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

12 MALINDA DOTSON,
 13 Plaintiff,
 14 v.
 15 UNITED STATES OF AMERICA, et al.
 16 Defendant.
 17

No. C 08-04291 SI

**STIPULATION FOR COMPROMISE
 SETTLEMENT AND RELEASE OF
 FEDERAL TORT CLAIMS ACT
 CLAIMS PURSUANT TO 28 U.S.C. §
 2677; [PROPOSED] ORDER**

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C 08-04291 SI

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 by and between the undersigned Plaintiff and the UNITED
5 STATES OF AMERICA, by and through their respective attorneys, as follows:

6 WHEREAS, Plaintiff filed the above-captioned action under the Federal Tort Claims
7 Act, 28 U.S.C. §§ 2671 *et seq.*;

8 WHEREAS, Plaintiff and the United States of America wish to avoid any further
9 litigation and controversy and to settle and compromise fully any and all claims and issues that
10 have been raised, or could have been raised in this action, which have transpired prior to the
11 execution of this Agreement;

12 IT IS HEREBY STIPULATED AND AGREED as follows:

13 1. **The Parties.** The parties to this Stipulation and Agreement are plaintiff Malinda
14 Dotson (hereinafter "Plaintiff"), on the one hand, and defendant United States of America, on the
15 other hand. Plaintiff and the United States of America are collectively referred to in this
16 Stipulation and Agreement as "the Parties" and individually as a "Party."

17 2. **Agreement to Compromise Claims.** Plaintiff and the United States hereby agree to
18 settle and compromise the above-entitled action under the terms and conditions set forth herein.
19 The parties do hereby agree to settle and compromise each and every claim of any kind, whether
20 known or unknown, arising directly or indirectly from the acts or omissions that gave rise to the
21 above-captioned action under the terms and conditions set forth in this Settlement Agreement.

22 3. **Settlement Amount** The United States agrees to pay to Plaintiff the sum of Seven
23 Thousand Five Hundred Dollars and No Cents (\$7,500.00), made payable to Malinda Dotson and
24 her attorney James A. Zito, under the terms and conditions set forth herein, which sum shall be in
25 full settlement and satisfaction of any and all claims, demands, rights, and causes of action of
26 whatsoever kind and nature, arising from, and by reason of any and all known and unknown,
27 foreseen and unforeseen bodily and personal injuries, damage to property and the consequences
28 thereof, resulting, and to result, from the same subject matter that gave rise to the above-

1 captioned lawsuit, for which Plaintiff, her heirs, executors, administrators, or assigns, and each of
2 them, now have or may hereafter acquire against the United States of America or its past or
3 present agents, servants, past and present employees, past and present administrators and assigns.
4 As stated in the United States of America's Answer, the payment of the Settlement Amount is
5 subject to the availability of sufficient funds in the special account for community health center
6 settlements and judgments to pay the entire Settlement Amount at one time. 42 U.S. C. §233(k).

7 4. **Release.** Plaintiff and her guardians, heirs, executors, administrators, or assigns
8 hereby agree to accept Seven Thousand Five Hundred Dollars and No Cents (\$7,500.00) in full
9 settlement and satisfaction of any and all claims, demands, rights, and causes of action of
10 whatsoever kind and nature, including claims for wrongful death, arising from, and by reason of
11 any and all known and unknown, foreseen and unforeseen bodily and personal injuries, damage
12 to property and the consequences thereof which they may have or hereafter acquire against the
13 United States of America, its past and present agents, past and present servants, past and present
14 employees, past and present administrators, or assigns on account of the same subject matter that
15 gave rise to the above-captioned action, including any future claim or lawsuit of any kind or type
16 whatsoever, whether known or unknown, and whether for compensatory or exemplary damages.
17 Plaintiff and her guardians, heirs, executors, administrators or assigns further agree to reimburse,
18 indemnify and hold harmless the United States of America, its past and present agents, past and
19 present servants, past and present employees, past and present administrators, or assigns from
20 and against any and all such causes of action, claims, liens, rights, or subrogated or contribution
21 interests incident to or resulting from further litigation or the prosecution of claims by Plaintiff or
22 her guardians, heirs, executors, administrators or assigns against any third party or against the
23 United States of America, including claims for wrongful death.

24 5. **Dismissal.** In consideration of the payment of Seven Thousand Five Hundred Dollars
25 and No Cents (\$7,500.00) and the other terms of this Stipulation and Agreement, Plaintiff agrees
26 to immediately upon execution of this Stipulation and Agreement, execute the accompanying
27 Stipulation For Dismissal with Prejudice, which stipulation shall dismiss, with prejudice, all
28 claims asserted in this Action or any claims against the United States of America that could have

1 been asserted in this Action, which is captioned Malinda Dotson v. United States of America,
2 C08-04291 SI . The fully executed Stipulation For Dismissal with Prejudice will be held by
3 counsel for the defendant and will be filed with the Court upon receipt by Plaintiff's counsel of
4 the Settlement Amount and the completion of the settlement terms described herein.

5 6. **No Admission of Liability.** This Stipulation and Agreement is entered into by all
6 Parties for the purpose of compromising disputed claims and avoiding the expenses and risks of
7 litigation. This settlement does not constitute an admission of liability or fault on the part of any
8 Party.

