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9 UNITED STATES DISTRICT COURT
 10 NORTHERN DISTRICT OF CALIFORNIA
 11 SAN FRANCISCO DIVISION
 12

13 ROBERTA KLEIN,)
)
 14 Plaintiff,)
)
 15 v.)
 16 UNITED STATES OF AMERICA et al.,)
 17)
 18 Defendants.)

No. C 06-5729 SC

**STIPULATION FOR COMPROMISE
 SETTLEMENT AND RELEASES;
 [PROPOSED] ORDER**

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STIPULATION FOR COMPROMISE SETTLEMENT AND RELEASES; [PROPOSED] ORDER
 No. 06-5729 SC

1 THE PARTIES AND THEIR ATTORNEYS OF RECORD HEREBY SUBMIT THE
2 FOLLOWING STIPULATION FOR COMPROMISE SETTLEMENT AND RELEASE
3 (hereinafter, "Stipulation and Agreement"):

4 IT IS HEREBY STIPULATED AND AGREED as follows:

5 1. The parties to this Stipulation and Agreement are plaintiff Roberta Klein (hereinafter
6 "Plaintiff"), on the one hand, and all of the named defendants, including the United States of
7 America and Blue & Gold Fleet, LP (erroneously named as "Blue & Gold Fleet" in Plaintiff's
8 First Amended Complaint for Damages for Negligence and Premises Liability), on the other
9 hand. The named defendants, including the United States of America and Blue & Gold Fleet, LP
10 are collectively referred to in this Stipulation and Agreement as "the Defendants." Plaintiff and
11 the Defendants are collectively referred to in this Stipulation and Agreement as "the Parties" and
12 individually as a "Party."

13 2. Plaintiff and the Defendants hereby agree to settle and compromise the above-entitled
14 action under the terms and conditions set forth herein.

15 3. The United States of America agrees to pay to Plaintiff and her counsel, the Dolan Law
16 Firm, the sum of Twenty-Five Thousand Dollars and No Cents (\$25,000), under the terms and
17 conditions set forth herein, which sum shall be in full settlement and satisfaction of any and all
18 claims, demands, rights, and causes of action of whatsoever kind and nature, arising from, and by
19 reason of any and all known and unknown, foreseen and unforeseen bodily and personal injuries,
20 damage to property and the consequences thereof, resulting, and to result, from the same subject
21 matter that gave rise to the above-captioned lawsuit, for which Plaintiff, her heirs, executors,
22 administrators, or assigns, and each of them, now have or may hereafter acquire against the
23 United States of America or its agents, servants, and employees. For purposes of this Stipulation
24 and Agreement only and for no other purpose, the named Defendants other than Blue & Gold
25 Fleet, LP (namely, The Golden Gate National Recreation Area, The National Park Service, the
26 Golden Gate National Parks Association and the National Parks Conservation Association) are
27 agreed by the Parties to be deemed agents, servants and employees who are entitled to the
28 benefits of this Stipulation and Agreement in exchange for the consideration provided to Plaintiff

1 in this Stipulation and Agreement by the United States of America.

2 4. Blue & Gold Fleet, LP agrees to pay to Plaintiff and her counsel, the Dolan Law Firm, the
3 sum of Twenty-Five Thousand Dollars and No Cents (\$25,000), under the terms and conditions
4 set forth herein, which sum shall be in full settlement and satisfaction of any and all claims,
5 demands, rights, and causes of action of whatsoever kind and nature, arising from, and by reason
6 of any and all known and unknown, foreseen and unforeseen bodily and personal injuries,
7 damage to property and the consequences thereof, resulting, and to result, from the same subject
8 matter that gave rise to the above-captioned lawsuit, for which Plaintiff, her heirs, executors,
9 administrators, or assigns, and each of them, now have or may hereafter acquire against Blue &
10 Gold Fleet, LP or its agents, servants, and employees.

11 5. Plaintiff and her heirs, executors, administrators or assigns hereby agree to accept the sum
12 of Twenty-Five Thousand Dollars and No Cents (\$25,000) from the United States of America in
13 full settlement and satisfaction of any and all claims, demands, rights, and causes of action of
14 whatsoever kind and nature, arising from, and by reason of any and all known and unknown,
15 foreseen and unforeseen bodily and personal injuries, damage to property and the consequences
16 thereof which they may have or hereafter acquire against the United States of America or its
17 agents, servants and employees on account of the same subject matter that gave rise to the above-
18 captioned lawsuit. Plaintiff and her heirs, executors, administrators or assigns further agree to
19 reimburse, indemnify and hold harmless the United States of America and its agents, servants or
20 employees from any and all such causes of action, claims, liens, rights, or subrogated or
21 contribution interests incident to or resulting from further litigation or the prosecution of claims
22 by Plaintiff or her heirs, executors, administrators or assigns against any third party or against the
23 United States of America.

