
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1 11. Construction. Each party hereby stipulates that it has been represented by and has relied upon
 2 counsel in the negotiations for the preparation of this agreement, that it has had the contents of the
 3 agreement fully explained to it by such counsel, and is fully aware of and understands all of the terms of
 4 the agreement and the legal consequences thereof. For purposes of construction, this agreement shall be
 5 deemed to have been drafted by all parties to this agreement and shall not, therefore, be construed
 6 against any party for that reason in any subsequent dispute. Plaintiff and her counsel expressly represent
 7 that a competent interpreter translated this settlement agreement into the Vietnamese language for
 8 Plaintiff.
 9 Plaintiff.

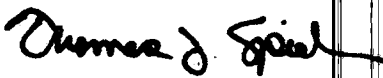
10 12. Severability. If any provision of this agreement shall be invalid, illegal, or unenforceable, the
 11 validity, legality, and enforceability of the remaining provisions shall not in any way be affected or
 12 impaired thereby.

13 13. Integration. This instrument shall constitute the entire agreement between the parties, and it is
 14 expressly understood and agreed that the agreement has been freely and voluntarily entered into by the
 15 parties hereto with the advice of counsel, who have explained the legal effect of this agreement. The
 16 parties further acknowledge that no warranties or representations have been made on any subject other
 17 than as set forth in this agreement. This agreement may not be altered, modified or otherwise changed
 18 in any respect except by writing, duly executed by all of the parties or their authorized representatives.
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20 DATED: May 21, 2014



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 22 THANH T. HUYNH on behalf of herself and La Tiendita

23 DATED: May 20, 2014


 24 Thomas Spielbauer
 25 Attorneys for Plaintiffs

MELINDA HAAG
 26 United States Attorney

27 DATED: May 21, 2014


 28 JAMES A. SCHARF
 Assistant United States Attorneys
 Attorneys for Defendant

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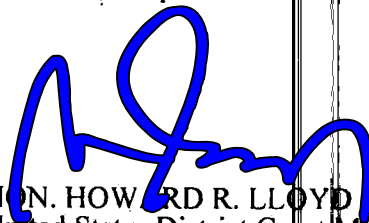
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Pursuant to stipulation, IT IS SO ORDERED.

Further, the TRO issued in this case, as well as all case deadlines and hearing dates, are hereby vacated. Pursuant to Paragraph 3 of this Stipulation and Order, within 7 days from the date entry of this Order, the parties may each file a short letter not exceeding **THREE (3)** pages setting forth their respective positions as to whether the payment due date should be 120 days, 150 days, or 180 days from the date of this Order. The Court will then choose one of those dates without further hearing. Within 7 calendar days of the payment by Plaintiffs to Defendant, the parties will file a dismissal with prejudice at which time this case will be closed.

DATED: May 28, 2014



HON. HOWARD R. LLOYD
United States District Court Magistrate Judge

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