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United States Attorney

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9 Attorneys for Defendant

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

13 SHERVIN BAYAT,

14 Plaintiff,

15 v.

16 UNITED STATES OF AMERICA,

17 Defendant.

Docket No. 17-cv-05011-TSH (SK)

~~STIPULATION AND AGREEMENT OF~~
~~COMPROMISE AND SETTLEMENT AND~~
~~[PROPOSED] ORDER~~

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19 IT IS HEREBY STIPULATED by and between the undersigned Plaintiff and the UNITED
20 STATES OF AMERICA, by and through their respective attorneys, as follows:

21 WHEREAS, Plaintiff filed the above-captioned action on August 29, 2017;

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

26 NOW, THEREFORE, in consideration of the mutual promises contained in this Agreement,
27 and other good and valuable consideration, the Parties agree as follows:

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STIPULATION AND AGREEMENT OF COMPROMISE AND SETTLEMENT AND [PROPOSED] ORDER
No. 17-cv-05011-TSH (SK)

1 heirs, executors, administrators or assigns against any third party or against the United States,
2 including claims for wrongful death.

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

10 6. **No Admission of Liability**. This stipulation for compromise settlement is not intended to
11 be, and should not be construed as, an admission of liability or fault on the part of the United States,
12 and the United States specifically denies that it is liable to the Plaintiff. This settlement is entered
13 into by all parties for the purpose of compromising disputed claims and avoiding the expenses and
14 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 Title 28,
19 United States Code, Section 2678, attorney's fees for services rendered in connection with this
20 action shall not exceed 25 per centum of the amount of the compromise settlement.

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

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

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

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

8 11. **Payment by Electronic Funds Transfer.** Payment of the settlement amount shall be
9 deposited by electronic fund transfer to the bank account Plaintiff shall designate in an Electronic
10 Funds Transfer enrollment form the Plaintiff will provide to the undersigned Assistant United States
11 Attorney within five days of executing this Agreement. Plaintiff's attorney agrees to distribute the
12 settlement proceeds to the Plaintiff. Plaintiff and Plaintiff's attorney have been informed that
13 payment of the Settlement Amount may take sixty (60) days or more to process from the date that
14 the Court "so orders" this Agreement.

15 12. **Tax Liability.** There shall be no withholding from this amount. Plaintiff understands
16 that this payment will be reported to the Internal Revenue Service, and that any questions as to the
17 tax liability, if any, as a result of this payment is a matter solely between Plaintiff and the relevant
18 tax authorities. If any withholding or income tax liability is imposed upon Plaintiff or Plaintiff's
19 counsel based on payment of the Settlement Amount, Plaintiff or Plaintiff's counsel shall be solely
20 responsible for paying any such determined liability from any government agency. Nothing in this
21 Agreement constitutes an agreement by the United States of America concerning the characterization
22 of the Settlement Amount for the purposes of the Internal Revenue Code, Title 26 of the United
23 States Code.

24 13. **Treasury Offset Program.** Nothing in this Agreement waives or modifies federal,
25 state, or local law pertaining to taxes, offsets, levies, and liens that may apply to this Agreement or
26 the settlement proceeds, and Plaintiff is executing this Agreement without reliance on any
27 representation by Defendant as to the application of any such law. Accordingly, the United States
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1 may offset against the Settlement Amount Plaintiff's delinquent debts to the United States, if any.
2 *See Astrue v. Ratliff*, 560 U.S. 586 (2010).

3 14. **Choice of Law and Venue.** This Agreement is governed by the laws of the United
4 States. The exclusive jurisdiction and venue for any dispute relating to this Agreement is the United
5 States District Court for the Northern District of California.

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

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

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

23 18. **Execution in Counterparts.** It is contemplated that this Agreement may be executed in
24 several counterparts, with a separate signature page for each party. All such counterparts and
25 signature pages, together, shall be deemed to be one document.

