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6 Attorneys for the United States

7  
 8 IN THE UNITED STATES DISTRICT COURT  
 9 EASTERN DISTRICT OF CALIFORNIA

10  
 11 CALIFORNIA CAPITAL INSURANCE  
 COMPANY,

12 Plaintiff,

13 v.

14 UNITED STATES OF AMERICA,

15 Defendant.  
 16

Case No. 2:09-cv-00472 MCE-EFB

**STIPULATION AND  
 ORDER OF DISMISSAL WITH  
 PREJUDICE**

17 It is hereby stipulated by and between CALIFORNIA CAPITAL INSURANCE  
 18 COMPANY (“CALIFORNIA CAPITAL”) and the UNITED STATES OF AMERICA  
 19 (“UNITED STATES”) as follows:

20 1. CALIFORNIA CAPITAL does hereby agree to settle and compromise each  
 21 and every claim of any kind, whether known or unknown, arising directly or indirectly  
 22 from the acts or omissions that gave rise to the above-captioned action under the terms  
 23 and conditions set forth in this Stipulation.

24 2. The UNITED STATES agrees to pay to CALIFORNIA CAPITAL the sum of  
 25 Eighty Five Thousand Dollars (\$85,000.00), which sum shall be in full settlement and  
 26 satisfaction of any and all claims, demands, rights, and causes of action of whatsoever  
 27 kind and nature, arising from, and by reason of any and all known and unknown,  
 28

1 foreseen and unforeseen bodily and personal injuries, damage to property and the  
2 consequences thereof, resulting, and to result, from the subject matter of this action,  
3 including any future claims for wrongful death, for which CALIFORNIA CAPITAL and  
4 any parent, subsidiary, division, member, affiliated entities, or assigns, and each of them,  
5 now have or may hereafter acquire against the UNITED STATES, its agents, servants,  
6 and employees.<sup>1</sup>

7 3. CALIFORNIA CAPITAL and any parent, subsidiary, division, member,  
8 affiliated entities, or assigns, and any person or entity acting on behalf of any of the  
9 foregoing, agrees to accept the Eighty Five Thousand Dollars (\$85,000.00) in full  
10 settlement and satisfaction of any and all claims, demands, rights, and causes of action of  
11 whatsoever kind and nature, including claims for wrongful death, arising from, and by  
12 reason of, any and all known and unknown, foreseen and unforeseen bodily and personal  
13 injuries, damage to property and the consequences thereof which they may have or  
14 hereafter acquire against the UNITED STATES, its agents, servants, and employees on  
15 account of the same subject matter that gave rise to the above-captioned action, including  
16 any future claim or lawsuit of any kind or type whatsoever, whether known or unknown,  
17 and whether for compensatory or exemplary damages. CALIFORNIA CAPITAL and any  
18 parent, subsidiary, division, member, affiliated entities, or assigns, and any person or  
19 entity acting on behalf of any of the foregoing, further agree to reimburse, indemnify and  
20 hold harmless the UNITED STATES and its agents, servants and employees from and  
21 against any and all causes of action, claims, liens, rights, or subrogated or contribution  
22 interests incident to or resulting from further litigation or the prosecution of claims  
23 arising from the subject matter of this action against any third party or against the  
24 UNITED STATES, including claims for wrongful death.

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26 <sup>1</sup> For purposes of this Stipulation of Dismissal the term “subject matter” shall refer only to  
27 the claims, causes of action and allegations made by California Capital in this action and  
28 shall not include those made or to be made by nonparties to this action including but not  
limited to Eric Prescott, Phyllis Solomon, Patricia Thiessen and Pacific Bell Telephone  
Company.

1           4.     CALIFORNIA CAPITAL expressly waives any rights or benefits available  
2 pursuant to Section 1542 of the Civil Code of the State of California, which provides as  
3 follows:

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

9     The parties understand and agree that this Stipulation shall act as a release of future  
10 claims that may arise from the subject matter of the above-captioned action, whether  
11 such claims are currently known, unknown, foreseen or unforeseen. The parties  
12 understand and acknowledge the significance and consequences of the specific waiver of  
13 section 1542 and hereby assume full responsibility for any injury, loss, damage or liability  
14 that may be incurred hereafter by reason of or related to the subject matter that gave rise  
15 to this action.

