

1 MELINDA HAAG (CABN 132612)
 United States Attorney
 2 ALEX G. TSE (CABN 152348)
 Chief, Civil Division
 3 NEILL T. TSENG (CABN 220348)
 4 Assistant United States Attorney

5 450 Golden Gate Avenue, Box 36055
 San Francisco, CA 94102-3495
 6 Telephone: (415) 436-7155
 Fax: (415) 436-6748
 7 Email: neill.tseng@usdoj.gov

8 Attorney for Defendant USA

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

13 JOSEPH MILBAUER,

14 Plaintiff,

15 v.

16 UNITED STATES OF AMERICA

17 Defendant.

Docket No. C 12-6517 EDL YGR

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

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

21 WHEREAS, Plaintiff filed the above-captioned action on 12/26/12;

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, receipt of which is hereby acknowledged, the Parties
 28 agree as follows:

STIPULATION FOR COMPROMISE SETTLEMENT AND RELEASE [PROPOSED] ORDER
 No. C 12-6517 EDL YGR

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

3 5. **Dismissal of Action.** In consideration of the payment of the Settlement Amount and the
4 other terms of this Agreement, Plaintiff shall immediately upon execution of this Agreement also
5 execute a Stipulation of Dismissal, a copy of which is attached hereto as Exhibit A. The Stipulation
6 of 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 within five (5) business days of receipt by Plaintiff's attorney of the
9 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 it is specifically denied that it is liable to the Plaintiff. This settlement is entered into by all
13 parties for the purpose of compromising disputed claims and avoiding the expenses and risks of
14 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 persons signing this Agreement warrant and represent that they possess
22 full 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 which the creditor does not know or
26 suspect to exist in his or her favor at the time of executing the release, which if known
27 by him or her must have materially affected his or her settlement with the debtor."
28

1 Plaintiff having been apprized of the statutory language of Civil Code Section 1542 by his [her]
2 attorney, and fully understanding the same, nevertheless elects to waive the benefits of any and all
3 rights he/she 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 Check.** Payment of the Settlement Amount will be made by check drawn
9 on the Treasury of the United States for five thousand dollars (\$5,000.00) and made
10 payable to Thomas Quick. The check will be mailed to Plaintiff's attorneys at
11 the following address: 5674 Stoneridge Dr. #200. Plaintiff's attorney agrees to distribute
12 the settlement proceeds to the Plaintiff. Pleasanton, CA 94588 Plaintiff and his attorney have been informed that payment
13 of the Settlement Amount may take sixty (60) days or more from the date that the Court "so orders"
14 this Agreement to process.

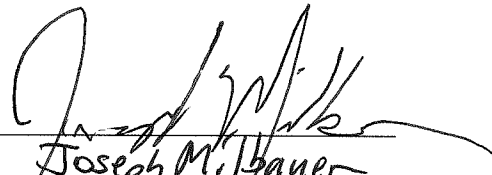
15 12. **Tax Liability.** If any withholding or income tax liability is imposed upon Plaintiff or
16 Plaintiff's counsel based on payment of the Settlement Amount, Plaintiff or Plaintiff's counsel shall
17 be solely responsible for paying any such determined liability from any government agency.
18 Nothing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

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


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

11
12 DATED: June 13 2013




Plaintiff Joseph Milbauer

13
14 DATED: June 13, 2013



Plaintiff's Attorney Thomas Quick

15
16 DATED: June 13, 2013




Assistant United States Attorney NEILL T. TSENG
Attorney for Defendant

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18 A compliance hearing shall be held on Friday, September 13, 2013 on the Court's 9:01a.m.
19 Calendar, in the Federal Courthouse, 1301 Clay Street, Oakland, California in Courtroom 5.
20 Five (5) business days prior to the date of the compliance hearing, the parties shall file either (a) a
21 Stipulation of Dismissal; or (b) a one-page Joint Statement setting forth an explanation regarding
22 the failure to comply. If compliance is complete, the parties need not appear and the compliance hearing
will be taken off calendar.

23 PURSUANT TO STIPULATION, IT IS SO ORDERED.

24 Dated: June 19, 2013



HON. ~~STEPHEN S. ...~~ YVONNE GONZALEZ-ROGER
United States District Judge
~~Magistrate~~
District

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Exhibit "A"

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4 450 Golden Gate Avenue, Box 36055
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7 Attorneys for Defendant USA
8

9 UNITED STATES DISTRICT COURT
10 NORTHERN DISTRICT OF CALIFORNIA
11 OAKLAND DIVISION

12 JOSEPH MILBAUER,
13 Plaintiff,

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15 UNITED STATES OF AMERICA,
16 Defendant.

C 12-6517 YGR

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

