

1 DAVID P. MASTAGNI (SBN 57721)
 ANTHONY P. DONOGHUE (SBN 254113)
 2 **MASTAGNI, HOLSTEDT, AMICK,
 MILLER & JOHNSEN**
 3 A Professional Corporation
 1912 I Street
 4 Sacramento, California 95811
 Telephone: (916) 446-4692
 5 Facsimile: (916) 447-4614

6 Attorneys for Plaintiffs
 MARJORIE McCLISS and MARK McCLISS

7
 8 STEPHEN G. PONGRATZ (SBN 131276)
BEYER, PONGRATZ & ROSEN
 3230 Ramos Circle
 9 Sacramento, California 95827
 Telephone: (916) 369-9750
 10 Facsimile: (916) 369-9760

11 Attorneys for Defendant
 JIMMIE EARL WARD

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 13 **IN THE UNITED STATES DISTRICT COURT**
 14 **FOR THE EASTERN DISTRICT OF CALIFORNIA**

15
 16 MARJORIE McCLISS and MARK McCLISS,
 17 Plaintiffs,

18 v.

19 JIMMIE EARL WARD; ERIC K. SHINSEKI,
 Secretary of Veterans Affairs; the UNITED
 20 STATES OF AMERICA; and DOES 1 through
 100, inclusive,
 21 Defendants.

CASE NO. 2:07-cv-001154-MCE-KJM

**STIPULATION FOR COMPROMISE
 SETTLEMENT; CONSENT DECREE;
 AND ORDER**

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 24 It is hereby stipulated by and between the following parties only: Plaintiffs MARJORIE
 25 McCLISS and MARK McCLISS (hereinafter referred to as "PLAINTIFFS") and Defendant JIMMIE
 26 EARL WARD (hereinafter referred to as "DEFENDANT WARD") as follows:

27 1. Pursuant to this STIPULATION FOR COMPROMISE SETTLEMENT and CONSENT
 28 DECREE (hereinafter referred to as "STIPULATED SETTLEMENT AGREEMENT"), PLAINTIFFS

1 and DEFENDANT WARD, who are the only parties to this STIPULATED SETTLEMENT
2 AGREEMENT, hereby agree to resolve and settle the disputes between them arising from or relating to,
3 directly or indirectly, the acts or omissions that are alleged by PLAINTIFFS in their complaints in the
4 United States District Court for the Eastern District of California (Case No. 2:07-cv-00154-MCE-
5 KJM), against DEFENDANT WARD and to further memorialize herein the terms of such resolution
6 and settlement that was reached by and between the parties.

7 2. DEFENDANT WARD agrees to pay to PLAINTIFFS the sum of \$11,000.00 in full
8 settlement and satisfaction of any and all claims, demands, rights, and causes of action that
9 PLAINTIFFS have against DEFENDANT WARD only, arising from and by reason of any and all
10 known and unknown, foreseen and unforeseen bodily and personal injuries, damage to property and the
11 consequences thereof, which have resulted or may in the future result from the acts or omissions that
12 are alleged by PLAINTIFFS in their complaint in the above-captioned action, and which is the subject
13 matter of this action.

14 3. PLAINTIFFS do hereby waive to the fullest extent possible under law any and all rights
15 under Section 1542 of the California Code of Civil Procedure, which reads as follows:

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

19 4. PLAINTIFFS warrant that they are the sole and lawful owner of all rights, title, and
20 interests in and to every claim and other matter which they purport to release herein, and that they have
21 not heretofore assigned or transferred, or purported or attempted to assign or transfer to any person or
22 **entity any claims or other matters herein released.**

23 5. This STIPULATED SETTLEMENT AGREEMENT is not, is in no way intended to be,
24 and should not be construed as, an admission of liability or fault on the part of DEFENDANT WARD .

25 6. It is also agreed, by and among the parties, that the amount specified in Paragraph 2 is
26 the total amount of the compromise settlement, and that the all parties agree to bear their own attorney's
27 fees, costs, and expenses incurred in the above-captioned action and in any associated Equal
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1 Employment Opportunity Commission, administrative or tort claims proceedings with the Department
2 of Veterans Affairs, and release each other from any claims for attorney's fees, costs, or expenses.

3 7. The persons signing this STIPULATED SETTLEMENT AGREEMENT warrant and
4 represent that they possess full authority to bind the persons on whose behalf they are signing to the
5 terms of this STIPULATED SETTLEMENT AGREEMENT.

