

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

STATES OF NEW YORK,
CALIFORNIA, ILLINOIS,
MINNESOTA, NEW MEXICO, and
VERMONT, and the DISTRICT OF
COLUMBIA,

Plaintiffs,

v.

UNITED STATES DEPARTMENT
OF AGRICULTURE; UNITED
STATES DEPARTMENT OF
AGRICULTURE FOOD AND
NUTRITION SERVICE; and
SONNY PERDUE, in his official
capacity as Secretary of Agriculture,

Defendants.

19-CV-2956

Judge Andrew L. Carter, Jr.

**STIPULATION OF VOLUNTARY DISMISSAL WITHOUT PREJUDICE
PURSUANT TO FED. R. CIV. P. 41(a)(1)(A)(ii)**

WHEREAS, in this action plaintiffs the States of New York, California, Illinois, Minnesota, New Mexico, Vermont and the District of Columbia (the “States”) challenge provisions in defendants’ (collectively, “USDA”) final rule, *Child Nutrition Programs: Flexibilities for Milk, Whole Grains, and Sodium Requirements*, 83 Fed. Reg. 63,775 (Dec. 12, 2018) (codified at 7 C.F.R. § 210.10; 7 C.F.R. § 220.8) (the “2018 Rule”) that eliminate the final sodium target, delay compliance with sodium target 2, and cut in half the whole grain requirement in the National School Lunch Program and School Breakfast Program;

WHEREAS, other plaintiffs brought a separate action (No. 19 Civ. 1004 (GJH)) in the U.S. District Court for the District of Maryland (the “Maryland District Court”) that also challenged the 2018 Rule and sought its vacatur;

WHEREAS, on April 13, 2020, the Maryland District Court issued a Memorandum Opinion and Order vacating the 2018 Rule and remanding to USDA for further proceedings consistent with the Maryland District Court’s opinion (the “Maryland District Court Decision”);

WHEREAS, on April 16, 2020, this Court, in an Opinion and Order, denied USDA’s motion to dismiss the States’ action for lack of subject matter jurisdiction, holding that the States had “alleged an injury in fact to their proprietary interests and thus, have established standing” (Dkt. 71, Op. at 19);

WHEREAS, USDA has determined that it will not pursue an appeal of the Maryland District Court Decision;

WHEREAS, the Maryland District Court Decision vacated the 2018 Rule, and such vacatur applies nationwide;

IT IS HEREBY STIPULATED AND AGREED by and between the parties, through their respective counsels, that

1. This action is voluntarily dismissed, without prejudice, pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(ii), and without interest, costs, expenses, disbursements, or fees to any party; and

2. This Stipulation may be executed in one or more counterparts, each of which taken together shall constitute one and the same document; electronically

scanned signatures are acceptable as originals, and the parties consent to electronic signatures (*i.e.*, /s/ [Name of Counsel]).

Dated: May 21, 2020

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