16           5.     This Stipulation is not, is in no way intended to be, and should not be  
17 construed as, an admission of liability or fault on the part of the UNITED STATES, its  
18 agents, servants, or employees, and it is specifically denied that they are liable to  
19 CALIFORNIA CAPITAL . This settlement is entered into by CALIFORNIA CAPITAL  
20 and the United States for the purpose of compromising disputed claims under the Federal  
21 Tort Claims Act and avoiding the expenses and risks of further litigation.

22           6.     The parties agree that they will each bear their own costs, fees, and  
23 expenses; that any attorney's fees owed by CALIFORNIA CAPITAL shall not exceed 25%  
24 of the settlement amount (28 U.S.C. § 2678) and will be paid out of the settlement  
25 amount and not in addition thereto; and that all outstanding or future bills and liens will  
26 be the sole responsibility of CALIFORNIA CAPITAL .

27           7.     Payment of the settlement amount from the UNITED STATES will be made  
28 by check drawn on the Treasury of the United States for Eighty Five Thousand Dollars  
(\$85,000.00) and made payable to "CALIFORNIA CAPITAL INSURANCE COMPANY."

1 Tax identification number 95-1332270. The check will be mailed to CALIFORNIA  
2 CAPITAL 's attorney at the following address. Culbreth Schroeder, LLP, 2945 Ramco  
3 Street, Suite 180, West Sacramento, CA 95691.

4 8. The parties agree to execute and deliver such other and further documents  
5 as may be required to carry out the terms of this Stipulation.

6 9. Each person signing this Stipulation warrants and represents that he or she  
7 possesses full authority to bind the person[s] on whose behalf he or she is signing to the  
8 terms of the Stipulation.

9 10. Each person signing this Stipulation warrants and represents that no  
10 promises, inducements, or other agreements not expressly contained herein have been  
11 made; that this Stipulation contains the entire agreement between the parties; and that  
12 the terms of this Stipulation are contractual and not mere recitals. This Stipulation may  
13 not be altered, amended, modified, or otherwise changed in any respect, except by a  
14 writing duly executed by the party to be charged. All prior oral understandings,  
15 agreements, and writings are superseded by this Stipulation and are of no force or effect.

16 11. Each person executing this Stipulation represents that he or she has read  
17 and understands its contents; that he or she executes this Stipulation voluntarily; that he  
18 or she has not been influenced by any person acting on behalf of any party.

19 12. This Stipulation may be executed in counterparts. All such counterparts  
20 and signature pages, together, shall be deemed to be one document.

21 13. Upon approval by the Court as provided below, CALIFORNIA CAPITAL's  
22 action against the UNITED STATES is hereby DISMISSED WITH PREJUDICE in its  
23 entirety and the Clerk of the Court is requested to enter this dismissal and release in the  
24 official docket and to close the case.

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1 14. Notwithstanding the entry of a dismissal herein, the parties agree that that  
2 the Honorable Morrison C. England, Jr. shall retain jurisdiction to enforce the terms of  
3 this compromise settlement.

4 Respectfully submitted,

5 DATED: June 2, 2011

BENJAMIN B. WAGNER  
United States Attorney

6  
7 By: /s/ Jason Ehrlenspiel  
8 JASON EHRLINSPIEL  
Assistant United States Attorney

9 DATED: June 7, 2011

CULBRETH SCHROEDER, LLP

10  
11 By: /s/ Eric Schroeder  
12 ERIC SCHROEDER  
Attorneys for Plaintiff

13 DATED: June 6, 2011


CALIFORNIA CAPITAL INSURANCE  
COMPANY

14  
15 /s/ Ken Fletcher  
16 By: Ken Fletcher  
17 Its: HO Claim Examiner CCIC

18 **ORDER**

19 **IT IS SO ORDERED.** The matter having been resolved in its entirety, the Clerk of  
20 Court is hereby directed to close the file.

21 Date: June 20, 2011

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24 \_\_\_\_\_  
25 MORRISON C. ENGLAND, JR.  
26 UNITED STATES DISTRICT JUDGE  
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