

## SETTLEMENT AGREEMENT

The Plaintiffs Missouri Alliance for Animal Legislation and Stop Animal Exploitation Now (“Plaintiffs”) and the Defendants, the U.S. Department of Agriculture (“USDA”); Secretary Sonny Perdue, in his official capacity as USDA Secretary; the Animal and Plant Health Inspection Service; and Animal Care, hereby enter into this Settlement Agreement (“Agreement”).

WHEREAS, Animal Care has published the Animal Welfare Inspection Guide (“Inspection Guide”) to facilitate the work of its inspectors in carrying out their duties under the Animal Welfare Act, 7 U.S.C. § 2131 *et seq.*;

WHEREAS, Animal Care revised its Inspection Guide in January 2016 to include § 2.4.3 and in 2018 to include § 2.4.2, and has, at various times, continued to revise these sections;

WHEREAS, on July 23, 2019, the Plaintiffs commenced a lawsuit in the United States District Court for the District of Columbia. *See Missouri Alliance for Animal Legis., et al. v. U.S. Department of Agriculture, et al.*, No. 1:18-cv-2087-DLF (D.D.C.) (the “Litigation”) challenging Animal Care’s inclusion of §§ 2.4.2 (“Disputed Section regarding Self-Reporting”) and 2.4.3 in its Inspection Guide (“Disputed Section regarding Teachable Moments”) (collectively hereafter known as the “Disputed Sections”);

WHEREAS, the Plaintiffs and the Defendants have conducted good-faith settlement negotiations to address the Disputed Sections;

WHEREAS, the Plaintiffs and the Defendants wish to, with respect to the Litigation, avoid further expense and risk of litigation and believe it is in their best interests to enter into this Agreement;

NOW THEREFORE, the Parties hereby mutually and voluntarily agree as follows:

1. **No Admission of Liability or Wrongdoing.** This Agreement is the result of the Parties compromising and settling disputed claims. Neither this Agreement nor any representations made by either Party in the course of negotiating this Agreement shall constitute or be construed as any admission of liability or wrongdoing by either Party, or by their officers, employees, agents, successors, assigns, or representatives, related to any claims or defenses that were raised (or could have been raised) with regard to the Litigation and/or the Disputed Sections.

2. **Satisfaction and Discharge of all Claims and/or Potential Claims.** This Agreement is in full and complete satisfaction of any claim, including interest, fees, and costs, that the Plaintiffs raised (or could have raised) concerning the Litigation. The Plaintiffs hereby release and forever discharge Defendants and their successors, the United States of America, any department, agency, or establishment of the United States, and any past or present officers, employees, agents, successors, assigns, or representatives of the United States or any department, agency, or establishment thereof, from any and all claims, whether presently known or unknown, that have been raised (or could have been raised) regarding the Litigation.

3. **Fees, Costs, and Expenses.** Defendants will pay Plaintiffs \$70,000 (Seventy Thousand Dollars) to resolve any claim for Plaintiffs' costs, expenses, and attorney's fees for all aspects of Plaintiffs' claims concerning the Disputed Sections and/or the Litigation, and/or any settlement negotiations related to the Litigation ("Settlement Payment"). In entering into this Agreement, the Parties mutually waive any additional claims either Party may have against the other Party for any fees, costs, or expenses related to the Disputed Sections and/or the Litigation, and/or any settlement negotiations related to the Litigation. This Agreement may not be construed as a determination or admission that either Party is a prevailing party or substantially

prevailed in any aspect of events after Animal Care revised its Inspection Guide to include the Disputed Sections or in the Litigation. The Settlement Payment will be made payable to Advancing Law for Animals.

4. **Non-Monetary Relief Concerning the Disputed Sections**

a. **Disputed Section regarding Self-Reporting.** Within ninety (90) days of the Effective Date of this Agreement, Defendants shall remove the Disputed Section regarding Self-Reporting from the Inspection Guide. Defendants shall not reinstate, or otherwise republish in any way, the Disputed Section regarding Self-Reporting, or its substantive equivalent.

b. **Disputed Section regarding Teachable Moments.** Within ninety (90) days of the Effective Date of this Agreement, Defendants will revise the Disputed Section Regarding Teachable Moments as follows:

i. Defendants will remove from § 2.4.3 the phrase “[c]ite any noncompliance that is causing noticeable pain or distress to an animal on the Inspection Report” and will replaced it with the phrase “[c]ite any noncompliance that is adversely impacting the health or well-being of an animal (for example: lack of adequate water, food, ventilation, or anything causing pain or distress) on the Inspection Report.”

