

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

4 450 Golden Gate Avenue, Box 36055
5 San Francisco, California 94102-3495
6 Telephone: (415) 436-6967
7 FAX: (415) 436-6748
8 jennifer.s.wang@usdoj.gov

Attorneys for Defendant

9 STEPHEN DUGGAN, Esq. (SBN 153817)

Law Offices

10 250 Healdsburg Ave., Ste 201

Healdsburg, CA 95448

11 707-473-2800

707-473-2801 (Fax)

12 stephenjduggan@comcast.net

Attorney for Plaintiff

14 UNITED STATES DISTRICT COURT
15 NORTHERN DISTRICT OF CALIFORNIA
16 OAKLAND DIVISION
17

18 JUDITH SPALETTA,)

19 Plaintiff,)

20 v.)

21 JOHN E. POTTER, POSTMASTER)
22 GENERAL OF THE UNITED STATES,)

23 Defendant.)

No. 08-2323 CW

**STIPULATION AND AGREEMENT OF
COMPROMISE AND SETTLEMENT;
ORDER**

24 IT IS HEREBY STIPULATED AND AGREED by and between plaintiff JUDITH
25 SPALETTA (“Plaintiff”) and defendant JOHN E. POTTER, POSTMASTER GENERAL OF
26 THE UNITED STATES (hereinafter “Defendant” or “Agency”), by and through their
27 undersigned counsel, as follows:

28 1. The parties do hereby agree to settle, compromise, and dismiss *Judith Spaletta v.*

1 *John E. Potter, Postmaster General of the United States*, United States District Court for the
2 Northern District of California, Case Number C 08-02323 CW (“This Action”), under the terms
3 and conditions set forth herein.

4 2. The Agency agrees to issue a written statement to all rural route letter carriers at
5 the Ukiah Post Office stating that provisions in the Employee & Labor Relations Manual
6 (“ELM”) and the Agreement between the United States Postal Service and the Rural Letter
7 Carriers’ Association regarding Annual Leave will be applied equally to all rural route letter
8 carriers in the Ukiah Post Office.

9 3. The Agency agrees to remove the Letter of Warning dated September 12, 2008
10 from Plaintiff’s Official Personnel File (“OPF”).

11 4. The Agency agrees to waive any and all rights to seek repayment from Plaintiff of
12
13 any overpayment made to Plaintiff arising out of the Agency’s November 2008 route adjustment
14 at the Ukiah Post Office.

15 5. Plaintiff and her heirs, executors, administrators, assigns and attorneys hereby
16 agree to accept said Agency actions, in full and final settlement and satisfaction of all of the
17 claims raised in This Action or that could be raised in This Action under the terms and
18 conditions set forth herein.

19 6. It is also agreed, by and among the parties, that neither Plaintiff nor any of her
20 attorneys may make any claim for attorney’s fees or other costs against Defendant, the United
21 States, their agents, servants, or employees. It is also agreed, by and among the parties, that the
22 respective parties will bear their own costs, fees, and expenses and that any attorney’s fees owed
23 by Plaintiff will be paid by solely by Plaintiff and not by Defendant.

24 7. In consideration of the Agency actions as set forth above, Plaintiff agrees that
25 she will execute immediately upon execution of this Agreement, a Stipulation of Dismissal with
26 Prejudice pursuant to Federal Rule of Civil Procedure 41, which stipulation shall dismiss, with
27 prejudice, all claims asserted in This Action or any claims that could have been asserted in This
28 Action. The fully executed Stipulation of Dismissal will be held by counsel for Defendant, will

1 be filed with the Court upon completion of all actions set forth above, and will be filed with the
2 Court no sooner than 10 calendar days after the full execution of this Agreement.

3 8. In consideration of the Agency actions set forth above, Plaintiff and her heirs,
4 administrators, successors or assigns hereby release and forever discharge Defendant, and any
5 and all of its past and present officials, directors, employees, agents, attorneys, successors, and
6 assigns, either in their official or individual capacities, from any and all obligations, damages,
7 liabilities, causes of actions, claims, and demands of any kind and nature whatsoever, whether
8 suspected or unsuspected, arising in law or equity, known or unknown, which Plaintiff may have
9 had, may now have, or may hereafter have arising out of or in connection with any event
10 occurring prior to the date of this Agreement, including but not limited to, any alleged violation
11 of Title VII of the Civil Rights Act of 1964, the Civil Rights Act of 1991, the Rehabilitation Act
12 of 1973, the Family and Medical Leave Act of 1993, the Age Discrimination in Employment Act
13 of 1967; any other claim relating to plaintiff's employment with the Agency; and any and all
14 claims that could have been asserted in This Action. The parties agree that this Agreement does
15 and will not affect Plaintiff's entitlement, if any, to Office of Worker's Compensation Program
16 benefits. This Agreement further does not apply to, nor does Plaintiff waive, payment for
17 steward time, if any, that she has accumulated prior to the date this Agreement is executed for
18 which she has not been paid assuming that Plaintiff has followed United States Postal Service
19 procedures regarding any claim for payment. This Agreement further does not waive Plaintiff's
20 right to be paid mileage for express mail delivered, if any, prior to the date this Agreement is
21 executed assuming that Plaintiff has followed United States Postal Service procedures regarding
22 any claim for payment.

