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7 Attorneys for Federal Defendants

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

11 MINNIE L. ESPINO, )  
 12 )  
 Plaintiff, )  
 13 )  
 v. )  
 14 UNITED STATES OF AMERICA, )  
 15 )  
 Defendant. )  
 16 )  
 17 )

No. C 07-4642 MHP

**SETTLEMENT AGREEMENT AND  
 [PROPOSED] ORDER APPROVING  
 SETTLEMENT**

18  
 19 **SETTLEMENT AGREEMENT**

20 Plaintiff Minnie Espino and defendant United States of America hereby enter into this  
 21 Settlement Agreement (the "Agreement"), as follows:

22 1. The parties hereby agree to settle and compromise *Minnie Espino v. United States*  
 23 *of America*, United States District Court for the Northern District of California Case Number  
 24 C 07-04642 MHP (the "Lawsuit"), under the terms and conditions set forth herein.

25 2. The United States of America agrees to pay plaintiff the sum of One Thousand  
 26 Five Hundred Dollars (\$1,500.00) (the "Settlement Amount") in full settlement and satisfaction  
 27 of any and all claims, demands, rights, and causes of action of whatsoever kind and nature,  
 28 arising from, and by reason of any and all known and unknown, foreseen and unforeseen bodily

1 and personal injuries, damage to property and the consequences thereof, resulting, and to result,  
2 from the same subject matter that gave rise to the Lawsuit for which plaintiff or her heirs,  
3 executors, administrators, or assigns, and each of them, now have or may hereafter acquire  
4 against the United States of America, its agencies, agents, servants, or employees.

5 3. Plaintiff and her heirs, executors, administrators, and assigns hereby agree to  
6 accept the Settlement Amount in full settlement and satisfaction of any and all claims, demands,  
7 rights, or causes of action of whatsoever kind and nature, arising from, and by reason of any and  
8 all known and unknown, foreseen and unforeseen bodily and personal injuries, damage to  
9 property and the consequences thereof which they may have or hereafter acquire against the  
10 United States of America, its agencies, agents, servants, or employees on account of the same  
11 subject matter that gave rise to the Lawsuit. Plaintiff and her heirs, executors, administrators,  
12 and assigns further agree to reimburse, indemnify, and hold harmless the United States of  
13 America, its agencies, agents, servants, and employees from any and all such causes of action,  
14 claims, liens, rights, or subrogated or contribution interests incident to or resulting from further  
15 litigation or the prosecution of claims by plaintiff or her heirs, executors, administrators, or  
16 assigns against any third party or against the United States of America.

17 4. This Agreement shall not constitute an admission of liability or fault on the part of  
18 the United States of America, its agencies, agents, servants, or employees, and is entered into by  
19 and between the parties for the purpose of compromising disputed claims and avoiding the  
20 expenses and risks of litigation.

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

24 6. The Settlement Amount represents the entire amount of the compromise  
25 settlement. The parties will each bear their own costs, attorneys' fees, and expenses, and any  
26 attorneys' fees or liens owed by plaintiff will be paid out of the Settlement Amount and not in  
27 addition thereto.

28 7. It is also understood by plaintiff that, pursuant to Title 28 , Section 2678 of the

1 United States Code, attorneys' fees for services rendered in connection with this Lawsuit shall  
2 not exceed 25 percent of the Settlement Amount.

3 8. Payment of the Settlement Amount will be made by a check drawn on the United  
4 States Postal Service and will be made payable to "Minnie Espino."

5 9. In consideration of the payment of the Settlement Amount and this Agreement,  
6 plaintiff agrees that she will also execute a Stipulation of Dismissal, which stipulation shall  
7 dismiss with prejudice all claims asserted in this Lawsuit. The fully-executed Stipulation of  
8 Dismissal will be held by defendant's counsel and will be filed with the Court upon receipt by  
9 plaintiff of the Settlement Amount.

10 10. Plaintiff has been informed that payment of the Settlement Amount may take up  
11 to sixty days or more after the date of the Agreement to process, but defendant agrees to make  
12 good faith efforts to expeditiously process the payment.

13 11. The parties agree that should any dispute arise with respect to the implementation  
14 of the terms of this Agreement, plaintiff shall not seek to rescind the Agreement and pursue her  
15 original causes of action. Plaintiff's sole remedy in such a dispute is an action to enforce the  
16 Agreement in the United States District Court. The parties agree that the United States District  
17 Court will retain jurisdiction over this matter for purposes of resolving any dispute alleging a  
18 breach of this Agreement.

19 12. In consideration of payment of the Settlement Amount and this Agreement,  
20 plaintiff hereby releases and forever discharges the United States of America and any and all of  
21 its past and present officials, employees, agencies, agents, attorneys, successors, and assigns from  
22 any and all obligations, damages, liabilities, actions, causes of action, claims, and demands of  
23 any kind and nature whatsoever, whether suspected or unsuspected, at law or in equity, known or  
24 unknown, arising out of the allegations set forth in the pleadings in the Lawsuit.