6 8. Payment of the settlement amount by DEFENDANT WARD shall be made by pursuant
7 to the following terms:

- 8 a. On or before February 26, 2010, DEFENDANT WARD shall pay to "Marjorie McCliss,
9 Mark McCliss and Mastagni, Holdstedt, Amick, Miller & Johnsen, APC" at 1912 I
10 Street, Sacramento, CA 95811, the sum of one thousand dollars (\$1,000.00).
- 11 b. On or before March 26, 2010, DEFENDANT WARD shall pay to "Marjorie McCliss,
12 Mark McCliss and Mastagni, Holdstedt, Amick, Miller & Johnsen, APC" at 1912 I
13 Street, Sacramento, CA 95811, the sum of one thousand dollars (\$1,000.00).
- 14 c. On or before April 30, 2010, DEFENDANT WARD shall pay to "Marjorie McCliss,
15 Mark McCliss and Mastagni, Holdstedt, Amick, Miller & Johnsen, APC" at 1912 I
16 Street, Sacramento, CA 95811, the sum of one thousand dollars (\$1,000.00).
- 17 d. On or before May 28, 2010, DEFENDANT WARD shall pay to "Marjorie McCliss,
18 Mark McCliss and Mastagni, Holdstedt, Amick, Miller & Johnsen, APC" at 1912 I
19 Street, Sacramento, CA 95811, the sum of one thousand dollars (\$1,000.00).
- 20 e. On or before June 25, 2010, DEFENDANT WARD shall pay to "Marjorie McCliss,
21 Mark McCliss and Mastagni, Holdstedt, Amick, Miller & Johnsen, APC" at 1912 I
22 Street, Sacramento, CA 95811, the sum of one thousand dollars (\$1,000.00).
- 23 f. On or before July 30, 2010, DEFENDANT WARD shall pay to "Marjorie McCliss,
24 Mark McCliss and Mastagni, Holdstedt, Amick, Miller & Johnsen, APC" at 1912 I
25 Street, Sacramento, CA 95811, the sum of one thousand dollars (\$1,000.00).
- 26 g. On or before August 27, 2010, DEFENDANT WARD shall pay to "Marjorie McCliss,
27 Mark McCliss and Mastagni, Holdstedt, Amick, Miller & Johnsen, APC" at 1912 I
28 Street, Sacramento, CA 95811, the sum of one thousand dollars (\$1,000.00).

- 1 h. On or before September 24, 2010, DEFENDANT WARD shall pay to “Marjorie
2 McCliss, Mark McCliss and Mastagni, Holdstedt, Amick, Miller & Johnsen, APC” at
3 1912 I Street, Sacramento, CA 95811, the sum of one thousand dollars (\$1,000.00).
- 4 i. On or before October 29, 2010, DEFENDANT WARD shall pay to “Marjorie McCliss,
5 Mark McCliss and Mastagni, Holdstedt, Amick, Miller & Johnsen, APC” at 1912 I
6 Street, Sacramento, CA 95811, the sum of one thousand dollars (\$1,000.00).
- 7 j. On or before November 26, 2010, DEFENDANT WARD shall pay to “Marjorie
8 McCliss, Mark McCliss and Mastagni, Holdstedt, Amick, Miller & Johnsen, APC” at
9 1912 I Street, Sacramento, CA 95811, the sum of one thousand dollars (\$1,000.00).
- 10 k. On or before December 31, 2010, DEFENDANT WARD shall pay to “Marjorie
11 McCliss, Mark McCliss and Mastagni, Holdstedt, Amick, Miller & Johnsen, APC” at
12 1912 I Street, Sacramento, CA 95811, the sum of one thousand dollars (\$1,000.00).
- 13 l. Said payments shall be deemed late when DEFENDANT WARD fails to either
14 personally deliver or postmark by U.S. Mail the payment as of the date listed for the
15 respective payments. In the event of late payment:
- 16 i. DEFENDANT WARD shall be deemed in default;
- 17 ii. The entire remaining balance owed shall be deemed accelerated and all due and
18 payable;
- 19 iii. A 10% simple interest shall apply on all outstanding principle still owed; and
- 20 iv. PLAINTIFFS shall be entitled to reimbursement of attorney’s fees, costs and
21 expenses incurred while enforcing the terms of this STIPULATED
22 SETTLEMENT AGREEMENT and/or the corresponding ORDER.

