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6 Attorneys for Plaintiff
THOMAS MILLS

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11 Attorney for Plaintiff
12 ABF FREIGHT SYSTEMS, INC.

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19 Attorneys for Defendant
20 UNITED STATES OF AMERICA

21 UNITED STATES DISTRICT COURT
22 NORTHERN DISTRICT OF CALIFORNIA
23 SAN FRANCISCO DIVISION

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1 ABF FREIGHT SYSTEMS, INC.,
2 Plaintiff,
3 v.
4 UNITED STATES OF AMERICA, *et al.*,
5 Defendants.

) CASE NO. C 10-5188 SI
) (consolidated with C 11-04663 SI)

) **STIPULATION FOR COMPROMISE
) SETTLEMENT AND RELEASE; [PROPOSED]
) ORDER**

6 THOMAS MILLS,
7 Plaintiff,
8 v.
9 UNITED STATES OF AMERICA, *et al.*,
10 Defendants.

11
12 It is hereby stipulated by and between Plaintiff ABF FREIGHT SYSTEMS, INC. ("Plaintiff
13 ABF"), Plaintiff THOMAS MILLS ("Plaintiff Mills") (collectively, "Plaintiffs"), and Defendant
14 UNITED STATES OF AMERICA ("Defendant USA"), by and through their respective attorneys, as
15 follows:

16 WHEREAS, Plaintiff ABF filed civil action number C 10-5188 on November 16, 2010;
17 WHEREAS, Plaintiff Mills filed civil action number C 11-4663 on September 20, 2011;
18 WHEREAS, civil action number C 11-4663 was related to and consolidated with civil action
19 number C 10-5188 on December 12, 2011;

20 WHEREAS, Plaintiffs and Defendant USA wish to avoid any further litigation and controversy
21 and to settle and compromise fully any and all claims and issues that have been raised, or could have
22 been raised, against Defendant USA in the above-captioned consolidated action, which have transpired
23 prior to the execution of this Settlement Agreement ("Agreement");

24 NOW, THEREFORE, in consideration of the mutual promises contained in this Agreement, and
25 other good and valuable consideration, receipt of which is hereby acknowledged, the Parties agree as
26 follows:

27 1. Agreement to Compromise Claims. Plaintiffs and Defendant USA do hereby agree to settle
28 and compromise each and every claim against Defendant USA of any kind, whether known or unknown,

1 arising directly or indirectly from the acts or omissions that gave rise to the above-captioned
2 consolidated action under the terms and conditions set forth in this Agreement.

3 2. **Definition of "United States of America."** As used in this Agreement, the United States of
4 America shall include its current and former agents, servants, employees, and attorneys, as well as the
5 General Services Administration and/or its current and former agents, servants, employees, and
6 attorneys, as well as the Federal Protective Service and/or its current and former agents, servants,
7 employees, and attorneys.

8 3. **Settlement Amount.** The United States of America agrees to pay to Plaintiff Mills the sum
9 of fifty thousand dollars (\$50,000.00) ("Settlement Amount"), which sum shall be in full settlement and
10 satisfaction of any and all claims, demands, rights, and causes of action of whatsoever kind and nature,
11 arising from, and by reason of any and all known and unknown, foreseen and unforeseen personal
12 injuries, damage to property and the consequences thereof, resulting, and to result, from the subject
13 matter of this settlement, including any claims for wrongful death, for which Plaintiffs or their
14 guardians, heirs, executors, administrators, or assigns, and each of them, now have or may hereafter
15 acquire against the United States of America.

16 4. **Consideration Received by Plaintiff ABF.** Plaintiff ABF will not receive any payment from
17 Defendant USA as a result of this Agreement, but will receive consideration in the form of a credit in its
18 workers compensation case with Plaintiff Mills as a result of the Settlement Amount to be paid by
19 Defendant USA to Plaintiff Mills under this Agreement. This consideration shall be in full settlement
20 and satisfaction of any and all claims, demands, rights, and causes of action of whatsoever kind and
21 nature, arising from, and by reason of any and all known and unknown, foreseen and unforeseen
22 personal injuries, damage to property and the consequences thereof, resulting, and to result, from the
23 subject matter of this settlement, including any claims for wrongful death, for which Plaintiffs or their
24 guardians, heirs, executors, administrators, or assigns, and each of them, now have or may hereafter
25 acquire against the United States of America.

