

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

PEOPLE FOR THE ETHICAL TREATMENT OF ANIMALS, INC., <p style="text-align: center;">Plaintiff,</p> <p style="text-align: center;">v.</p> MICHAEL K. YOUNG, in his official capacity as President of Texas A&M University, <p style="text-align: center;">Defendant.</p>	}	Civil Action No. 18-cv-1547
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NOTICE OF FINAL SETTLEMENT AGREEMENT

Whereas on November 5, 2019, the parties jointly notified the Court that they had reached an agreement to settle the above-captioned matter but needed additional time to reduce that agreement into a formal settlement agreement, and the parties thus jointly moved for a 90-day administrative closure of this matter (ECF No. 73);

Whereas on November 7, 2019, the Court issued a Conditional Dismissal dismissing the case with prejudice, allowing the parties to move for reinstatement by February 3, 2020, and retaining jurisdiction to enforce the settlement (ECF No. 74);

The parties hereby notify the Court that they have now fully executed the settlement agreement. A copy of the fully executed settlement agreement, over which the Court maintains jurisdiction for enforcement purposes, is attached hereto as Exhibit A.

DATED: February 3, 2020

Respectfully submitted:

/s/ David Greene
DAVID GREENE*
Attorney-in-Charge for Plaintiff

ADAM SCHWARTZ*
Electronic Frontier Foundation
815 Eddy Street
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*Admitted *pro hac vice*
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LOCAL COUNSEL:

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Attorneys for Plaintiff
People for the Ethical Treatment of Animals, Inc.

EXHIBIT A

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

PEOPLE FOR THE ETHICAL
TREATMENT OF ANIMALS, INC.,

Plaintiff,

v.

MICHAEL K. YOUNG, IN HIS OFFICIAL
CAPACITY AS PRESIDENT OF TEXAS
A&M UNIVERSITY,

Defendant.

No. 4:18-CV-01547

SETTLEMENT AGREEMENT AND
FULL AND FINAL RELEASE OF ALL CLAIMS IN THIS LAWSUIT

This **SETTLEMENT AGREEMENT AND FULL AND FINAL RELEASE OF ALL CLAIMS IN THIS LAWSUIT** (*the "Agreement"*) is made by and between Plaintiff People for the Ethical Treatment of Animals, Inc. ("PETA" or "Releasing Party"), and Defendant Michael K. Young, in his official capacity as President of Texas A & M University ("Defendant" or "TAMU").

RECITALS

- A. WHEREAS**, there is a lawsuit now pending in the United States District Court for the Southern District of Texas, Houston Division, entitled Cause No. 4:18-cv-01547; *People for the Ethical Treatment of Animals, Inc. v. Michael K. Young, in his official capacity as President of Texas A & M University* (hereinafter "Lawsuit");
- B. WHEREAS**, the Defendant is an agency of the State of Texas;
- C. WHEREAS**, PETA alleges in the Lawsuit that TAMU blocked PETA from posting certain content on TAMU's Facebook page and in doing so violated PETA's rights under the First Amendment to the United States Constitution;

- D. WHEREAS**, TAMU categorically denies PETA's allegations and asserts that all actions concerning PETA were appropriate and not in violation of any of PETA's rights under any state or federal law;
- E. WHEREAS**, bona fide disputes and controversies ("Disputes") exist between PETA and TAMU (*collectively* "Parties") regarding matters described in Recitals A-D;
- F. WHEREAS**, litigation will require extensive preparation and expense unless it is fully settled, terminated, and dismissed with prejudice at this time; and,
- G. WHEREAS**, the Parties wish to fully and finally resolve all matters disputed in the Lawsuit.

NOW, THEREFORE, in consideration of the Recitals set forth above, the mutual promises, agreements, covenants, and provisions herein contained, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereby agree that the Agreement resolves all claims in this lawsuit or which could have been asserted therein upon the following terms and conditions:

1. Consideration:

In complete compromise and settlement of this Lawsuit, TAMU agrees to take all of the following actions:

- a.** To remove any and all settings currently blocking or filtering PETA's comments on TAMU's Facebook page.
- b.** Within two weeks of the execution of this agreement, to confirm in writing that it has done so.
- c.** To not exercise viewpoint discrimination when administering its Facebook page, and in particular to not exercise viewpoint discrimination against PETA or PETA's supporters and members.
- d.** To refrain from adding any settings in the future to block or filter, whether automatically or manually, PETA or its comments on TAMU's Facebook page, provided that TAMU explicitly retains the right to remove, filter or hide any of PETA's posts or comments not in compliance with its Facebook Usage Policy, and PETA explicitly retains the right to bring a facial challenge to that policy and to

bring an as-applied challenge to the manner that TAMU applies that policy (subject to the limitations below).¹

- e. To pay \$75,000 in attorney's fees by check made payable to PETA's counsel Electronic Frontier Foundation, Tax Identification Number 04-3091431. Payment of attorney's fees will be made no later than forty-five ("45") days after the full execution of this Agreement by all required signatories.

