

1 JOSEPH P. RUSSONIELLO (CSBN 44332)
 United States Attorney
 2 JOANN M. SWANSON (CSBN 88143)
 Chief, Civil Division
 3 ELLEN M. FITZGERALD (NY 2408805)
 Assistant United States Attorney
 4 450 Golden Gate Avenue, Box 36055
 San Francisco, CA 94102-3495
 5 Tel. (415) 436-7314
 Fax: (415) 436-6748
 6 E-Mail: ellen.fitzgerald@usdoj.gov

7 Attorneys for Defendant

8
 9 UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA
 10 SAN FRANCISCO DIVISION

11 RICARDO ANGEL NAVARRETTE,)	Case No.: C 04-0760 JSW
)	
12 Plaintiff,)	AMENDED SETTLEMENT AGREEMENT
)	AND [PROPOSED] ORDER
13 vs.)	APPROVING AMENDED SETTLEMENT
)	
14 THE UNITED STATES OF AMERICA,)	
)	
15 Defendant)	
)	

16
 17 STIPULATION FOR COMPROMISE SETTLEMENT AND RELEASE OF
 18 FEDERAL TORT CLAIMS ACT CLAIMS PURSUANT TO 28 U.S.C. § 2677

19 It is hereby stipulated by and between the undersigned plaintiffs
 20 (meaning any person, other than the defendant and the structured
 21 settlement broker, signing the agreement, whether or not a party to
 22 the civil action), and the UNITED STATES OF AMERICA, by and through
 23 their respective attorneys, as follows:

- 24
 25 1. The parties do hereby agree to settle and compromise each and
 26 every claim of any kind, whether known or unknown, arising directly or
 27 indirectly from the acts or omissions that gave rise to the above-

1 captioned action under the terms and conditions set forth in the
2 Settlement Agreement.

3 2. The Stipulation For Compromise Settlement And Release is not,
4 is in no way intended to be, and should not be construed as, an
5 admission of liability or fault on the part of the UNITED STATES OF
6 AMERICA, its agents, servants, or employees, and it is specifically
7 denied that they are liable to the plaintiff. The settlement is
8 entered into by all parties for the purpose of compromising disputed
9 claims under the Federal Tort Claims Act and avoiding the expenses and
10 risks of further litigation.
11

12 3. The UNITED STATES OF AMERICA agrees to pay the undersigned
13 plaintiff the cash sums set forth below in paragraph 3(a) to purchase
14 the annuity contract(s) described below in paragraph 3(b).

15 (a) As soon as practicable after counsel of record for the
16 UNITED STATES OF AMERICA receives (1) this Stipulation signed by all
17 parties and as Order Approving Settlement by the Court; and (2) the
18 Social Security Numbers or tax identification numbers of plaintiff and
19 his attorneys, counsel for the UNITED STATES OF AMERICA will send a
20 formal request to the Judgment Fund Branch, Financial Management
21 Service, Department of the Treasury, requesting the sum of ONE MILLION
22 DOLLARS (\$1,000,000.00) (hereinafter "settlement amount") to be paid,
23 by check or wire transfer to JMW SETTLEMENTS, INC. Client Funds
24 Account, out of which the following disbursements will be made by JMW
25 SETTLEMENTS from said Client Funds Account:
26
27
28

1 (i) To Ricardo Angel Navarrette and Barbara Bozman-Moss Esq., his
2 attorney of record, the sum of SEVEN HUNDRED THOUSAND DOLLARS
3 (\$700,000.00).

4 (ii) To an insurance company rated not less than A+ by A.M. Best &
5 Company, the sum of THREE HUNDRED THOUSAND DOLLARS (\$300,000.00) for
6 the purchase of the annuity described below.
7

8
9 The parties agree that any attorney's fees owed by the plaintiff
10 shall not exceed 25% of the settlement amount (28 U.S.C. § 2678) and
11 must be paid out of the settlement amount and not in addition thereto.

