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

12 CEDRIC BACCHUS,)
13 Plaintiff,)
14 v.)
15 DARRELL SHAWN TUCKER, UNITED)
16 STATES OF AMERICA, Does 1 through)
10,)
17 Defendants.)

18

19

No. C 10-0804 MEJ

**SETTLEMENT AGREEMENT AND
[PROPOSED] ORDER**

20 NOW, THEREFORE, in consideration of the mutual promises contained in this
21 Settlement Agreement (the "Agreement"), and other good and valuable consideration, receipt of
22 which is hereby acknowledged, it is hereby stipulated by and between the undersigned plaintiff
23 and the United States of America, by and through their respective attorneys, as follows:

- 24 1. The parties hereby agree to settle and compromise *Cedric Bacchus v. United States of*
25 *America*, United States District Court for the Northern District of California Case Number C10-
0804 MEJ (the "Lawsuit"), under the terms and conditions set forth herein.
- 26 2. The United States of America agrees to pay the sum of Ten Thousand Five Hundred
27 Dollars and Zero Cents (\$10,500.00) (the "Settlement Amount"), which sum shall be in full
28 settlement and satisfaction of any and all claims, demands, rights, and causes of action of
whatsoever kind and nature, arising from, and by reason of any and all known and unknown,

1 foreseen and unforeseen bodily and personal injuries, damage to property and the consequences
2 thereof, resulting, and to result, from the same subject matter that gave rise to the Lawsuit,
3 including any claims for wrongful death, for which plaintiff or his guardians, heirs, executors,
4 administrators, or assigns, and each of them, now have or may hereafter acquire against the
5 United States of America, its agencies, agents, servants, and employees.

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

21 4. This Agreement shall not constitute an admission of liability or fault on the part of the
22 United States of America, its agencies, agents, servants, or employees, and is entered into by and
23 between the parties for the purpose of compromising disputed claims and avoiding the expenses
24 and risks of litigation.

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

28

1 . 6. The Settlement Amount represents the entire amount of the compromise settlement. The
2 parties will each bear their own costs, attorneys' fees, and expenses, and any attorneys' fees or
3 liens owed by plaintiff will be paid out of the Settlement Amount and not in addition thereto.

4 . 7. It is also understood by plaintiff that, pursuant to Title 28 , Section 2678 of the United
5 States Code, attorneys' fees for services rendered in connection with this Lawsuit shall not
6 exceed 25 percent of the Settlement Amount.

7 . 8. Payment of the Settlement Amount will be made by check drawn on the United States
8 Postal Service and will be made payable to Brian L. Larsen State Bar Trust Account and Cedric
9 Bacchus, plaintiff. The check will be mailed to plaintiff's attorney at the following address: Law
10 Offices of Brain L. Larsen, 530 Jackson Street, 2nd Fl., San Francisco, CA 94133.

11 . 9. In consideration of the payment referred to in Paragraph 2, plaintiff agrees that,
12 immediately upon execution of this Agreement, he will execute a Stipulation of Dismissal, which
13 shall dismiss, with prejudice, all claims asserted in the Lawsuit or any claims that could have
14 been asserted in the Lawsuit, which is captioned *Cedric Bacchus v. United States of America*,
15 C10-0804 MEJ. The fully executed Stipulations of Dismissal will be held by counsel for the
16 Federal Defendant and will be filed with the Court upon receipt by plaintiff's counsel of the
17 settlement sum described in Paragraph 2.

18 . 10. Plaintiff has been informed that payment of the Settlement Amount may take sixty days
19 or more to process, but defendant agrees to make good faith efforts to expeditiously process the
20 payment.

21 . 11. There shall be no withholding from the Settlement Amount. Plaintiff understands that
22 this payment will be reported to the Internal Revenue Service ("IRS"), and that any questions as
23 to the tax liability, if any, as a result of this payment is a matter solely between plaintiff and the
24 IRS.

25 . 12. The parties agree that should any dispute arise with respect to the implementation of the
26 terms of this Agreement, plaintiff shall not seek to rescind the Agreement and pursue his original
27 causes of action. Plaintiff's sole remedy in such a dispute is an action to enforce the Agreement
28 in the United States District Court. The parties agree that the United States District Court will

1 retain jurisdiction over this matter for purposes of resolving any dispute alleging a breach of this
2 Agreement.

3 13. In consideration of payment of the Settlement Amount and this Agreement, plaintiff
4 hereby releases and forever discharges the United States of America and any and all of its past
5 and present officials, employees, agencies, agents, attorneys, successors, and assigns from any
6 and all obligations, damages, liabilities, actions, causes of action, claims, and demands of any
7 kind and nature whatsoever, whether suspected or unsuspected, at law or in equity, known or
8 unknown, arising out of the allegations set forth in the pleadings in the Lawsuit.

9 14. California Civil Code Section provides as follows:

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

14 Plaintiff, having been apprised of such language by his attorney, and fully understanding the
15 same, nevertheless waives the benefits of any and all rights he may have pursuant to Section
16 1542 and any similar provisions of federal law. Plaintiff understands that, if the facts concerning
17 his injuries and the liability of the defendant for damages pertaining thereto are found hereinafter
18 to be other than or different from the facts now believed to be true, this Agreement shall be and
19 remain effective notwithstanding such difference.

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

27 16. The persons signing this Agreement warrant and represent that they possess full authority
28 to bind the persons on whose behalf they are signing to the terms of the settlement.

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

4
5 Dated: 12/22

Cedric Bacchus
CEDRIC BACCHUS
Plaintiff

6
7 Dated: 12/27/10

LAW OFFICES OF BRIAN LARSEN

Lauren Gelber Brian Larsen
LAUREN GELBER BRIAN LARSEN
Attorney for Plaintiff

8
9 Dated: 1/14/11

MELINDA HAAG
United States Attorney

Jennifer S. Wang
JENNIFER S. WANG
Assistant United States Attorney
Attorneys for Federal Defendant

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11 **[PROPOSED] ORDER**

12 THE ABOVE SETTLEMENT AGREEMENT IS APPROVED, AND IT IS SO ORDERED.

13
14 Dated: January 19, 2011

Maria-Elena James
HON. MARIA-ELENA JAMES
United States Magistrate Judge