23 9. PLAINTIFFS shall timely file a notice of satisfaction of judgment upon satisfaction of
24 payment pursuant to the terms included in paragraph 8.

25 10. The parties understand, acknowledge, agree and consent that this Court shall retain
26 jurisdiction in this matter until such time as the terms of the settlement, as described herein, are
27 satisfied.

28 11. PLAINTIFFS authorize and consent to DEFENDANT WARD filing this STIPULATED

1 SETTLEMENT AGREEMENT and a request for dismissal of the above-captioned action with
2 prejudice pursuant to the terms included in paragraph 8, with such stipulation and request requiring
3 each party to bear its own fees, costs, and expenses.

4 12. DEFENDANT WARD acknowledges and agrees that the debt incurred herein shall be
5 non-dischargeable in any bankruptcy proceeding.

6 13. The parties understand, acknowledge and agree that this STIPULATED SETTLEMENT
7 AGREEMENT contains the entire agreement between the parties pertaining to the compromise and
8 settlement of all claims referenced herein, and that no promise or representation not contained in this
9 STIPULATED SETTLEMENT AGREEMENT has been made to PLAINTIFFS. This STIPULATED
10 SETTLEMENT AGREEMENT is executed without reliance on any representation as to tax
11 consequences, and PLAINTIFFS are responsible for the payment of all taxes that may be associated
12 with the settlement payment.

13 14. Any of the parties to this STIPULATED SETTLEMENT AGREEMENT, namely
14 MARJORIE McCLISS, MARK McCLISS and DEFENDANT WARD, may file this STIPULATION
15 FOR COMPROMISE SETTLEMENT; CONSENT DECREE AND [PROPOSED] ORDER in this or
16 any other action or proceeding to enforce the terms and conditions of this STIPULATED
17 SETTLEMENT AGREEMENT. In any action or proceeding to enforce the terms or conditions of this
18 STIPULATED SETTLEMENT AGREEMENT, the prevailing party or parties shall be entitled to an
19 award of their reasonable attorneys' fees, litigation expenses, and costs.

20 15. It is contemplated that this STIPULATED SETTLEMENT AGREEMENT may be
21 executed in several counterparts, with a separate signature page for each party. All such counterparts
22 and signature pages, together, shall be deemed to be one document.

23 IT IS SO STIPULATED AND AGREED.

24 DATED: _____, 2010

BEYER, PONGRATZ & ROSEN

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27 By: _____
28 STEPHEN G. PONGRATZ
Attorneys for Jimmie Earl Ward

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DATED: _____, 2010

JIMMIE EARL WARD

DATED: _____, 2010

MASTAGNI, HOLSTEDT, AMICK, MILLER &
JOHNSEN, APC

By:

ANTHONY P. DONOGHUE
Attorneys for Marjorie and Mark McCliss

DATED: _____, 2010

MARJORIE McCLISS

DATED: _____, 2010

MARK McCLISS

1 Street, Sacramento, CA 95811, the sum of one thousand dollars (\$1,000.00).

- 2 g. On or before August 27, 2010, DEFENDANT WARD shall pay to “Marjorie McCliss,
3 Mark McCliss and Mastagni, Holdstedt, Amick, Miller & Johnsen, APC” at 1912 I
4 Street, Sacramento, CA 95811, the sum of one thousand dollars (\$1,000.00).
- 5 h. On or before September 24, 2010, DEFENDANT WARD shall pay to “Marjorie
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18 personally deliver or postmark by U.S. Mail the payment as of the date listed for the
19 respective payments. In the event of late payment:
- 20 i. DEFENDANT WARD shall be deemed in default;
 - 21 ii. The entire remaining balance owed shall be deemed accelerated and all due and
22 payable;
 - 23 iii. A 10% simple interest shall apply on all outstanding principle still owed; and
 - 24 iv. PLAINTIFFS shall be entitled to reimbursement of attorney’s fees, costs and
25 expenses incurred while enforcing the terms of this STIPULATED
26 SETTLEMENT AGREEMENT and/or the corresponding ORDER.

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28 PLAINTIFFS shall timely file a notice of satisfaction of judgment upon satisfaction of

1 payment pursuant to the terms.

2 Failure to comply with this ORDER may be grounds for the imposition of sanctions on any and
3 all counsel as well as any party or parties who cause non-compliance with this ORDER.

4 IT IS SO ORDERED.

5 Dated: February 3, 2010



7 MORRISON C. ENGLAND, JR.
8 UNITED STATES DISTRICT JUDGE

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