

REED SMITH LLP
A limited liability partnership formed in the State of Delaware

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15 Attorneys for Federal Defendants

17 UNITED STATES DISTRICT COURT
18 NORTHERN DISTRICT OF CALIFORNIA

19 ROBERT CARL PATRICK KEANE,
20 individually; and CHIEKO STRANGE,
individually,

21 Plaintiffs,

22 vs.

23 SETH M. MCMULLEN, PAUL
24 ACCORNERO and JOHN SILVA,

25 Defendants.

No.: CV-07-4894 SBA

**STIPULATION OF SETTLEMENT
AND RELEASE**

26
27 It is hereby stipulated by and between on the one hand the undersigned
28 Plaintiffs Robert Carl Patrick Keane and Chieko Strange (“Plaintiffs”) and on the

1 other hand, Seth McMullen and John Silva (“**Federal Defendants**”), by and through
2 their respective attorneys, as follows:

3 WHEREAS, Plaintiffs filed the above-captioned action on September 20, 2007
4 (“**District Court Action**”);

5 WHEREAS, on October 10, 2012, the Federal Defendants filed a Notice of
6 Appeal in the United States Court of Appeals for the Ninth Circuit from the Order of
7 the District Court issued and entered on August 13, 2012, denying Federal
8 Defendants’ motion for summary judgment based on qualified immunity (the
9 “**Appeal**”);

10 WHEREAS, Plaintiffs and Federal Defendants (individually, a “**Party**”, and
11 collectively, the “**Parties**”) wish to avoid any further litigation and controversy and to
12 settle and compromise fully any and all claims and issues that have been raised, or
13 could have been raised in the District Court Action, which have transpired prior to the
14 execution of this Settlement Agreement (“**Agreement**”);

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

18 1. **Agreement to Compromise Claims.** The Parties do hereby agree to settle
19 and compromise each and every claim of any kind, whether known or unknown,
20 arising directly or indirectly from the acts or omissions that gave rise to the above-
21 captioned action under the terms and conditions set forth in this Agreement.

22 2. **Definition of “Federal Defendants.”** As used in this Agreement, the
23 Federal Defendants shall include the United States of America, its current and former
24 agents, servants, employees, and attorneys, as well as the Drug Enforcement Agency,
25 and its current and former agents, servants, employees, and attorneys.

26 3. **Settlement Amount.** On behalf of the Federal Defendants, and within sixty
27 (60) days of entry of the Court’s order approving this Agreement, the United States of
28 America agrees to pay the sum of fifty thousand dollars (\$ 50,000.00) (“**Settlement**

1 Amount”), which sum shall be in full settlement and satisfaction of any and all
 2 claims, demands, rights, and causes of action of whatsoever kind and nature, arising
 3 from, and by reason of any and all known and unknown, foreseen and unforeseen
 4 personal injuries, damage to property and the consequences thereof, resulting, and to
 5 result, from the subject matter of this settlement, including any claims for wrongful
 6 death, for which Plaintiffs or their guardians, heirs, executors, administrators, or
 7 assigns, and each of them, now have or may hereafter acquire against the Federal
 8 Defendants.

9 4. **Release.** Plaintiffs and their guardians, heirs, executors, administrators or
 10 assigns hereby agrees to accept the Settlement Amount in full settlement and
 11 satisfaction of any and all claims, demands, rights, and causes of action of whatsoever
 12 kind and nature, including claims for wrongful death, arising from, and by reason of
 13 any and all known and unknown, foreseen and unforeseen personal injuries, damage
 14 to property and the consequences thereof which they may have or hereafter acquire
 15 against the Federal Defendants on account of the same subject matter that gave rise to
 16 the above-captioned action, including any future claim or lawsuit of any kind or type
 17 whatsoever, whether known or unknown, and whether for compensatory or exemplary
 18 damages. Plaintiffs and their guardians, heirs, executors, administrators or assigns
 19 further agrees to reimburse, indemnify and hold harmless the Federal Defendants from
 20 and against any and all such causes of action, claims, liens, rights, or subrogated or
 21 contribution interests incident to or resulting from further litigation or the prosecution
 22 of claims by Plaintiffs and their guardians, heirs, executors, administrators or assigns
 23 against any third party or against the United States, including claims for wrongful
 24 death related to the District Court Action.