25 13. California Civil Code Section provides as follows:

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

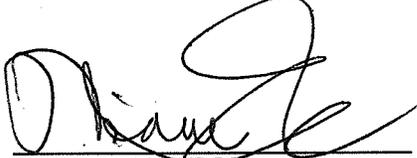
Plaintiff, having been apprised of such language by her attorney, and fully understanding the

1 same, nevertheless waives the benefits of any and all rights she may have pursuant to Section  
2 1542 and any similar provisions of federal law. Plaintiff understands that, if the facts concerning  
3 her injuries and the liability of the defendant for damages pertaining thereto are found hereinafter  
4 to be other than or different from the facts now believed to be true, this Agreement shall be and  
5 remain effective notwithstanding such difference.

6 14. This instrument shall constitute the entire agreement between the parties, and it is  
7 expressly understood and agreed that this Agreement has been freely and voluntarily entered into  
8 by the parties with the advice of counsel, who have explained the legal effect of this Agreement.  
9 The parties further acknowledge that no warranties or representations have been made on any  
10 subject other than as set forth in this Agreement. This Agreement may not be altered, modified,  
11 amended, or otherwise changed in any respect except by writing, duly executed by all parties and  
12 their authorized representatives.

13 15. Attachment A to this Agreement is Defendant's Notice of Independent Medical  
14 Examination Pursuant to FRCP 35.

15  
16 Dated: 12/19/08

  
MINNIE ESPINO  
Plaintiff

17  
18 Dated: 12/19/08

HOWREY LLP  
*Approved as to form*  
  
JEANNINE SANO  
ALYSON G. BARKER  
MICHAEL C. CHOU  
Volunteer Settlement Counsel  
for Plaintiff

19  
20  
21  
22  
23 Dated: 12/19/08

JOSEPH P. RUSSONIELLO  
United States Attorney

  
JENNIFER S WANG  
Assistant United States Attorney  
Attorneys for Defendant

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**[PROPOSED] ORDER**

THE ABOVE SETTLEMENT AGREEMENT IS APPROVED, AND IT IS SO ORDERED.

Dated: January 6, 2009



# ATTACHMENT A

1 JOSEPH P. RUSSONIELLO (CSBN 44332)

United States Attorney

2 JOANN M. SWANSON (CSBN 88143)

Chief, Civil Division

3 JENNIFER S WANG (CSBN 233155)

Assistant United States Attorney

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Attorneys for Federal Defendants

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

12 MINNIE L. ESPINO,

Plaintiff,

v.

14 UNITED STATES OF AMERICA,

Defendant.

No. C 07-4642 MHP

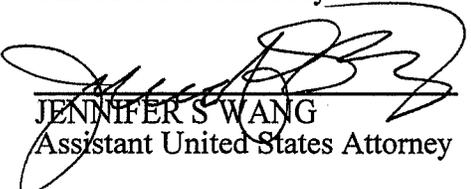
**DEFENDANTS' NOTICE OF  
INDEPENDENT MEDICAL  
EXAMINATION PURSUANT TO FRCP  
35**

18  
19 **TO PLAINTIFF:**

20 PLEASE TAKE NOTICE that pursuant to Rule 35 of the Federal Rules of Civil  
21 Procedure, defendant United States of America will schedule an independent medical  
22 examination of plaintiff Minnie Espino with **Dr. James Glick**, a licensed orthopedic surgeon, on  
23 **December 10, 2008 beginning at 11:15 a.m.** The examination will take place at 2299 Post  
24 Street, Suite 107, San Francisco, California 94115.

26 Respectfully submitted,  
27 JOSEPH P. RUSSONIELLO  
United States Attorney

28 Dated: December 1, 2008

  
JENNIFER S WANG  
Assistant United States Attorney

1 **CERTIFICATE OF SERVICE**

2 The undersigned hereby certifies that she is an employee of the Office of the United  
3 States Attorney for the Northern District of California and is a person of such age and discretion  
4 to be competent to serve papers. The undersigned further certifies that she is causing a copy of  
5 the following:

6 **DEFENDANTS NOTICE OF INDEPENDENT  
7 MEDICAL EXAMINATION PURSUANT TO FRCP 35**

8 Minnie L. Espino v. United States Postal Service  
9 Case No. CV 07-4642 MHP

10 to be served this date upon the party in this action by placing a true copy thereof in a sealed  
11 envelope, and served as follows:

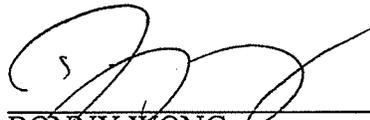
- 11  **FIRST CLASS MAIL** by placing such envelope(s) with postage thereon fully prepaid in  
12 the designated area for outgoing U.S. mail in accordance with this office's practice.
- 13  **CERTIFIED MAIL (# )** by placing such envelope(s) with postage thereon fully prepaid  
14 in the designated area for outgoing U.S. mail in accordance with this office's practice.
- 15  **ELECTRONIC MAIL**
- 16  **FEDERAL EXPRESS**
- 17  **FACSIMILE (FAX)** Telephone No.: See Below

18 to the party(ies) addressed as follows:

19 Minnie L. Espino 720 Solano Avenue Albany, CA 94706	20 Jeannine Sano Howrey LLP 1950 University Avenue, 4th Floor, Suite 500 East Palo Alto, CA 94303	21 Alyson Barker Howrey LLP 4 Park Plaza #1700 Irvine, CA 92614
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22 I declare under penalty of perjury under the laws of the United States that the foregoing is  
23 true and correct.

24 Executed on December 1, 2008 at San Francisco, California.

25   
26 BONNY WONG  
27 Legal Assistant  
28