

1 SETTLEMENT AGREEMENT

2 I. PARTIES

3 This Settlement Agreement ("Settlement Agreement") is entered into by and between (i) the
4 United States of America ("United States"), acting through the United States Attorney's Office for the
5 Eastern District of California, on behalf of the United States Department of Agriculture, Food Safety
6 and Inspection Service; (ii) Transhumance Holding Company, Inc. ("Defendant"); and (iii) Relator
7 Compassion Over Killing. Collectively, all of the above hereafter will be referred to herein as "the
8 Parties," and each is individually referred to as a "Party."
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10 II. RECITALS

11 A. Defendant Transhumance Holding Company, Inc., is a privately held California
12 corporation that owns Ellensburg Lamb Company, Inc., dba Superior Farms ("ELC"). ELC own and
13 operates a lamb slaughterhouse in located at 7390 Rio Dixon Road., Dixon, CA 95620 (the "Dixon
14 facility").

15 B. On or about January 31, 2017, a *qui tam* action was filed, pursuant to the provisions of
16 the Federal False Claims Act, 31 U.S.C. § 3729 *et seq.*, in the United States District Court for the
17 Eastern District of California captioned *U.S. ex rel Compassion Over Killing v. Transhumance Holding*
18 *Co., Inc., dba Superior Farms, Inc.*, action number 2:17-cv-210 MCE ("Civil Action"). Relator's
19 complaint ("Complaint") alleges that from 2009 through 2015, Defendant knowingly submitted, or
20 caused the submission of, false or fraudulent claims to the United States in violation of 31 U.S.C. §§
21 3729(1)(A), (B), (C) and (G). In brief, Relator claims that by submitting an offer to supply meat to
22 USDA, Superior "certified that the offer is made subject to the Master Solicitation; Commodity
23 Supplement and/or Specifications, this Solicitation; the Agriculture Acquisition Regulations (AGAR)
24 and the Federal Acquisition Regulations (FAR)." The FAR requires that the "Contractor shall comply
25 with all applicable Federal, State and local laws, executive orders, rules and regulations applicable to its
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1 performance under th[e] contract.” Relator also alleges, in part, that Defendant defrauded the United
2 States by billing for lamb meat products processed in violation of the Humane Slaughter Act and Meat
3 Inspection Act and its own food safety plans. Relator’s four primary allegations are generally
4 categorized as (1) humane handling violations, (2) Religious (Halal) violations, (3) freshness and safety
5 violations by changing packaging labels, and (4) metal detector violations. The United States intervened
6 in the Civil Action on Counts I and II, arising from the humane handling and slaughter allegations (¶¶
7 92-112), which alleged conduct shall hereinafter be referred to as the “Covered Conduct.”

9 C. The United States contends that it has certain claims against Defendant with respect to
10 the Covered Conduct. Defendant expressly denies the allegations related to the Covered Conduct and
11 expressly denies any wrongdoing or liability for the Covered Conduct or any of the allegations in the
12 Complaint. Neither this Agreement, nor the performance of any obligations under it, including any
13 payment, nor the fact of settlement, is intended to be, or shall be understood as, an admission of liability
14 or wrongdoing, or expression reflecting upon the merits of the dispute by Defendant. This Settlement
15 Agreement is also not a concession by the United States that its claims are not well founded. This
16 Settlement Agreement does not affect the government’s independent enforcement rights and actions and
17 thus is in addition to, not in lieu of, those enforcement provisions.

19 D. Relator claims entitlement under 31 U.S.C. § 3730(d) to a share of the proceeds of the
20 monetary portions of this Settlement Agreement and to Relator’s reasonable expenses, attorney’s fees
21 and costs. Relator expressly disclaims any interest in, or alleged entitlement to or value of, the non-
22 monetary portions of this settlement including a consent decree.

24 E. Contemporaneous with this Agreement, Defendant shall also enter into a consent decree
25 with the United States Department of Agriculture, Food Safety and Inspection Service.

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1 To avoid the delay, uncertainty, inconvenience, and expense of protracted litigation of the
2 above claims, and in consideration of the mutual promises and obligations of this Settlement Agreement,
3 the parties agree and covenant as follows:

4 **III. TERMS AND CONDITIONS**

5 1. In consideration of the obligations of the Parties set forth in this Settlement Agreement,
6 Defendant shall pay two hundred thousand dollars (\$200,000) (the "Settlement Amount") to the United
7 States by electronic funds transfer, pursuant to written instructions to be provided by the United States
8 Attorney's Office for the Eastern District of California, within thirty (30) days of the Effective Date of
9 this Agreement as defined herein.
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11 2. Subject to the exceptions in Paragraph 3 (concerning excluded claims) below, and
12 conditioned upon the full payment of the Settlement Amount by Defendant and satisfaction of the other
13 terms of this agreement set forth above, the United States releases Defendant, together with its current
14 and former parent corporations; direct and indirect subsidiaries, including without limitation ELC;
15 brother or sister corporations; divisions, current or former corporate owners; and the corporate
16 successors and assigns of any of them from any civil or administrative monetary claim the United States
17 has for the Covered Conduct under the False Claims Act, 31 U.S.C. §§ 3729-3733 and the Program
18 Fraud Civil Remedies Act, 31 U.S.C. §§ 3801-3812, and/or under common law theories of payment by
19 mistake, unjust enrichment and fraud.
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21 3. Notwithstanding any term of this Settlement Agreement, including the releases in
22 paragraph 3, specifically reserved and not released as to any entity or person, including Defendant, are
23 the following potential claims of the United States:
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- 25 a. Any liability arising under Title 26, United States Code (Internal Revenue Code);
26 b. Any criminal liability;

1 c. Any administrative liability, including the suspension and debarment rights of any
2 federal agency;

3 d. Any liability to the United States (or its agencies) for any conduct other than the
4 Covered Conduct;

5 e. Any liability based upon obligations created by this Agreement;

6 f. Any liability of individuals;

7 g. Any liability for express or implied warranty claims or other claims for defective
8 or deficient products, including quality of goods and services other than the Covered Conduct;

9 h. Any liability for failure to deliver goods or services due; and

10 i. Any liability for personal injury or property damage or for other consequential
11 damages arising from the Covered Conduct.
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14 4. **Release by Relator.** Conditioned upon Defendant's full payment to the United States of
15 the Settlement Amount and \$50,000 to Relator for attorney's fees and costs, Relator (on behalf of itself,
16 its officers, agents, agencies, and departments) hereby fully and finally releases Defendant and its
17 current and former officers, directors, members, partners, agents, attorneys, insurers, employees,
18 shareholders, parent corporations, direct and indirect subsidiaries, including without limitation ELC,
19 divisions, affiliates, predecessors, successors and assigns, and any of them from any and all liability for
20 any civil claims, demands, obligations, actions, causes of action, damages, costs, losses, attorneys' fees,
21 interest, penalties, and expenses, including any claims for compensatory damages, statutory damages,
22 multiplied damages or punitive damages, which Relator has or may have arising from the Covered
23 Conduct and any other alleged conduct giving rise to or related to the allegations and claims in the Civil
24 Action, and investigation and pursuit thereof. Relator represents and warrants that it has not assigned,
25 reassigned, or transferred or purported to assign, reassign or transfer, any or any portion of any claim,
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1 demand, action, cause of action, or other right released or discharged under this Settlement Agreement
2 except between itself and its counsel.

3 5. Relator and its heirs, successors, attorneys, agents and assigns do not object to this
4 Agreement and instead agree and confirm that this Agreement is fair, adequate, and reasonable under all
5 the circumstances, pursuant to 31 U.S.C. § 3730(c)(2)(B) and that the Settlement Amounts for each
6 individual claim are also fair, adequate, and reasonable under all the circumstances, pursuant to 31
7 U.S.C. § 3730(c)(2)(B) and that the Settlement Amount is also fair, adequate, and reasonable under all
8 the circumstances. In connection with this Agreement and this Civil Action, Relator and its heirs,
9 successors, attorneys, agents and assigns agree that neither this Agreement, any intervention by the
10 United States in the Civil Action in order to dismiss the Civil Action, nor any dismissal of the Civil
11 Action, shall waive or otherwise affect the ability of the United States to contend that provisions in the
12 False Claims Act, including 31 U.S.C. §§ 3730(d)(3) and 3730(e), bar Relator from sharing in the
13 proceeds of this Agreement. Moreover, the United States and Relator and its heirs, successors,
14 attorneys, agents and assigns agree that they each retain all of their rights pursuant to the False Claims
15 Act on the issue of the share percentage, if any, that Relator should receive any of the monetary
16 proceeds of the settlement of their claims, and that the agreement concerning Relator's share shall be set
17 forth in a separate document.

18 6. Defendant waives and shall not assert any defenses that it may have to any criminal
19 prosecution or administrative action relating to the Covered Conduct that may be based in whole or in
20 part on a contention that, under the Double Jeopardy Clause in the Fifth Amendment of the Constitution,
21 or under the Excessive Fines Clause in the Eighth Amendment of the Constitution, this Agreement bars a
22 remedy sought in such criminal prosecution or administrative action.