26 5. **Release.** Plaintiffs and their guardians, heirs, executors, administrators or assigns hereby
27 agree to accept the Settlement Amount and the consideration set forth in paragraph 4 above in full
28 settlement and satisfaction of any and all claims, demands, rights, and causes of action of whatsoever

1 kind and nature, including claims for wrongful death, arising from, and by reason of any and all known
2 and unknown, foreseen and unforeseen personal injuries, damage to property and the consequences
3 thereof which they may have or hereafter acquire against the United States of America on account of the
4 same subject matter that gave rise to the above-captioned consolidated action, including any future claim
5 or lawsuit of any kind or type whatsoever, whether known or unknown, and whether for compensatory
6 or exemplary damages. Plaintiff Mills and his guardians, heirs, executors, administrators or assigns
7 further agree to reimburse, indemnify and hold harmless the United States of America from and against
8 any and all such causes of action, claims, liens, rights, or subrogated or contribution interests incident to
9 or resulting from further litigation or the prosecution of claims by Plaintiff Mills or his guardians, heirs,
10 executors, administrators or assigns against any third party or against the United States, including claims
11 for wrongful death. Plaintiff ABF Freight Systems, Inc. and its executors, administrators or assigns
12 further agree to reimburse, indemnify and hold harmless the United States of America from and against
13 any and all such causes of action, claims, liens, rights, or subrogated or contribution interests incident to
14 or resulting from further litigation or the prosecution of claims by ABF Freight Systems, Inc. or its
15 executors, administrators or assigns against the United States for reimbursement of past or future claims
16 for workers' compensation benefits paid to, or on behalf of, Thomas Mills, arising out of the incident
17 that is the subject of this Stipulation for Compromise Settlement and Release.

18 **6. Dismissal of Action.** In consideration of the payment of the Settlement Amount, the
19 consideration set forth in paragraph 4 above, and the other terms of this Agreement, Plaintiffs shall
20 immediately upon execution of this Agreement also execute a Stipulation to Dismiss With Prejudice All
21 Claims Against Defendant USA; [Proposed] Order, a copy of which is attached hereto as Exhibit A.
22 The Stipulation to Dismiss With Prejudice All Claims Against Defendant USA; [Proposed] Order shall
23 dismiss, with prejudice, all claims asserted in this consolidated action, or that could have been asserted
24 in this consolidated action, against Defendant USA. The fully executed Stipulation to Dismiss With
25 Prejudice All Claims Against Defendant USA; [Proposed] Order will be held by Defendant USA's
26 attorney and will be filed within five (5) business days of receipt by Plaintiff Mills's attorney of the
27 Settlement Amount.

28 **7. No Admission of Liability.** This stipulation for compromise settlement is not intended to be,

1 and should not be construed as, an admission of liability or fault on the part of the United States, and it
2 is specifically denied that it is liable to the Plaintiffs. This settlement is entered into by all parties for the
3 purpose of compromising disputed claims and avoiding the expenses and risks of further litigation.

4 **8. Parties Bear Their Own Costs.** It is also agreed, by and among the parties, that the
5 respective parties will each bear their own costs, fees, and expenses and that any attorney's fees owed by
6 the Plaintiffs will be paid out of the Settlement Amount and not in addition thereto.

7 **9. Attorney's Fees.** It is also understood by and among Plaintiffs and Defendant USA that
8 pursuant to Title 28, United States Code, Section 2678, attorney's fees for services rendered in
9 connection with this consolidated action shall not exceed 25 per centum of the amount of the
10 compromise settlement.

11 **10. Authority.** The persons signing this Agreement warrant and represent that they possess full
12 authority to bind the persons on whose behalf they are signing to the terms of the settlement.

13 **11. Waiver of California Civil Code § 1542.** The provisions of California Civil Code Section
14 1542 are set forth below:

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

17 Plaintiffs, having been apprised of the statutory language of Civil Code Section 1542 by their
18 attorneys, and fully understanding the same, nevertheless elect to waive the benefits of any and all rights
19 they may have pursuant to the provision of that statute and any similar provision of federal law.

20 Plaintiffs understand that, if the facts concerning Plaintiffs' injuries and the liability of the government
21 for damages pertaining thereto are found hereinafter to be other than or different from the facts now
22 believed by them to be true, the Agreement shall be and remain effective notwithstanding such material
23 difference.

24 **12. Payment by Check.** Payment of the Settlement Amount will be made by check drawn on
25 the Treasury of the United States for fifty thousand dollars (\$50,000.00) and made payable to "Albert G.
26 Stoll, Jr., ALC and Thomas Mills." The check will be mailed or otherwise delivered to Plaintiff Mills's
27 attorney at the following address: Albert G. Stoll, Jr.-A Law Corporation, 55 Francisco Street, Ste. 403,
28 San Francisco, CA 94133. Plaintiff Mills's attorney agrees to distribute the settlement proceeds to

1 Plaintiff Mills. Plaintiffs and their attorneys have been informed that payment of the Settlement Amount
2 may take sixty (60) days or more from the date that the Court “so orders” this Agreement to process.

