

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
ASHEVILLE DIVISION
1:13CV319-MOC-DLH

SEP - 3 2015

U.S. DISTRICT COURT
W. DIST. OF N.C.

ESTATE OF JASON CHARLES POWELL)
JENNIFER P. POWELL, ADMINISTRATRIX)
and JENNIFER POWELL, Individually,)
)
Plaintiffs,)
v.)
)
UNITED STATES OF AMERICA,)
)
Defendant)

ORDER

On the 31st day of August, 2015, the above-referenced matter came on for hearing and approval by the Court as to the reasonableness of a proposed settlement between the United States of America and Plaintiff Jennifer P. Powell, individually and as administratrix of the Estate of Jason Charles Powell. The Estate of Jason Charles Powell includes two minors, namely: J.E.P. (born 2001) and J.C.P. (born 2004). Plaintiff appeared through counsel of record. Defendant United States of America appeared through its counsel.

The complete and precise terms and conditions of the proposed settlement are set forth in the proposed "Stipulation For Compromise Settlement And Release Of Federal Tort Claims Act Claim Pursuant To 28 U.S.C. § 2677" (hereinafter "Proposed Stipulation") attached and incorporated as Exhibit A to this Order. The Court has reviewed the Proposed Stipulation and received testimony and arguments in favor of this proposed settlement, as deemed necessary by the Court. The Court is fully informed of the specifics of the full and final terms and conditions of the proposed settlement. The Court finds that this proposed settlement is fair, reasonable, and in the best interests of the minor children. The Court additionally understands that this

proposed settlement is contingent upon the satisfaction of the terms set forth in the Proposed Stipulation, including the necessity of the approval by the Attorney General of the United States, this Order approving the proposed settlement on behalf of the minor beneficiaries of Jason Charles Powell, and a release and waiver in favor of the United States by any other public or private entity with respect to any and all claims the entity may have now or in the future against the United States (and its agents, servants and employees), whether sounding in tort, contract, or otherwise, including claims for payment for goods or services to or on behalf of Jennifer P. Powell or her family arising from the subject matter of this litigation and any claims for contribution, subrogation, and/or indemnification.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the proposed settlement as set forth in the Proposed Stipulation is hereby approved by this court, with recognition of the fact that the terms of the proposed settlement and Proposed Stipulation are not binding on the parties and shall not be finalized until so approved by the Attorney General. It is further Ordered that Jennifer P. Powell, as administratrix of the Estate of Jason Charles Powell, is authorized to sign the Stipulation and any other documents necessary to consummate this proposed settlement.

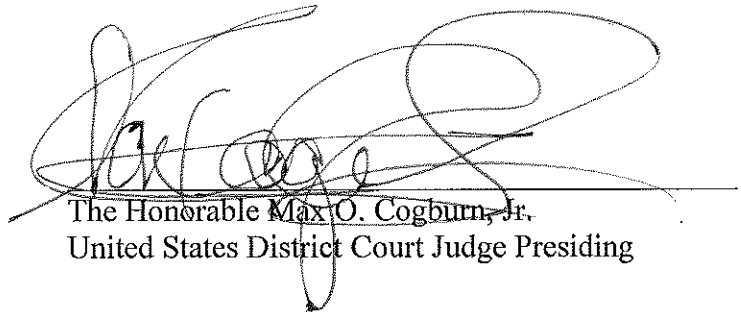
IT IS FURTHER ORDERED that upon approval by the Attorney General, the proposed settlement amount of \$1,600,000.00 shall be distributed as follows:

- a. \$600,000.00 to Jennifer Powell
- b. \$200,000.00 to Chance Powell, son of the deceased Jason Powell
- c. \$200,000.00 to each of the minor children of Jason Powell, J.E.P. and J.C.P., to be placed in a conservatorship with payouts of the monies to the minor children as follows:
 - 1) 19 years of age – 10% of the principle
 - 2) 25 years of age – 30% pf the principle
 - 3) 30 years of age – all remaining balances

