

SETTLEMENT AGREEMENT AND RELEASE

WHEREAS, This Settlement Agreement is made and entered into by and between Bonita Berg ("Berg") and The United States of America ("United States") and the United States Drug Enforcement Administration ("DEA"), each being a "Party" and, collectively, the "Parties;"

WHEREAS, Berg commenced litigation entitled *Bonita Berg v. The United States of America; the United States Drug Enforcement Administration, etc.*, which is pending in the United States District Court for the District of Minnesota, Civil File No. 03-4642 (MJD/JSM) (hereafter "the Litigation");

WHEREAS, all defendants, including the United States and DEA expressly denied and disclaimed wrongdoing or liability of any kind whatsoever;

WHEREAS, the Parties desire to settle and resolve the Lawsuit;

Therefore, it is hereby stipulated and agreed by and between Berg, on the one hand, and the United States and the DEA, on the other hand, as follows:

1. For and in exchange for a payment of \$20,000 to be made pursuant to 28 U.S.C. § 2677, plaintiff agrees to withdraw and quit for all time any and all claims, demands, actions, causes of action, complaints, appeals or suits that were filed against the named defendants in the Litigation or could have been filed against any officers or employees of the United States who might have been named as defendants in the Litigation, and further agrees to waive, withdraw, and/or quit any and all claims, demands, actions, causes of action, complaints appeals or suits against the defendants, and against any officers or employees of

the United States who might have been named as defendants in the Litigation, whether of an administrative or judicial nature, arising out of events which were, or could have been, litigated in the Litigation, up to and including the date of this Agreement relating in any way to the actions of the DEA, its agents and local law enforcement assigned to work with the DEA on February 26, 2001 at the Minneapolis-St. Paul Airport ("MSP") and the resulting interaction at MSP on February 26, 2001 between Berg and a DEA agent and a local law enforcement officer assigned to assist the DEA. This waiver includes claims against the named defendants and against any officers or employees of the United States who might have been named as defendants in this action, in both their official and personal capacities. The parties understand that this amount includes full satisfaction of all claims for attorneys' fees and costs arising from work performed by plaintiff's present and former counsel at all stages of this litigation, including, but not limited to, the processing of the plaintiff's administrative tort claim and district court complaints in connection with the Litigation.

2. It is understood and agreed that the United States and the DEA expressly deny any and all liability to Berg, and that this Settlement Agreement and Release, together with the payment set forth in Paragraph 1, shall not be construed as, or represented to be an admission of any liability whatsoever. Rather it is a compromise of disputed claims entered into by the parties in consideration of the time, expense and uncertainty of further litigation.

3. The plaintiff has been informed that the Drug Enforcement Administration and the United States Department of Justice both maintain files resulting from the filing of her administrative tort claim and her filing of the litigation. Nothing in this Agreement is intended to, or has any effect upon, the maintenance or disposition of those files in the ordinary course of the operations of the Department of Justice or the Drug Enforcement Administration. The Drug Enforcement Administration represents that the plaintiff's name or other identifying information has not been made a part of any law enforcement database as a result of the encounter described in the complaint in the action.

4. Berg warrants that she has not heretofore assigned, transferred, or purported to assign or transfer to any person or entity any claim, demand, action, or cause of action herein released or discharged by Berg.

5. After execution of this Settlement Agreement and Release and payment of the amount set forth in Paragraph 1, the Parties hereto, through their respective counsel, shall execute and file a Stipulation dismissing the Litigation with prejudice and without costs or attorneys' fees to any party. In addition, after execution of this Settlement Agreement and Release and payment of the amount set forth in Paragraph 1, counsel for United States and the DEA will file documents necessary to secure dismissal without prejudice of the related appeal currently pending in the United States Court of Appeals for the Eighth Circuit, No. 07-1613. Pending performance under this Settlement Agreement and Release,

Berg will cooperate in requesting any necessary stays of the proceedings in the appeal.

6. Berg intends to ask Judge Davis to correct the following two clerical mistakes on page 18 in the Court's February 2, 2007 Order by replacing the name "Key" for "Berg:"

The Court has already concluded that a reasonable juror could find that Berg [Key] did not have reasonable articulable suspicion to stop Berg based on Berg's actions. This, coupled with the fact that Key's cold-stops were overwhelmingly minority persons, could lead a reasonable juror to conclude that Berg [Key] used race as a reason to stop Berg.

The United States and the DEA agree not to request, in whole or in part, the sealing of the summary judgment Order dated February 2, 2007, or of any amended summary judgment Order that may be entered to address the clerical mistakes identified above.

7. Berg and the United States/DEA agree to resolve their dispute about public access to the following documents produced in this litigation by the DEA under the substantive standards provided by the Freedom of Information Act ("FOIA"):

(i) "Operation Jetway – Selected Findings (through August 15, 2001)," dated August 16, 2001 and prepared by the DEA Statistical Services Section, which was filed under seal with the Court as Exhibit A to the August 28, 2006 Declaration of Timothy E. Branson submitted in connection with Plaintiff's Memorandum in Opposition to Defendants' Motion for Summary Judgment;

(ii) "Operation Jetway – Selected Findings (through August 15, 2002)," dated August 30, 2002 and prepared by the DEA Statistical Services Section;

(iii) Memorandum dated May 19, 2000 from DEA Chief of Operations to All Special Agents in Charge/Designated Asst. Special Agents in Charge re Executive Order on Fairness in Law Enforcement Guidance and Practices for Data Collection, which was filed under seal with the Court as Exhibit B to the August 28, 2006 Declaration of Timothy E. Branson submitted in connection with Plaintiff's Memorandum in Opposition to Defendants' Motion for Summary Judgment;

