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8 Attorneys for the Plaintiff
 9 United States of America

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IN THE UNITED STATES DISTRICT COURT
 FOR THE EASTERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 v.)
)
 AMY LOPEZ,)
)
 Defendant.)

Case No. 1:13-CV-00112-LJO-SMS

**SETTLEMENT AGREEMENT
 AND PROPOSED ORDER**

I. PARTIES

1. Plaintiff, United States of America, and Defendant Amy Lopez (collectively, the Parties), hereby agree to resolve the United States' civil action to recover money for Defendant's breach of her student loan contract as set forth below (the Agreement). The Agreement is based upon the following facts:

II. BACKGROUND

2. Defendant resides in and maintains a law practice in this District.
3. The complaint alleges that on April 1, 2005, Defendant signed a promissory note to consolidate her student loans through the U.S. Department of Education's Federal Direct Consolidation Loan Program pursuant to the Higher Education Act of 1965, as amended, 20 U.S.C. § 1087a *et seq.* On April 18, 2005, the United States disbursed \$120,204.24 to Defendant with interest thereon at 8.25 per cent per annum.
4. Defendant defaulted on the loan on September 23, 2008.

1 vi. June 1, 2013, and continuing the first of each month thereafter until
2 paid in full, \$650.00, in U.S. legal tender, to satisfy the Judgment Amount. Post judgment
3 interest shall accrue at the rate of one percent (1%), compounded annually. Appendix "A" hereto
4 sets forth the amortization schedule for the reduced \$135,000.00 payment plan, which shall
5 remain in effect provided Defendant does not default, or fails to timely cure a default, under these
6 payment provisions.

7 D. Defendant agrees to be placed in the Treasury Offset Program (TOP), with any
8 and all tax refunds, federal stimulus funds or other federal monies subject to the TOP being
9 applied to the Judgment Amount. The United States will credit Defendant dollar-for-dollar for
10 any set-offs, but until the Judgment Amount is satisfied, Defendant remains obligated to perform
11 per the terms of this Agreement.

12 E. Defendant's monthly payments are due by the 1st day of each month until the
13 Judgment Amount is satisfied. Checks must be payable to the **United States Department of**
14 **Justice**. Until notified otherwise, Defendant's payments are due at the United States Attorney's
15 Office, Attention Financial Litigation Unit (FLU), 501 I Street, Suite 10-100, Sacramento, CA
16 95814.

17 F. During the period of the payment plan, Defendant may request a reduction in
18 the amount of her installment payments if she believes a deterioration of her financial condition
19 imperils her ability to comply with the Agreement. Defendant shall submit her request in writing
20 to the FLU at its address listed above and shall support her request with her signed and filed tax
21 returns and schedules and any other relevant financial documentation. Defendant shall provide
22 any additional documents and information sought by the FLU for its determination whether a
23 financial adjustment is justified. The FLU has the sole authority to determine the amount and
24 duration of any adjustment to Defendant's payment plan obligations. Conversely, there is no
25 prepayment penalty and Defendant is encouraged to increase her payments as her financial
26 situation allows. Beginning on February 1, 2014, and at least annually thereafter, the United
27 States may review and evaluate whether Defendant's financial condition warrants an increase in
28 the amount of her monthly payments. Defendant shall produce the financial documentation

requested by the United States for this evaluation.

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2 G. Default. Defendant shall be in default if she fails to make a timely payment
3 and thereafter fails to cure the default within fifteen (15) days from the date the United States
4 mails written notice of the deficiency to Defendant at the address stated in paragraph 8H, below.
5 If Defendant fails to cure her default, the United States may declare any unpaid balance
6 immediately due and owing and proceed with collection efforts against Defendant. If the United
7 States is required to enforce the judgment, Defendant agrees to a litigation surcharge of
8 \$15,000.00 to compensate the United States for its collection costs. No further notice is required.

9 H. Written Notice. Except as provided elsewhere in this Agreement, whenever
10 written notice is required, the notice shall be addressed and mailed to the individuals identified
11 below, unless those individuals or their successors give notice of a change of address to the other
12 party in writing.

13 As to the United States:

14 Kurt A. Didier
15 Assistant United States Attorney
16 United States Attorney's Office
17 501 I Street, Suite 10-100
18 Sacramento, CA 95814
19 Phone 916-554-2700
20 Facsimile 916-554-2900

21 As to Defendant:

22 Amy Lopez, Esq.
23 225 W. Shaw Avenue, Suite 101
24 Fresno, CA 93704
25 Phone 559-221-6800
26 Facsimile 559-221-6803

27 The 15 day cure period provided by the default notices referenced in paragraph 8G, above,
28 commences from the date the United States mails a default notice to Defendant. All other
29 notices and shall be considered effective upon receipt.

