

1 JOSEPH P. RUSSONIELLO (CSBN 44332)  
 United States Attorney  
 2 JOANN M. SWANSON (CSBN 88143)  
 Chief, Civil Division  
 3 MICHAEL T. PYLE (CSBN 172954 )  
 Assistant United States Attorney  
 4 VICTORIA R. CARRADERO (CSBN 217885)  
 Assistant United States Attorney

5 U.S. Attorney's Office/Civil Division  
 6 450 Golden Gate Avenue, 9<sup>th</sup> Floor  
 San Francisco, California 94102-3495  
 7 Telephone: (415) 436-7322  
 Facsimile: (415) 436-6748  
 8 E-mail: michael.t.pyle@usdoj.gov

9 Attorneys for Defendant United States of America

10

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

14

15 SASKIA RUSSELL ET AL.,  
 16 Plaintiffs,  
 17 v.  
 18 UNITED STATES OF AMERICA,  
 19 Defendant.

No. 08-5651 TEH

**STIPULATION FOR COMPROMISE  
 SETTLEMENT AND RELEASES;  
~~PROPOSED~~ ORDER**

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

23 IT IS HEREBY STIPULATED AND AGREED as follows:

24 1. The parties to this Stipulation and Agreement are plaintiffs Saskia Russell and Saskia  
 25 Russell's minor children for which the Court has appointed her as Guardian Ad Litem: Chantz  
 26 Russell, Hudson Russell, Maverick Russell, and Brodin Russell (hereinafter "Plaintiffs"), on the  
 27 one hand, and all of the named defendants, including the United States of America and United  
 28 States Coast Guard, on the other hand. The named defendants, including the United States of

1 America and United States Coast Guard are collectively referred to in this Stipulation and  
2 Agreement as “the Defendants.” Plaintiffs and the Defendants are collectively referred to in this  
3 Stipulation and Agreement as “the Parties” and individually as a “Party.”

4 2. Plaintiffs and the Defendants hereby agree to settle and compromise the above-entitled  
5 action under the terms and conditions set forth herein, which agreement shall not become  
6 effective until such time as the Court issues an order approving Plaintiffs’ motion to approve a  
7 compromise settlement by a minor (the “Effective Date”).

8 3. The United States of America agrees to pay to Plaintiffs and their counsel the sum of Two  
9 Hundred and Fifty Thousand Dollars and No Cents (\$250,000), under the terms and conditions  
10 set forth herein, which sum shall be in full settlement and satisfaction of any and all claims,  
11 demands, rights, and causes of action of whatsoever kind and nature, arising from, and by reason  
12 of any and all known and unknown, foreseen and unforeseen bodily, mental, emotional, physical  
13 and personal damages or injuries of any kind, property loss or damage of any kind, and the  
14 consequences thereof, resulting, and to result, from the same subject matter that gave rise to the  
15 above-captioned lawsuit, for which Plaintiffs, their heirs, executors, administrators, or assigns,  
16 and each of them, now have or may hereafter acquire against the United States of America or its  
17 agents, servants, and employees.

18 4. Plaintiffs and their heirs, executors, administrators or assigns hereby agree to accept the  
19 sum of Two Hundred and Fifty Thousand Dollars and No Cents (\$250,000) from the United  
20 States of America in full settlement and satisfaction of any and all claims, demands, rights, and  
21 causes of action of whatsoever kind and nature, arising from, and by reason of any and all known  
22 and unknown, foreseen and unforeseen bodily, mental, emotional, physical and personal damages  
23 or injuries of any kind, property loss or damage of any kind, and the consequences thereof which  
24 they may have or hereafter acquire against the United States of America or its agents, servants  
25 and employees on account of the same subject matter that gave rise to the above-captioned  
26 lawsuit. Plaintiffs and their heirs, executors, administrators or assigns further agree to reimburse,  
27 indemnify and hold harmless the United States of America and its agents, servants or employees  
28 from any and all such causes of action, claims, liens, rights, or subrogated or contribution

1 interests incident to or resulting from further litigation or the prosecution of claims by Plaintiffs  
2 or their heirs, executors, administrators or assigns against the United States of America.

3 5. In consideration of the payment of Two Hundred and Fifty Thousand Dollars and No  
4 Cents (\$250,000) by the United States of America and the other terms of this Stipulation and  
5 Agreement, Plaintiffs agree to immediately upon execution of this Stipulation and Agreement,  
6 execute the accompanying Stipulation For Dismissal with Prejudice, which stipulation shall  
7 dismiss, with prejudice, all claims asserted in this Action or any claims that could have been  
8 asserted in this Action, which is captioned Saskia Russell et al. v. United States of America,  
9 C08-5651 TEH. The fully executed Stipulation For Dismissal with Prejudice will be held by  
10 counsel for the United States of America and will not be filed with the Court until after the  
11 payment to be made by the United States of America pursuant to this Stipulation and Agreement  
12 has been made.

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

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

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

22 9. It is agreed, by and among the Parties, that the Two Hundred and Fifty Thousand Dollars  
23 and No Cents (\$250,000) paid by the United States of America represents the entire amount of  
24 the compromise settlement and that the respective Parties will each bear their own costs, fees,  
25 and expenses and that any attorneys' fees owed by the Plaintiffs will be paid out of the settlement  
26 amount and not in addition thereto.