26 19. **Outstanding Liens for Medical Treatment.** Plaintiff is solely responsible for
27 satisfying any and all outstanding liens relating to Plaintiff's medical treatment arising out of the
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1 subject matter of this action. Plaintiff shall indemnify Defendant from any liability Defendant may
2 incur from any lien claimant arising out of Plaintiff's failure to satisfy outstanding lien(s).

3

4 Dated: November __, 2019

Sherwin Bayat
SHERVIN BAYAT
Plaintiff

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7 Dated: November __, 2019

MICHAEL P. HOLLOMON, JR.
Attorney for Plaintiff

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10 Dated: November __, 2019

DAVID L. ANDERSON
United States Attorney

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PURSUANT TO STIPULATION, IT IS SO ORDERED.

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Dated: _____
HON. THOMAS S. HIXSON
United States Magistrate Judge

1 subject matter of this action. Plaintiff shall indemnify Defendant from any liability Defendant may
2 incur from any lien claimant arising out of Plaintiff's failure to satisfy outstanding lien(s).

3
4 Dated: November __, 2019

5 _____
SHERVIN BAYAT
Plaintiff

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7 Dated: December 10, 2019

8 _____
MICHAEL P. HOLLOMON, JR.
Attorney for Plaintiff

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10 Dated: November __, 2019

DAVID L. ANDERSON
United States Attorney

11 By: _____

12 ROBIN M. WALL
13 Assistant United States Attorney
14 Attorney for Defendant

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19 PURSUANT TO STIPULATION, IT IS SO ORDERED.

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21 Dated: February 6, 2020

22 _____
HON. THOMAS S. HIXSON
United States Magistrate Judge

1 subject matter of this action. Plaintiff shall indemnify Defendant from any liability Defendant may
2 incur from any lien claimant arising out of Plaintiff's failure to satisfy outstanding lien(s).

3
4 Dated: November ___, 2019

SHERVIN BAYAT
Plaintiff

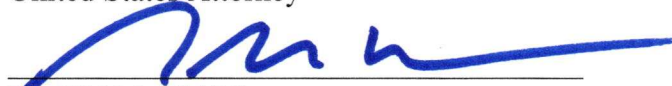
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6
7 Dated: November ___, 2019

MICHAEL P. HOLLOMON, JR.
Attorney for Plaintiff

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9 **Dec. 3, 2019**
10 Dated: ~~November~~ ___, 2019

DAVID L. ANDERSON
United States Attorney

11 By:



ROBIN M. WALL
Assistant United States Attorney
Attorney for Defendant

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19 PURSUANT TO STIPULATION, IT IS SO ORDERED.

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21 Dated: _____

HON. THOMAS S. HIXSON
United States Magistrate Judge

1 DAVID L. ANDERSON (CABN 149604)
United States Attorney

2 SARA WINSLOW (DCBN 457643)
3 Chief, Civil Division

4 ROBIN M. WALL (CABN 235690)
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**STIPULATION OF DISMISSAL;
[PROPOSED] ORDER**

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1 **STIPULATION OF DISMISSAL**

2 As authorized by Federal Rule of Civil Procedure 41(a), Plaintiff and Defendant hereby
3 stipulate to the dismissal with prejudice of Plaintiff's Complaint for Damages.

4 Each party will bear its own costs and attorney's fees.

5 It is so stipulated, through counsel of record.

6
7 Dated: _____, 2020

8 SHERVIN BAYAT
9 Plaintiff

10 Dated: _____, 2020

11 MICHAEL P. HOLLOMON, JR.
12 Attorney for Plaintiff

13 Dated: _____, 2020

DAVID L. ANDERSON
United States Attorney

14 By:

15 ROBIN M. WALL
16 Assistant United States Attorney
17 Attorney for Defendant

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22 PURSUANT TO STIPULATION, IT IS SO ORDERED.

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24 Dated: _____

25 HON. THOMAS S. HIXSON
26 United States Magistrate Judge