12 (b) The United States will purchase an annuity contract to make
13 the following payments:

14 To Ricardo Angel Navarrette commencing one year from the
15 date of funding the sum of \$1,000.00 per month for 19 years
16 (228 monthly payments) certain. Thereafter commencing
17 twenty years from the date of funding the sum of \$2,392.24
18 for 10 years (120 monthly payments) certain and continuing
19 thereafter so long as Ricardo Angel Navarrette shall live.
20

21 In the event the purchase price of the annuity has changed
22 prior to purchase, the benefits will be adjusted upwards or
23 downwards to whatever can be purchased for the sum of THREE
24 HUNDRED THOUSAND DOLLARS (\$300,000.00).
25

26
27 (c) The annuity contract(s) will be owned solely and
28 exclusively by the UNITED STATES OF AMERICA and will be purchased as
soon as practicable following the execution of the Stipulation For

1 Compromise Settlement And Release. The parties stipulate and agree
2 that the UNITED STATES OF AMERICA's only obligation with respect to
3 said annuity contract(s) and any annuity payments therefrom is to
4 purchase the annuity contract(s), and they further agree that the
5 UNITED STATES OF AMERICA does not guarantee or insure any of the
6 annuity payments. The parties further stipulate and agree that the
7 UNITED STATES OF AMERICA is released from any and all obligations with
8 respect to the annuity contract(s) and annuity payments upon the
9 purchase of the annuity contract(s).
10

11 The parties stipulate and agree that the annuity company that
12 issues the annuity contract(s) shall at all times have the sole
13 obligation for making all annuity payments. The obligation of the
14 annuity company to make each annuity payment shall be discharged upon
15 direct deposit, electronic funds transfer (EFT), or the mailing of a
16 valid check in the amount of such payment to the address designated by
17 the party to whom the payment is required to be made under this
18 Stipulation For Compromise Settlement And Release. Checks lost or
19 delayed through no fault of the annuity company shall be promptly
20 replaced by the annuity company, but the annuity company is not liable
21 for interest during the interim.
22

23 As further consideration of the agreement the Plaintiff
24 acknowledges and agrees that the annuity payments cannot be assigned,
25 accelerated, deferred, increased, or decreased by the parties, that no
26 part of any annuity payments called for herein or any assets of the
27 UNITED STATES OF AMERICA or the annuity company, are subject to
28 execution or any legal process for any obligation in any manner, and

1 that the Plaintiff shall not have the power, nor the right, to sell,
2 assign, mortgage, encumber, or anticipate said annuity payments, or
3 any part thereof, by assignment, sale, transfer or otherwise.
4 Moreover, Plaintiff hereby stipulates and agrees that any such
5 purported sale, assignment, mortgage or other form of transfer shall
6 be void and of no legal effect. Plaintiff further agrees to indemnify
7 and hold harmless the UNITED STATES OF AMERICA and any other party
8 released hereunder, from any and all claims, costs, fees or expenses
9 resulting from the sale, transfer, assignment or attempted sale,
10 transfer or assignment of any payments made herein pursuant to the
11 terms of the referenced annuity contract.
12

13 Plaintiff and his guardians, heirs, executors, administrators or
14 assigns do hereby agree to maintain with the annuity company and the
15 UNITED STATES OF AMERICA a current mailing address, and to notify the
16 annuity company and the UNITED STATES OF AMERICA of the death of any
17 beneficiary of said annuity contract within ten (10) days of death.
18

19 In the event of the death of Ricardo Angel Navarette prior to the
20 348th monthly payment, all remaining certain payments shall be paid
21 when due to his estate. Provided further, that Ricardo Angel Navarette
22 shall have the right pursuant to this agreement to designate any such
23 person or entity as contingent beneficiary has he may desire from time
24 to time. Said designation shall be in writing and in a form acceptable
25 to the UNITED STATES OF AMERICA and the annuity issuer.

26 4. Plaintiff and his guardians, heirs, executors,
27 administrators, or assigns do hereby accept the cash sums set forth
28 above in paragraph 3(a) and the purchase of the annuity contract(s)

1 set forth above in paragraph 3(b) in full settlement, satisfaction and
2 release of any and all claims, demands, rights, and causes of action
3 of whatsoever kind and nature, including any future claims for
4 wrongful death and any claims for fees, costs and expenses, arising
5 from, and by reason of, any and all known and unknown, foreseen and
6 unforeseen, bodily and personal injuries, death, or damage to
7 property, and the consequences thereof, which the plaintiff or his
8 heirs, executors, administrators, or assigns may have or hereafter
9 acquire against the UNITED STATES OF AMERICA, its agents, servants and
10 employees on account of the same subject matter that gave rise to the
11 above-captioned action. Plaintiff and his guardians, heirs,
12 executors, administrators, and assigns do hereby further agree to
13 reimburse, indemnify and hold harmless the UNITED STATES OF AMERICA
14 and its agents, servants, and employees from and against any and all
15 such claims, causes of action, liens, rights, or subrogated or
16 contribution interests incident to or resulting or arising from the
17 acts or omissions that gave rise to the above-captioned action,
18 including claims or causes of action for wrongful death.
19
20

