

THE HONORABLE RICARDO S. MARTINEZ

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

ISABEL VALENCIA-PEREZ,)
)
)
Plaintiff,)
)
)
v.)
)
)
DARYL SCHERMERHORN, in his)
individual capacity and "JANE DOE")
SCHERMERHORN, as a marital)
community; STEVEN MALPEZZI, in)
his individual capacity and "JANE DOE")
MALPEZZI, as a marital community;)
THE UNITED STATES OF AMERICA,)
)
Defendants.)

No. C 08-0920 RSM

**STIPULATION AND AGREEMENT
FOR COMPROMISE SETTLEMENT
AND RELEASE; ORDER**

THE PARTIES AND THEIR ATTORNEYS OF RECORD HEREBY SUBMIT THE
FOLLOWING STIPULATION AND AGREEMENT FOR COMPROMISE SETTLEMENT
AND RELEASE (the "Stipulation and Agreement"):

1. This Stipulation and Agreement is entered into by and between plaintiff Isabel
Valencia-Perez ("Plaintiff") and defendants Daryl Schermerhorn, in his individual capacity and
"Jane Doe" Schermerhorn, as a marital community; Steven Malpezzi, in his individual capacity
and "Jane Doe" Malpezzi, as a marital community; and the United States of America (the
"USA") (collectively, "Defendants").

STIPULATION AND AGREEMENT FOR COMPROMISE SETTLEMENT AND RELEASE; ORDER
Case No. C 08-0920 RSM

1 attorneys may make any additional claim for attorney's fees or other costs against Defendants or
2 Defendants' agents, servants or employees.

3 7. Payment of the settlement amount will be made by a check payable to
4 "Davies Pearson, P.C." The check will be delivered to Plaintiff's attorney at the following
5 address:

6 Joseph M. Diaz
7 Davies Pearson, P.C.
8 920 Fawcett Avenue
9 P.O. Box 1657
10 Tacoma, Washington 98401

11 8. Plaintiff and his attorneys are responsible for payment of any taxes that may be
12 due on the settlement proceeds. Defendants make no representation as to any tax consequences
13 or liabilities Plaintiff or his attorney may incur as a result of this settlement. Defendants will not
14 withhold any taxes of any kind. The determination of Plaintiff's tax liability, if any, is a matter
15 solely between Plaintiff, his attorneys, the IRS and/or state and local tax authorities.

16 9. In consideration of the payment referred to in paragraphs 3 and 6 above, Plaintiff
17 agrees that he will, immediately upon execution of this Stipulation and Agreement, execute a
18 Stipulation of Dismissal, which stipulation shall dismiss with prejudice all claims that were
19 asserted or could have been asserted in This Action. The fully-executed Stipulation of Dismissal
20 will be held by counsel for Defendants and will not be filed with the Court until payment of the
21 sum referenced in paragraphs 3 and 6 herein is made. Plaintiff is advised that settlement checks
22 are sometimes not available for up to sixty (60) days after approval of the settlement by the
23 Court.

24 10. In consideration of the payment referred to in paragraphs 3 and 6 above, Plaintiff
25 hereby releases and forever discharges Defendants and any and all of Defendants' predecessor
26 and current agencies, officials, employees, agents, attorneys, successors and assigns from any
27 and all obligations, damages, liabilities, actions, causes of actions, claims and demands of any
28 kind and nature whatsoever, whether suspected or unsuspected, arising at law or in equity,

1 arising from or by reason of any and all known, unknown, foreseen or unforeseen injuries, and
2 the consequences thereof, resulting from the facts, circumstances, subject matter or allegations
3 that gave rise to This Action.

4 11. The parties agree that this Stipulation and Agreement is intended to be a full and
5 final settlement of all claims arising out of the allegations set forth in Plaintiff's pleadings in
6 This Action. Plaintiff agrees to indemnify and hold harmless Defendants from any and all
7 claims, demands, obligations, liens, and lawsuits brought against Defendants, their agencies or
8 employees on account of the same subject matter that gave rise to This Action.

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

17 13. The parties agree that, should any dispute arise with respect to the implementation
18 of the terms of this Agreement, Plaintiff shall not seek to rescind the Agreement and pursue his
19 original causes of action. Plaintiff's sole remedy in such a dispute is an action to enforce this
20 Stipulation and Agreement in district court. The parties agree that the district court will retain
21 jurisdiction over this matter for the purposes of resolving any dispute alleging a breach of this
22 Stipulation and Agreement.

23 14. Each party acknowledges that he/she/it has been represented by and has relied
24 upon independent counsel in negotiating, preparing and entering into this Stipulation and
25 Agreement and that each party has had the contents of this Stipulation and Agreement fully
26 explained by counsel and that each party is fully aware of and understands all of the terms of the

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

5 15. If any provision of this Stipulation and Agreement shall be held invalid, illegal, or
6 unenforceable, the validity, legality, and enforceability of the remaining provisions shall not in
7 any way be affected or impaired thereby.

8 16. This Stipulation and Agreement may be executed in counterparts by the parties
9 hereto, each of which shall be deemed an original, and which together shall constitute one and
10 the same instrument, having the same force and effect as if a single original had been executed
11 by all parties. The parties agree to accept facsimile transmission signatures and PDFs
12 transmitted by e-mail as though they were original signatures on this document.

13 17. The persons signing this Stipulation and Agreement warrant and represent that
14 they possess full authority to bind the persons on whose behalf they are signing to the terms of
15 this Stipulation and Agreement.

16 SO STIPULATED.

17 Respectfully submitted,

18
19 DATED:

20 _____
ISABEL VALENCIA-PEREZ
21 Plaintiff

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23 DATED:

24 _____
JOSEPH M. DIAZ
Davies Pearson, P.C.
25 Attorney for Plaintiff

1 JOSEPH P. RUSSONIELLO
2 United States Attorney

3 DATED:

4 _____
5 NEILL T. TSENG
6 Assistant United States Attorney
7 Attorneys for Defendants

8 DATED:

9 _____
10 DARYL SCHERMERHORN
11 Defendant

12 DATED:

13 _____
14 STEVEN MALPEZZI
15 Defendant

16 **APPROVED AND SO ORDERED.**

17 DATED: November 12, 2009.

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19 _____
20 RICARDO S. MARTINEZ
21 UNITED STATES DISTRICT JUDGE
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