

1 JOSEPH P. RUSSONIELLO (SBN 44332)
United States Attorney
2 JOANN M. SWANSON (SBN 88143)
Chief, Civil Division
3 ABRAHAM A. SIMMONS (SBN 146400)
Assistant United States Attorney

4 450 Golden Gate Avenue, 9th Floor
5 San Francisco, California 94102-3495
6 Telephone: (415) 436-7264
Facsimile: (415) 436-6748
7 Email: abraham.simmons@usdoj.gov

8 Attorneys for Federal Defendants

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

12 SUZANNE YVETTE MITCHEL,)
13 Plaintiff,)
14 v.)
15 ERIC H. HOLDER, JR., ATTORNEY)
GENERAL OF THE UNITED STATES,)
16 Defendant.)

No. C 08-0205 MEJ

E-FILING CASE

**STIPULATION AND AGREEMENT OF
COMPROMISE AND SETTLEMENT
AND ~~PROPOSED~~ ORDER**

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18 IT IS HEREBY STIPULATED by and between the parties, after full and open discussion,
19 that this action be settled and compromised on the following terms:

20 WHEREAS, Plaintiff filed the above-captioned action under Title VII of the Civil Rights
21 Act of 1964, 42 U.S.C. §2000e-16, as amended;

22 WHEREAS, Plaintiff has filed the following administrative EEO complaints with the
23 Department of Justice: P-2007-0070.

24 WHEREAS, Plaintiff and Defendant wish to avoid any further litigation and controversy
25 and to settle and compromise fully any and all claims and issues that have been raised, or could
26 have been raised, arising out of Plaintiff's employment with Defendant, which have transpired
27 prior to the execution of this Agreement;
28

1 NOW, THEREFORE, in consideration of the mutual promises contained in this
2 Agreement, and other good and valuable consideration, receipt of which is hereby acknowledged,
3 the Parties agree as follows:

4 1. Settlement Amount. In full and final settlement of all claims in connection with the
5 above-captioned action, defendant shall pay Plaintiff a total sum of six hundred twenty thousand
6 (\$620,000) dollars ("Settlement Amount"). There shall be no withholding from this amount.
7 Plaintiff understands that this payment will be reported to the Internal Revenue Service ("IRS"),
8 and that any questions as to the tax liability, if any, as a result of this payment is a matter solely
9 between Plaintiff and the IRS. The settlement amount will be paid by electronic funds transfer
10 ("EFT") into the client trust account maintained by plaintiff's attorney, *David E. Scott, Esq.*

11 Plaintiff and her attorney have been informed that payment of the Settlement Amount may take
12 sixty (60) days or more from the date that the Court "so orders" this Agreement to process.
13 Defendant also shall reinstate/restore to plaintiff's leave balance 200 hours of sick leave and 200
14 hours of annual leave previously used by plaintiff.

15 2. Release. In consideration of the payment of the Settlement Amount and the other terms
16 set forth in this Stipulation and Agreement, Plaintiff hereby releases and forever discharges
17 Defendant, the Department of Justice, and any and all of their past and present officials, agents,
18 employees, attorneys, insurers, their successors and assigns, from any and all obligations,
19 damages, liabilities, actions, causes of actions, claims and demands of any kind and nature
20 whatsoever, whether suspected or unsuspected, at law or in equity, known or unknown, or
21 omitted prior to the date she executes this Agreement, which arise from or relate to her
22 employment with the Department of Justice.

23 3. Attorneys' Fees. The parties agree that the Settlement Amount is in full satisfaction of
24 all claims for attorneys' fees and costs arising from work performed by Plaintiff's counsel as all
25 stages of litigation, including, but not limited to, the processing of Plaintiff's administrative and
26 district court complaints in connection with the above-captioned action, and any other ERO

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1 administrative proceedings which are currently pending.

2 4. **Dismissal.** In consideration of the payment of the Settlement Amount and the other
3 terms of this Stipulation and Agreement, Plaintiff agrees that she will within seven days of this
4 agreement, execute a Stipulation of Dismissal, which stipulation shall dismiss, with prejudice, all
5 claims asserted in this Action or any claims that could have been asserted in this Action. The
6 fully executed Stipulation of Dismissal will be held by counsel for Defendant and will be filed
7 with the Court upon receipt by Plaintiff's counsel of the Settlement Amount.

