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13 UNITED STATES DISTRICT COURT
 14 NORTHERN DISTRICT OF CALIFORNIA
 15 SAN FRANCISCO DIVISION

16 SENTRY INSURANCE COMPANY,

17
18 Plaintiff,

19 v.

20 UNITED STATES OF AMERICA,

21 Defendant.
22

Case No. C 13-1771 KAW

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

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

25 WHEREAS, Plaintiff filed the above-captioned action on August 27, 2012;

26 WHEREAS, Plaintiff and Defendant wish to avoid any further litigation and controversy and
 27 to settle and compromise fully any and all claims and issues that have been raised, or could have
 28

1 been raised in this action, which have transpired prior to the execution of this Settlement Agreement
2 (“Agreement”);

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

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

10 2. **Definition of “United States of America.”** As used in this Agreement, the United States
11 of America shall include its current and former agents, servants, employees, and attorneys, as well as
12 the Stanley Eugene Pittman, the United States Marine Corps, the United States Navy, and/or their
13 current and former agents, servants, employees, and attorneys.

14 3. **Settlement Amount.** The United States of America agrees to pay the sum of Twelve
15 Thousand Five Hundred dollars (\$12,500.00) (“Settlement Amount”), which sum shall be in full
16 settlement and satisfaction of any and all claims, demands, rights, and causes of action of whatsoever
17 kind and nature, arising from, and by reason of any and all known and unknown, foreseen and
18 unforeseen subrogation claims, personal injuries, damage to property and the consequences thereof,
19 resulting, and to result, from the subject matter of this settlement, including any claims for wrongful
20 death, for which Plaintiff together with its current and former parent corporations; direct and indirect
21 subsidiaries; brother or sister corporations; divisions; current or former owners; and officers,
22 directors and affiliates; and the successors and assigns of any of them, now have or may hereafter
23 acquire against the United States of America.

24 4. **Release.** Plaintiff together with its current and former parent corporations; direct and
25 indirect subsidiaries; brother or sister corporations; divisions; current or former owners; and officers,
26 directors and affiliates; and the successors and assigns of any of them agree to accept the Settlement
27 Amount in full settlement and satisfaction of any and all claims, demands, rights, and causes of
28 action of whatsoever kind and nature, including claims for wrongful death, arising from, and by

1 reason of any and all known and unknown, foreseen and unforeseen subrogation claims, personal
2 injuries, damage to property and the consequences thereof which they may have or hereafter acquire
3 against the United States of America on account of the same subject matter that gave rise to the
4 above-captioned action, including any future claim or lawsuit of any kind or type whatsoever,
5 whether known or unknown, and whether for compensatory or exemplary damages. Plaintiff
6 together with its current and former parent corporations; direct and indirect subsidiaries; brother or
7 sister corporations; divisions; current or former owners; and officers, directors and affiliates; and the
8 successors and assigns of any of them further agree to reimburse, indemnify and hold harmless the
9 United States of America from and against any and all such causes of action, claims, liens, rights, or
10 subrogated or contribution interests incident to or resulting from further litigation or the prosecution
11 of claims by Plaintiff together with its current and former parent corporations; direct and indirect
12 subsidiaries; brother or sister corporations; divisions; current or former owners; and officers,
13 directors and affiliates; and the successors and assigns of any of them against any third party or
14 against the United States, including claims for wrongful death.

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

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

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

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

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

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

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

14 Plaintiff having been apprised of the statutory language of Civil Code Section 1542 by his [her]
15 attorney, and fully understanding the same, nevertheless elects to waive the benefits of any and all
16 rights he/she may have pursuant to the provision of that statute and any similar provision of federal
17 law. Plaintiff understands that, if the facts concerning Plaintiff's injury and the liability of the
18 government for damages pertaining thereto are found hereinafter to be other than or different from
19 the facts now believed by them to be true, the Agreement shall be and remain effective
20 notwithstanding such material difference.

21 11. **Payment by Electronic Funds Transfer**. Payment of the settlement amount shall be
22 deposited by electronic fund transfer to a bank account to be designated by Plaintiff. Plaintiff agrees
23 to provide the banking and tax ID information requested by Defendant's counsel to effectuate the
24 electronic fund transfer within five days of the execution of this Agreement. Plaintiff and his
25 attorney have been informed that payment of the Settlement Amount may take sixty (60) days or
26 more from the date that the Court "so orders" this Agreement to process.

27 12. **Tax Liability**. If any withholding or income tax liability is imposed upon Plaintiff or
28 Plaintiff's counsel based on payment of the Settlement Amount, Plaintiff or Plaintiff's counsel shall

1 be solely responsible for paying any such determined liability from any government agency.
2 Nothing in this Agreement constitutes an agreement by the United States of America concerning the
3 characterization of the Settlement Amount for the purposes of the Internal Revenue Code, Title 26 of
4 the United States Code.

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

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

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

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

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DATED:

Bobbie A. Hoopes
Plaintiff, Sentry Insurance Company
By: Sr. Recovery Analyst
Its:

DATED: 9-17-13

MULLEN & FILIPPI, LLP
[Signature]
LAWRENCE R. MOORE
Attorneys for Plaintiff Sentry Insurance Company

DATED: 9/17/13

MELINDA HAAG
United States Attorney
[Signature]
MICHAEL T. PYLE
Assistant United States Attorney

PURSUANT TO STIPULATION, IT IS SO ORDERED.

Dated: 9/24/13

Kandis Westmore
HON. KANDIS A. WESTMORE
United States Magistrate Judge