3 13. **Tax Liability.** If any withholding or income tax liability is imposed upon Plaintiffs or
4 Plaintiffs’ counsel based on payment of the Settlement Amount, Plaintiffs or Plaintiffs’ counsel shall be
5 solely responsible for paying any such determined liability from any government agency. Nothing in
6 this Agreement constitutes an agreement by the United States of America concerning the
7 characterization of the Settlement Amount for the purposes of the Internal Revenue Code, Title 26 of the
8 United States Code.

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

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

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

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DATED:

Thomas Mills 5-31-13
THOMAS MILLS
Plaintiff

DATED: 5/10/2013

ALBERT G. STOLL JR., A Law Corporation
[Signature]
ALBERT G. STOLL JR.
Attorney for Plaintiff THOMAS MILLS

LAW OFFICE OF CLARK W. PATTEN

DATED:

CLARK W. PATTEN
Attorney for Plaintiff ABF FREIGHT SYSTEMS,
INC.

MELINDA HAAG
United States Attorney

DATED:

NEILL T. TSENG
Assistant United States Attorney
Attorneys for Defendant USA

PURSUANT TO STIPULATION, IT IS SO ORDERED.

DATED:

HONORABLE SUSAN ILLSTON
UNITED STATES DISTRICT JUDGE

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DATED:

THOMAS MILLS
Plaintiff

ALBERT G. STOLL JR., A Law Corporation

DATED:

ALBERT G. STOLL JR
Attorney for Plaintiff THOMAS MILLS

LAW OFFICE OF CLARK W. PATTEN

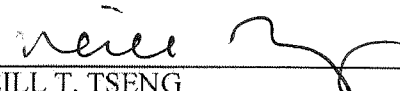
DATED: *26 June 2013*



CLARK W. PATTEN
Attorney for Plaintiff ABF FREIGHT SYSTEMS,
INC.

MELINDA HAAG
United States Attorney

DATED: *6/26/13*



NEILL T. TSENG
Assistant United States Attorney
Attorneys for Defendant USA

PURSUANT TO STIPULATION, IT IS SO ORDERED.

DATED:

6/27/13



HONORABLE SUSAN ILLSTON
UNITED STATES DISTRICT JUDGE

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Exhibit "A"

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THOMAS MILLS
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12 ABF FREIGHT SYSTEMS, INC.

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19 Attorneys for Defendant
20 UNITED STATES OF AMERICA

21 UNITED STATES DISTRICT COURT
22 NORTHERN DISTRICT OF CALIFORNIA
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1 ABF FREIGHT SYSTEMS, INC.,
2 Plaintiff,
3 v.
4 UNITED STATES OF AMERICA, *et al.*,
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6 THOMAS MILLS,
7 Plaintiff,
8 v.
9 UNITED STATES OF AMERICA, *et al.*,
10 Defendants.

) CASE NO. C 10-5188 SI
) (consolidated with C 11-04663 SI)

) **STIPULATION TO DISMISS WITH**
) **PREJUDICE ALL CLAIMS AGAINST**
) **DEFENDANT UNITED STATES OF AMERICA;**
) **[PROPOSED] ORDER**

11
12 Pursuant to Federal Rule of Civil Procedure 41(a), Plaintiff ABF FREIGHT SYSTEMS, INC.,
13 Plaintiff THOMAS MILLS, and Defendant UNITED STATES OF AMERICA hereby stipulate to
14 dismiss with prejudice the above-captioned consolidated action with respect to all claims that were
15 asserted by Plaintiff ABF FREIGHT SYSTEMS, INC., or by Plaintiff THOMAS MILLS against
16 Defendant UNITED STATES OF AMERICA. Each party will bear its own costs and attorneys' fees.

17 Respectfully submitted,
18 ALBERT G. STOLL JR., A Law Corporation

20 DATED:

21 ALBERT G. STOLL JR
22 Attorney for Plaintiff THOMAS MILLS

LAW OFFICE OF CLARK W. PATTEN

24 DATED:

25 CLARK W. PATTEN
26 Attorney for Plaintiff ABF FREIGHT SYSTEMS,
27 INC.

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MELINDA HAAG
United States Attorney

DATED:

NEILL T. TSENG
Assistant United States Attorney
Attorneys for Defendant USA

PURSUANT TO STIPULATION, IT IS SO ORDERED.

DATED:

HONORABLE SUSAN ILLSTON
UNITED STATES DISTRICT JUDGE