9 7. **Attorney's Fees.** It is also understood by and among the parties that pursuant to Title
10 28, United States Code, Section 2678, attorney's fees for services rendered in connection with
11 this action shall not exceed 25 per centum of the amount of the compromise settlement. It is
12 agreed, by and among the Parties, that no Party may make any claim for attorney's fees or other
13 costs or expenses of litigation against the United States, their past and present agents, servants,
14 or past or present employees, administrators or assigns in connection with the above-captioned
15 lawsuit.

16 8. **Complete Defense.** It is agreed, by and among the Parties, that this Stipulation and
17 Agreement may be pled as a full and complete defense to any subsequent action or other
18 proceeding which arises out of the claims released and discharged by this Stipulation and
19 Agreement.

20 9. **Parties Bear Their Own Costs.** It is agreed, by and among the Parties, that the
21 settlement amount of Seven Thousand Five Hundred Dollars and No Cents (\$7,500.00) paid by
22 the United States of America to Plaintiff represents the entire amount of the compromise
23 settlement and that the respective Parties will each bear their own costs, fees, and expenses and
24 that any attorneys' fees owed by the Plaintiff will be paid out of the settlement amount and not in
25 addition thereto.

26 10. **Payment by Electronic Funds Transfer.** The Seven Thousand Five
27 Hundred Dollars and No Cents (\$7,500.00) to be paid to Plaintiff pursuant to the terms of this
28 Stipulation and Agreement will be made by government wire transfer as per the following:

- 1 A. Name of Bank:
- 2 B. Street Address of Bank:
- 3 C. City, State and Zip Code of Bank:
- 4 D. Federal Reserve Number:
- 5 E. Routing Number:
- 6 F. Name of Account:
- 7 G. Account Number:

8 Plaintiff's attorney agrees to distribute the settlement proceeds to the Plaintiff, and to obtain a
9 dismissal of the above-captioned action with prejudice, with each party bearing its own fees,
10 costs, and expenses. Plaintiff and her attorney have been informed that payment of the
11 Settlement Amount may take sixty (60) days or more from the date that the Court "so orders" this
12 Agreement to process.

13 12. **Discharge**. Plaintiff forever discharges the United States of America and any and
14 all of its past and present officials, past and present employees, past and present agents, past and
15 present attorneys, their successors and assigns, from any and all obligations, damages, liabilities,
16 actions, causes of actions, claims and demands of any kind and nature whatsoever, whether
17 suspected or unsuspected, at law or in equity, known or unknown, arising out of the allegations
18 set forth in Plaintiff's pleadings in this action.

19 13. **Waiver of California Civil Code § 1542**. The provisions of California Civil Code
20 Section 1542 are set forth below:

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

23 Plaintiff, having been apprised of the statutory language of Civil Code Section 1542 by an
24 attorney of her choosing, and fully understanding the same, nevertheless elects to waive the
25 benefits of any and all rights he may have pursuant to the provision of that statute and any similar
26 provision of federal law. Plaintiff understands that, if the facts concerning injuries or liability for
27 damages pertaining thereto are found hereinafter to be other than or different from the facts now
28 believed by him to be true, this Stipulation and Agreement shall be and remain effective

1 notwithstanding such material difference.

2 14. **Authority.** The persons signing this Settlement Agreement warrant and represent
3 that they possess full authority to bind the persons on whose behalf they are signing to the terms
4 of the settlement.

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

12 16. **Withholding.** If any withholding or income tax liability is imposed upon Plaintiff
13 based on payment of the settlement sum as set forth herein, Plaintiff shall be solely responsible
14 for paying any such liability.

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

24 18. **Construction.** Each Party acknowledges that they have been represented by and
25 have relied upon independent counsel in negotiating, preparing and entering into this Stipulation
26 and Agreement and that they have had the contents of this Stipulation and Agreement fully
27 explained by counsel and that they are fully aware of and understand all of the terms of the
28 agreement and the legal consequences thereof. It is further acknowledged that the Parties have

1 mutually participated in the drafting of this Stipulation and Agreement and it is agreed that no
2 provision herein shall be construed against any Party hereto by virtue of the drafting of this
3 Stipulation and Agreement.

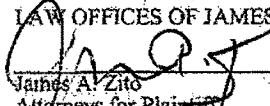
4 19. Severability. If any provision of this Stipulation and Agreement shall be held
5 invalid, illegal, or unenforceable, the validity, legality, and enforceability of the remaining
6 provisions shall not in any way be affected or impaired thereby. This instrument shall constitute
7 the entire agreement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

12 20. Notice. The Parties further agree that the filing of this executed Stipulation and
13 Agreement shall notify the Court of the agreement by Plaintiff and the United States of America
14 to vacate the pending summary judgment motion hearing date with respect to the Federal
15 Defendant's pending motion for summary judgment associated with this litigation.

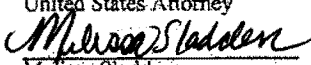
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17 DATED: March 14, 2011


Malinda Dotson, Plaintiff

18 DATED: March 25, 2011

LAW OFFICES OF JAMES A. ZITO

James A. Zito
Attorneys for Plaintiff

21 DATED: March 25, 2011

MELINDA HAAG
United States Attorney

Melissa Sladden
Assistant United States Attorney

25 PURSUANT TO STIPULATION, IT IS SO ORDERED:

26 DATED: 3/29/11



HON. SUSAN ILLSTON
United States District Judge