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

13 FRANCISCA MORALEZ,) No. C 07-3807 EDL
)
 14 Plaintiffs,)
)
 15 v.)
)
 16 ELAINE CHAO, SECRETARY OF)
 LABOR.)
 17)
 Defendant.)
 18)
 19)

**STIPULATION AND AGREEMENT OF
 COMPROMISE AND [PROPOSED]
 ORDER**

20 IT IS HEREBY STIPULATED AND AGREED by and between plaintiff FRANCISCA
 21 MORALEZ and defendant ELAINE CHAO, (hereinafter the "Federal Defendant"), by and
 22 through their undersigned counsel, as follows:

- 23 1. The parties do hereby agree to settle, compromise and dismiss the above-
 24 captioned action ("This Action") under the terms and conditions set forth herein.
- 25 2. The Federal Defendant agrees to pay the sum of Three Hundred and Sixty Five
 26 Thousand Dollars and no cents (\$365,000.00) to plaintiff under the terms and conditions set forth
 27 herein.
- 28 3. The plaintiff and her heirs, executors, administrators, assigns and attorneys
 hereby agree to accept the sum of Three Hundred and Sixty Five Thousand Dollars and no cents

1 (\$365,000.00), in full and final settlement and satisfaction of the claims raised in This Action
2 under the terms and conditions set forth herein.

3 4. It is also agreed, by and among the parties, that the settlement amount of Three
4 Hundred and Sixty Five Thousand Dollars and no cents (\$365,000.00) represents the entire
5 amount payable to plaintiff and her heirs, executors, administrators, assigns and attorneys.

6 5. It is also agreed, by and among the parties, that the settlement amount of Three
7 Hundred and Sixty Five Thousand Dollars and no cents (\$365,000.00) shall be made payable to
8 plaintiff via electronic funds transfer to "Law Offices of Michael S. Sorgen Trust Account."

9 6. It is also agreed by and among the parties that neither plaintiff nor any of her
10 attorneys may make any claim for attorney's fees or other costs against the Federal Defendant,
11 the United States, their agents, servants, or employees.

12 7. In consideration of the payment of Three Hundred and Sixty Five Thousand
13 Dollars and no cents (\$365,000.00) as set forth above, the plaintiff hereby releases and forever
14 discharges the Federal Defendant and any and all of its past and present officials, directors,
15 employees, agents, attorneys, successors, and assigns from any and all obligations, damages,
16 liabilities, causes of actions, claims, and demands of any kind and nature whatsoever, which
17 have been or could have been raised in the complaint or EEO complaint in this action, whether
18 suspected or unsuspected, arising in law or equity, arising from or by reason of any and all
19 known, unknown, foreseen, or unforeseen injuries, and the consequences thereof, resulting from
20 the facts, circumstances and subject matter that gave rise to This Action, including all claims of
21 discrimination, harassment, hostile work environment, constructive discharge, failure to
22 accommodate asserted by plaintiff in each and every Equal Employment Opportunity ("EEO")
23 complaint filed while plaintiff worked at the Department of Labor or any and all claims that
24 could have been asserted in the EEO Complaint, during the EEOC hearing, or during the time of
25 plaintiff's employment by the Federal Defendant.

26 8. In consideration of the payment of Three Hundred and Sixty Five Thousand
27 Dollars and no cents (\$365,000.00) as set forth above, the plaintiff further agrees that she may
28 not and will not use or rely on the incidents and actions underlying the EEO Complaint or Equal

1 Employment Opportunity Commission (“EEOC”) hearing in any other administrative
2 proceeding, state court action or federal court action to prove any kind of discrimination,
3 harassment, hostile work environment, or retaliation or as background or history to any claim of
4 discrimination, harassment, hostile work environment, constructive discharge, failure to
5 accommodate, or retaliation she may bring.

6 9. The provisions of California Civil Code Section 1542 are set forth below:

7 A general release does not extend to claims which the creditor
8 does not know or suspect to exist in her favor at the time of
9 executing the release, which if known by her must have materially
10 affected her settlement with the debtor.

