

FILED

SEP 11 2013

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CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

1 MELINDA HAAG (CABN 132612)
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13 Attorneys for Plaintiffs

14 UNITED STATES DISTRICT COURT
15 NORTHERN DISTRICT OF CALIFORNIA
16 SAN JOSE DIVISION
17

18 JOSEPH KOENIG and VERONICA KOENIG

19 Plaintiffs,

20 v.

21 UNITED STATES OF AMERICA

22 Defendant.

Case No. C 11-4876 HRL

**STIPULATION AND AGREEMENT OF
COMPROMISE AND SETTLEMENT AND
~~PROPOSED~~ ORDER**

(RE: DOCKET No. 57)

24 It is hereby stipulated by and between the undersigned Plaintiffs and Defendant the United
25 States of America, by and through their respective attorneys, as follows:

26 WHEREAS, Plaintiffs filed the above-captioned action on October 3, 2011;

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

STIPULATION FOR COMPROMISE SETTLEMENT AND RELEASE ~~PROPOSED~~ ORDER
No. C 11-4876 HRL

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 United States Postal Service, and/or its current and former agents, servants, employees, and
13 attorneys.

14 3. **Settlement Amount.** The United States of America agrees to pay the sum of One
15 Hundred Eighty Thousand dollars (\$180,000.00) (“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 personal injuries, damage to property and the consequences thereof, resulting, and to
19 result, from the subject matter of this settlement, including any claims for wrongful death, for which
20 Plaintiffs or his or her guardians, heirs, executors, administrators, or assigns, and each of them, now
21 have or may hereafter acquire against the United States of America.

22 4. **Release.** Plaintiffs and his and her guardians, heirs, executors, administrators or assigns
23 hereby agrees to accept the Settlement Amount in full settlement and satisfaction of any and all
24 claims, demands, rights, and causes of action of whatsoever kind and nature, including claims for
25 wrongful death, arising from, and by reason of any and all known and unknown, foreseen and
26 unforeseen personal injuries, damage to property and the consequences thereof which they may have
27 or hereafter acquire against the United States of America on account of the same subject matter that
28 gave rise to the above-captioned action, including any future claim or lawsuit of any kind or type

1 whatsoever, whether known or unknown, and whether for compensatory or exemplary damages.
2 Plaintiff and their guardians, heirs, executors, administrators or assigns further agrees to reimburse,
3 indemnify and hold harmless the United States of America from and against any and all such causes
4 of action, claims, liens, rights, or subrogated or contribution interests incident to or resulting from
5 further litigation or the prosecution of claims by Plaintiff or his or her guardians, heirs, executors,
6 administrators or assigns against any third party or against the United States, including claims for
7 wrongful death. Notwithstanding the foregoing, the United States Postal Service will be responsible
8 for and fully resolve all Medicare liens arising from the July 31, 2009 accident.

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

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

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

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

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

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

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

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

13 11. **Payment by Check.** The United States Postal Service will prepare a check in the
14 amount of One Hundred Eighty Thousand dollars (\$180,000.00) and made payable to Joseph and
15 Veronica Koenig, Plaintiffs, and Dreyer, Babich, Buccola, Wood LLP, Plaintiffs' attorneys. The
16 check will be mailed to Plaintiffs' attorneys at the following address: Christopher W. Wood, Esq.,
17 Dreyer, Babich, Buccola, Wood LLP, 20 Bicentennial Circle, Sacramento, California, 95826.
18 Plaintiffs' attorney agrees to distribute the settlement proceeds to the Plaintiffs.

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

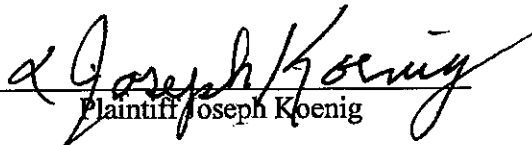
25 13. **Construction.** Each party hereby stipulates that it has been represented by and has
26 relied upon independent counsel in the negotiations for the preparation of this Agreement, that it has
27 had the contents of the Agreement fully explained to it by such counsel, and is fully aware of and
28 understands all of the terms of the Agreement and the legal consequences thereof. For purposes of

1 construction, this Agreement shall be deemed to have been drafted by all Parties to this Agreement
2 and shall not, therefore, be construed against any Party for that reason in any subsequent dispute.

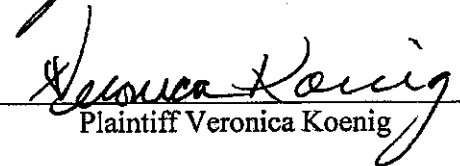
3 14. **Severability.** If any provision of this Agreement shall be invalid, illegal, or
4 unenforceable, the validity, legality, and enforceability of the remaining provision shall not in any
5 way be affected or impaired thereby.

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

13
14 DATED: September 10, 2013


Plaintiff Joseph Koenig

15
16
17 DATED: September 20, 2013


Plaintiff Veronica Koenig

18
19 DREYER BABIC BUCCOLA WOOD, LLP

20
21 DATED: September 10, 2013

By: 

22 CHRISTOPHER W. WOOD
Attorneys for Plaintiffs

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MELINDA HAAG
United States Attorney

DATED: September 10, 2013

By: Michael T. Pyle

MICHAEL T. PYLE
Assistant United States Attorney
Attorneys for Defendant

PURSUANT TO STIPULATION, IT IS SO ORDERED.

Dated: 9/11/13

Howard R. Lloyd
HON. ~~HAROLD L. LLOYD~~ HOWARD R. LLOYD
United States Magistrate Judge

Exhibit A

1 MELINDA HAAG (CABN 132612)
United States Attorney
2 ALEX G. TSE (CABN 152348)
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3 MICHAEL T. PYLE (CABN 172954)
Assistant United States Attorney
4 Assistant United States Attorney
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8 Attorneys for Defendant United States of America

9 CHRISTOPHER W. WOOD, ESQ. (SBN 193955)
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10 DREYER BABICH BUCCOLA WOOD, LLP
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13 Attorneys for Plaintiffs

14 UNITED STATES DISTRICT COURT
15 NORTHERN DISTRICT OF CALIFORNIA
16 SAN JOSE DIVISION
17

18 JOSEPH KOENIG and VERONICA KOENIG
19 Plaintiffs,
20 v.
21 UNITED STATES OF AMERICA
22 Defendant.

Case No. C 11-4876 HRL

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

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26 It is hereby stipulated by and between the undersigned Plaintiffs and Defendant the United
27 States of America, that the above-captioned action be and hereby is dismissed with prejudice
28 pursuant to Federal Rule of Civil Procedure 41(a)(1)(ii). Each party shall bear its own fees and costs

1 except as set forth in the Stipulation and Compromise Settlement and Release approved by the
2 Court.

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4
5 DATED: September __, 2013

Plaintiff Joseph Koenig

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7
8 DATED: September __, 2013

Plaintiff Veronica Koenig

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10 DREYER BABIC BUCCOLA WOOD, LLP

11 DATED: September __, 2013

By: _____

12 _____
13 CHRISTOPHER W. WOOD
Attorneys for Plaintiffs

14
15
16 MELINDA HAAG
United States Attorney

17
18 DATED: September __, 2013

By: _____

19 MICHAEL T. PYLE
Assistant United States Attorney
Attorneys for Defendant

20
21
22 PURSUANT TO STIPULATION, IT IS SO ORDERED.

23
24 Dated: _____

25 HON. HAROLD L. LLOYD
United States Magistrate Judge