In exchange, PETA agrees that it will dismiss the Lawsuit with prejudice to the refiling of the same; and will not initiate any facial challenge concerning TAMU's Facebook Usage Policy for at least eighteen ("18") months from the effective date of this Agreement or any as-applied challenge for at least three ("3") months from the effective date of this Agreement; and will not encourage, intervene in, join, fund directly or indirectly, or otherwise participate in any facial challenge concerning that policy for at least eighteen ("18") months from the effective date of this Agreement.

2. State Approval:

The payment of attorney's fees to PETA's counsel is subject to approval as required by the Office of the Attorney General and such other officers and officials of the State of Texas as may be required by law or necessary to obtain funding. PETA agrees and understands that this Agreement is not final until such approval has been obtained. TAMU understands and agrees that PETA's release in paragraph 5 below and its other obligations under the Agreement are not effective until this Agreement becomes final based on the foregoing. Counsel for Defendant shall use best efforts to expeditiously obtain all required approvals for this Agreement and payment of the attorney's fees.

3. Resolution of This Lawsuit:

PETA, in consideration of the benefits outlined above, agrees that upon actual receipt of the completed Agreement, the written confirmation of performance, and attorney's fees, the Parties will file the executed Joint Stipulation of Dismissal of All Claims pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(ii) in the Lawsuit, attached hereto as Exhibit A, with the Court.

Notwithstanding the foregoing, PETA may bring an action to enforce the provisions of this Agreement.

¹ TEXAS A & M UNIVERSITY FACEBOOK USAGE POLICY, <https://www.tamu.edu/statements/facebook-usage-policy.html> (last visited June 28, 2019).

4. Plaintiff's Release:

PETA hereby irrevocably and unconditionally **RELEASES, ACQUITS** and forever **DISCHARGES** the Defendant who for purposes of this Agreement are TAMU, and all of their past and present agents, attorneys, servants, employees, successors, and assigns, as well as the Board of Regents of The Texas A&M University System from any and all claims, causes of action, rights, demands, debts, liabilities, and controversies, which accrued as of the date of this Agreement, asserted or unasserted, of any nature whatsoever, arising from the transactions or occurrences made the subject of this litigation, regardless of whether or not such person, entity, agent, agency, successor, assign, or party is expressly named herein. The disputes released by PETA include those actual or contingent, at law or in equity, and whether based in tort, contract, statute, or any other basis. PETA's release includes equitable relief; actual, compensatory, consequential, punitive, special, multiple or other damages; expenses (including attorneys' fees and costs); and all other reimbursements or charges of any kind.

5. Responsibility for Taxes and Tax Consequences:

PETA shall be ultimately responsible for all taxes, if any, including any federal and/or state incomes taxes, social security taxes, or Medicare taxes owed by it to any taxing authority, in connection with the payment of attorney's fees. PETA acknowledges that TAMU and its legal counsel have made no representations regarding the proper tax treatment of the attorney's fees paid.

6. Claims Not Previously Conveyed:

PETA represents and warrants that no claim released herein has previously been conveyed, assigned, or in any manner transferred, in whole or in part, to any third party, except for assignment of fees and expenses to its counsel in this Lawsuit.

7. Severability:

If any part of this Agreement is held to be invalid or unenforceable, the remainder of the Agreement shall not be affected, and shall remain binding upon the Parties.

8. Merger:

This Agreement contains the entire understanding of the Parties hereto, supersedes any and all prior agreements or understandings, statements, promises, or inducements

contrary to the terms of this Agreement, and shall not be amended except by written instrument expressly referring to this Agreement and signed by all of the Parties hereto.

9. Governing Law:

The substantive laws of the United States and the State of Texas shall govern the validity, construction, performance and enforcement of this Agreement. Venue for any dispute arising under this Agreement shall be in Bexar County, Texas.

