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7 Attorneys for Defendant

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

12 JANE STILLWATER,

13 Plaintiff,

14 v.

15 U.S. DEPARTMENT OF DEFENSE –  
 16 OFFICE OF MILITARY CLAIMS,

17 Defendant.

Case No. 08-5778-JL

**[PROPOSED] ORDER APPROVING  
COMPROMISE SETTLEMENT**

18 IT IS HEREBY STIPULATED by and between Plaintiff Jane Stillwater and Defendant United  
 19 States of America, as follows:

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

22 2. Defendant United States of America agrees to pay to Plaintiff Jane Stillwater the sum of  
 23 One Thousand Three Hundred Sixty Two Dollars and fifteen cents (\$1,362.15), which sum shall  
 24 be in 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,  
 26 foreseen and unforeseen bodily and personal injuries, damage to property and the consequences  
 27 thereof, resulting, and to result, from the same subject matter that gave rise to the above-captioned  
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STIPULATION AND [PROPOSED] ORDER APPROVING COMPROMISE SETTLEMENT  
C 08-5778-JL

1 lawsuit, for which Plaintiff or her heirs, executors, administrators, or assigns, and each of them,  
2 now have or may hereafter acquire against the United States of America, its agencies, agents,  
3 servants, and employees.

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

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

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

24 6. It is also agreed, by and among the parties, that the settlement amount of One Thousand  
25 Three Hundred Sixty Two Dollars and fifteen cents (\$1,362.15) to Jane Stillwater represents the  
26 entire amount of the compromise settlement and that the respective parties will each bear their  
27 own costs, fees, and expenses and that any attorneys' fees owed by Plaintiff will be paid out of the  
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1 settlement amount and not in addition thereto.

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

5 8. Payment of the settlement amount will be made by a check for One Thousand Three  
6 Hundred Sixty Two Dollars and fifteen cents (\$1,362.15) and made payable to Jane Stillwater.

7 9. In consideration of this Agreement and the payment of the foregoing amount thereunder,  
8 Plaintiff agrees that upon notification that the settlement check is ready for delivery, she will  
9 deliver to Defendant's counsel a fully executed Notice of Dismissal with prejudice of Stillwater v.  
10 Department of Defense, C 08-5778-JL. Upon delivery of the Notice of Dismissal, Defendant's  
11 counsel will release the settlement check to Plaintiff.

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

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

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

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

25 "A general release does not extend to claims which the creditor does not know or suspect to  
26 exist in his favor at the time of executing the release, which if known by him must have  
27 materially affected his settlement with the debtor."  
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1 Plaintiff having been apprised of the statutory language of California Civil Code Section 1542  
2 and fully understanding the same, nevertheless elects to waive the benefits of any and all rights she  
3 may have pursuant to the provision of that statute and any similar provision of federal law.  
4 Plaintiff understands that, if the facts concerning Plaintiff's injuries and the liability of the  
5 government for damages pertaining thereto are found hereinafter to be other than or different from  
6 the facts now believed by them to be true, the Agreement shall be and remain effective  
7 notwithstanding such material difference.

8 14. This instrument shall constitute the entire Agreement between the parties, and it is  
9 expressly understood and agreed that the Agreement has been freely and voluntarily entered into  
10 by the parties. The parties further acknowledge that no warranties or representations have been  
11 made on any subject other than as set forth in this Agreement. This Agreement may not be altered,  
12 modified or otherwise changed in any respect except by writing, duly executed by all of the parties  
13 or their authorized representatives.

14  
15 Dated: June 15, 2009

/s/  
JANE STILLWATER  
Plaintiff

16  
17  
18 Dated: June 15, 2009

JOSEPH P. RUSSONIELLO  
United States Attorney

/s/  
EDWARD A. OLSEN  
Assistant United States Attorney

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20  
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22  
23 ~~PROPOSED~~ ORDER

24 APPROVED AND SO ORDERED.

25 Dated: June 17, 2009

  
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JAMES LARSON  
United States Magistrate Judge