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8 Attorneys for Defendants

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

12 LUDWIK CHROBOK,
 13 Plaintiff,
 14 v.
 15 UNITED STATES OF AMERICA,
 16 VETERANS ADMINISTRATION
 17 Defendant.

No. CV-09-2890 TEH
**STIPULATION OF SETTLEMENT
 AND [PROPOSED] ORDER**

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 STIPULATION OF SETTLEMENT AND [PROPOSED] ORDER
 CV-09-2890 TEH

1 It is hereby stipulated by and between each of the undersigned parties, by and through
2 their respective attorneys and representatives, as follows:

3 **PREAMBLE**

4 WHEREAS, Plaintiff Ludwik Chrobok (“Plaintiff” or “Chrobok”) is a World War II
5 veteran who underwent a right hip replacement at the VA Medical Center (“VA”) in San
6 Francisco on June 1, 2006. Following his post surgical treatment at the VA Medical Center in
7 San Francisco, the Plaintiff was transferred to Redwood Convalescent Hospital in Castro Valley
8 California (“Redwood”) for physical therapy and rehabilitation.

9 WHEREAS, Plaintiff was a patient at Redwood from June 12, 2006 to June 22, 2006.

10 WHEREAS, on June 8, 2007, Plaintiff sued Redwood in California Superior Court for
11 San Mateo County, *see, Chrobok v. Redwood Convalescent Hospital, et al.*, No. HG07329904,
12 for professional negligence and elder abuse (the “State Court Action”);

13 WHEREAS, the Department of Veterans Affairs has filed a lien in the State Court
14 Action;

15 WHEREAS, on June 26, 2009, Plaintiff sued the United States of America and the
16 Veterans Administration (“Federal Defendants”) in the District Court for the Northern District of
17 California pursuant to the Federal Tort Claims Act, 28 U.S.C. §§ 2671-80 (“FTCA”) for
18 professional negligence and elder abuse, *see, Chrobok v. the United States, et al.*, C 09-2890
19 TEH (the “FTCA Action”);

20 WHEREAS, this settlement is entered into by all parties for the purpose of compromising
21 disputed professional negligence and elder abuse claims under the FTCA or state law and
22 avoiding the expenses and risks of further litigation.

23 **TERMS AND CONDITIONS**

24 **1. The Settlement Amount:**

25 A. Redwood will pay Plaintiff five hundred fifty thousand dollars (\$550,000)
26 after the execution of this agreement (the “Settlement Amount”). The sum of \$500,000 is
27 allocated to Plaintiff’s claim for Elder Abuse, and the sum of \$50,000 is allocated to Plaintiff’s
28 claim for professional negligence.

1 present, and future liens or claims for payment or reimbursement by any public entity or body,
2 including any federal, State, or local government, including Medicare and Medicaid, any
3 insurance company, and any private individual or entity, arising from the injuries that are the
4 subject matter of this action. Plaintiff stipulates and agrees that he will satisfy or resolve any and
5 all past, present, and future liens or claims for payment or reimbursement against him asserted by
6 any public entity or body, including any federal, State, or local government, including Medicare
7 and Medicaid, any insurance company, and any private individual or entity. Plaintiff and his
8 attorneys represent that, as of the date they sign this Stipulation, they have made a diligent search
9 and effort to determine the identity of any individual or entity that has or may have a lien or
10 claim for payment or reimbursement against that plaintiff arising from the injuries that are the
11 subject matter of this action. Plaintiff and his attorneys hereby represent that he is not aware of
12 any liens or claims for payment or reimbursement relating in any way to this action. Plaintiff and
13 his guardians, heirs, executors, administrators, and assigns do hereby further agree to reimburse,
14 indemnify, and hold harmless the United States of America, the United States Department of
15 Veteran's Affairs, and their insurers, agents, servants, and employees, and Redwood, their
16 insurers, agents, servants, employees or heirs, from and against any and all such liens or claims
17 of Plaintiff incident to, or resulting or arising from, the acts or omissions that gave rise to the
18 FTCA Action or the State Court Action by Plaintiff.

19 6. **Releases:** This settlement resolves all claims or potential claims by any party to this
20 action arising out of the alleged medical malpractice and alleged elder abuse in this litigation,
21 including but not limited to any potential claims for subrogation, indemnity, or contribution by
22 any party or its insurer.