8 5. **Waiver of California Civil Code § 1542.** The provisions of California Civil Code
9 Section 1542 are set forth below:

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

14 Plaintiff has been apprised of the statutory language of Civil Code Section 1542 by her attorneys,
15 and fully understanding the same, nevertheless elects to waive the benefits of any and all rights
16 she may have pursuant to the provision of that statute and any similar provision of federal law.
17 Plaintiff understands that, if the facts concerning Plaintiff's claims and the liability of the
18 government for damages pertaining thereto are found hereinafter to be other than or different
19 from the facts now believed by them to be true, this Agreement shall be and remain effective
20 notwithstanding such material difference.

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

24 7. **No Admission of Liability.** This is a compromise settlement of a disputed claim and
25 demand, which settlement does not constitute an admission of liability or fault on the part of the
26 Defendant, the Department of Justice, or any of their past and present officials, agents,
27 employees, attorneys, or insurers on account of the events described in Plaintiff's complaints in
28 these actions.

1 8. **Tax Liability.** If any withholding or income tax liability is imposed upon Plaintiff or
2 Plaintiff's counsel based on payment of the settlement sum received herein, Plaintiff or
3 Plaintiff's counsel shall be solely responsible for paying any such determined liability from any
4 government agency thereof.

5 9. **Enforcement Sole Remedy.** The parties agree that should any dispute arise with
6 respect to the implementation of the terms of this Agreement, Plaintiff shall not seek to rescind
7 the Agreement and pursue her original causes of action. Plaintiff's sole remedy in such a dispute
8 is an action to enforce the Agreement in the United States District Court for the Northern District
9 of California.

10 10. **Construction.** Each party hereby stipulates that it has been represented by and has
11 relied upon independent counsel in the negotiations for the preparation of this Agreement, that it
12 has had the contents of the Agreement fully explained to it by such counsel, and is fully aware of
13 and understands all of the terms of the Agreement and the legal consequences thereof. For
14 purposes of construction, this Agreement shall be deemed to have been drafted by all Parties to
15 this Agreement and shall not, therefore, be construed against any Party for that reason in any
16 subsequent dispute.

17 11. **Severability.** If any provision of this Agreement shall be invalid, illegal, or
18 unenforceable, the validity, legality, and enforceability of the remaining provision shall not in
19 any way be affected or impaired thereby.

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

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13. Authority. The signatories to this Agreement have actual authority to bind the parties.


DATED: 6/14/2010


SUZANNE Y. MITCHELL
Plaintiff

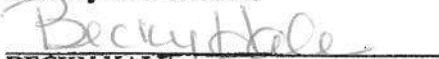
DATED:

MARK SCHALLERT, ESQ.
Plaintiff's Attorney

DATED: 6/16/2010


ABRAHAM A. SIMMONS
Assistant United States Attorney
Attorney for Defendant

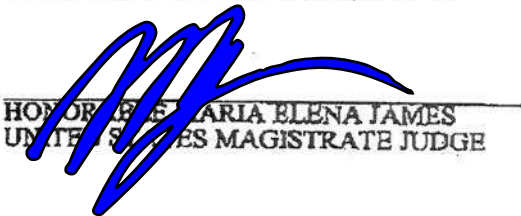
DATED: 6/16/2010


BECKY HALE
EMPLOYEE SERVICES ADMINISTRATOR
WESTERN REGIONAL OFFICE
BUREAU OF PRISONS

~~PROPOSED ORDER~~

PURSUANT TO STIPULATION AND GOOD CAUSE APPEARING, IT IS SO ORDERED.

Dated: June 18, 2010


HONORABLE MARIA ELENA JAMES
UNITED STATES MAGISTRATE JUDGE

1 13. Authority. The signatories to this Agreement have actual authority to bind the parties.
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4 DATED:

SUZANNE Y. MITCHEL
Plaintiff

6 DATED: June 14, 2010

MARK SCHALLERT, ESQ.
Plaintiff's Attorney

8 DATED:

ABRAHAM A. SIMMONS
Assistant United States Attorney
Attorney for Defendant

11 DATED:

BECKY HALE
EMPLOYEE SERVICES ADMINISTRATOR
WESTERN REGIONAL OFFICE
BUREAU OF PRISONS

14 **[PROPOSED] ORDER**

16 PURSUANT TO STIPULATION AND GOOD CAUSE APPEARING, IT IS SO
17 ORDERED.

18 Dated: _____

HONORABLE MARIA ELENA JAMES
UNITED STATES MAGISTRATE JUDGE