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7 Attorneys for Defendant
 8 UNITED STATES OF AMERICA

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

12
 13 RICHARD AZZOLINO,
 14 Plaintiff,
 15 v.
 16 UNITED STATES OF AMERICA,
 17 Defendant.

Docket No. C 12-1378 RS

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

18 It is hereby stipulated by and between the undersigned Plaintiff and the UNITED
 19 STATES OF AMERICA, by and through their respective attorneys, as follows:

20 WHEREAS, Plaintiff filed the above-captioned action on May 21, 2012;

21 WHEREAS, Plaintiff and Defendant wish to avoid any further litigation and
 22 controversy and to settle and compromise fully any and all claims and issues that have been
 23 raised, or could have been raised in this action, which have transpired prior to the execution of
 24 this Settlement Agreement (“Agreement”);

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

28 1. **Agreement to Compromise Claims.** The parties do hereby agree to settle and

1 compromise each and every claim of any kind, whether known or unknown, arising directly or
2 indirectly from the acts or omissions that gave rise to the above-captioned action under the
3 terms and conditions set forth in this Agreement.

4 2. **Definition of "United States of America."** As used in this Agreement, the United
5 States of America shall include its current and former agents, servants, employees, and
6 attorneys, as well as the United States House of Representatives, and/or its current and former
7 agents, servants, employees, and attorneys.

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

17 4. **Release.** Plaintiff and his guardians, heirs, executors, administrators or assigns
18 hereby agrees to accept the Settlement Amount in full settlement and satisfaction of any and all
19 claims, demands, rights, and causes of action of whatsoever kind and nature, including claims
20 for wrongful death, arising from, and by reason of any and all known and unknown, foreseen
21 and unforeseen personal injuries, damage to property and the consequences thereof which they
22 may have or hereafter acquire against the United States of America on account of the same
23 subject matter that gave rise to the above-captioned action, including any future claim or
24 lawsuit of any kind or type whatsoever, whether known or unknown, and whether for
25 compensatory or exemplary damages. Plaintiff and his guardians, heirs, executors,
26 administrators or assigns further agrees to reimburse, indemnify and hold harmless the United
27 States of America from and against any and all such causes of action, claims, liens, rights, or
28 subrogated or contribution interests incident to or resulting from further litigation or the

1 prosecution of claims by Plaintiff or his guardians, heirs, executors, administrators or assigns
2 against any third party or against the United States, including claims for wrongful death.

3 5. **Dismissal of Action.** In consideration of the payment of the Settlement Amount and
4 the other terms of this Agreement, Plaintiff shall immediately upon execution of this
5 Agreement also execute a Stipulation of Dismissal, a copy of which is attached hereto as
6 Exhibit "A". The Stipulation of Dismissal shall dismiss, with prejudice, all claims asserted in
7 this action, or that could have been asserted in this action. The fully executed Stipulation of
8 Dismissal will be held by Defendant's attorney and will be filed within five (5) business days
9 of receipt by Plaintiff's attorney of the Settlement Amount.

10 6. **No Admission of Liability.** This stipulation for compromise settlement is not
11 intended to be, and should not be construed as, an admission of liability or fault on the part of
12 the United States, and it is specifically denied that it is liable to the Plaintiff. This settlement is
13 entered into by all parties for the purpose of compromising disputed claims and avoiding the
14 expenses and risks of further litigation.

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

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

21 9. **Authority.** The persons signing this Agreement warrant and represent that they
22 possess full authority to bind the persons on whose behalf they are signing to the terms of the
23 settlement.

24 10. **Waiver of California Civil Code § 1542.** The provisions of California Civil Code
25 Section 1542 are set forth below:

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

1 Plaintiff, having been apprized of the statutory language of Civil Code Section 1542 by his
2 attorney, and fully understanding the same, nevertheless elects to waive the benefits of any and
3 all rights he may have pursuant to the provision of that statute and any similar provision of
4 federal law. Plaintiff understands that, if the facts concerning Plaintiff's injury and the liability
5 of the government for damages pertaining thereto are found hereinafter to be other than or
6 different from the facts now believed by them to be true, the Agreement shall be and remain
7 effective notwithstanding such material difference.

8 11. **Payment by Check.** Payment of the Settlement Amount will be made by check
9 drawn on the Treasury of the United States for fifty thousand dollars and zero cents
10 (\$50,000.00) and made payable to "Richard Azzolino & Meisel & Krentsa". The check will be
11 mailed or otherwise delivered to Plaintiff's attorney at the following address: Law Offices of
12 Meisel & Krentsa, 350 Sansome Street, Suite 600, San Francisco, California 94104. Plaintiff's
13 attorney agrees to distribute the settlement proceeds to the Plaintiff. Plaintiff and his attorney
14 have been informed that payment of the Settlement Amount may take sixty (60) days or more
15 from the date that the Court "so orders" this Agreement to process.

16 12. **Tax Liability.** If any withholding or income tax liability is imposed upon Plaintiff
17 or Plaintiff's counsel based on payment of the Settlement Amount, Plaintiff or Plaintiff's
18 counsel shall be solely responsible for paying any such determined liability from any
19 government agency. Nothing in this Agreement constitutes an agreement by the United States
20 of America concerning the characterization of the Settlement Amount for the purposes of the
21 Internal Revenue Code, Title 26 of the United States Code.

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

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

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

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12 DATED: 2/18/13



RICHARD AZZOLINO
Plaintiff

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15 DATED: 2/15/13


DONALD E. KRENTSA
Attorney for Plaintiff


MELINDA HAAG
United States Attorney

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20 DATED: 2/25/13


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

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23 PURSUANT TO STIPULATION, IT IS SO ORDERED.

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26 DATED: 2/25/13


HON. RICHARD SEEBORG
UNITED STATES DISTRICT JUDGE

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EXHIBIT "A"

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United States Attorney
2 ALEX G. TSE (CSBN 152348)
Chief, Civil Division
3 NEILL T. TSENG (CSBN 220348)
Assistant United States Attorney

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13 RICHARD AZZOLINO,
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16 UNITED STATES OF AMERICA,
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Docket No. C 12-1378 RS

**STIPULATION OF DISMISSAL WITH
PREJUDICE; [PROPOSED] ORDER**

18 THE PARTIES IN THE ABOVE-CAPTIONED ACTION HEREBY SUBMIT THE
19 FOLLOWING STIPULATION:

20 Pursuant to Federal Rule of Civil Procedure 41(a), plaintiff Richard Azzolino and
21 defendant United States of America hereby stipulate to dismiss with prejudice the above-
22 captioned action, including all claims that were asserted therein. Each party will bear its own
23 costs and attorneys' fees.

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DATED:

RICHARD AZZOLINO
Plaintiff

DATED:

DONALD E. KRENTSA
Attorney for Plaintiff

MELINDA HAAG
United States Attorney

DATED:

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

[PROPOSED] ORDER

The Stipulation of Dismissal with Prejudice is granted and this entire action is dismissed with prejudice.

IT IS SO ORDERED.

DATED: _____

HON. RICHARD SEEBORG
UNITED STATES DISTRICT JUDGE