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

11 TROY GABRIELSON and ALLAN T.  
 12 BOWEN,

13 Plaintiffs,

14 v.

15 UNITED STATES OF AMERICA,

16 Defendant.

**CASE NO. 2:09-CV-00538 MCE-CMK**

**STIPULATION AND ORDER APPROVING  
 COMPROMISE SETTLEMENT AND  
 DISMISSING PLAINTIFF BOWEN'S CLAIMS  
 WITH PREJUDICE**

17  
 18 It is hereby stipulated by and between Plaintiff Allan T. Bowen and Defendant United States of  
 19 America, by and through their respective attorneys, as follows:

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

23 2. The United States of America agrees to pay the sum of \$35,000.00, which sum shall be in  
 24 full settlement and satisfaction of any and all claims, demands, rights, and causes of action of  
 25 whatsoever kind and nature, arising from, and by reason of any and all known and unknown, foreseen  
 26 and unforeseen bodily and personal injuries, damage to property and the consequences thereof, resulting,  
 27 and to result, from the subject matter of this settlement, including any claims for wrongful death, for  
 28 which Plaintiff or his guardians, heirs, executors, administrators, or assigns, and each of them, now have

1 or may hereafter acquire against the United States of America, its agents, servants, and employees.

2 3. Plaintiff and his guardians, heirs, executors, administrators or assigns hereby agree to  
3 accept the sums set forth in this Stipulation of Compromise Settlement in full settlement, satisfaction,  
4 and release of any and all claims, demands, rights, and causes of action of whatsoever kind and nature,  
5 including claims for wrongful death, arising from, and by reason of any and all known and unknown,  
6 foreseen and unforeseen bodily and personal injuries, damage to property and the consequences thereof  
7 which they may have or hereafter acquire against the United States of America, its agents, servants and  
8 employees on account of the same subject matter that gave rise to the above-captioned action, including  
9 any future claim or lawsuit of any kind or type whatsoever, whether known or unknown, and whether  
10 for compensatory or exemplary damages. Plaintiff and his guardians, heirs, executors, administrators or  
11 assigns further agree to reimburse, indemnify and hold harmless the United States of America, its  
12 agents, servants, and employees from and against any and all such causes of action, claims, liens, rights,  
13 or subrogated or contribution interests incident to or resulting from further litigation or the prosecution  
14 of claims by Plaintiff or his guardians, heirs, executors, administrators or assigns against any third party  
15 or against the United States, including claims for wrongful death.

16 4. Plaintiff expressly waives any rights or benefits available pursuant to Section 1542 of the  
17 Civil Code of the State of California, which provides as follows:

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

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

27 5. This stipulation for compromise settlement is not, is in no way intended to be, and should  
28 not be construed as, an admission of liability or fault on the part of the United States, its agents,

1 servants, or employees, and it is specifically denied that they are liable to Plaintiff. This settlement is  
2 entered into by all parties for the purpose of compromising disputed claims under the Federal Tort  
3 Claims Act and avoiding the expenses and risks of further litigation.

4 6. It is also agreed, by and among the parties, that the respective parties will each bear their  
5 own costs, fees, and expenses and that any attorney's fees owed by Plaintiff will be paid out of the  
6 settlement amount and not in addition thereto.

7 7. It is also understood by and among the parties that pursuant to Title 28, United States  
8 Code, Section 2678, attorney's fees for services rendered in connection with this action shall not exceed  
9 25 per centum of the amount of the compromise settlement.

10 8. The persons signing this Settlement Agreement warrant and represent that they possess  
11 full authority to bind the persons on whose behalf they are signing to the terms of the settlement. In the  
12 event any plaintiff is a minor or a legally incompetent adult, Plaintiff must obtain Court approval of the  
13 settlement at his expense. Plaintiff agrees to obtain such approval in a timely manner: time being of the  
14 essence. Plaintiff further agrees that the United States may void this settlement at its option in the event  
15 such approval is not obtained in a timely manner. In the event Plaintiff fails to obtain such Court  
16 approval, the entire Stipulation For Compromise Settlement And Release and the compromise  
17 settlement are null and void.

18 9. Payment of the settlement amount will be made by check for thirty-five thousand dollars  
19 (\$35,000.00) and made payable to Allan T. Bowen, Plaintiff, and John Barr, Plaintiff's attorney. The  
20 check will be mailed to Plaintiff's attorney at the following address: Barr & Mudford, 1824 Court  
21 Street, P.O. Box 994390, Redding, CA 96099-4390. Plaintiff's attorney agrees to distribute the  
22 settlement proceeds to Plaintiff, and to obtain a dismissal of the above-captioned action with prejudice,  
23 with each party bearing its own fees, costs, and expenses.

24 10. The parties agree that this Stipulation for Compromise Settlement and Release, including  
25 all the terms and conditions of this compromise settlement and any additional agreements relating  
26 thereto, may be made public in their entirety, and Plaintiff expressly consents to such release and  
27 disclosure pursuant to 5 U.S.C. § 552a(b).

28 11. It is contemplated that this Stipulation may be executed in several counterparts, with a

1 separate signature page for each party. All such counterparts and signature pages, together, shall be  
2 deemed to be one document.

3 12. Upon approval by the Court as provided below, Plaintiff Bowen's claims against the  
4 United States are hereby DISMISSED WITH PREJUDICE in their entirety.

5 13. Notwithstanding the entry of a dismissal herein, the parties agree that that the Honorable  
6 Morrison C. England, Jr. shall retain jurisdiction to enforce the terms of this compromise settlement.

7  
8 Respectfully submitted,

9 Dated: June 19, 2013

10 *Allan T. Bowen*

11 ALLAN T. BOWEN  
12 Plaintiff  
13 BARR & MUDFORD

14 Dated: May 31, 2013

15 */s/ John Dugan Douglas Barr*

16 JOHN DUGAN DOUGLAS BARR  
17 Attorneys for Plaintiff Allan T. Bowen

18 Dated: May 30, 2013

19 BENJAMIN B. WAGNER  
20 United States Attorney

21 */s/ Edward A. Olsen*

22 EDWARD A. OLSEN  
23 Assistant United States Attorney

24 **ORDER**

25 In accordance with the foregoing stipulation, IT IS SO ORDERED.

26 Dated: June 27, 2013

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28   
MORRISON C. ENGLAND, JR., CHIEF JUDGE  
UNITED STATES DISTRICT COURT