ii. Defendants will not publish other guidance documents, such as Tech Notes, inconsistent with the revised language specified in this subsection (b).

iii. Notwithstanding any other provision in this Agreement, including the addition of the revised language as set forth in this subsection, the Parties agree that it shall be deemed consistent with this Agreement for Defendants to remove the Disputed Section regarding Teachable Moments from the Inspection Guide in its entirety.

c. Notwithstanding any other provision in this Agreement, Defendants may

revise the Disputed Sections in response to changes to the AWA, other legislation, or a court order.

d. Notwithstanding any other provision in this Agreement, Defendants may revise, reinstate, and/or otherwise republish the Disputed Sections pursuant to notice and comment rulemaking pursuant to 5 U.S.C. § 553.

**5. Other Non-Monetary Relief**

a. **Revised USDA Public Search Tool Interface.** Within one hundred and twenty days (120) days of the Effective Date of this Agreement, Defendants will revise the interface setting forth the Inspection Reports Search on the USDA Animal Care Public Search Tool as follows: Defendants shall amend the interface to include the number of Teachable Moments assessed. Subject to the availability of appropriations, the revised interface shall display the number of Teachable Moments in a manner substantially equivalent to Exhibit A attached to this Agreement.

b. **Inspector Training.** Within ninety (90) days of the Effective Date of this Agreement, Defendants shall update and, subject to the availability of appropriations, use its training materials to reflect the agreed-on changes in subparagraphs (b). The training material will appear in a manner substantially equivalent to Exhibit B attached to this Agreement.

6. **Effect on Other Revisions.** Except as set forth in paragraphs (4) and (5) of this Agreement, nothing in this Agreement shall preclude Animal Care from making any other revisions to any other part of its Inspection Guide (including revisions that may concern the Disputed Sections), any other part of its Inspection Reports, any other part of its Public Search Tool Interface, or any other part of its Training Materials.

7. **No Precedent or Evidence.** No warranty, representation, term, or provision of this Agreement may be offered or received in evidence or referred to in any civil, criminal, or administrative action against the Defendants or against any federal agency, except in a motion alleging a breach of the terms of this Agreement as provided in paragraph (9) of this Agreement.

8. **Dates Agreement is in Effect.** This Agreement takes effect on the date on which the Parties execute this Agreement, also referred to as the Effective Date. The non-monetary commitments in paragraphs (4) and (5) shall remain in effect for three (3) years, after which time they expire, and USDA no longer will have any obligations under this Agreement.

9. **Dispute Resolution.** In the event of any dispute between the Parties occurring within three (3) years of the Effective Date of this Agreement concerning the non-monetary provisions described in paragraphs (4) and (5) of this Agreement, the Parties agree to use the following provisions:

a. The Party claiming nonperformance shall provide written notice to counsel for the other Party of the claimed nonperformance. Following such notice, the Parties will engage in good-faith discussions in an effort to resolve the dispute. If the Parties are unable to do so within sixty (60) days following written notice, the Party claiming nonperformance may bring the matter to the Court as set forth in subparagraph (b) below.

b. The Parties agree to engage in the dispute resolution procedures described in subparagraph (a) above to resolve any dispute relating to the interpretation or implementation of this Agreement before bringing the matter to the court's attention as set forth herein. In the event that any Party institutes any legal action against any other party to enforce the provisions of this Agreement, or to declare rights and/or obligations under this Agreement, that party shall file a motion pursuant to Fed. R. Civ. P. 60(b)(6) seeking relief from the entry of judgment

dismissing the Litigation.

i. With respect to the non-monetary provisions in paragraph (4) of this Agreement, Plaintiffs' motion may seek to reinstate their claims set forth in their Amended Complaint concerning the Disputed Sections. However, this Agreement shall not be deemed to waive any available defenses to Plaintiffs' claims in their Amended Complaint.

ii. With respect to the other non-monetary provisions in paragraph (5) of this Agreement, the Parties agree not to dispute that the filing of such a motion constitutes an appropriate mechanism to enforce the provisions of this Agreement, or to declare rights and/or obligations under this Agreement. However, this Agreement shall not be deemed to waive any available defenses to the substance of such motion, and any right or authority to contend that no breach of this Settlement Agreement has occurred.

c. In the event of any dispute arising after three (3) years of the Effective Date of this Agreement, this Agreement will no longer be in effect, and the Plaintiffs agree to file a new lawsuit to challenge any changes to the Disputed Sections or matters addressed in paragraph (5).