23 A. Plaintiff and his respective guardians, heirs, executors, administrators, and
24 assigns do hereby accept the Settlement Amount set forth above in full settlement, satisfaction,
25 and release of any and all claims, demands, rights, and causes of action of whatsoever kind and
26 nature, including any claims for wrongful death, any claims for pre-judgment or post-judgment
27 interest, and any claims for fees, costs, and expenses, whether incurred in the district court, the
28 court of appeals, or in any other court proceedings, arising from, and by reason of, any and all

1 known and unknown, foreseen and unforeseen, bodily and personal injuries, death, or damage to
2 property, and the consequences thereof, which the Plaintiff or his heirs, executors, administrators,
3 or assigns may have or hereafter acquire against the Federal Defendants, or their insurers, agents,
4 servants, and employees, or against the Redwood or their insurers, agents, servants, employees or
5 heirs, on account of the same subject matter that gave rise to the FTCA Action and/or the State
6 Court Action.

7 1. Plaintiff and his guardians, heirs, executors, administrators, and assigns do
8 hereby further agree to reimburse, indemnify, and hold harmless the Federal Defendants, and
9 their insurers, agents, servants, and employees, and Redwood, their insurers, agents, servants,
10 employees or heirs, from and against any and all such claims, causes of action, liens, rights, or
11 subrogated or contribution interests (whether such claims, causes of action, liens, rights,
12 subrogated interests, or contribution interests sound in tort, contract, or statutory) of Plaintiff
13 incident to, or resulting or arising from, the acts or omissions that gave rise to the FTCA Action
14 and/or the State Court Action by Plaintiff.

15 2. Plaintiff further warrants that this Stipulation of Settlement extends to and
16 covers claims or causes of action which may arise in the future under California Code of Civil
17 Procedure Section 377.60 upon the death of Plaintiff, whether as heirs of Plaintiff, or otherwise,
18 by reason of any act, cause, matter or thing claimed, alleged, or in any way related to the acts or
19 omissions covered by this Stipulation of Settlement.

20 3. Plaintiff represents and warrants that at all times referred to in the FTCA
21 Action and State Court Action and since the time of filing said action, no other person other than
22 Plaintiff had, or has, an interest in the causes of action set forth therein and that Plaintiff has not
23 sold, assigned, transferred, conveyed or otherwise disposed of any claim or demand relating to
24 any matter covered by this Stipulation of Settlement.

25 B. Redwood agrees to waive and release any claim or cause of action (whether sounding
26 in tort, contract, statutory, or otherwise) that it has or may have in the future against the United
27 States, its agents, servants, and employees arising out of the subject matter of the above-
28 captioned action or this litigation. This includes any potential claim for subrogation,

1 contribution, or indemnification. This condition is for the benefit of the United States
2 exclusively.

3 C. The United States Department of Veteran's Affairs, agrees to waive and release
4 any claim or cause of action (whether sounding in tort, contract, statutory, or otherwise) that it
5 has against Redwood, its insurers, agents, servants, and employees arising out of the subject
6 mater of the State Court Action. This includes any potential claim for subrogation, contribution
7 or indemnification arising only from the State Court Action. No entities other than Redwood, its
8 insurers, agents, servants, and employees are released from such claims by this Paragraph.

9 1. Notwithstanding any term of this Agreement, specifically reserved and excluded
10 from the scope and terms of this Agreement as to any entity or person (including Redwood and
11 Plaintiff) are the following claims of the United States and United States Department of
12 Veteran's Affairs:

- 13 a. Any civil, criminal, or administrative liability arising under Title
14 26 U.S. Code (Internal Revenue Code);
- 15 b. Any criminal liability;
- 16 c. Any liability to the United States or the United States Department
17 of Veteran's Affairs for any conduct other than the conduct set forth in the complaint in the State
18 Court Action filed on June 8, 2007 or the FTCA Action filed on June 26, 2009;
- 19 d. Any liability based upon such obligations as are created by this
20 Agreement.

21 7. **Statutory Waiver.**

22 The provisions of California Civil Code Section 1542 are set forth below:

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

27 Plaintiff, having been apprised of the statutory language of Civil Code Section 1542 by his
28 attorneys, and fully understanding the same, nevertheless elect to waive the benefits of any and
all rights he may have pursuant to the provision of that statute and any similar provision of

1 federal law. Plaintiff understands that, if the facts concerning injuries or liability for damages
2 pertaining thereto are found hereinafter to be other than or different from the facts now believed
3 by them to be true, the Agreement shall be and remain effective notwithstanding such material
4 difference.

