

1 BENJAMIN B. WAGNER
 United States Attorney
 2 KURT A. DIDIER
 Assistant United States Attorney
 3 501 I Street, Suite 10-100
 Sacramento, California 95814
 Telephone: (916) 554-2700
 4 Attorneys for the Plaintiff
 5 United States of America

6
 7 IN THE UNITED STATES DISTRICT COURT
 8 FOR THE EASTERN DISTRICT OF CALIFORNIA

9 UNITED STATES OF AMERICA,)
 10)
 Plaintiff,)
 11)
 v.)
 12)
 LINESHA SMITH,)
 13)
 Defendant.)
 14)

Case No. 2:10-CV-00820-FCD-DAD

**SETTLEMENT AGREEMENT
 AND ORDER**

15
 16 1. Plaintiff, United States of America, and defendant Linesha Smith hereby agree to
 17 resolve the United States' civil complaint for fraud and unjust enrichment as set forth below (the
 18 Agreement). The complaint arises from Defendant's submission of a false claim for disaster
 19 assistance following Hurricane Katrina's August 2005 devastation of parts of Louisiana. The
 20 Agreement is based upon the following facts:

21 A. This is an action to recover treble damages and penalties pursuant to the False Claims
 22 Act, 31 U.S.C. §§ 3729 et seq. (the FCA) and for unjust enrichment.

23 B. Defendant is a California resident. She has never resided in, or visited Louisiana.

24 C. The complaint alleges Defendant falsely claimed to the Federal Emergency
 25 Management Agency (FEMA) that she suffered hurricane caused losses. Specifically, Defendant
 26 claimed that when Hurricane Katrina struck New Orleans, Louisiana, Defendant maintained her
 27 primary residence there and suffered hurricane caused damage to her home and personal property.

1 D. As a result of Defendant's false claims, the United States paid temporary housing
2 assistance for Defendant's benefit in the amount of \$2,358. The United States would not have
3 paid this amount but for Defendant's false representations. The complaint seeks the recovery of
4 three times the amount of this loss and penalties as authorized by the FCA.

5 E. Defendant admits the allegations contained in the United States' complaint.

6 2. The United States and Defendant agree to settle this litigation upon the following
7 terms:

8 A. Service of Process. Defendant has accepted, via overnight mail, service of the
9 summons, complaint and new case documents identified at Docket Entry Nos. 1, 2, and 3.

10 B. Entry of Judgment. Defendant consents to entry of judgment in the amount of \$6,000,
11 representing damages, penalties and costs authorized pursuant to 31 U.S.C. §§ 3729(a)(1) -
12 3729(a)(3). Defendant further agrees that interest on the judgment shall accrue at 3% interest
13 compounded annually (Interest) until the judgment is satisfied. The judgment amount, however,
14 is reduced to \$4,000, at 3% Interest, provided Defendant does not default under the provisions of
15 the parties' repayment plan.

16 C. Repayment Plan. Beginning May 1, 2010, Defendant shall pay the United States at
17 least \$50 per month. Should the defendant successfully make monthly payments by the agreed
18 upon monthly due date, the judgment shall be reduced to \$4,000 at 3% Interest. Should the
19 Defendant repay \$1,500 in the first year of this repayment period, the judgment shall be further
20 reduced to \$3,500 at 3% Interest. Should the Defendant repay the remaining balance during the
21 second year of this repayment period, the judgment shall be finally reduced to \$3,000, plus 3%
22 Interest. The payments must be postmarked by the 15th day of each month and mailed to the
23 FEMA-LOCKBOX, P.O. Box 70941, Charlotte, NC 28272-0941. Checks must be payable to the
24 **Federal Emergency Management Agency (FEMA)** and reference NEMIS ID 91-2248604.
25 There is no prepayment penalty and Defendant is encouraged to increase her payments as her
26 financial situation allows. Upon Defendant's compliance with these settlement terms, the United
27 States will file a satisfaction of judgment with the Court.

28 D. Default. Defendant shall be in default if she fails to make a timely payment and

1 thereafter fails to cure the default within ten days from the date the United States mails written
2 notice of the deficiency to Defendant at the address stated in paragraph E, below. The United
3 States may also declare Defendant's default as provided in paragraph F, below. If Defendant fails
4 to cure her default, the judgment shall revert to \$6,000, plus 3% Interest from the date judgment
5 was entered, less any previous payments received. No further notice is required. Upon
6 Defendant's failure to cure her default, the United States may declare any unpaid balance
7 immediately due and owing and proceed with collection efforts against Defendant.