10. **Dismissal of Litigation.** In exchange for Defendants agreeing to the payment of costs, expenses, and attorney's fees identified in paragraph (3) of this Agreement and to the non-monetary terms identified in paragraphs (4) and (5) of this Agreement, the Plaintiffs shall file a notice of dismissal of the Litigation with prejudice within 10 days of the execution of this Agreement, pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(i). An unsigned copy of this notice is attached hereto as Exhibit C to this Agreement.

11. **Integrated Agreement.** This Agreement and its Exhibits constitute the entire agreement and understanding between the Plaintiffs and the Defendants regarding the Litigation.

Any statement, representation, remark, agreement, or understanding, in oral or written form, that is not contained in this Agreement shall not be enforced, recognized, or used to interpret this Agreement or its Exhibits.

12. **Severability.** Should it be determined that any term of this Agreement is unenforceable, it is the Parties' intention that the term shall be deemed to be deleted and the validity and enforceability of the remaining terms remain intact.

13. **Jointly Drafted Agreement.** This Agreement shall be considered a jointly drafted agreement and shall not be construed against any Party as the drafter.

14. **No Third Party Beneficiaries or Rights.** This Agreement is not intended to create, and does not create, any third-party beneficiary rights or any other kind of right or privilege for any person, group, or entity.

15. **No Representations Regarding Taxes, Offsets, Levies, or Liens.** Compliance with all applicable federal, state, and local tax requirements related to this Agreement shall be the sole responsibility of the Plaintiffs. This Agreement is executed without reliance upon any representation by the Defendants as to tax consequences. Further, nothing in this Agreement waives or modifies any federal, state, or local law pertaining to taxes, offsets, levies, or liens that may apply to this Agreement, including (but not limited to) the requirements of the United States Department Treasury Debt Collection Authorities established by 31 U.S.C. § 3716 and 26 U.S.C. § 6331(h). This Agreement is executed without reliance on any representation by the Defendants as to the application of any such law.

16. **Modification.** The Parties may modify this Agreement only by written agreement signed by each Party.

17.     **Execution.** This Agreement may be executed in counterparts, by undersigned representatives of the Parties.

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SIGNED:



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01-18-2021

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Date

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Date

## Settlement Exhibit A – Revised Interface



### Inspection Reports Search

To locate inspection reports prepared by Animal Care inspectors, enter the known information in the **License/Registration Type and/or State** fields and then click the Search button.

Additional search options and information may be available for certain business entities, such as the names and addresses of corporations with commercial addresses.

Click on the icon to the left of any entry to see the associated inspection report.

To ensure that accurate information is received, the Clear button must be clicked between every search.

License/Registration Type	City	State	Zip Code
<input type="text" value="-Select-"/>	<input type="text"/>	<input type="text" value="-Select-"/>	<input type="text"/>

Customer/Organization Name	Customer Number	Certificate Number
<input type="text"/>	<input type="text" value="616"/>	<input type="text"/>

Certificate number should be in xx-x-xxxx format

Search Clear

To view licensees/registrants information, click on "View Licensees/Registrants" button

View Licensees/Registrants

View Inspection Reports

### Inspection Report(s) Based on Submitted Criteria

1 - 13

View Report	Licensee/Registrant IDs	Inspection Date	Non-Compliances Inspection (NCI)	Site Name	Legal Name
	Customer No: 616 Certificate No: 35-R-0001	Dec 10, 2019	Direct: 0 Non-Critical: 0 Critical: 0 Teachable Moment: 2	ALL CAMPUS SITES	UNIVERSITY OF WISCONSIN MADISON
	Customer No: 616 Certificate No: 35-R-0001	Jul 09, 2019	Direct: 0 Non-Critical: 0 Critical: 1	ALL CAMPUS SITES	UNIVERSITY OF WISCONSIN MADISON
	Customer No: 616 Certificate No: 35-R-0001	Mar 26, 2019	Direct: 0 Non-Critical: 0 Critical: 0	ALL CAMPUS SITES	UNIVERSITY OF WISCONSIN MADISON
	Customer No: 616 Certificate No: 35-R-0001	Aug 14, 2018	Direct: 0 Non-Critical: 0 Critical: 0	ALL CAMPUS SITES	UNIVERSITY OF WISCONSIN MADISON
	Customer No: 616 Certificate No: 35-R-0001	Jun 12, 2018	Direct: 0 Non-Critical: 0 Critical: 0	ALL CAMPUS SITES	UNIVERSITY OF WISCONSIN MADISON

