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7 Attorneys for Defendants

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 9 UNITED STATES DISTRICT COURT
 10 NORTHERN DISTRICT OF CALIFORNIA
 11 SAN FRANCISCO DIVISION

12 GERALD VON BARGEN and KHOEUN)
 13 KHAN,) No. C 06-4744 MEJ

14 Plaintiffs,)

15 v.)

16 UNITED STATES OF AMERICA, et al.,)

17 Defendants.)

**STIPULATION OF SETTLEMENT
 AND RELEASES; ~~PROPOSED~~
 ORDER**

18 IT IS HEREBY STIPULATED by and between plaintiffs Gerald Von Bargen and
 19 Khoeun Khan, on the one hand, and defendant United States of America, on the other hand, as
 20 follows:

21 1. The parties do hereby agree to settle and compromise the above-entitled personal
 22 injury action under the terms and conditions set forth herein.

23 2. The United States of America, defendant, agrees to pay to plaintiff Gerald Von Bargen
 24 the sum of Thirty-five thousand dollars (\$35,000.00) and to pay to plaintiff Khoeun Khan the
 25 sum of Five thousand dollars (\$5,000), which sums shall be in full settlement and satisfaction of
 26 any and all claims, demands, rights, and causes of action of whatsoever kind and nature, arising
 27 from, and by reason of any and all known and unknown, foreseen and unforeseen bodily and
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1 personal injuries, damage to property and the consequences thereof, resulting, and to result, from
2 the same subject matter that gave rise to the above-captioned lawsuit, for which plaintiffs or their
3 heirs, executors, administrators, or assigns, and each of them, now have or may hereafter acquire
4 against the United States of America or its agents, servants, and employees.

5 3. Plaintiffs and their heirs, executors, administrators or assigns hereby agree to accept
6 the sums of money specified above (that is, the agreement to pay to plaintiff Gerald Von Bargaen
7 the sum of Thirty-five thousand dollars (\$35,000.00) and to pay to plaintiff Khoeun Khan the
8 sum of Five thousand dollars (\$5,000)) in full settlement and satisfaction of any and all claims,
9 demands, rights, and causes of action of whatsoever kind and nature, arising from, and by reason
10 of any and all known and unknown, foreseen and unforeseen bodily and personal injuries,
11 damage to property and the consequences thereof which they may have or hereafter acquire
12 against the United States of America or its agents, servants and employees on account of the
13 same subject matter that gave rise to the above-captioned lawsuit. Plaintiffs and their heirs,
14 executors, administrators or assigns further agree to reimburse, indemnify and hold harmless the
15 United States of America and its agents, servants or employees from any and all such causes of
16 action, claims, liens, rights, or subrogated or contribution interests incident to or resulting from
17 further litigation or the prosecution of claims by plaintiffs or their heirs, executors, administrators
18 or assigns against any third party or against the United States of America.

19 4. This stipulation for compromise settlement is entered into by all parties for the
20 purpose of compromising disputed claims and avoiding the expenses and risks of litigation. This
21 settlement does not constitute an admission of liability or fault on the part of the defendant.

22 5. This agreement may be pled as a full and complete defense to any subsequent action or
23 other proceeding which arises out of the claims released and discharged by the agreement.

24 6. It is also agreed, by and among the parties, that the settlement amount to plaintiff
25 Gerald Von Bargaen in the sum of Thirty-five thousand dollars (\$35,000.00) and to plaintiff
26 Khoeun Khan in the sum of Five thousand dollars (\$5,000)) paid by the United States of America
27 to plaintiffs represents the entire amount of the compromise settlement and that the respective
28 parties will each bear their own costs, fees, and expenses and that any attorneys' fees, costs and/or

1 expenses owed by the plaintiffs will be paid out of the settlement amount and not in addition
2 thereto.

3 7. It is also understood by and among the parties that, pursuant to Title 28, United States
4 Code, Section 2678, attorneys' fees for services rendered to plaintiffs in connection with this
5 action shall not exceed 25 per centum of the amount of the compromise settlement.

6 8. Payment of the settlement amount will be made by one check payable in the amount of
7 Thirty-five thousand dollars (\$35,000.00) to "Gerald Von Bargen and his attorneys, Hinton,
8 Cochran & Borba, LLP" and one check payable in the amount of Five thousand dollars (\$5,000)
9 to "Khoecun Khan and her attorneys, Hinton, Cochran & Borba, LLP". Plaintiffs and their
10 attorneys are responsible for payment of any taxes that may be due on the settlement proceeds.
11 Defendant makes no representation as to any tax consequences or liabilities Plaintiffs or their
12 attorneys may incur as a result of this settlement.