IT IS FURTHER ORDERED that upon approval and finalization of the proposed settlement, attorneys' fees in this action shall be no more than twenty-five percent (25%) of \$1,600,000.00 and shall be paid as provided in the Proposed Stipulation. The Court finds that the costs and expenses associated with the litigation are \$41,176.58 and that such costs and expenses are fair, reasonable, and necessary. It is hereby Ordered that upon approval and finalization of the proposed settlement, such costs and expenses are to be paid as provided in the Proposed Stipulation. Pursuant to stipulation of Counsel, the costs set forth herein shall be rolled into the fee of \$400,000.00 and that the fees, costs and expenses were reasonable and necessary to prosecute this action. The Court holds that plaintiffs are legally responsible for any and all liens or claims for payment or reimbursement, including any liens or claims for payment or reimbursement by Medicaid or healthcare providers. The Court hereby Orders plaintiffs, by and through their attorneys, to satisfy or resolve any and all such liens or claims for payment or reimbursement asserted by any individual or entity. The Court further Orders that plaintiffs and their attorneys shall provide to the United States the information required by the Proposed Stipulation regarding the satisfaction or resolution of such liens or claims for payment or reimbursement within the time specified in said Proposed Stipulation. The Court further Orders that Plaintiffs' attorneys shall not distribute to Plaintiffs any of the amount payable to them directly pursuant to the Proposed Stipulation unless and until such liens or claims for payment or reimbursement have been satisfied or resolved.

IT IS FURTHER ORDERED that plaintiffs, upon final execution of the Proposed Stipulation and after the payment of the proposed settlement amount by the United States, shall immediately cause to be filed with the Court a dismissal of these actions with prejudice, with each party bearing its own costs, expenses and fees.

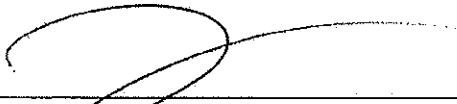
This the 2nd day of September 2015



The Honorable Max O. Cogburn, Jr.
United States District Court Judge Presiding

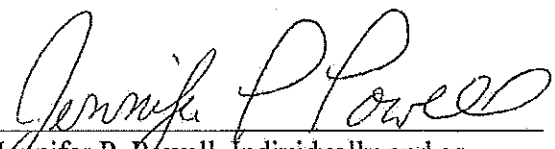
APPROVED AS TO FORM AND CONTENT:

/s/ Gill P. Beck *Gill P. Beck*
Gill P. Beck
Assistant United States Attorney
Attorney for Defendant, United States of America


James L. Epperson
Attorney for Plaintiff

CONSENT AND ACKNOWLEDGEMENT

I, Jennifer P. Powell, Individually and as Administratrix of the Estate of Jason Charles Powell and as the natural mother of the minor beneficiaries, J.E.P. and J.C.P., do hereby expressly consent to the entry of the foregoing Order, and do further acknowledge and represent that all matters and things therein stated are, to the best of my belief, true and accurate. The undersigned understands, comprehends and agrees that the compromise settlement evidenced by the foregoing Order and Proposed Stipulation to which reference is made herein, constitutes a full, final and complete satisfaction and discharge of the settling Defendant from any further liability or damages owed to any person, firm or entity in this matter, and that neither the undersigned nor any other person, firm or corporation shall hereafter have any right again to assert any action or claim for monetary relief against the settling Defendant for monetary damages or relief arising from or in any way related to the injuries and damages sustained by the Plaintiffs and/or Plaintiffs' decedent, or to any losses, injuries or damages incurred as a consequence of any of the matters which are the subject of this Order and Proposed Stipulation, and that no other person, firm or corporation has any right to assert any additional claims of any type or description for the matters alleged in the Complaint, or which could have been alleged in the Complaint.


Jennifer P. Powell, Individually and as
Administratrix of the Estate of Jason Charles Powell

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FOR THE WESTERN DISTRICT OF NORTH CAROLINA
ASHEVILLE DIVISION
1:13CV319-MOC-DLH

ESTATE OF JASON CHARLES POWELL,
JENNIFER P. POWELL, ADMINISTRATRIX,
And JENNIFER POWELL, Individually,

Plaintiffs,

v.

UNITED STATES OF AMERICA,

Defendant.

STIPULATION FOR COMPROMISE SETTLEMENT AND RELEASE OF
FEDERAL TORT CLAIMS ACT CLAIMS PURSUANT TO 28 U.S.C. § 2677

It is hereby stipulated by and between the undersigned Plaintiffs (meaning any person, other than the Defendant and the attorneys, signing this agreement, whether or not a party to this civil action), and the United States of America, by and through their respective attorneys, as follows:

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

2. The United States of America agrees to pay the sum of ONE MILLION AND SIX HUNDRED THOUSAND DOLLARS, \$1,600,000.00, which sum shall be in full settlement and

(2011 Edition)

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Exhibit A

satisfaction of any and all claims, demands, rights, and causes of action of whatsoever kind and nature, arising from, and by reason of any and all known and unknown, foreseen and unforeseen bodily and personal injuries, damage to property and the consequences thereof, resulting, and to result, from the subject matter of this settlement, including any claims for wrongful death, for which plaintiffs or their administratrix, guardians, heirs, executrix, or assigns, and each of them, now have or may hereafter acquire against the United States of America, its agents, servants, and employees.