10. Other Acknowledgements:

Each party represents and certifies that it: (1) has carefully read all of this Agreement; (2) has been given a fair opportunity to discuss and negotiate the terms of this Agreement through legal counsel; (3) has been given a reasonable time within which to consider this Agreement before executing it; (4) understands the provisions of this Agreement; (5) has received advice from an attorney regarding this Agreement; (6) has determined that it is in its best interest to enter into this Agreement; (7) has not been influenced to sign this Agreement by any statement or representation by the other party or their legal counsel not contained in this Agreement; and (8) enters into this Agreement knowingly and voluntarily.

11. Multiple Originals:

This Agreement may be executed in multiple counterparts and via electronic delivery, each of which shall constitute an original.

EXECUTED as of the last date of signing below:



Jeffrey S. Kerr, General Counsel to PETA

Date: 11/12/19

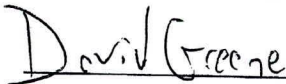


[TAMU]

Date: 11/13/19

By: _____ TITLE

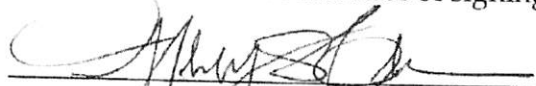
APPROVED AS TO FORM:

 11/14/19

David Greene
Attorney for Plaintiff

Eric A. Hudson
Attorney for Defendant

EXECUTED as of the last date of signing below:


Jeffrey S. Kerr, General Counsel to PETA

Date: 11/12/19

[TAMU]

Date: _____

By: _____ TITLE

APPROVED AS TO FORM:

David Greene 11/14/19
David Greene
Attorney for Plaintiff

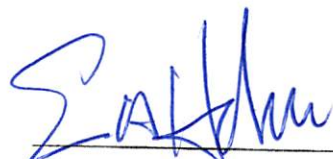
 02/03/2020
Eric A. Hudson
Attorney for Defendant

EXHIBIT A

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
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PEOPLE FOR THE ETHICAL
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Plaintiff,

v.

MICHAEL K. YOUNG, IN HIS OFFICIAL
CAPACITY AS PRESIDENT OF TEXAS
A&M UNIVERSITY,

Defendant.

No. 4:18-CV-01547

JOINT STIPULATION OF DISMISSAL

TO THE HONORABLE UNITED STATES DISTRICT COURT JUDGE LYNN N. HUGHES:

COME NOW PLAINTIFF PEOPLE FOR THE ETHICAL TREATMENT OF ANIMALS, INC. and DEFENDANT MICHAEL K. YOUNG, IN HIS OFFICIAL CAPACITY AS PRESIDENT OF TEXAS A & M UNIVERSITY, by and through their respective counsel of record, and, pursuant to Federal Rule of Civil Procedure 41, file this, their Joint Stipulation of Dismissal. For cause of action, the Plaintiff and Defendants would show unto the Court as follows:

{00343403}

Pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(ii), PLAINTIFF PEOPLE FOR THE ETHICAL TREATMENT OF ANIMALS, INC. and DEFENDANT MICHAEL K. YOUNG, IN HIS OFFICIAL CAPACITY AS PRESIDENT OF TEXAS A & M UNIVERSITY, voluntarily stipulate, without need for Court orders, to the dismissal of the above-styled and numbered cause, claims, counterclaims, crossclaims or third-party claim, with prejudice.

Respectfully submitted,

PETA

By: _____

PETA COUNSEL

* * *

/s/ Eric A. Hudson

ERIC A. HUDSON
Assistant Attorney General
Office of the Attorney General
P.O. Box 12548, Capitol Station
Austin, Texas 78711-2548
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Facsimile: (512) 320-0667
eric.hudson@oag.texas.gov
ATTORNEY FOR DEFENDANT

{00343403}

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the above and foregoing Joint Stipulation of Dismissal has been delivered on this the ____th day of _____, 2019, via E-File Notification to Eric Hudson, Esq., Office of the Attorney General, General Litigation Division, P.O. Box 1258, Capital Station, Austin, Texas 78711-2548.

[PETA]

PETA COUNSEL

NOTICE OF ELECTRONIC FILING

The undersigned counsel hereby certifies that he has electronically submitted for filing a true and correct copy of the above and foregoing in accordance with the Electronic Case Files System of the Southern District of Texas on the ____th day of _____, 2019.

[PETA]

PETA COUNSEL