11 The plaintiff having been apprised of the statutory language of Civil Code Section 1542 by her
12 attorney, and fully understanding the same, nevertheless waives the benefits of any and all rights
13 she may have pursuant to the provision of that statute and any similar provision of federal law.

14 The plaintiff understands that if the facts concerning the plaintiff’s injury and the liability of the
15 Federal Defendant, or its directors, officers, agents, servants, or employees, for damages
16 pertaining thereto are found hereafter to be other than or different from the facts now believed by
17 her to be true, this agreement shall be and remain effective notwithstanding such material
18 difference.

19 10. The parties acknowledge that neither this agreement nor anything contained
20 herein shall constitute an admission of liability or fault on the part of the Federal Defendant, or
21 its directors, officers, agents, servants, or employees. This agreement is entered into by the
22 parties for the purpose of compromising disputed claims, avoiding the expenses and risks of
23 litigation, and buying peace.

24 11. This agreement may be pled as a full and complete defense to any action or other
25 proceeding, including any local, state or federal administrative action, involving any person or
26 party which arises out of the claims released and discharged by this agreement.

27 12. If any withholding or income tax liability is imposed upon plaintiff based on
28 payment of the settlement sum as set forth herein, plaintiff shall be solely responsible for paying
any such liability. Plaintiff, and her attorney, will indemnify and hold harmless the Federal

1 Defendant from any liability the Federal Defendant may incur from any government agency
2 arising out of any failure by plaintiff to pay any tax liability she might be responsible for from
3 any government agency.

4 13. Plaintiff and her attorneys have been informed that payment of the settlement
5 amount may take 90 days or more to process.

6 14. Within 60 days of the signature of this agreement, plaintiff's attorney will draft
7 and send to the Federal Defendant's counsel a proposed letter of recommendation to be signed
8 by Charles James, Assistant Secretary of Labor. The parties shall mutually agree on the
9 language proposed, and all statements in the letter of recommendation must be factually
10 accurate. If a dispute arises between the parties over the letter of recommendation, U.S.
11 Magistrate Judge Edward Chen shall arbitrate the matter.

12 15. The parties agree that the District Court shall retain jurisdiction over this matter
13 for the purposes of resolving any dispute alleging a breach of this agreement.

14 16. Each party acknowledges that they have been represented by and have relied upon
15 independent counsel in negotiating, preparing and entering into this agreement and that they
16 have had the contents of this agreement fully explained by counsel and that they are fully aware
17 of and understand all of the terms of the agreement and the legal consequences thereof. It is
18 further acknowledged that the parties have mutually participated in the drafting of this agreement
19 and it is agreed that no provision herein shall be construed against any party hereto by virtue of
20 the drafting of this agreement.

21 17. If any provision of this agreement shall be held invalid, illegal, or unenforceable,
22 the validity, legality, and enforceability of the remaining provisions shall not in any way be
23 affected or impaired thereby.

24 18. This instrument shall constitute the entire agreement between the parties, and it is
25 expressly understood and agreed that this agreement has been freely and voluntarily entered into
26 by the parties hereto with the advice of counsel, who have explained the legal effect of this
27 agreement. The parties further acknowledge that no warranties or representations have been
28 made on any subject other than as set forth in this agreement.

1 19. This agreement may not be altered, modified or otherwise changed in any respect
2 except in writing, duly executed by all of the parties or their authorized representatives.

3
4 Dated: October 17, 2008

Francisca Moralez
FRANCISCA MORALEZ
Plaintiff

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6
7 Dated: October 26, 2008

By: [Signature]
MICHAEL S. SORGEN, ESQ.
Attorney for Plaintiff

8
9 JOSEPH P. RUSSONIELLO
United States Attorney

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11
12 Dated: 10/24/08

By: [Signature]
ELLEN M. FITZGERALD
ANDREW Y.S. CHENG
Assistant United States Attorneys
Attorneys for the Federal Defendant

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14
15
16 PURSUANT TO THE ABOVE STIPULATION AND AGREEMENT,
17 APPROVED AND SO ORDERED:

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20 Dated: October 28, 2008