5 8. **Construction.** Each party hereby stipulates that it has been represented by and has
6 relied upon independent counsel in the negotiations for the preparation of this Agreement, that it
7 has had the contents of the Agreement fully explained to it by such counsel, and is fully aware of
8 and understands all of the terms of the Agreement and the legal consequences thereof. For
9 purposes of construction, this Agreement shall be deemed to have been drafted by all Parties to
10 this Agreement and shall not, therefore, be construed against any Party for that reason in any
11 subsequent dispute.

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

19 10. **Complete Defense:** This agreement may be pled as a full and complete defense to
20 any subsequent action or other proceeding which arises out of the claims released and discharged
21 by the agreement.

22 11. **Enforcement Sole Remedy:** The parties agree that, should any dispute arise with
23 respect to the implementation of the terms of this Agreement, Plaintiff shall not seek to rescind
24 the Agreement and pursue his original causes of action. Plaintiff's sole remedy in such a dispute
25 is an action to enforce the Agreement in the appropriate court.

26 12. **Severability.** If any provision of this Agreement shall be invalid, illegal, or
27 unenforceable, the validity, legality, and enforceability of the remaining provision shall not in
28 any way be affected or impaired thereby.

1 13. Authority to Sign: The signatories to this Stipulation have actual authority to bind
2 the parties.

3 14. Multiple Signature Pages: It is contemplated that this Stipulation may be executed
4 in several counterparts, with multiple signature pages. All such counterparts and signature pages,
5 together, shall be deemed to be one document.

6 IT IS SO STIPULATED.

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8 DATED: 8/5, 2010

Respectfully submitted,

JOSEPH P. RUSSONIELLO
United States Attorney

/s/ Melissa Brown

MELISSA K. BROWN
Assistant United States Attorney

Law Office of Cousins & Edington
~~MARK J. ALEXANDER, ESQ.~~ Edington
Law Offices of Mark J. Alexander

/s/ Mark Alexander.

15 Dated: 7/27 2010 *MSE*

~~MARK J. ALEXANDER~~ *NICOLE M.*
Attorneys for the Plaintiff Edington

ANTHONY D. GHECA, ESQ.
Law Offices of Anthony D. Ghecea

/s/ Anthony D. Ghecea

19 Dated: 7/27 2010 *[Signature]*

ANTHONY D. GHECEA
Attorneys for the Plaintiff

KATHLEEN RHOADS, ESQ.
Gordon Rees, LLP

/s/ Kathleen Rhoads

24 Dated: 8/5, 2010

KATHLEEN RHOADS
Attorneys for the Defendant,
Redwood Convalescent Hospital

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LUDWIK CHROBOK

Dated: 7-23, 2010

Ludwik Chrobok
Plaintiff

APPROVAL BY DEFENDANTS REPRESENTATIVES

JOSEPH A. HART, ESQ.

/s/ Joseph Hart

Dated: _____, 2010

Senior Staff Attorney, Regional Counsel
Veterans Administration, San Francisco, CA

JOSEPH A. HART, ESQ.

/s/ _____

Dated: _____, 2010

Representative for Redwood Convalescent
Hospital

[PROPOSED] ORDER

Upon stipulation of the parties and good cause appearing, IT IS SO ORDERED.

DATED: _____

HONORABLE THELTON E. HENDERSON
United States District Court Judge

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LUDWIK CHROBOK

Dated: _____, 2010

Plaintiff

APPROVAL BY DEFENDANTS REPRESENTATIVES

JOSEPH A. HART, ESQ.

/s/ Joseph Hart

Dated: _____, 2010

Senior Staff Attorney, Regional Counsel
Veterans Administration, San Francisco, CA

JOSEPH A. HART, ESQ.

/s/ _____

Dated: Aug. 3, 2010

L.B. Hart

Representative for Redwood Convalescent
Hospital

[PROPOSED] ORDER

Upon stipulation of the parties and good cause appearing, IT IS SO ORDERED.

DATED: 8/5/10 _____

HONORABLE THELTON E. HENDERSON
United States District Judge

