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7 Attorneys for Defendant

8 UNITED STATES DISTRICT COURT
 9 NORTHERN DISTRICT OF CALIFORNIA
 10 SAN FRANCISCO DIVISION

12 RONY DAVID MURCIA CASTILLO
 13 Plaintiff,

14 v.

15 UNITED STATES OF AMERICA
 16 Defendant.

Docket No. 21-CV-04720 SBA

**STIPULATION AND AGREEMENT OF
 COMPROMISE AND SETTLEMENT
 AND ORDER AS MODIFIED**

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

20 WHEREAS, Plaintiff filed the above-captioned action on June 21, 2021;

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

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

27
 28 STIPULATION AND AGREEMENT OF COMPROMISE AND SETTLEMENT AND ORDER No.
 21-CV-04720 SBA

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

5 2. **Definition of "United States of America."** As used in this Agreement, the United States
6 of America shall include its current and former agents, servants, employees, and attorneys, as well as
7 the United States Postal Service, and/or its current and former agents, servants, employees, and
8 attorneys.

9 3. **Settlement Amount.** The United States of America agrees to pay the sum of EIGHTY
10 FIVE THOUSAND DOLLARS (\$85,000) ("Settlement Amount"), which sum shall be in full
11 settlement and satisfaction of any and all claims, demands, rights, and causes of action of whatsoever
12 kind and nature, arising from, and by reason of any and all known and unknown, foreseen and
13 unforeseen personal injuries, damage to property and the consequences thereof, resulting, and to
14 result, from the subject matter of this settlement, including any claims for wrongful death, for which
15 Plaintiff or Plaintiff's guardians, heirs, executors, administrators, or assigns, and each of them, now
16 have or may hereafter acquire against the United States of America.

17 4. **Release.** Plaintiff and Plaintiff's guardians, heirs, executors, administrators or assigns
18 hereby agree to accept the Settlement Amount in full settlement and satisfaction of any and all
19 claims, demands, rights, and causes of action of whatsoever kind and nature, including claims for
20 wrongful death, arising from, and by reason of any and all known and unknown, foreseen and
21 unforeseen personal injuries, damage to property and the consequences thereof which they may have
22 or hereafter acquire against the United States of America on account of the same subject matter that
23 gave rise to the above-captioned action, including any future claim or lawsuit of any kind or type
24 whatsoever, whether known or unknown, and whether for compensatory or exemplary damages.
25 Plaintiff and Plaintiff's guardians, heirs, executors, administrators or assigns further agree to
26 reimburse, indemnify and hold harmless the United States of America from and against any and all
27 such causes of action, claims, liens, rights, or subrogated or contribution interests incident to or
28 resulting from further litigation or the prosecution of claims by Plaintiff or Plaintiff's guardians,

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 party does
26 not know or suspect to exist in his or her favor at the time of executing the release and
27 that, if known by him or her, would have materially affected his or her settlement
28 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.

9 11. **Payment by Check.** Payment of the Settlement Amount will be made by check for
10 EIGHTY FIVE THOUSAND DOLLARS (\$85,000) and made payable to "Weltin, Streb, & Weltin,
11 LLP, in trust for Rony Murcia Castillo". The check will be mailed to Plaintiff's attorneys at the
12 following address: "Michael Villegiante, Weltin, Streb, & Weltin, LLP, 1432 Martin Luther King
13 Jr Way, Oakland, CA 94612". Plaintiff's attorney agrees to distribute the settlement proceeds to the
14 Plaintiff. Plaintiff and Plaintiff's attorney have been informed that payment of the Settlement
15 Amount may take sixty (60) days or more to process from the date that this Agreement is executed
16 by all the signatories.

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

26 13. **Treasury Offset Program.** Nothing in this Agreement waives or modifies federal,
27 state, or local law pertaining to taxes, offsets, levies, and liens that may apply to this Agreement or
28 the settlement proceeds, and Plaintiff is executing this Agreement without reliance on any

1 representation by Defendant as to the application of any such law. Accordingly, the United States
2 may offset against the Settlement Amount Plaintiff's delinquent debts to the United States, if any.
3 *See Astrue v. Ratliff*, 560 U.S. 586 (2010).

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

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

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

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

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

27 19. **Outstanding Liens.** Plaintiff does not need to reimburse the United States for the
28 government's purchase of the State Compensation Insurance Fund worker's compensation lien rights

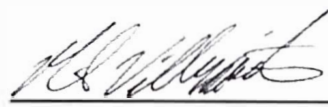
1 or for the amount of any right to repayment based on that lien. As part of this agreement, the United
2 States agrees that such lien rights are waived as to itself and as to all successors in interest in such
3 lien rights, and that any obligations that Plaintiff may have to the United States based on such lien
4 are discharged in full. Plaintiff is solely responsible for satisfying any worker's compensation claim
5 or lien for benefits paid by the State Compensation Insurance Fund, to the extent any other claims or
6 lien rights are held by a person or entity other than the United States or any successors in interest to
7 the lien rights purchased by the United States. Plaintiff is likewise solely responsible for satisfying
8 any and all other outstanding liens relating to the subject matter of this action, including but not
9 limited to liens for any additional medical treatment not already paid by workers' compensation and
10 any outstanding attorneys' liens. Plaintiff shall indemnify Defendant from any liability Defendant
11 may incur from any lien claimant arising out of Plaintiff's failure to satisfy outstanding lien(s).

12
13 DATED: 7/7/2022



Plaintiff


14
15 DATED: 7/7/2022



Mike Villeggiante, Esq.
Weltin, Streb, & Weltin, LLP
Attorneys for Plaintiff

18 STEPHANIE M. HINDS
United States Attorney

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20 DATED: 7/8/22

By: 

Valerie E. Smith
Assistant United States Attorney
Attorney for Defendant

1 Stipulation of dismissal to be filed within 60 days of the date this order is entered.
2 PURSUANT TO STIPULATION, IT IS SO ORDERED.

3 Dated: 8/2/2022

 RS
Richard Seeborg for Sandra B. Armstrong
United States District Judge

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