27 10. The Two Hundred and Fifty Thousand Dollars and No Cents (\$250,000) paid by the  
28 United States of America will be made by wire transfer or other electronic means to a bank

1 account to be designated in writing by Plaintiffs' counsel. Plaintiffs' counsel agrees to promptly  
2 provide Defendant's counsel with the necessary information, such as Tax I.D. and banking  
3 information, for payment of the Settlement Amount. Plaintiffs' counsel shall be responsible for  
4 distributing the funds transferred to the bank account designated in writing by Plaintiffs' counsel  
5 to Plaintiffs. If any withholding or income tax liability is imposed upon Plaintiffs or Plaintiffs'  
6 counsel based on payment of the settlement sum as set forth herein, Plaintiffs and Plaintiffs'  
7 counsel shall be solely responsible for paying any such liability. Plaintiffs and Plaintiffs' counsel  
8 will indemnify and hold harmless the United States of America from any liability that may be  
9 incurred from any government agency arising out of any failure by Plaintiffs or Plaintiffs'  
10 counsel to pay any tax liability they might be responsible for from any government agency.

11 11. Plaintiffs have been informed that the payment of the Two Hundred and Fifty Thousand  
12 Dollars and No Cents (\$250,000) may take up to 90 days from the Effective Date of this  
13 Stipulation and Agreement, as defined above in paragraph 2, to process, but Defendant agrees to  
14 make good faith efforts to expeditiously process the payment.

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

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

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

24 The Plaintiffs, having been apprised of the statutory language of Civil Code Section 1542 by an  
25 attorney of Plaintiffs' own choosing, and fully understanding the same, nevertheless elects to  
26 waive the benefits of any and all rights each Plaintiff may have pursuant to the provision of that  
27 statute and any similar provision of federal law. The Plaintiffs understand that, if the facts  
28 concerning injuries or liability for damages pertaining thereto are found hereinafter to be other

1 than or different from the facts now believed by each Plaintiff to be true, this Stipulation and  
2 Agreement shall be and remain effective notwithstanding such material difference.

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

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

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

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

23 18. If any provision of this Stipulation and Agreement shall be held invalid, illegal, or  
24 unenforceable, the validity, legality, and enforceability of the remaining provisions shall not in  
25 any way be affected or impaired thereby. This Stipulation and Agreement shall constitute the  
26 entire agreement between the parties, and it is expressly understood and agreed that this  
27 agreement has been freely and voluntarily entered into by the parties hereto with the advice of  
28 counsel, who have explained the legal effect of this Stipulation and Agreement. The Parties

1 further acknowledge that no warranties or representations have been made on any subject other  
2 than as set forth in this Stipulation and Agreement.

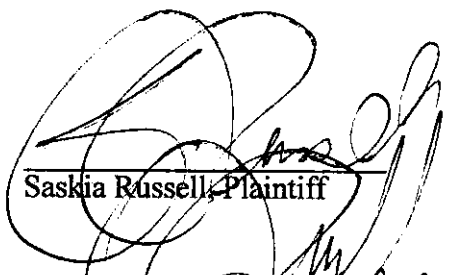
3 19. The Parties agree that, should any dispute arise with respect to the implementation of the  
4 terms of this Stipulation and Agreement, no Party shall seek to rescind the Stipulation and  
5 Agreement and pursue any of the original causes of action. Each Party's sole remedy in such a  
6 dispute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

12 20. The Parties further agree that the filing of this executed Stipulation and Agreement shall  
13 notify the Court of the agreement by Plaintiffs and the United States to vacate all pending

14 //  
15 //  
16 //  
17 //  
18 //  
19 //  
20 //  
21 //  
22 //  
23 //  
24 //  
25 //  
26 //  
27 //  
28 //

1 discovery, motion hearing dates, settlement or pretrial deadlines and trial date associated with  
2 this litigation.

3  
4 DATED: February 23, 2010

  
Saskia Russell, Plaintiff

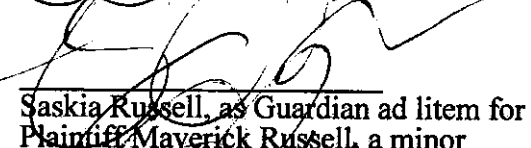
5  
6 DATED: February 23, 2010

Saskia Russell, as Guardian ad litem for  
Plaintiff Chantz Russell, a minor

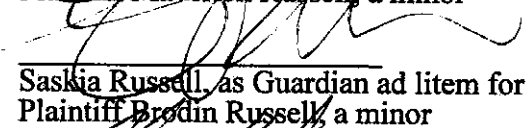
7  
8 DATED: February 27, 2010

  
Saskia Russell, as Guardian ad litem for  
Plaintiff Hudson Russell, a minor

9  
10 DATED: February 27, 2010

  
Saskia Russell, as Guardian ad litem for  
Plaintiff Maverick Russell, a minor

11  
12 DATED: February 27, 2010

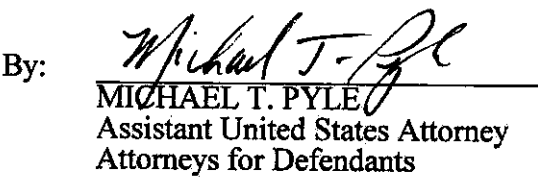
  
Saskia Russell, as Guardian ad litem for  
Plaintiff Brodin Russell, a minor

13  
14 DATED: February 28, 2010

By:   
CLAYTON KENT  
Attorney for Plaintiffs

15  
16  
17  
18 JOSEPH P. RUSSONIELLO  
United States Attorney

19 DATED: <sup>March</sup> February 18, 2010

By:   
MICHAEL T. PYLE  
Assistant United States Attorney  
Attorneys for Defendants

20  
21  
22 **PURSUANT TO STIPULATION, IT IS SO ORDERED:**

23  
24  
25 DATED: 03/22/10