3. Plaintiffs and their administratrix, guardians, heirs, executrix, or assigns hereby agree to accept the sums set forth in this Stipulation of Compromise Settlement in full settlement, satisfaction, and release of any and all claims, demands, rights, and causes of action of whatsoever kind and nature, including claims for wrongful death, arising from, and by reason of any and all known and unknown, foreseen and unforeseen bodily and personal injuries, damage to property and the consequences thereof which they may have or hereafter acquire against the United States of America, its agents, servants and employees on account of the same subject matter that gave rise to the above-captioned action, including any future claim or lawsuit of any kind or type whatsoever, whether known or unknown, and whether for compensatory or exemplary damages. Plaintiffs and their administratrix, guardians, heirs, executrix, or assigns further agree to reimburse, indemnify and hold harmless the United States of America, its agents, servants, and employees from and against any and all such causes of action, claims, liens, rights, or subrogated or contribution interests incident to or resulting from further litigation or the prosecution of claims by plaintiffs or their guardians, heirs, executors, administratrix or assigns against any third party or against the United States, including claims for wrongful death.

4. This stipulation for compromise settlement is not, is in no way intended to be, and should not be construed as, an admission of liability or fault on the part of the United States, its agents, servants, or employees, and it is specifically denied that they are liable to the plaintiffs. This settlement is entered into by all parties for the purpose of compromising disputed claims under the Federal Tort Claims Act and avoiding the expenses and risks of further litigation.

5. It is also agreed, by and among the parties, that the respective parties will each bear their own costs, fees, and expenses and that any attorney's fees owed by the Plaintiffs will be paid out of the settlement amount and not in addition thereto.

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

7. The persons signing this Settlement Agreement warrant and represent that they possess full authority to bind the persons on whose behalf they are signing to the terms of the settlement. In the event any Plaintiff is a minor or a legally incompetent adult, the plaintiffs must obtain Court approval of the settlement at their expense. Plaintiffs agree to obtain such approval in a timely manner: time being of the essence. Plaintiffs further agree that the United States may void this settlement at its option in the event such approval is not obtained in a timely manner. In the event Plaintiffs fail to obtain such Court approval, the entire Stipulation For Compromise Settlement And Release and the compromise settlement are null and void.

8. Payment of the settlement amount will be made by government wire transfer as per the following:

- A. Name of Bank:
- B. Street Address of Bank:
- C. City, State and Zip Code of Bank:
- D. Federal Reserve Number:
- E. Routing Number:
- F. Name of Account:
- G. Account Number:

Plaintiffs' attorney agrees to distribute the settlement proceeds among the Plaintiffs, and to obtain a dismissal of the above-captioned action with prejudice, with each party bearing its own fees, costs, and expenses.

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

10. It is contemplated that this Stipulation may be executed in several counterparts, with a separate signature page for each party. All such counterparts and signature pages, together, shall be deemed to be one document.

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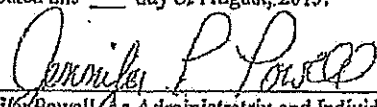
SIGNATORIES


STIPULATION FOR COMPROMISE SETTLEMENT AND RELEASE OF
FEDERAL TORT CLAIMS ACT CLAIMS PURSUANT TO 28 U.S.C. § 2677

JILL WESTMORHLAND ROSE
ACTING UNITED STATES ATTORNEY

GILL P. BECK
ASSISTANT UNITED STATES ATTORNEY
N.C. Bar No. 13175
Room 233, US Courthouse
100 Ollis Street
Asheville, NC 28801
Telephone No. 828-271-4661
Gill.Beck@usdoj.gov
Executed this ___ day of August, 2015.

JAMES L. EPPERSON
N.C. Bar No. 20529
Epperson Law PLLC
1367 Providence Road
Weddington, N.C. 28104
james@epplaw.com
Attorney for Plaintiffs
Executed this ___ day of August, 2015.


Jennifer Powell, As Administratrix and Individually,
Plaintiff
Executed this 17 day of August, 2015.


Chance Powell
Executed this 18 day of August, 2015.