## Settlement Exhibit B – Inspector Training

# Teachable Moments



*"You've lived an exemplary life, but I can't let you in because of, well, that suit."*  
*"You lived an exemplary life, professor, but I can't let you in because of, well, that suit."*

# GOAL

Given a scenario, the inspector will identify and write teachable moments.

# Objectives

- 1: List the qualifications of a teachable moment.
- 2: Determine if the NCI is applicable to be a teachable moment.
- 3: Properly write a teachable moment.

# Teachable Moments *Criteria*

- A minor NCI that is not adversely impacting animal welfare and
- Is not a Direct or other Critical, or a Repeat NCI, and
- The facility/site is willing and able to correct the issue quickly, and
- Was not previously listed as a Teachable Moment or cited at the site within the last two years



# Pop Quiz – please respond “yes” or “no”

Is an NCI appropriate to be a Teachable Moment if it has the below criteria:

- Minor NCI that is quick to correct
- Facility representatives are willing and able to quickly correct
- This is the first time this NCI has been cited at facility for at least 2 years
- There are not more than 3 NCIs identified at inspection *and*
- There is an adverse impact on the welfare of the animal

# Pop quiz – please respond “yes” or “no”



Does this insufficient space NCI qualify as a TM?

- Facility willing and able to quickly correct
- No previous NCIs or TMs for 3.28 (c) in past 2 years
- No more than 3 NCIs noted on this inspection

# Teachable Moments *Use*

## **Special Considerations**

- First inspection after a Prelicense- keep teachable moments to recordkeeping and identification issues
- First inspection after registration- teachable moments are appropriate
- Prior to recording a veterinary care NCI as a TM, inspector must consult the SACS.

## **Avoided Use**

- During a Prelicense or New Site Approval inspection
- Four or more NCIs identified
- Any facility/site with a poor compliance record .

# Teachable Moments *Documentation*

- The description should be a **brief/concise part 2**; a short description of the problem.
- Part 3, why it matters, or part 4, the correction, should **not** be included on the Teachable Moment.
- The Teachable Moment needs enough detail (but not too much) to know the exact problem that was observed
- There should be enough information provided that another inspector can identify the problem and licensee can correct.

# Documentation

## Incorrect

- *Records need to be updated.* – not enough detail
- *Ensure records are updated.* – states the correction

## Correct

- *The facility's records of acquisition were not up to date.*
- *The facility recently purchased two animals that were not listed on their list of animals on hand.*

# Documentation

## Incorrect

- *Two whelping boxes need to be replaced.*
- *Ensure whelping boxes are being maintained.* – both examples state the correction only

## Correct

- *Two whelping boxes were chewed and worn.*

# Documentation

## Incorrect

- *Enclosures must be cleaned more often.* – states the correction

## Correct

- *Ten enclosures had dirt and grime on the walls and doors.*

# Documentation

## Incorrect

- *In one enclosure, the dogs are being fed on the floor. Food receptacles must be used for feeding dogs.* – states the problem but also has the correction.

## Correct

- *In one enclosure, the dogs are being fed on the floor of the shelter.*





# Why do We Care About TMs?

- We are here to support the mission
- Our #1 goal for each facility is \_\_\_\_\_
- Teachable Moments were created as a non-regulatory method to work to bring facilities into COMPLIANCE.

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

MISSOURI ALLIANCE FOR ANIMAL  
LEGISLATION, *et al.*,

Plaintiffs,

v.

UNITED STATES DEPARTMENT OF  
AGRICULTURE, *et al.*,

Defendants.

No. 1:19-cv-2087 (DLF)

**NOTICE OF VOLUNTARY DISMISSAL WITH PREJUDICE**

Pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(i), Plaintiffs Missouri Alliance for Animal Legislation and Stop Animal Exploitation Now, acting pursuant to a Settlement Agreement executed on January \_\_, 2021, hereby voluntarily dismiss the above-captioned action with prejudice.

Dated: January \_\_, 2021

Respectfully submitted,

s/ Vanessa Shakib

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\* Admitted *pro hac vice*