13 9. The parties will execute a dismissal with prejudice of this action, but the dismissal
14 with prejudice shall not be filed with the Court until payment of the settlement consideration has
15 been made. Plaintiffs are advised that settlement checks are sometimes not available for eight to
16 ten weeks after approval of the settlement by the court. Counsel for the United States of America
17 will notify plaintiffs' counsel when the settlement check is available. Provided that plaintiff has
18 provided defendant's counsel with the signed stipulation of dismissal, defendant's counsel will,
19 within ten (10) days of receipt of the settlement check, deliver the settlement check to plaintiffs'
20 counsel.

21 10. Plaintiffs hereby release and forever discharge the United States Postal Service, the
22 United States of America and any and all of their past and present officials, employees, agents,
23 attorneys, their successors and assigns, from any and all obligations, damages, liabilities, actions,
24 causes of actions, claims and demands of any kind and nature whatsoever, whether suspected or
25 unsuspected, at law or in equity, known or unknown, arising out of the allegations set forth in
26 plaintiffs' pleadings in this action.

27 11. The provisions of California Civil Code Section 1542 are set forth below:

28 "A general release does not extend to claims which the creditor does not know or

1 suspect to exist in his favor at the time of executing the release, which if known
2 by him must have materially affected his settlement with the debtor."

3 Plaintiffs, having been apprised of the statutory language of Civil Code Section 1542 by their
4 attorneys, and fully understanding the same, nevertheless elect to waive the benefits of any and
5 all rights he may have pursuant to the provision of that statute and any similar provision of
6 federal law. Plaintiffs understand that, if the facts concerning injuries or liability for damages
7 pertaining thereto are found hereinafter to be other than or different from the facts now believed
8 by them to be true, the Agreement shall be and remain effective notwithstanding such material
9 difference.

10 12. The parties agree that this stipulation is intended to be a full and final settlement of
11 all claims arising out of the allegations set forth in plaintiffs' pleadings in this action. Plaintiffs
12 agree to indemnify and hold harmless defendant United States of America from any and all
13 claims, demands, obligations, liens, and lawsuits brought against the United States of America,
14 its agencies or employees, including but not limited to the United States Postal Service, arising
15 out of the allegations set forth in plaintiffs' complaint in this action.

16 13. This instrument shall constitute the entire agreement between the parties, and it is
17 expressly understood and agreed that the agreement has been freely and voluntarily entered into
18 by the parties hereto with the advice of counsel, who have explained the legal effect of this
19 agreement. The parties further acknowledge that no warranties or representations have been
20 made on any subject other than as set forth in this Agreement. This Agreement may not be
21 altered, modified or otherwise changed in any respect except by writing, duly executed by all of
22 the parties or their authorized representatives.

23 14. The parties agree that, should any dispute arise with respect to the implementation of
24 the terms of this Agreement, Plaintiffs shall not seek to rescind the Agreement and pursue their
25 original causes of action. Plaintiffs' sole remedy in such a dispute is an action to enforce the
26 Agreement in district court. The parties agree that the district court will retain jurisdiction over
27 this matter for the purposes of resolving any dispute alleging a breach of this Agreement.

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15. This settlement agreement may be signed in counterparts.

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JOSEPH P. RUSSONIELLO
United States Attorney

DATED: ^{May 25} April __, 2010

By: Michael T. Pyle
MICHAEL T. PYLE
Assistant United States Attorney
Attorneys for Defendants

DATED: April 10, 2010

By: Gerald von Borgen
GERALD VON BARGEN
Plaintiff

DATED: April __, 2010

By: _____
KHOEUN KHAN
Plaintiff

HINTON COHRAN & BORBA, LLP

DATED: ^{5/20/} April __, 2010

By: John E. Borba
JOHN BORBA
Attorneys for Plaintiff

PURSUANT TO STIPULATION, IT IS SO ORDERED:

Dated: May 26, 2010

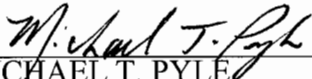
[Signature]
Hon. Mary Ellen Jones
United States Magistrate Judge

15. This settlement agreement may be signed in counterparts.

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JOSEPH P. RUSSONIELLO
United States Attorney

DATED: ^{May 25} April __, 2010

By: 
MICHAEL T. PYLE
Assistant United States Attorney
Attorneys for Defendants

DATED: April __, 2010


By: _____
GERALD VON BARGEN
Plaintiff

DATED: ^{5/4/2010} April __, 2010

By: 
KHOEUN KHAN
Plaintiff

HINTON COHRAN & BORBA, LLP

DATED: ^{5/20/} April __, 2010

By: 
JOHN BORBA
Attorneys for Plaintiff

PURSUANT TO STIPULATION, IT IS SO ORDERED:

Dated:

Hon. Maria Elena-James
United States Magistrate Judge