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18
 19 **UNITED STATES DISTRICT COURT**
 20 **NORTHERN DISTRICT OF CALIFORNIA**
 21

22 SANDRA BUCHANAN)
 23 Plaintiff,)
 24 v.)
 25 UNITED STATES OF AMERICA)
 26 Defendant.)
 27 _____)
 28)

No. C 11-1347 MEJ

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

**Stipulation for Compromise Settlement and Release; [Proposed] Order
 C 11-1347 MEJ**

1 It is hereby stipulated by and between the undersigned Plaintiff SANDRA BUCHANAN
2 (“Plaintiff”), the Defendant UNITED STATES OF AMERICA (“Defendant”), and DTG
3 OPERATIONS, INC., DOLLAR THRIFTY AUTOMOTIVE GROUP, INC., DOLLAR RENT A
4 CAR, INC., THRIFTY RENT-A-CAR SYSTEM, INC., RENTAL CAR FINANCE CORP.,
5 DOLLAR RENT A CAR SYSTEMS, INC., YORK CLAIMS SERVICE, INC. - FLORIDA
6 (hereinafter refereed to collectively as “Dollar Rent A Car”), by and through their respective
7 attorneys, as follows:

8 WHEREAS, the parties participated in a Settlement Conference with Judge Nandor J.
9 Vadas on November 8, 2012, at which this Stipulation for Compromise Settlement and Release
10 was reached.

11 WHEREAS, the parties wish to avoid any further litigation and controversy and to settle
12 and compromise fully any and all claims and issues that have been raised, or could have been
13 raised in this action, which have transpired prior to the execution of this Settlement Agreement;

14 WHEREAS, the parties intend this to be a full, final and complete settlement that
15 resolves all claims and potential claims that Plaintiff may have arising out of the subject
16 automobile accident of August 1, 2007, including any claims for property damage, personal
17 injury, past medical specials, future medical specials, wage loss, and loss of earning capacity.

18 NOW, THEREFORE, in consideration of the mutual promises contained in this
19 Settlement Agreement, and other good and valuable consideration, receipt of which is hereby
20 acknowledged, the parties agree as follows:

21 1. Agreement to Compromise Claims. The parties do hereby agree to settle and
22 compromise each and every claim of any kind, whether known or unknown, arising directly or
23 indirectly from the acts or omissions that gave rise to the above-captioned action under the terms
24 and conditions set forth in this Settlement Agreement.

25 2. Definition of “United States of America.” As used in this Settlement Agreement, the
26 United States of America shall include its current and former agencies, agents, servants,
27 employees, and attorneys, including but not limited to, the National Credit Union Administration
28 and/or any of its current or former agents, servants, employees, and attorneys, including, but not

1 limited to, Victoria Bennett.

2 3. Settlement Amount. Dollar Rent A Car agrees to pay the sum of One Hundred
3 Thousand dollars (\$100,000) and the United States of America agrees to pay the sum of Twenty-
4 Five Thousand dollars (\$25,000.00) (collectively “Settlement Amount”), which sum shall be in
5 full settlement and satisfaction of any and all claims, demands, rights, and causes of action of
6 whatsoever kind and nature, arising from, and by reason of any and all known and unknown,
7 foreseen and unforeseen personal injuries, damage to property and the consequences thereof,
8 resulting, and to result, from the subject matter of this settlement, including any claims for
9 wrongful death, for which Plaintiff or her guardians, heirs, executors, administrators, or assigns,
10 and each of them, now have or may hereafter acquire against the United States of America.

11 4. Release. Plaintiff and her guardians, heirs, executors, administrators or assigns hereby
12 agrees to accept the Settlement Amount in full settlement and satisfaction of any and all claims,
13 demands, rights, and causes of action of whatsoever kind and nature, including claims for
14 wrongful death, arising from, and by reason of any and all known and unknown, foreseen and
15 unforeseen personal injuries, damage to property and the consequences thereof which they may
16 have or hereafter acquire against the Dollar Rent A Car and the United States of America on
17 account of the same subject matter that gave rise to the above-captioned action, including any
18 future claim or lawsuit of any kind or type whatsoever, whether known or unknown, and whether
19 for compensatory or exemplary damages. Plaintiff and her guardians, heirs, executors,
20 administrators or assigns further agrees to reimburse, indemnify and hold harmless Dollar Rent A
21 Car and the United States of America from and against any and all such causes of action, claims,
22 liens, rights, or subrogated or contribution interests incident to or resulting from further litigation
23 or the prosecution of claims by Plaintiff or her guardians, heirs, executors, administrators or
24 assigns against any third party or against the United States, including claims for loss of
25 consortium or wrongful death.

26 5. Dismissal of Action. In consideration of the payment of the Settlement Amount and
27 the other terms of this Settlement Agreement, Plaintiff shall immediately upon execution of this
28 Settlement Agreement also execute a Stipulation of Dismissal. The Stipulation of Dismissal

1 shall dismiss, with prejudice, all claims asserted in this action, or that could have been asserted in
2 this action. The fully executed Stipulation of Dismissal will be held by Defendant's attorney and
3 will be filed within five (5) business days of receipt by Plaintiff's attorney of the Settlement
4 Amount.