8 E. Written Notice. Whenever written notice is required (this does not include payments,
9 which must be mailed to the FEMA-LOCKBOX identified in paragraph C, above), the notice
10 shall be addressed and mailed to the individuals identified below, unless those individuals or their
11 successors give notice of an address change to the other parties in writing.

12 As to the United States:

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

20 As to Defendant:

21 Linesha Smith
22 110 Ishi Circle
23 Sacramento, CA 95833
24 Phone: 916-271-5859

25 The ten day cure period provided by the default notices referenced in paragraph D, above,
26 commences from the date the United States mails a default notice to Defendant. All other notices
27 and shall be considered effective upon receipt.

28 F. Bankruptcy. This action concerns the recovery of treble damages and penalties
payable to the United States for Defendant's liability under the FCA. Defendant acknowledges
the provisions of 11 U.S.C. § 523(a)(7), which provide an exception to the discharge afforded by
Bankruptcy Code sections 11 U.S.C. §§ 727, 1141, 1228(a) and (b), and 1328(b). Accordingly,
Defendant agrees that a voluntary bankruptcy petition filed by her or an involuntary petition filed

1 against her shall not excuse Defendant's performance under this Agreement. The United States
2 may treat Defendant's failure to perform during the pendency of a bankruptcy proceeding as a
3 default under paragraph D, above.

4 G. Solvency. Defendant has reviewed her financial situations and warrants that she is
5 currently solvent within the meaning of 11 U.S.C. §§ 547(b)(3) and 548(a)(1)(B)(ii)(I) and will
6 remain solvent following payment to the United States.

7 H. Opportunity to Review and Revise. By settling this action, the parties intend to avoid
8 the expenses and risks of further litigation. Each party has, or had the opportunity to fully review
9 and revise this Agreement. The parties agree that the Agreement has been negotiated in good
10 faith, and is fair and reasonable. Accordingly, the normal rule of construction resolving
11 ambiguities against the drafting party shall not be utilized in the interpretation of this Agreement.

12 I. Authorization and Understanding. Each party to this Agreement represents and
13 warrants that each person whose signature appears in this Agreement has been duly authorized
14 and has the full authority to execute this Agreement on behalf of the person, persons or entity who
15 is a party to this Agreement. Each person executing this Agreement further represents that
16 he/she: has read and understands its contents; executes this Agreement voluntarily; and has not
17 been influenced by any person acting on behalf of any party. The Agreement is binding on each
18 party and on its successors in interest, transferees and assigns.

19 J. Governing Law. This Agreement is entered into in the State of California and shall be
20 construed and interpreted according to its laws or federal laws, as is appropriate.

21 K. Severability. If any term, provision, covenant or condition of this Agreement is held
22 by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the
23 provisions shall remain in full force and effect.

24 L. A fully executed copy—including facsimile signatures—of the Agreement shall be
25 deemed an original for all purposes, and this Agreement may be executed in one or more
26 counterparts, each of which shall be an original, but all of which shall constitute one instrument.

27 M. Entire Agreement. This document memorializes the parties' entire Agreement. The
28 Agreement's terms are contractual and not mere recitals, and may be amended or modified in

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1 whole, or in part, at any time only by an agreement in writing, executed in the same manner as
2 this Agreement.

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4 **LINESHA SMITH**

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6 Dated: March 20, 2010

7 By: /s/ Linesha Smith
8 LINESHA SMITH, an Individual

9 **UNITED STATES OF AMERICA**

10 BENJAMIN B. WAGNER
11 United States Attorney

12 Dated: April 9, 2010

13 By: /s/ Kurt A. Didier
14 KURT A. DIDIER
15 Assistant United States Attorney
16 Attorneys for the United States of America

17 **ORDER**

18 The Court, having reviewed the court files and parties' settlement agreement (the
19 Agreement) and finding good cause therefor, hereby APPROVES the terms of the Agreement.
20 The stipulated entry of judgment as provided in the Agreement shall be entered as a separate
21 judgment.

22 IT IS SO ORDERED.

23
24 Dated: April 9, 2010

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26 

27 FRANK C. DAMRELL, JR.
28 UNITED STATES DISTRICT JUDGE