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17 Attorneys for Defendant KEN SALAZAR

18 UNITED STATES DISTRICT COURT  
19 NORTHERN DISTRICT OF CALIFORNIA

20 KAREN S. O'MARA,  
21 Plaintiff,  
22 v.  
23 KEN SALAZAR, SECRETARY OF THE  
24 U.S. DEPARTMENT OF INTERIOR,  
25 Defendant.

Docket No. CV-10-1378 DMR

STIPULATION AND AGREEMENT OF  
COMPROMISE AND SETTLEMENT  
AND [PROPOSED] ORDER

26 IT IS HEREBY STIPULATED AND AGREED by and between plaintiff KAREN S.  
27 O'MARA (hereafter "O'Mara" or "plaintiff") and defendant KEN SALAZAR, SECRETARY OF  
28 THE U.S. DEPARTMENT OF INTERIOR (hereafter "Interior"), by and through their undersigned  
counsel, as follows:

Stipulation and Agreement for Compromise and Settlement  
O'Mara v. Salazar, 4:10-cv-01378-DMR 1

1           WHEREAS, O'Mara is a female who was employed by the U. S. Geological Survey  
2 ("USGS") since April 2001 and she has worked as a Finance Technician from April 2, 2006 to the  
3 present.

4           WHEREAS, O'Mara received performance awards, commendations and performance  
5 ratings throughout her career.

6           WHEREAS, in April 2010, O'Mara commenced this lawsuit, alleging discrimination based  
7 on gender and gender plus age, hostile work environment and retaliation for protected activity  
8 under Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e-16 *et seq.* (Title VII) and the  
9 Age Discrimination in Employment Act, 29 U.S.C. §621 *et seq.* (ADEA).

10           WHEREAS, the parties now desire to avoid the expense, burden and delay of litigation, and  
11 to resolve all of O'Mara's claims, charges and any and all lawsuits and claims brought by O'Mara  
12 against Interior fully and forever in consideration of the promises contained herein.

13           NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

14           1.     In exchange for the promises by O'Mara in this Agreement and complete settlement  
15 of this matter, the Secretary of the Department Interior agrees to:

- 16           A.     Pay the sum of \$25,000.00 to plaintiff under the terms and conditions set  
17                 forth herein.
- 18           B.     Defendant will have the plaintiff's GS-8 Financial Tech position description  
19                 audited by a USGS Classifier to ensure that it is properly classified and  
20                 graded. If the classifier determines that the position should be graded as a  
21                 GS-09, the defendant shall promote plaintiff to the GS-09 grade level.
- 22           C.     In the event that the classification audit does not result in upgrading  
23                 plaintiff's position to a GS-09, defendant will give priority consideration to  
24                 plaintiff for the next available GS-09 Budget Analyst or Financial Specialist  
25                 position with the U.S. Geological Survey that is filled within the next two  
26                 years for which plaintiff is on the certification list in the local commuting  
27                 area. For purposes of this paragraph, "priority consideration" means that the  
28                 plaintiff's application package will be reviewed by the selection official prior

1 to any other applicant being considered. "Priority consideration" does not  
2 mean that plaintiff is guaranteed selection for a position for which she was  
3 given priority consideration.

4 2. O'Mara and her heirs, executors, administrators, assigns and attorneys hereby agree  
5 to accept the sum set forth in Paragraph 1, in full and final settlement and satisfaction of the claims  
6 raised in this action under the terms and conditions set forth herein.

7 3. It is also agreed, by and among the parties, that the sum set forth in Paragraph 1  
8 represents the entire amount payable to O'Mara and her heirs, executors, administrators, assigns  
9 and attorneys.

10 4. It is also agreed, by and among the parties, that the sum set forth in Paragraph 1  
11 shall be made payable to O'Mara's counsel, Mary Dryovage, Esq. and Karen S. O'Mara. The  
12 checks will be mailed to O'Mara's attorney at the following address: Mary Dryovage, Esq., Law  
13 Offices of Mary Dryovage, 600 Harrison Street, Suite 120, San Francisco, CA 94107.

14 5. It is also agreed by and among the parties that neither O'Mara nor her attorney may  
15 make any claim for attorney's fees or other costs against Interior, the United States, their agents,  
16 servants, or employees.

17 6. In consideration of the receipt of the sums set forth in Paragraph 1, O'Mara agrees  
18 that she will immediately upon execution of this agreement, execute a Stipulation of Dismissal,  
19 which stipulation shall dismiss, with prejudice, all claims asserted in this action or any claims that  
20 could have been asserted in this action, which is captioned *Karen S. O'Mara v. Kenneth L.*  
21 *Salazar, Secretary, U.S. Dept of Interior*, Case No. 4:10-cv-01378-DMR. The fully executed  
22 Stipulation of Dismissal will be held by counsel for Interior and will be filed with the Court upon  
23 receipt by O'Mara's counsel of the settlement amount.

24 7. In consideration of the receipt of the sums set forth in Paragraph 1, O'Mara hereby  
25 releases and forever discharges Interior and any and all of its past and present officials, employees,  
26 agents, attorneys, successors, and assigns from any and all obligations, damages, liabilities, causes  
27 of actions, claims, and demands of any kind and nature whatsoever, whether suspected or  
28 unsuspected, arising in law or equity, arising from or by reason of any and all known, unknown,

1 foreseen, or unforeseen injuries, and the consequences thereof, resulting from the facts,  
2 circumstances and subject matter that gave rise to this action, including all claims under Title VII  
3 of the Civil Rights Act of 1964 as amended by the Civil Rights Act of 1991, and the Age  
4 Discrimination in Employment Act of 1967 and any other claim O'Mara could have asserted  
5 regarding the events of this lawsuit.