25 5. **Dismissal of Action.** In consideration of the payment of the Settlement
 26 Amount and the other terms of this Agreement, Plaintiffs shall immediately upon
 27 execution of this Agreement also execute two Stipulations of Dismissal. The first
 28 stipulation of dismissal shall provide for the dismissal of the pending Appeal. A copy

1 of the Stipulation of Dismissal of Appeal is attached hereto as Exhibit A. The Appeal
2 shall be dismissed forthwith. The second stipulation of dismissal shall provide for the
3 dismissal of the District Court Action. A copy of the Stipulation of Dismissal of
4 District Court Action is attached hereto as Exhibit B. The stipulation of dismissal of
5 the District Court Action shall dismiss, with prejudice, all claims asserted in this
6 action, or that could have been asserted in this action. The fully executed Stipulation
7 of Dismissal of District Court Action will be held by Federal Defendants' attorney and
8 will be filed within five (5) business days of confirmation from Plaintiffs' attorney
9 that the Settlement Amount has been deposited into the bank account designated by
10 Plaintiffs as set forth in Paragraph 11.

11 **6. No Admission of Liability.** This Agreement is not intended to be, and
12 should not be construed as, an admission of liability or fault on the part of the Federal
13 Defendants, and it is specifically denied that it is liable to the Plaintiffs. This
14 settlement is entered into by all Parties for the purpose of compromising disputed
15 claims and avoiding the expenses and risks of further litigation.

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

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

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

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

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“A general release does not extend to claims which the creditor does not know or suspect 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.”

Plaintiffs having been apprised of the statutory language of Civil Code Section 1542 by their attorneys, and fully understanding the same, nevertheless elects to waive the benefits of any and all rights they may have pursuant to the provision of that statute and any similar provision of federal law. Plaintiffs understand that, if the facts concerning Plaintiffs’ injury and the liability of the Federal Defendants for damages pertaining thereto are found hereinafter to be other than or different from the facts now believed by them to be true, the Agreement shall be and remain effective notwithstanding such material difference.

11. **Payment by Electronic Funds Transfer.** Payment of the Settlement Amount shall be deposited by electronic fund transfer to the bank account Plaintiffs shall designate in an Electronic Funds Transfer enrollment form the Plaintiffs will provide to the undersigned Assistant United States Attorney within five (5) days of executing this Agreement.

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

13. **Construction.** Each Party hereby stipulates that it has been represented by and has relied upon independent counsel in the negotiations for the preparation of this Agreement, that it has had the contents of the Agreement fully explained to it by such counsel, and is fully aware of and understands all of the terms of the Agreement and

1 the legal consequences thereof. For purposes of construction, this Agreement shall be
2 deemed to have been drafted by all Parties to this Agreement and shall not, therefore,
3 be construed against any Party for that reason in any subsequent dispute.

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

7 15. **Integration.** This instrument shall constitute the entire Agreement
8 between the Parties, and it is expressly understood and agreed that the Agreement has
9 been freely and voluntarily entered into by the Parties hereto with the advice of
10 counsel, who have explained the legal effect of this Agreement. The Parties further
11 acknowledge that no warranties or representations have been made on any subject
12 other than as set forth in this Agreement. This Agreement may not be altered,

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1 modified or otherwise changed in any respect except by writing, duly executed by all
2 of the Parties or their authorized representatives.

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4 DATED: 3/5/14 Robert C. Keane 3/5/14
5 Plaintiff Robert Carl Patrick Keane

6 DATED: 3/5/14 Chieko Strange 3/5/14
7 Plaintiff Chieko Strange

8
9 DATED: 3/20/14 REED SMITH LLP

James Neudecker
11 James Neudecker
12 Andrew Amoroso
13 Attorneys for Plaintiffs

14 MELINDA HAAG
15 United States Attorney

16 DATED: 3/18/14 Abraham A. Simmons
17 Abraham A. Simmons
18 Assistant United States Attorney
19 Attorney for Federal Defendants

20 PURSUANT TO STIPULATION, IT IS SO ORDERED.

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23 Dated: 4/8/2014 Sandra B. Armstrong
24 SANDRA B. ARMSTRONG
25 United States District Judge
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