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 DENNIS BECKLEY, M.D.

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 United States Attorney
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 Chief, Civil Division
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13 Attorneys for Respondent
 14 DEPARTMENT OF VETERANS AFFAIRS

15 UNITED STATES DISTRICT COURT
 16 NORTHERN DISTRICT OF CALIFORNIA
 17 SAN FRANCISCO DIVISION

18 DENNIS BECKLEY, M.D.,

19 Petitioner,

20 v.

21 DEPARTMENT OF VETERANS AFFAIRS,

22 Respondent.

Docket No. C 12-6139 MEJ

**STIPULATION AND AGREEMENT OF
 COMPROMISE AND SETTLEMENT;
 [PROPOSED] ORDER; EXHIBIT "A"**

1 actions, claims and demands of any kind and nature whatsoever, whether suspected or unsuspected,
2 at law or in equity, known or unknown, or omitted prior to the date he executes this Agreement,
3 which arise from or relate to his employment with the Department of Veterans Affairs.

4 3. **Attorneys' Fees**. The parties agree that the Settlement Amount is in full satisfaction of
5 all claims for attorneys' fees and costs arising from work performed by Petitioner's counsel at all
6 stages of litigation, including, but not limited to, the processing of Petitioner's administrative
7 complaint and Petitioner's Ninth Circuit and district court petitions in connection with the above-
8 captioned action, and any other administrative proceedings which are currently pending.

9 4. **Dismissal**. In consideration of the payment of the Settlement Amount and the other terms
10 of this Stipulation and Agreement, Petitioner agrees that he will immediately upon execution of this
11 Agreement also execute the Stipulation of Dismissal with Prejudice; [Proposed] Order which is attached
12 hereto as Exhibit "A". The fully executed Stipulation of Dismissal with Prejudice; [Proposed] Order
13 will be held by counsel for Respondent and will be filed with the Court upon receipt by Petitioner's
14 counsel of the Settlement Amount and a copy of Petitioner's revised Standard Form 50.

15 5. **Waiver of California Civil Code § 1542**. The provisions of California Civil Code
16 Section 1542 are set forth below:

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

21 Petitioner has been apprised of the statutory language of Civil Code Section 1542 by his attorneys,
22 and fully understanding the same, nevertheless elects to waive the benefits of any and all rights he
23 may have pursuant to the provision of that statute and any similar provision of federal law.

24 Petitioner understands that, if the facts concerning Petitioner's claims and the liability of the
25 government for damages pertaining thereto are found hereinafter to be other than or different from
26 the facts now believed by them to be true, this Agreement shall be and remain effective
27 notwithstanding such material difference.

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1 6. **Agreement as a Complete Defense.** This Agreement may be pleaded as a full and
2 complete defense to any subsequent action or other proceeding involving any person or party which
3 arises out of the claims released and discharged by the Agreement.

4 7. **No Admission of Liability.** This is a compromise settlement of a disputed claim and
5 demand, which settlement does not constitute an admission of liability or fault on the part of
6 Respondent or any of its past and present officials, agents, employees, attorneys, or insurers on
7 account of the events described in Petitioner's petition in this action.

8 8. **Tax Liability.** If any withholding or income tax liability is imposed upon Petitioner or
9 Petitioner's counsel based on payment of the settlement sum received herein, Petitioner or
10 Petitioner's counsel shall be solely responsible for paying any such determined liability from any
11 government agency thereof.

12 9. **Enforcement Sole Remedy.** The parties agree that should any dispute arise with respect
13 to the implementation of the terms of this Agreement, Petitioner shall not seek to rescind the
14 Agreement and pursue his original petition. Petitioner's sole remedy in such a dispute is an action to
15 enforce the Agreement in the United States District Court for the Northern District of California.

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

22 11. **Severability.** If any provision of this Agreement shall be invalid, illegal, or
23 unenforceable, the validity, legality, and enforceability of the remaining provisions shall not in any
24 way be affected or impaired thereby.

25 12. **Integration.** This instrument shall constitute the entire Agreement between the parties,
26 and it is expressly understood and agreed that the Agreement has been freely and voluntarily entered
27 into by the parties hereto with the advice of counsel, who have explained the legal effect of this
28 Agreement. The parties further acknowledge that no warranties or representations have been made

1 on any subject other than as set forth in this Agreement. This Agreement may not be altered,
2 modified or otherwise changed in any respect except by writing, duly executed by all of the parties
3 or their authorized representatives.

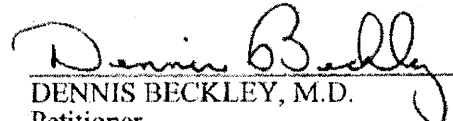
4 13. Authority. The signatories to this Agreement have actual authority to bind the parties.

5 14. Expungement of Personnel Records. In addition to the terms described in paragraph 1
6 above, Respondent agrees to the following:

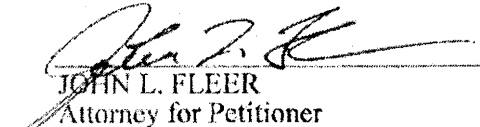
7 (A) Respondent shall expunge from Petitioner's Official Personnel Folder ("OPF") all
8 records of his removal, and replace such records with a Standard Form 50 reflecting that Petitioner
9 retired effective August 12, 2011.

10 (B) Petitioner and Respondent will cooperate in notifying the Medical Board of California
11 and the National Practitioner Data Bank of Petitioner's retirement in lieu of removal.

12
13 DATED: 5/23/13



DENNIS BECKLEY, M.D.
Petitioner

14
15 DATED: 5-23-13



JOHN L. FLEER
Attorney for Petitioner

MELINDA HAAG
United States Attorney

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18
19
20 DATED: 5/23/13



NEILL T. TSENG
Assistant United States Attorney
Attorneys for Respondent

21
22
23 DATED: 5/23/13


COLEEN WELCH
VA Staff Attorney

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25 PURSUANT TO STIPULATION, IT IS SO ORDERED.

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27 DATED: May 23, 2013


HON. MARIA-ELENA JAMES
United States Magistrate Judge

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Exhibit "A"

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21 DEPARTMENT OF VETERANS AFFAIRS,

22 Respondent.

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

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

2 Pursuant to Federal Rule of Civil Procedure 41(a), Petitioner Dennis Beckley, M.D., and
3 Respondent Department of Veterans Affairs hereby stipulate to dismiss with prejudice the above-
4 captioned action. Each party will bear its own costs and attorneys' fees.

5
6 DATED:

DENNIS BECKLEY, M.D.
Petitioner

7
8 DATED:

JOHN L. FLEER
Attorney for Petitioner

9
10
11 MELINDA HAAG
United States Attorney

12
13 DATED:

NEILL T. TSENG
Assistant United States Attorney
Attorneys for Respondent

14
15 PURSUANT TO STIPULATION, IT IS SO ORDERED.

16
17 DATED:

HON. MARIA-ELENA JAMES
United States Magistrate Judge