23 9. The parties agree that this Agreement is not intended to waive Plaintiff's ability,
24 in her capacity as a Shop Steward, to file any timely grievance on behalf of her Union against the
25 United States Postal Service regarding any grievance settlement entered into to add to each
26 route 30 minutes for "withdrawal" and 5 minutes for "edit book time."

27 10. In consideration of actions to be taken by the Agency set forth above, Plaintiff
28 further agrees that she may not and will not use or rely on the incidents and actions underlying

1 the Complaint or the EEO Complaints underlying This Action to prove any other claims against
2 the Defendant, the United States, or its agencies and employees, in any other administrative
3 proceeding, state court action or federal court action.

4 11. The provisions of California Civil Code Section 1542 are set forth below:

5 A general release does not extend to claims which the creditor does not know or
6 suspect to exist in her favor at the time of executing the release, which if known
7 by her must have materially affected her settlement with the debtor.

8 Plaintiff having been apprised of the statutory language of Civil Code Section 1542 by her
9 attorney, and fully understanding the same, nevertheless elects to waive the benefits of any and
10 all rights she may have pursuant to the provision of that statute and any similar provision of
11 federal law. Plaintiff understands that if the facts concerning Plaintiff's alleged injury and the
12 liability of Defendant, or its directors, officers, agents, servants, or employees, for damages
13 pertaining thereto are found hereafter to be other than or different from the facts now believed by
14 her to be true, this Agreement shall be and remain effective notwithstanding such material
15 difference.

16 12. The parties acknowledge that neither this Agreement nor anything contained
17 herein shall constitute an admission of liability or fault on the part of Defendant or its directors,
18 officers, agents, servants, or employees. This Agreement is entered into by the parties for the
19 purpose of compromising disputed claims, avoiding the expenses and risks of litigation, and
20 buying peace.

21 13. This Agreement may be pled as a full and complete defense to any action or other
22 proceeding, including any local, state or federal administrative action, involving any person or
23 party which arises out of the claims released and discharged by this Agreement.

24 14. The parties agree that the District Court shall retain jurisdiction over this matter
25 for the purposes of resolving any dispute alleging a breach of this Agreement.

26 15. Each party acknowledges that they have been represented by and have relied upon
27 independent counsel in negotiating, preparing and entering into this Agreement and that they
28 have had the contents of this Agreement fully explained by counsel and that they are fully aware

1 of and understand all of the terms of the Agreement and the legal consequences thereof. It is
2 further acknowledged that the parties have mutually participated in the drafting of this
3 Agreement and it is agreed that no provision herein shall be construed against any party hereto
4 by virtue of the drafting of this Agreement.

5 16. Plaintiff acknowledges that she has been given more than twenty-one (21)
6 calendar days within which to review and consider this Agreement. Plaintiff further
7 acknowledges that she has been given a reasonable time within which to review and consider
8 this Agreement and represents that she is represented by counsel in this action, has conferred
9 with her attorney prior to executing this Settlement Agreement, has examined and understands
10 the provisions of 29 U.S.C. § 626(f)(1)(A-E), and that the requirements of those provisions are
11 fully met and satisfied in connection with this Agreement.

12 17. If any provision of this Agreement shall be held invalid, illegal, or unenforceable,
13 the validity, legality, and enforceability of the remaining provisions shall not in any way be
14 affected or impaired thereby.

15 18. This instrument shall constitute the entire agreement between the parties, and it is
16 expressly understood and agreed that this Agreement has been freely and voluntarily entered into
17 by the parties hereto with the advice of counsel, who have explained the legal effect of this
18 Agreement. The parties further acknowledge that no warranties or representations have been
19 made on any subject other than as set forth in this Agreement.

20 19. The parties agree that this Stipulation and Agreement of Compromise and
21 Settlement, including all the terms and conditions of this compromise settlement and any
22 additional agreements relating thereto, may be made public in their entirety, and Plaintiff
23 expressly consents to such release and disclosure pursuant to 5 U.S.C. § 552a(b).

24 20. The persons signing this Agreement warrant and represent that they possess full
25 authority to bind the persons on whose behalf they are signing to the terms of the settlement.

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