

1 MELINDA HAAG (CSBN 132612)
 United States Attorney
 2 JOANN M. SWANSON (CSBN 88143)
 Chief, Civil Division
 3 JAMES A. SCHARF (CSBN 152171)
 Assistant United States Attorney

4 150 Almaden Blvd, Ste. 900
 5 San Jose, CA 95113-2009
 Telephone: (408) 535-5044
 6 Facsimile: (408) 535-5081
 Email: james.scharf@usdoj.gov

7 Attorneys for Defendants

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 9 UNITED STATES DISTRICT COURT
 10 NORTHERN DISTRICT OF CALIFORNIA
 11 SAN JOSE DIVISION

12 JUAN MONTANO,
 13 Plaintiff,
 14 v.
 15 TODD ALLAN MILLER, et al.,
 16 Defendants

Civil Action No. C 10-00746 JW

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

IT IS HEREBY STIPULATED AND AGREED by and between plaintiff Juan Montano ("Plaintiff") and defendant Todd Allan Miller, defendant Department of Navy and the United States of America (hereinafter the "Federal Defendant"), by and through its undersigned counsel, as follows:

1. The parties do hereby agree to settle, compromise and dismiss the above-captioned action ("This Action") under the terms and conditions set forth herein.
2. The Federal Defendant agrees to pay the sum of \$17,000.00 ("the settlement amount") to plaintiff under the terms and conditions set forth herein. This is full, final and complete settlement that resolves all claims and potential claims that plaintiff may have

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1 arising out of the subject automobile accident of August 28, 2007, including plaintiff's claims for
2 property damage, personal injury and wage loss. Plaintiff is responsible for satisfying any and all
3 outstanding liens relating to plaintiff's medical treatment arising out of the subject matter of This
4 Action.

5 3. The plaintiff and his heirs, executors, administrators, assigns and attorneys
6 hereby agree to accept the settlement amount, in full and final settlement and satisfaction of the
7 claims raised in This Action under the terms and conditions set forth herein.

8 4. It is also agreed, by and among the parties, that the settlement amount
9 represents the entire amount payable to plaintiff and his heirs, executors, administrators, assigns
10 and attorneys.

11 5. It is also agreed, by and among the parties, that the settlement amount shall
12 be made payable to plaintiff and his attorney, William McCann, and shall be mailed to his
13 attorneys' business address.

14 6. It is also agreed, by and among the parties, that neither plaintiff nor any of
15 his attorneys may make any claim for attorney's fees or other costs against the Federal
16 Defendant. It is also agreed, by and among the parties, that the respective parties will bear their
17 own costs, fees, and expenses and that any attorney's fees owed by the plaintiff will be paid out
18 of the settlement amount and not in addition thereto.

19 7. It is also understood, by and among the parties, that pursuant to Title 28,
20 United States Code, Section 2678, that if plaintiff incurred any attorney's fees for services
21 rendered in connection with this action, said fees shall not exceed 25 percent of the amount of the
22 compromise settlement.

23 8. In consideration of the settlement amount as set forth above, the plaintiff
24 agrees that he will immediately upon execution of this agreement, execute a Stipulation of
25 Dismissal, which stipulation shall dismiss, with prejudice, all claims asserted in This Action or
26 any claims that could have been asserted in This Action. The fully executed Stipulation of
27 Dismissal will be held by counsel for the Federal Defendant and will be filed with the Court upon
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1 receipt by plaintiff's attorneys of the settlement amount.

2 9. In consideration of the payment of the settlement amount as set forth
3 above, the plaintiff hereby releases and forever discharges the Federal Defendant, the United
4 States of America, and any and all of their past and present agencies, officials, employees, agents,
5 attorneys, successors, and assigns from any and all obligations, damages, liabilities, causes of
6 actions, claims, and demands of any kind and nature whatsoever, whether suspected or
7 unsuspected, arising in law or equity, arising from or by reason of any and all known, unknown,
8 foreseen or unforeseen injuries, and the consequences thereof, resulting from the facts,
9 circumstances and subject matter that gave rise to This Action, including all claims under the
10 Federal Tort Claims Act ("FTCA"), all constitutional or *Bivens* claims, any and all current or
11 future claims by plaintiff's children, and any other claim relating to the subject accident, or any
12 and all claims that could have been asserted in the Complaint, including any and all claims for
13 property damage, personal injury and wage loss.

14 10. In consideration of the payment of the settlement amount as set forth
15 above, the plaintiff further agrees that he may not and will not use or rely on the incidents and
16 actions underlying the Complaint in any other administrative proceeding, state court action or
17 federal court action to prove any kind of further or future claim against the United States or its
18 agencies and employees.

