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6
 7 UNITED STATES DISTRICT COURT
 8 FOR THE EASTERN DISTRICT OF CALIFORNIA

9 PATRICK KENOYER,)
 10)
 Plaintiff,)
 11)
 v.)
 12)
 UNITED STATES OF AMERICA,)
 13)
 Defendant.)
 14)
 15)

No. 2:10-CV-01858-EFB

**STIPULATION AND
 ORDER APPROVING COMPROMISE
 SETTLEMENT**

16 IT IS HEREBY STIPULATED by and between Plaintiff Patrick Kenoyer and Defendant
 17 United States of America, by and through their respective attorneys as follows:

18 1. The parties do hereby agree to settle and compromise the above-entitled action under the
 19 terms and conditions set forth herein.

20 2. Defendant United States of America agrees to pay to Plaintiff Patrick Kenoyer the sum of
 21 Forty Thousand Dollars and no cents (\$40,000.00), which sum shall be in full settlement and
 22 satisfaction of any and all claims, demands, rights, and causes of action of whatsoever kind and
 23 nature, arising from, and by reason of any and all known and unknown, foreseen and unforeseen
 24 bodily and personal injuries, damage to property and the consequences thereof, resulting, and to
 25 result, from the same subject matter that gave rise to the above-captioned lawsuit, including any
 26 claims for wrongful death, for which Plaintiff or his heirs, executors, administrators, or assigns, and
 27 each of them, now have or may hereafter acquire against the United States of America, its agencies,
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1 agents, servants, and employees.

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

15 4. This stipulation for compromise settlement shall not constitute an admission of liability or
16 fault on the part of the United States, its agencies, agents, servants, or employees, and is entered
17 into by the parties for the purpose of compromising disputed claims and avoiding the expenses and
18 risks of litigation.

19 5. This Agreement may be pled as a full and complete defense to any subsequent action or
20 other proceeding involving any person or party which arises out of the claims released and
21 discharged by the Agreement.

22 6. It is also agreed, by and among the parties, that the settlement amount of Forty Thousand
23 Dollars and no cents (\$40,000.00) to Patrick Kenoyer represents the entire amount of the
24 compromise settlement and that the respective parties will each bear their own costs, fees, and
25 expenses and that any attorneys' fees owed by Plaintiff will be paid out of the settlement amount
26 and not in addition thereto.

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1 7. It is also understood by and among the parties that, pursuant to Title 28, United States Code,
2 Section 2678, attorneys' fees for services rendered in connection with this action shall not exceed
3 25 percent of the amount of the compromise settlement.

4 8. Payment of the settlement amount will be made by a check drawn on the United States
5 Postal Service for Forty Thousand Dollars and no cents (\$40,000.00) and made payable to Patrick
6 Kenoyer and the Frank Law Group, P.C. The check will be mailed to Frank Law Group, P.C.,
7 Courthouse Plaza, 1517 Lincoln Way, Auburn, CA 95603. Plaintiff and his attorney are
8 responsible for payment for any taxes that may be due on the settlement proceeds and Defendant
9 makes no representation as to any tax consequences or liabilities Plaintiff and his attorney may
10 incur as a result of this settlement.

11 9. In consideration of this Agreement and the payment of the foregoing amount thereunder,
12 Plaintiff agrees that upon notification that the settlement check is ready for delivery, he will deliver
13 to Defendant's counsel a fully executed Notice of Dismissal with prejudice of Kenoyer v. United
14 States, 2:10-CV-01858-EFB. Upon delivery of the Notice of Dismissal, Defendant's counsel will
15 release the settlement check to Plaintiff's counsel or his agent.

16 10. Plaintiff has been informed that payment may take sixty days or more to process, but
17 Defendant agrees to make good faith efforts to expeditiously process said payment.

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

23 12. Plaintiff hereby releases and forever discharges the United States and any and all of its past
24 and present officials, employees, agencies, agents, attorneys, their successors and assigns, from any
25 and all obligations, damages, liabilities, actions, causes of action, claims and demands of any kind
26 and nature whatsoever, whether suspected or unsuspected, at law or in equity, known or unknown,
27 arising out of the allegations set forth in Plaintiff's pleadings in this action.

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1 13. The provisions of California Civil Code Section 1542 are set forth below:

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

4 Plaintiff having been apprised of the statutory language of California Civil Code Section 1542 by
5 her attorneys, and fully understanding the same, nevertheless elects to waive the benefits of any and
6 all rights he may have pursuant to the provision of that statute and any similar provision of federal
7 law. Plaintiff understands that, if the facts concerning Plaintiff's injuries and the liability of the
8 government for damages pertaining thereto are found hereinafter to be other than or different from
9 the facts now believed by them to be true, the Agreement shall be and remain effective
10 notwithstanding such material difference.

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

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

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1 Dated: September 2, 2011

/s/ Patrick Kenoyer

2 PATRICK KENOYER

3 Plaintiff

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6 Dated: September 2, 2011

/s/ Brett E. Rosenthal

7 BRETT E. ROSENTHAL

8 Attorney for Plaintiff

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11 Dated: September 2, 2011

BENJAMIN B. WAGNER

12 United States Attorney

13 /s/ Edward A. Olsen

14 EDWARD A. OLSEN

15 Assistant United States Attorney

16 **ORDER**

17 APPROVED AND SO ORDERED.

18 Dated: September 29, 2011.



EDMUND F. BRENNAN
UNITED STATES MAGISTRATE JUDGE

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