5 6. No Admission of Liability. This stipulation for compromise settlement is not, is in no
6 way intended to be, and should not be construed as, an admission of liability or fault on the part
7 of Dollar Rent A Car or the United States, and it is specifically denied that either is liable to the
8 Plaintiff. This settlement is entered into by all parties for the purpose of compromising disputed
9 claims and avoiding the expenses and risks of further litigation.

10 7. Parties Bear Their Own Costs. It is also agreed, by and among the parties, that the
11 respective parties will each bear their own costs, fees, and expenses and that any attorney's fees
12 owed by the Plaintiff will be paid out of the settlement amount and not in addition thereto.

13 8. Attorney's Fees. It is also understood by and among the parties that pursuant to Title
14 28, United States Code, Section 2678, attorney's fees for services rendered in connection with
15 this action shall not exceed 25 per centum of the amount of the compromise settlement.

16 9. Authority. The persons signing this Settlement Agreement warrant and represent that
17 they possess full authority to bind the persons on whose behalf they are signing to the terms of
18 the settlement.

19 10. 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
22 does not know or suspect to exist in his or her favor at the time of
23 executing the release, which if known by him or her must have
materially affected his or her settlement with the debtor."

24 Plaintiff having been apprised of the statutory language of Civil Code Section 1542 by her
25 attorney, and fully understanding the same, nevertheless elects to waive the benefits of any and
26 all rights she may have pursuant to the provision of that statute and any similar provision of
27 federal law. Plaintiff understands that, if the facts concerning Plaintiff's injury and the liability
28 of the government for damages pertaining thereto are found hereinafter to be other than or

1 different from the facts now believed by them to be true, the Agreement shall be and remain
2 effective notwithstanding such material difference.

3 11. Payment by Check. Payment of the settlement amount will be made by two checks
4 one issued on behalf of Dollar Rent A Car in the amount of One Hundred Thousand dollars
5 (\$100,000) and one issued on behalf of the United States of America in the amount of Twenty-
6 Five Thousand dollars (\$25,000.00). Each check shall be payable to “Bishop | Barry | Drath in
7 trust for Sandra Buchanan and Healthcare Recoveries”. The checks will be sent via federal
8 express to Aaron Barry, Esq., BISHOP | BARRY | DRATH 2000 Powell Street, Suite 1425,
9 Emeryville, California 94608. Plaintiff’s attorneys agree to distribute the settlement proceeds to
10 the Plaintiff. Plaintiff and her attorney have been informed that payment of the Settlement
11 Amount may take sixty (60) days or more to process from the date that the Court “so orders” this
12 Agreement.

13 12. Tax Liability. If any withholding or income tax liability is imposed upon Plaintiff or
14 Plaintiff’s counsel based on payment of the Settlement Amount, Plaintiff or Plaintiff’s counsel
15 shall be solely responsible for paying any such determined liability from any government agency.
16 Nothing in this Settlement Agreement constitutes an agreement by the United States of America
17 concerning the characterization of the Settlement Amount for the purposes of the Internal
18 Revenue Code, Title 26 of the United States Code.

19 13. Construction. Each party hereby stipulates that it has been represented by and has
20 relied upon independent counsel in the negotiations for the preparation of this Settlement
21 Agreement, that it has had the contents of the Agreement fully explained to it by such counsel,
22 and is fully aware of and understands all of the terms of the Settlement Agreement and the legal
23 consequences thereof. For purposes of construction, this Agreement shall be deemed to have
24 been drafted by all Parties to this Settlement Agreement and shall not, therefore, be construed
25 against any Party for that reason in any subsequent dispute.

26 14. Severability. If any provision of this Settlement Agreement shall be invalid, illegal,
27 or unenforceable, the validity, legality, and enforceability of the remaining provision shall not in
28 any way be affected or impaired thereby.

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

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1 16. Liens. Plaintiff is responsible for satisfying any and all outstanding liens relating to
 2 Plaintiff's medical treatment arising out of the subject matter of this action. Plaintiff shall
 3 indemnify and hold harmless Defendant and Dollar Rent a Car from any liability Defendant or
 4 Dollar Rent A Car may incur from any lien claimant arising out of any failure by Plaintiff to
 5 satisfy the outstanding liens.

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7 DATED: November 15, 2012


 SANDRA BUCHANAN, Plaintiff

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9 BISHOP | BARRY | DRATH

10 DATED: November 19, 2012


 AARON HANCOCK
 Attorneys for Plaintiff

11
12 HOMAN & STONE

13 DATED: November 27, 2012


 GENE STONE
 Attorneys for Plaintiff

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16 MELINDA HAAG
United States Attorney

17 DATED: November __, 2012

 JUAN D. WALKER
 Assistant United States Attorneys
 Attorneys for Defendant

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21 **[PROPOSED] ORDER**

22 PURSUANT TO STIPULATION, IT IS SO ORDERED.

23
24 Dated: _____

 HON. MARIA-ELENA JAMES
 United States Magistrate Judge