21 5. The compromise settlement is specifically subject to each of
22 the following conditions:

23 a. An agreement by the parties on the terms, conditions, and
24 requirements of the Stipulation For Compromise Settlement And Release
25 and the annuity contract(s). The parties stipulate and agree that the
26 Stipulation For Compromise Settlement And Release and the compromise
27 settlement are null and void in the event the parties cannot agree on
28 the terms, conditions and requirements of the Stipulation For

1 Compromise Settlement And Release and the annuity contract(s). The
2 terms, conditions and requirements of the Stipulation For Compromise
3 Settlement And Release are not severable and the failure to agree,
4 fulfill or comply with any term, condition, or requirement renders the
5 entire Stipulation For Compromise Settlement And Release and the
6 compromise settlement null and void. The authorization by the
7 Attorney General or the Attorney General's designee to negotiate and
8 consummate a settlement for the amount agreed upon by the parties does
9 not make the settlement binding upon the UNITED STATES OF AMERICA
10 unless and until the other terms, conditions and requirements of the
11 Stipulation For Compromise Settlement And Release have been completely
12 agreed upon in writing.
13

14 b. Each beneficiary of the annuity contract(s) set forth above in
15 paragraphs 3(b) must be alive at the time of the purchase of said
16 annuity contract(s). In the event of the death of any beneficiary
17 prior to the purchase of said annuity contract(s), the entire
18 Stipulation For Compromise Settlement And Release and the compromise
19 settlement are null and void.
20

21 c. In the event any plaintiff is a minor or a legally incompetent
22 adult, the plaintiff must obtain Court approval of the settlement at
23 their expense. Such court approval must be obtained prior to the
24 purchase of the annuity contract(s) set forth above in paragraph 3(b).
25 Plaintiff agrees to obtain such approval in a timely manner: time
26 being of the essence. Plaintiff further agrees that the UNITED STATES
27 OF AMERICA may void the settlement at its option in the event such
28 approval is not obtained in a timely manner. In the event plaintiffs

1 fail to obtain such Court approval, the entire Stipulation For
2 Compromise Settlement And Release and the compromise settlement are
3 null and void.
4

5
6 6. Plaintiff's attorney agrees to distribute the settlement
7 proceeds among the plaintiffs and to obtain a dismissal of the above-
8 captioned action with prejudice, with each party bearing its own fees,
9 costs, and expenses.

10 7. The parties agree that the Stipulation for Compromise
11 Settlement and Release, including all the terms and conditions of the
12 compromise settlement and any additional agreements relating thereto,
13 may be made public in their entirety, and the plaintiffs expressly
14 consent to such release and disclosure pursuant to 5 U.S.C. § 552a(b).
15

16 8. California Civil Code Section 1542 provides as follows:

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

22 Plaintiff, having been apprised of such language by his attorney, and
23 fully understanding the same, nevertheless waives the benefits of any
24 and all rights he may have pursuant to Section 1542 and any similar
25 provisions of federal law. Plaintiff understands that, if the facts
26 concerning to be other than or different from the facts now believed
27 to be true, this Agreement shall be and remain effective
28 notwithstanding such difference.

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


5 Executed this 17th day of July, 2009.

6 JOSEPH P. RUSSONIELLO
 7 United States Attorney
 8 Attorney for Defendant,
 9 United States of America

10 By: 


11 ELLEN M. FITZGERALD
 12 Assistant United States Attorney

13
 14 Executed this 1st day of July, 2009.

15
 16
 17 

18 BARBARA BOZMAN-MOSS
 19 Attorney for Plaintiff

20
 21
 22
 23 Executed this 1 day of July, 2009.

24
 25
 26 

27 RICARDO ANGEL NAVARETTE
 28 Plaintiff

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Executed this 22nd day of July, 2009.

JMW SETTLEMENTS, INC.

By: Mark S. Feldman

SO ORDERED this 21 day of August, 2009:

Jeffrey S. White
JEFFREY S. WHITE
United States District Court Judge