(iv) Transcript of deposition of Patrick Gartin, pp. 1-99 and 123-124, which was filed under seal with the Court as Exhibit D to the August 28, 2006 Declaration of Timothy E. Branson submitted in connection with Plaintiff's Memorandum in Opposition to Defendants' Motion for Summary Judgment, and Gartin deposition transcript pp. 146-207;

(v) August 28, 2002 summary prepared by Patrick Gartin, entitled "Fairness in Law Enforcement Milestones Related to DEA Data Collection Efforts," and attached Memoranda from Patrick Gartin to Martin W. Pracht dated January 24, February 13, February 20, and April 12, 2001, which were collectively filed under seal with the Court as Exhibit E to the August 28, 2006 Declaration of Timothy E. Branson submitted in connection with Plaintiff's Memorandum in Opposition to Defendants' Motion for Summary Judgment; and

(vi) Drug Enforcement Administration Field Encounter Forms, which were collectively filed under seal with the Court as Exhibits F and F.1 to the August 28, 2006 Declaration of Timothy E. Branson submitted in connection with Plaintiff's Memorandum in Opposition to Defendants' Motion for Summary Judgment.

8. With respect to that dispute, the plaintiff and the United States have agreed as follows:

a) within 30 days of the execution of this agreement the Drug Enforcement Administration will deliver to counsel for the plaintiff a set of the disputed documents reviewed for release under the substantive standards provided by the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552. The documents as so produced may be made available to the public without further litigation or order of the Court. In connection with this review, plaintiff shall have no liability to the Drug Enforcement Administration for any costs or fees, pursuant to FOIA or otherwise. Upon expiration of this 30-day period, and without regard to whether the Drug Enforcement Administration has delivered any documents to counsel for plaintiff, plaintiff shall have exhausted her administrative remedies.

b) In the event that the plaintiff is of the view that documents or portions of documents which are determined by the DEA to be exempt from disclosure under the substantive standards provided by the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, and are withheld from documents delivered to counsel in their entirety, or are delivered to counsel in redacted form, and the plaintiff is not satisfied with that determination, the plaintiff may have judicial review of the matter under the standards and procedures of the FOIA as follows:

c) The plaintiff may file a motion in this action seeking review of the DEA's determination. That motion shall in the first instance be

referred to Magistrate Judge Mayeron pursuant to Rule 72.1(a) (iii) of the Rules of the United States District Court for the District of Minnesota. As provided in Rule 72.2(b), if either the plaintiff or the defendant is dissatisfied with the Magistrate Judge's Report and Recommendation, either party may present its objections to Judge Davis. If dissatisfied with the Court's ruling, either party, may appeal to the United States Court of Appeals for the Eighth Circuit, and seek review of that Court's decision in the United States Supreme Court after final resolution of the FOIA dispute in the District of Minnesota.

Nothing in this Settlement Agreement precludes the parties from compromising or settling any FOIA dispute while reserving other matters in dispute for judicial resolution.

9. The parties acknowledge, understand, and agree that this Agreement sets forth the entire Agreement between them and fully supersedes any and all prior agreements or understandings between them. No other promises or agreements will be binding unless signed by any and all the parties. This Agreement may not be altered, amended, or changed except by a writing signed by an authorized representative of the parties.

10. Plaintiff agrees and represents that she has considered thoroughly all aspects of this Agreement; that she has discussed this

Agreement with her attorneys, and that in entering into this Agreement, she does so knowingly and voluntarily.

11. A facsimile signature shall be the equivalent of an original for purposes of this Agreement.

12. The United States District Court for the District of Minnesota having jurisdiction over the Action shall retain such jurisdiction as may be necessary or appropriate to carry out the provisions of ¶¶ 5, 6 and 8(c) of this Agreement. After execution of this Settlement Agreement and Release, the parties will submit a proposed Order to the District Court, specifying that the District Court shall retain jurisdiction consistent with this paragraph. In the event the District Court refuses to retain such jurisdiction, the Parties shall revise the language of ¶¶ 5, 6 and 8(c) to effectuate the substantive intent of those paragraphs. The parties expressly acknowledge and agree that the terms of this Settlement Agreement and Release shall survive the release and/or dismissal of the Plaintiff's claims in the action.

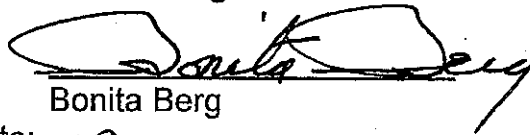
13. The effective date of this Agreement shall be the date that this Agreement has been signed by counsel for United States of America and the Drug Enforcement Administration and by Plaintiff.

14. The plaintiff hereby stipulates that she has been represented by and has relied upon independent counsel in the

negotiations for the preparation of this Agreement, that she has had the contents of the Agreement fully explained to it by such counsel, and is fully aware of and understands all of the terms of the Agreement and the legal consequences thereof. It is acknowledged that the parties hereto have, through their respective counsel, mutually participated in the preparation of this Agreement, and it is agreed that no provision hereof shall be construed against any party hereto by virtue of the activities of that party or its attorney.

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

Bonita Berg



Bonita Berg

Date:

May 24, 2007

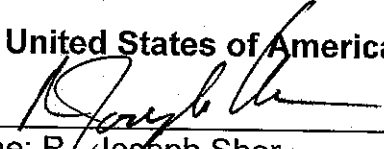


**One of the attorneys for the
Plaintiff**

Date:

May 29, 2007

The United States of America

By: 

Name: R. Joseph Sher
Assistant United States Attorney

Date: May 30, 2007