23 7. Defendant (on behalf of itself, its officers, agents, agencies, departments, employees,
24 partners, insurers and subsidiaries) hereby fully and finally release the United States and its employees,
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1 officers, servants, agents, agencies, and departments from any and all liability for any claims, demands,
2 obligations, actions, causes of action, damages, costs, losses, attorneys' fees, interest, and expenses of
3 every kind and however denominated, including any claims for compensatory or punitive damages,
4 which the Defendant has or may have against any or all of them related to the Covered Conduct and this
5 Action, and the United States' investigation and pursuit thereof.

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7 8. Relator and Defendant understand and acknowledge that the facts and/or potential claims
8 or defenses with respect to liability or damages regarding the matters released herein may be different
9 from the facts, claims, and/or defenses now believed to be true or available. Relator and Defendant
10 expressly accept and assume the risks of such possible difference in facts and/or potential claims or
11 defenses; intend to waive and forego any potential future benefit from, or future reliance on, any
12 unknown facts, claims, or defenses; and agree that this Settlement Agreement shall remain effective
13 notwithstanding any unknown facts, claims, or defenses. In addition, Relator and Defendant intend by
14 this Settlement Agreement, and the releases contained herein, to release fully, finally and forever all
15 unknown claims that arise out of or relate to the Covered Conduct, the Civil Action and the investigation
16 of Relator's claims ("Unknown Claims"). Accordingly, this Settlement Agreement, and the releases
17 contained herein, shall remain in full force as a complete release of such Unknown Claims
18 notwithstanding the discovery or existence of any such additional or different claims and/or facts before
19 or after the date of this Settlement Agreement. Relator and Defendant hereby expressly waive all rights
20 they may have by virtue of Section 1542 of the Civil Code of the State of California, or any comparable
21 provision under the law of any state, territory or country. Section 1542 of the California Civil Code
22 provides that:
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25 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR
26 DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF
27 EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE
28 MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

1 9. Defendant agree to the following:

2 a. Unallowable Costs Defined: All costs (as defined in the Federal Acquisition
3 Regulation, 48 C.F.R. § 31.205-47) incurred by or on behalf of Defendant, and its present or former
4 officers, directors, employees, shareholders, and agents in connection with:

- 5 (1) the matters covered by this Agreement;
- 6 (2) the United States' audit(s) and civil investigation(s) of the matters covered
7 by this Agreement;
- 8 (3) Defendant's investigation, defense, and corrective actions undertaken in
9 response to the United States' audit(s) and civil investigation(s) in
10 connection with the matters covered by this Agreement (including
11 attorney's fees);
- 12 (4) the negotiation and performance of this Agreement;
- 13 (5) the payments Defendant makes to the United States pursuant to this
14 Agreement and any payments that Defendant may make to Relator,
15 including costs and attorneys' fees,
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18 are unallowable costs for government contracting purposes (hereinafter referred to as Unallowable
19 Costs).

20 b. Future Treatment of Unallowable Costs: Unallowable Costs will be separately
21 determined and accounted for by Defendant, and Defendant shall not charge such Unallowable Costs
22 directly or indirectly to any contracts with the United States.

23 c. Treatment of Unallowable Costs Previously Submitted for Payment: Within 90
24 days of the Effective Date of this Agreement, Defendant shall identify and repay, by adjustment to
25 future claims for payment or otherwise, any Unallowable Costs included in payments previously sought
26 by Defendant or any of its subsidiaries or affiliates from the United States. Defendant agrees that the
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1 United States, at a minimum, shall be entitled to recoup from Defendant any overpayment plus
2 applicable interest and penalties as a result of the inclusion of such Unallowable Costs on previously-
3 submitted requests for payment. The United States, including the Department of Justice and/or the
4 affected agencies, reserves its rights to audit, examine, or re-examine Defendant's books and records
5 and to disagree with any calculations submitted by Defendant or any of its subsidiaries or affiliates
6 regarding any Unallowable Costs included in payments previously sought by Defendant, or the effect of
7 any such Unallowable Costs on the amount of such payments.
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9 10. Defendant agrees to cooperate fully and truthfully with the United States' investigation of
10 individuals and entities not released in this Agreement. Upon reasonable notice, Defendant shall
11 encourage, and agree not to impair, the cooperation of their directors, officers, and employees, and shall
12 use their best efforts to make available, and encourage, the cooperation of former directors, officers, and
13 employees for interviews and testimony, consistent with the rights and privileges of such individuals.
14 Defendant further agrees to furnish to the United States, upon request, complete and unredacted copies
15 of all non-privileged documents, reports, memoranda of interviews, and records in their possession,
16 custody, or control concerning any investigation of the Covered Conduct that they have undertaken, or
17 that has been performed by another on their behalf.
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19 11. Each of the Parties warrants and represents that it freely and voluntarily enters into this
20 Settlement Agreement without any degree of duress or compulsion whatsoever, after having been
21 apprised of all relevant information and data by its legal counsel. Each of the Parties further warrants
22 and represents that no other Party or its representative has made any promise, representation or
23 warranty, express or implied, except as expressly set forth in this Settlement Agreement, and that no
24 Party has relied on any inducements, promises, or representations made by any Party to this Settlement
25 Agreement, or its representatives, or any other person, except as expressly set forth herein.
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1 12. Except as otherwise set forth herein, each Party to this Settlement Agreement shall bear
2 ~~its own costs, attorneys' fees, and other expenses incurred in any manner in connection with the~~
3 investigation, litigation, and resolution of this matter, including the preparation and performance of this
4 Settlement Agreement.