19 11. The provisions of California Civil Code Section 1542 are set forth below:

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

23 The plaintiff having been apprised of the statutory language of Civil Code Section 1542, and
24 fully understanding the same, nevertheless elects to waive the benefits of any and all rights he
25 may have pursuant to the provision of that statute and any similar provision of federal law. The
26 plaintiff understands that if the facts concerning the plaintiff's alleged damages and the liability
27 of the Federal Defendant, or its agents, servants, or employees, for damages pertaining thereto are
28 found hereafter to be other than or different from the facts now believed by him to be true, this

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1 agreement shall be and remain effective notwithstanding such material difference.

2 12. The parties acknowledge that neither this agreement nor anything
3 contained herein shall constitute an admission of liability or fault on the part of the Federal
4 Defendant or its agents, servants, or employees. This agreement is entered into by the parties for
5 the purpose of compromising disputed claims, avoiding the expenses and risks of litigation, and
6 buying peace.

7 13. This agreement may be pled as a full and complete defense to any action
8 or other proceeding, including any local, state or federal administrative action, involving any
9 person or party which arises out of the claims released and discharged by this agreement.

10 14. If any withholding or income tax liability is imposed upon plaintiff based
11 on payment of the settlement sum as set forth herein, plaintiff shall be solely responsible for
12 paying any such liability. Plaintiff will indemnify and hold harmless the Federal Defendant from
13 any liability the Federal Defendant may incur from any government agency arising out of any
14 failure by plaintiff to pay any tax liability he might be responsible for from any government
15 agency. Plaintiff will also indemnify and hold harmless the Federal Defendant from any liability
16 the Federal Defendant may incur from any lien claimant arising out of any failure by plaintiff to
17 satisfy the outstanding liens. Plaintiff will also indemnify and hold harmless the Federal
18 Defendant from any liability the Federal Defendant may incur from any claim, including but not
19 limited to a loss of consortium claim, by plaintiff's spouse arising out of the subject matter of
20 This Action.

21 15. Plaintiff has been informed that payment of the settlement amount may
22 take 120 days or more to process.

23 16. The parties agree that the District Court shall retain jurisdiction over this
24 matter for the purposes of resolving any dispute alleging a breach of this agreement.

25 17. Each party acknowledges that they are fully aware of and understand all of
26 the terms of the agreement and the legal consequences thereof. It is further acknowledged that
27 the parties have mutually participated in the drafting of this agreement and it is agreed that no
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1 provision herein shall be construed against any party hereto by virtue of the drafting of this
2 agreement.

3 18. If any provision of this agreement shall be held invalid, illegal, or
4 unenforceable, the validity, legality, and enforceability of the remaining provisions shall not in
5 any way be affected or impaired thereby.

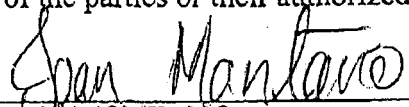
6 19. This instrument shall constitute the entire agreement between the parties,
7 and it is expressly understood and agreed that this agreement has been freely and voluntarily
8 entered into by the parties hereto. The parties further acknowledge that no warranties or
9 representations have been made on any subject other than as set forth in this agreement.

10 20. The parties agree that this Stipulation for Compromise Settlement and
11 Release, including all the terms and conditions of this compromise settlement and any additional
12 agreements relating thereto, may be made public in their entirety, and the plaintiff expressly
13 consents to such release and disclosure pursuant to 5 U.S.C. § 552a(b).

14 21. The persons signing this Stipulation and Agreement warrant and represent
15 that they possess full authority to bind the persons on whose behalf they are signing to the terms
16 of the settlement.

17 22. This agreement may not be altered, modified or otherwise changed in any
18 respect except in writing, duly executed by all of the parties or their authorized representatives.

19 Dated: September 13, 2010


JUAN MONTANO
Plaintiff

22 Dated: September 14, 2010


WILLIAM McCANN
Attorney for Plaintiff

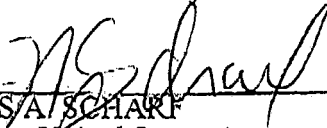
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MELINDA HAAG
United States Attorney

Dated: September 7, 2010

By: 

JAMES A. SCHARF
Assistant United States Attorney
Attorney for the Federal Defendant
United States of America

**PURSUANT TO THE ABOVE STIPULATION AND AGREEMENT,
APPROVED AND SO ORDERED:**

The Clerk shall close this file.

Dated: September 16, 2010



Hon. James Ware
United States District Court Judge

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