24 6. Plaintiff and her heirs, executors, administrators or assigns hereby agree to accept the sum
25 of Twenty-Five Thousand Dollars and No Cents (\$25,000) from Blue & Gold, LP in full
26 settlement and satisfaction of any and all claims, demands, rights, and causes of action of
27 whatsoever kind and nature, arising from, and by reason of any and all known and unknown,
28 foreseen and unforeseen bodily and personal injuries, damage to property and the consequences

1 thereof which they may have or hereafter acquire against Blue & Gold Fleet, LP or its agents,
2 servants and employees on account of the same subject matter that gave rise to the above-
3 captioned lawsuit. Plaintiff and her heirs, executors, administrators or assigns further agree to
4 reimburse, indemnify and hold harmless Blue & Gold Fleet, LP and its agents, servants or
5 employees from any and all such causes of action, claims, liens, rights, or subrogated or
6 contribution interests incident to or resulting from further litigation or the prosecution of claims
7 by Plaintiff or her heirs, executors, administrators or assigns against any third party or against the
8 United States of America.

9 7. In consideration of the payment of Twenty-Five Thousand Dollars and No Cents
10 (\$25,000.00) by the United States of America and the payment of Twenty-Five Thousand Dollars
11 and No Cents (\$25,000.00) by Blue & Gold Fleet, LP and the other terms of this Stipulation and
12 Agreement, Plaintiff agrees to immediately upon execution of this Stipulation and Agreement,
13 execute the accompanying Stipulation For Dismissal with Prejudice, which stipulation shall
14 dismiss, with prejudice, all claims asserted in this Action or any claims that could have been
15 asserted in this Action, which is captioned Roberta Klein v. United States of America et al.,
16 C 06-5729 SC. The fully executed Stipulation For Dismissal with Prejudice will be held by
17 counsel for the United States of America and will not be filed with the Court until Plaintiff has
18 received the settlement amount to be paid by the United States of America and Blue & Gold
19 Fleet, LP.

20 8. This Stipulation and Agreement is entered into by all Parties for the purpose of
21 compromising disputed claims and avoiding the expenses and risks of litigation. This settlement
22 does not constitute an admission of liability or fault on the part of any Party.

23 9. It is agreed, by and among the Parties, that no Party may make any claim for attorney's
24 fees or other costs or expenses of litigation against the Defendants, their agents, servants, or
25 employees in connection with the above-captioned lawsuit.

26 10. It is agreed, by and among the Parties, that this Stipulation and Agreement may be pled
27 as a full and complete defense to any subsequent action or other proceeding which arises out of
28 the claims released and discharged by this Stipulation and Agreement.

1 11. It is agreed, by and among the Parties, that the Twenty-Five Thousand Dollars and No
2 Cents (\$25,000.00) paid by Blue & Gold Fleet, LP and the Twenty-Five Thousand Dollars and
3 No Cents (\$25,000.00) paid by the United States of America represents the entire amount of the
4 compromise settlement and that the respective Parties will each bear their own costs, fees, and
5 expenses and that any attorneys' fees owed by the Plaintiff will be paid out of the settlement
6 amount and not in addition thereto.

7 12. The Twenty-Five Thousand Dollars and No Cents (\$25,000.00) paid by Blue & Gold
8 Fleet, LP will be made by a check made out to Plaintiff and the Dolan Law Firm and such
9 payment will be made within 14 days following the Court's approval of this Stipulation and
10 Agreement. The Twenty-Five Thousand Dollars and No Cents (\$25,000.00) paid by the United
11 States of America will be made by wire transfer or other electronic means to a bank account to be
12 designated in writing by Plaintiff's counsel. Plaintiff's counsel shall be responsible for
13 distributing the funds transferred to the bank account designated in writing by Plaintiff's counsel
14 to Plaintiff.

15 13. Counsel for the United States of America will submit a request for Judgment Fund
16 payment within 48 hours after the Court approves this Stipulation and Agreement. The Parties
17 recognize that payment from the Judgment Fund is often not available for 45 to 60 days after
18 approval of the settlement by the Court.

19 14. Plaintiff forever releases and discharges the United States of America, Blue & Gold
20 Fleet, LP, and any and all of their past and present officials, employees, agents, attorneys, their
21 successors and assigns, from any and all obligations, damages, liabilities, actions, causes of
22 actions, claims and demands of any kind and nature whatsoever, whether suspected or
23 unsuspected, at law or in equity, known or unknown, arising out of the allegations set forth in
24 Plaintiff's pleadings in this action.

25 15. The provisions of California Civil Code Section 1542 are set forth below:

26 "A general release does not extend to claims which the creditor
27 does not know or suspect to exist in his favor at the time of
28 executing the release, which if known by him must have materially
affected his settlement with the debtor."

The Parties, having been apprised of the statutory language of Civil Code Section 1542 by an

1 attorney of each Party's own choosing, and fully understanding the same, nevertheless elects to
2 waive the benefits of any and all rights each Party may have pursuant to the provision of that
3 statute and any similar provision of federal law. The Parties understand that, if the facts
4 concerning injuries or liability for damages pertaining thereto are found hereinafter to be other
5 than or different from the facts now believed by Each Party to be true, this Stipulation and
6 Agreement shall be and remain effective notwithstanding such material difference.