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6 13. This Settlement Agreement is intended to be for the sole benefit of the Parties and
7 released non-parties only. The Parties do not release any claims against any other person or entity not
8 expressly released by this Settlement Agreement.

9 14. Each individual signing this Settlement Agreement on behalf of the Defendant represents
10 and warrants that he or she has the power, consent, and authorization of the Party on whose behalf he or
11 she is signing to execute this Settlement Agreement. The individual signing on behalf of the United
12 States represent that she is signing this Settlement Agreement in her official capacities and she is
13 authorized to execute this Settlement Agreement.

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15 15. Each Party represents and warrants that it has not transferred anything being released
16 under this Settlement Agreement, and is not aware of any such transfer, and that the Party is not aware
17 of any prohibition of any type that prevents the Party from performing the terms of this Settlement
18 Agreement.

19 16. This Settlement Agreement is binding on Defendant's successors in interest, transferees,
20 and assigns. This Agreement is binding on Relator and its successors, transferees, heirs and assigns.

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22 17. Each Party warrants that it has been represented by, and has sought and obtained the
23 advice of, independent legal counsel with regard to the nature, purpose, and effect of this Settlement
24 Agreement. The Settlement Agreement was negotiated by the Parties and their respective counsel, each
25 of whom had the opportunity to participate in the drafting thereof. The Parties hereby declare that the
26 terms of this Settlement Agreement have been completely read, fully understood, and voluntarily
27 accepted following opportunity for review by legal counsel of their choice.
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1 18. For purposes of construction, this Settlement Agreement shall be deemed to have been
2 drafted by all Parties to this Settlement Agreement. The words of this Settlement Agreement shall not,
3 therefore, be construed against any Party for that reason in any subsequent dispute, but shall be
4 construed so as to affect their meaning, the Parties having waived the benefit of California Civil Code §
5 1654 and similar laws.
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7 19. This Settlement Agreement and the terms of the settlement are not confidential. The
8 Parties consent to the public disclosure of this Settlement Agreement, and of information about the
9 Action and this Settlement Agreement.

10 20. This Settlement Agreement constitutes the complete agreement between the Parties, and
11 supersedes and replaces all prior negotiations and agreements, whether written or oral, regarding the
12 resolution of the claims between the Parties with respect to the subject matter hereof.
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14 21. This Settlement Agreement may be executed in counterparts, each of which constitutes
15 an original and all of which taken together shall constitute one valid and binding Settlement Agreement
16 between the Parties.

17 22. This Settlement Agreement may not be altered, amended, or modified, except by a
18 writing duly executed by authorized representatives of all Parties.

19 23. This Settlement Agreement is governed by the laws of the United States. The Parties
20 agree that, should any judicial action be required to enforce or interpret this Settlement Agreement, or to
21 resolve any dispute hereunder, the exclusive jurisdiction and venue for such action shall be in the United
22 States District Court for the Eastern District of California.
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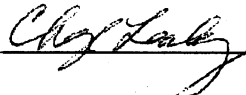
24 24. This Settlement Agreement is effective, final, and binding as of the date of signature of
25 the last signatory to the Settlement Agreement ("Effective Date"). Transmittal and receipt of facsimiles
26 or PDF versions of signatures shall constitute acceptable, binding signatures for purposes of this
27 Settlement Agreement.
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RELATOR

Dated: May 14 , 2019

By: 
Cheryl Leahy
General Counsel
COMPASSION OVER KILLING

Dated: May , 2019

By: _____
RICHARD ELIAS, ESQ.
Attorney for the Relator

THE UNITED STATES

Dated: May , 2019

McGregor W. Scott
United States Attorney

By: _____
KELLI L. TAYLOR
Assistant United States Attorney
Attorneys for the United States


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RELATOR

Dated: May , 2019

By: _____
Name
Title
COMPASSION OVER KILLING

Dated: May14, 2019


By: 

RICHARD ELIAS, ESQ.
Attorney for the Relator

THE UNITED STATES

Dated: May15, 2019

McGregor W. Scott
United States Attorney

By: 

KELLI L. TAYLOR
Assistant United States Attorney
Attorneys for the United States