6 8. In consideration of the payment of the sum set forth in Paragraph 1, O'Mara further  
7 agrees that she may not and will not use or rely on the incidents and actions underlying the events  
8 at issue to prove any other claims against Interior in any other lawsuit.

9 9. O'Mara represents and warrants that there has been no assignment or other transfer  
10 of any interest in any claim that O'Mara may have against Interior or any of its past or present  
11 officials, employees, attorneys or agents, and O'Mara agrees to indemnify and hold them harmless  
12 from any liability, claims, demands, costs, expenses and attorneys' fees incurred by them or any of  
13 them as a result of any person asserting any such assignment or transfer.

14 10. The provisions of California Civil Code Section 1542 are set forth below:

15  
16 A general release does not extend to claims which the creditor does not know  
17 or suspect to exist in his or her favor at the time of executing the release, which if  
18 known by him or her must have materially affected his or her settlement with the  
19 debtor.

20 O'Mara having been apprised of the statutory language of Civil Code Section 1542 by her  
21 attorneys, and fully understanding the same, nevertheless elects to waive the benefits of any and all  
22 rights she may have pursuant to the provision of that statute and any similar provision of federal  
23 law. O'Mara understands that if the facts concerning O'Mara's injury and the liability of Interior,  
24 or the Interior's agents, servants, or employees, for damages pertaining thereto are found hereafter  
25 to be other than or different from the facts now believed by them to be true, this agreement shall be  
26 and remain effective notwithstanding such material difference.

27 11. O'Mara acknowledges that she has been given twenty-one (21) calendar days within  
28 which to review and consider this agreement and understands that she has seven (7) calendar days  
within which to revoke her acceptance of this agreement. Any such revocation must be made in  
writing and delivered to counsel for Interior on or before the seventh calendar day after O'Mara

1 signs this agreement. O'Mara further represents that she has conferred with her attorney prior to  
2 executing this agreement, she has examined and understands the provisions of 29 U.S.C. §  
3 626(f)(1), and that the requirements of those provisions are fully met and satisfied in connection  
4 with this agreement.

5 12. The parties acknowledge that neither this agreement nor anything contained herein  
6 shall constitute an admission of liability or fault on the part of Interior or its officers, agents,  
7 servants, or employees. This agreement is entered into by the parties for the purpose of  
8 compromising disputed claims, avoiding the expenses and risks of litigation, and buying peace.

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

12 14. If any withholding or income tax liability is imposed upon O'Mara based on  
13 payment of the settlement sum as set forth herein in paragraph 1A, O'Mara shall be solely  
14 responsible for paying any such liability. The settlement amount in paragraph 1A will be  
15 considered and treated as general damages for personal injury, including allegations of emotional  
16 injury and for reimbursement of attorneys fees and costs of the litigation. This amount will not be  
17 considered or treated as back wages.

18 15. Counsel for Interior shall submit a Voucher for Payment and supporting documents  
19 to the Judgment Fund for payment of the sum set forth in paragraph 1A to O'Mara within seven  
20 days after receipt of a fully signed Agreement.

21 16. The parties agree that the District Court shall retain jurisdiction over this matter for  
22 the purposes of resolving any dispute alleging a breach of this agreement.

23 17. Each party acknowledges that they have been represented by and have relied upon  
24 independent counsel in negotiating, preparing and entering into this agreement and that they have  
25 had the contents of this agreement fully explained by counsel and that they are fully aware of and  
26 understand all of the terms of the agreement and the legal consequences thereof. It is further  
27 acknowledged that the parties have mutually participated in the drafting of this agreement and it is

28

1 agreed that no provision herein shall be construed against any party hereto by virtue of the drafting  
2 of this agreement.

3 18. Notwithstanding any other provision of this Agreement, nothing in this agreement  
4 shall have any adverse effect upon O'Mara's right and ability to continue to collect wages,  
5 employment benefits and medical benefits.

6 19. Except as it relates to the consideration to O'Mara as set forth in this agreement in  
7 paragraph 1, if any provision of this agreement shall be held invalid, illegal, or unenforceable, the  
8 validity, legality, and enforceability of the remaining provisions shall not in any way be affected or  
9 impaired thereby.


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

15 21. This agreement may not be altered, modified or otherwise changed in any respect  
16 except in writing, duly executed by all of the parties or their authorized representatives.

17 22. This agreement may be signed in one or more counterparts, each of which shall be  
18 deemed to be an original and all of which together shall constitute one and the same instrument.

19 FOR THE PLAINTIFF:

20 Dated: 10/13/10

  
KAREN S. O'MARA  
Plaintiff

23 Dated: 10/13/10

By:   
MARY DEYOVAGE  
Attorney for Plaintiff

25 FOR THE DEFENDANT:

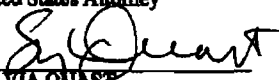
26 Dated: 10/13/2010

  
KEITH PRINCE,  
Chief, Branch of Regional Research,  
Western Region, USGS

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BENJAMIN WAGNER  
United States Attorney

Dated: 10/13/2010

By:   
SYLVIA QUAST  
Assistant United States Attorney  
Attorney for Secretary of the Department of Interior

**ORDER**

IT IS SO ORDERED.

Dated: 10/15/2010

  
HONORABLE DONNA M. RYU  
UNITED STATES MAGISTRATE JUDGE