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11
12 IN THE UNITED STATES DISTRICT COURT
13
14 EASTERN DISTRICT OF CALIFORNIA

15
16 JOSEPH HELM,

17 Plaintiff,

18 v.

19 UNITED STATES OF AMERICA,

20 Defendant.

21 CASE NO. 2:11-cv-01703 MCE EFB

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28 **STIPULATION FOR COMPROMISE
SETTLEMENT AND RELEASE OF
FEDERAL TORT CLAIMS ACT CLAIMS
PURSUANT TO 28 U.S.C. 2677**

29 It is hereby stipulated by and between the undersigned plaintiff (meaning any person, other than
30 the defendant and the attorneys, signing this agreement, whether or not a party to this civil action), and
31 the United States of America ("United States"), by and through their respective attorneys, as follows:

32 1. Plaintiff hereby agrees to settle and compromise each and every claim of any kind,
33 whether known or unknown, arising directly or indirectly from the acts or omissions that gave rise to the
34 above-captioned action, under the terms and conditions set forth in this Stipulation.

35 2. The United States of America agrees to pay the sum of \$6,000.00,* which sum shall be in
36 full settlement and satisfaction of any and all claims, demands, rights, and causes of action of
37 whatsoever kind and nature, arising from, and by reason of any and all known and unknown, foreseen
38 and unforeseen bodily and personal injuries, damage to property and the consequences thereof, resulting,
39 and to result, from the subject matter of this action, including any future claims for wrongful death, for
40 which plaintiff or his guardians, heirs, executors, administrators, or assigns, and each of them, now have
41 or may hereafter acquire against the United States, its agents, servants, and employees.

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

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

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

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

26 5. This Stipulation is not, is in no way intended to be, and should not be construed as, an
27 admission of liability or fault on the part of the United States of America, its agents, servants, or
28 employees, and it is specifically denied that they are liable to Plaintiff. This settlement is entered into

1 by all parties for the purpose of compromising disputed claims under the Federal Tort Claims Act and
2 avoiding the expenses and risks of further litigation.

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

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

9 8. Payment by the United States will be made by ~~Electronic Funds Transfer through~~
10 Plaintiff's attorney's trust account per the following terms: check payable to Joseph Helm.

11 Name of Bank: _____

12 Street Address: _____

13 Routing No.: _____

14 Account Name: _____

15 Account No: _____

16 Plaintiff's attorney agrees to distribute the settlement proceeds to plaintiff, and to obtain a
17 dismissal of the above-captioned action with prejudice, with each party bearing his or its own fees,
18 costs, and expenses.

19 9. The persons signing this Stipulation warrant and represent that they possess full authority
20 to bind the persons on whose behalf they are signing to the terms of the Stipulation. In the event any
21 plaintiff is a minor or legally incompetent adult, plaintiffs must obtain court approval of the settlement
22 at their expense. Plaintiff agrees to obtain such approval in a timely manner: time being of the essence.
23 Plaintiff further agrees that the United States of America may void this settlement at its option in the
24 event such approval is not obtained in a timely manner. In the event plaintiff fails to obtain such Court
25 approval, the entire Stipulation and the compromise settlement are null and void.

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

1 11. It is contemplated that this Stipulation may be executed in several counterparts, with a
2 separate signature page for each party. All such counterparts and signature pages, together, shall be
3 deemed to be one document.

4

5 DATED: April 21, 2015

BENJAMIN B. WAGNER
United States Attorney

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7 By: /s/ Lynn Trinka Ernce
LYNN TRINKA ERNCE
8 Assistant United States Attorney
9 Attorneys for the United States of America

10 DATED: April 21, 2015

11 By: /s/ Russell A. Robinson
12 Russell A. Robinson
13 Attorneys for Plaintiff
14 JOSEPH HELM

15 DATED: April 21, 2015

16 By: /s/ Joseph Helm
17 JOSEPH HELM
18 Plaintiff

19

20 **ORDER**

21 Pursuant to the above stipulation, this action is DISMISSED with prejudice, and the Clerk of
22 the Court is directed to close this case.

23 IT IS SO ORDERED.

24 Dated: May 8, 2015

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