30 9. In consideration of Defendant's undertakings, and subject to the exceptions stated
31 below, the United States fully and finally releases Defendant, her officers, directors, agents and
32 employees and agrees to settle and relinquish all claims it may have against Defendant arising

from the subject matter of this action.

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2 10. Defendant fully and finally releases the United States, its agencies, employees,
3 servants, contractors and agents from any claims (including attorneys' fees, costs, and expenses
4 of every kind and however denominated) which Defendant asserted, could have asserted, or may
5 assert in the future against the United States, its agencies, employees, servants, contractors and
6 agents arising from the subject matter of this action.

7 11. With respect to the Parties' mutual releases, each understands and agrees that this
8 Agreement shall release all existing and future claims arising directly or indirectly from the acts
9 or omissions that gave rise to the above-captioned action, including claims that are unknown and
10 unforeseen, notwithstanding Section 1542 of the Civil Code of the State of California, which
11 provides as follows:

12 A general release does not extend to claims which the creditor does not know or
13 suspect to exist in his or her favor at the time of executing [this] Release, which if
14 known by him or her, must have materially affected his or her settlement with the
15 debtor.

16 12. If Defendant's obligations under this Agreement are avoided for any reason,
17 including, but not limited to the exercise of a trustee's avoidance powers under the Bankruptcy
18 Code, the United States, at its sole option, may rescind the releases in this Agreement and bring
19 any civil and/or administrative claim, action or proceeding against Defendant for the claims that
20 would otherwise be covered by the releases provided herein, and Defendant agrees that she shall
21 not plead, argue or otherwise raise any defenses under the theories of statutes of limitations,
22 laches, estoppel or similar theories that relate to the timing of the filing of any such civil or
23 administrative claim, action or proceeding that are brought by the United States within ninety
24 (90) calendar days of written notification to the Defendant that the releases herein have been
25 rescinded pursuant to this paragraph, except to the extent such defenses were available on
26 January 1, 2013. If the United States rescinds the releases in this Agreement, Defendant shall be
27 relieved of all obligations under the Agreement.

28 13. This Agreement is for the Parties' benefit only.

1 14. The Parties agree to execute and deliver such other and further documents as may be
2 required to carry out the terms of this Agreement.

3 15. Each Party and signatory to this Agreement represents that he or she freely and
4 voluntarily enters into this Agreement without any degree of duress or compulsion. They hereby
5 declare that they have completely read, fully understand, and voluntarily accept the Agreement's
6 terms following opportunity for review by legal counsel of their choice.

7 16. Each party further warrants and represents that no party or its representative has
8 made any promise, representation or warranty, express or implied, except as set forth in this
9 Agreement and that each party has not relied on any inducements, promises or representations
10 made by any party to this Agreement, or its representatives, or to any other person, except as
11 expressly set forth herein.

12 17. This Agreement was negotiated by the Parties, each of whom had the opportunity to
13 participate in the drafting hereof. It is therefore the intent of the Parties that words of this
14 Agreement shall be construed as a whole so as to effect their fair meaning and not for or against
15 any party in any subsequent dispute, the Parties having waived the benefit of California Civil
16 Code § 1654 and similar laws.

17 18. Each party to this Agreement represents and warrants that each person whose
18 signature appears in this Agreement has been duly authorized and has the full authority to
19 execute this Agreement on behalf of the person, persons or entity who is a party to this
20 Agreement.

21 19. The Agreement is binding on each party and on its successors in interest, transferees
22 and assigns.

23 20. This Agreement is governed by the laws of the United States; and, to the extent state
24 law applies, the Agreement is governed by California law.

25 21. This Agreement constitutes the complete agreement between the Parties. It may not
26 be amended except by the parties' written consent.

27 22. If any term, provision, covenant or condition of this Agreement is held by a court of
28 competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions shall

1 remain in full force and effect.

2 23. Except as expressly provided to the contrary in this Agreement, each party shall bear
3 its own legal and other costs incurred in connection with this action, including the preparation
4 and performance of this Agreement.

5 24. This Agreement may be executed in counterparts and circulated for signatures by
6 facsimile or electronic transmission. All such counterparts, together, shall be deemed one
7 document. The Agreement is effective as of the date it is signed.

8 FOR THE UNITED STATES OF AMERICA:

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10 BENJAMIN B. WAGNER
11 United States Attorney

12 Dated: March 1, 2013

13 By: /s/Kurt A. Didier
14 KURT A. DIDIER
15 Assistant United States Attorney

16 FOR DEFENDANT AMY LOPEZ:

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18 Dated: January 30, 2013

19 By: /s/Amy Lopez
20 AMY LOPEZ, ESQ., in pro per
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