7 16. The United States of America and Blue & Gold, LP release and discharge each other and
8 any and all of their past and present officials, employees, agents, attorneys, their successors and
9 assigns, from any and all obligations, damages, liabilities, actions, causes of actions, claims and
10 demands of any kind and nature whatsoever, whether suspected or unsuspected, at law or in
11 equity, known or unknown, arising out of the allegations set forth in Plaintiff's pleadings in this
12 action.

13 17. The Parties agree that this Stipulation and Agreement is intended to be a full and final
14 settlement of all claims arising out of the allegations set forth in Plaintiffs' pleadings in this
15 action.

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

24 19. If any withholding or income tax liability is imposed upon Plaintiff based on payment of
25 the settlement sum as set forth herein, Plaintiff shall be solely responsible for paying any such
26 liability.

27 20. The Parties agree that the District Court shall retain jurisdiction over this matter for the
28 purposes of resolving any dispute alleging a breach of this Stipulation and Agreement.

1 21. Each Party acknowledges that they have been represented by and have relied upon
2 independent counsel in negotiating, preparing and entering into this Stipulation and Agreement
3 and that they have had the contents of this Stipulation and Agreement fully explained by counsel
4 and that they are fully aware of and understand all of the terms of the agreement and the legal
5 consequences thereof. It is further acknowledged that the Parties have mutually participated in
6 the drafting of this Stipulation and Agreement and it is agreed that no provision herein shall be
7 construed against any Party hereto by virtue of the drafting of this Stipulation and Agreement.

8 22. If any provision of this Stipulation and Agreement shall be held invalid, illegal, or
9 unenforceable, the validity, legality, and enforceability of the remaining provisions shall not in
10 any way be affected or impaired thereby. This Stipulation and Agreement shall constitute the
11 entire agreement between the parties, and it is expressly understood and agreed that this
12 agreement has been freely and voluntarily entered into by the parties hereto with the advice of
13 counsel, who have explained the legal effect of this Stipulation and Agreement. The Parties
14 further acknowledge that no warranties or representations have been made on any subject other
15 than as set forth in this Stipulation and Agreement.

16 23. The Parties agree that, should any dispute arise with respect to the implementation of the
17 terms of this Stipulation and Agreement, no Party shall seek to rescind the Stipulation and
18 Agreement and pursue any of the original causes of action. Each Party's sole remedy in such a
19 dispute is an action to enforce the Stipulation and Agreement in district court. The Parties agree
20 that the district court will retain jurisdiction over this matter for the purposes of resolving any
21 dispute alleging a breach of this Stipulation and Agreement. This Stipulation and Agreement
22 may be signed in counterparts, and any signature on a signature page transmitted by facsimile or
23 by PDF shall be treated the same as an original signature and shall be deemed binding and fully
24 effective.

25 24. The Parties further agree that the filing of this executed Stipulation and Agreement shall
26 notify the Court of the agreement by Plaintiff and the United States to vacate all pending
27 discovery, motion hearing dates, settlement or pretrial deadlines and trial date associated with
28 this litigation.

1 DATED: January 23, 2008
2 DATED: ~~December~~ 26, 2008

Roberta Klein
Roberta Klein, Plaintiff

3 DATED: ~~December~~ 26, 2008

THE DOLAN LAW FIRM
Bryan Lamb
Attorneys for Plaintiff

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6 DATED: December __, 2008

JOSEPH P. RUSSONIELLO
United States Attorney

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10 DATED: December __, 2008

Michael T. Pyle
Assistant United States Attorney
Attorneys for Defendant United States of America

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12
13 DATED: Deccmber __, 2008

NELSON, PERLOV & LEE

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17 DATED: December __, 2008

Mark S. Lee
Attorneys for Defendant Blue & Gold Fleet, LP

BLUE & GOLD FLEET, LP

18 PURSUANT TO STIPULATION, IT IS SO ORDERED:

19 DATED: _____

The Honorable Samuel Conti
United States District Judge

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DATED: December __, 2008

Roberta Klein, Plaintiff

DATED: December __, 2008

THE DOLAN LAW FIRM

Bryan Lamb
Attorneys for Plaintiff

January 26, 2009
DATED: ~~December~~ __, 2008

JOSEPH P. RUSSONIELLO
United States Attorney

Michael T. Pyle
Michael T. Pyle
Assistant United States Attorney
Attorneys for Defendant United States of America

DATED: December ~~31~~, 2008

NELSON, PERLOV & LEE

Mark S. Lee
Mark S. Lee
Attorneys for Defendant Blue & Gold Fleet, LP

DATED: December ~~21~~, 2008

BLUE & GOLD FLEET, LP

[Signature]

PURSUANT TO STIPULATION, IT IS SO ORDERED:

DATED: 2/2/09

The Honorable Samuel Conti
United States District Judge

