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16 Counsel for Defendant
17 U.S. Department of Homeland Security

18 UNITED STATES DISTRICT COURT
19 NORTHERN DISTRICT OF CALIFORNIA
20 SAN FRANCISCO DIVISION

21 IRVIN MUCHNICK,
22 Plaintiff,
23 v.

24 UNITED STATES DEPARTMENT OF
25 HOMELAND SECURITY,
26 Defendant.

CASE NO. 15-CV-03060-CRB
**STIPULATION AND AGREEMENT OF
COMPROMISE AND SETTLEMENT**

1 Plaintiff, Irvin Muchnick, and Defendant U.S. Department of Homeland Security (“DHS”),
2 hereby enter into this Stipulation and Agreement of Compromise and Settlement (“Stipulation”), as
3 follows:

4 WHEREAS, on January 27, 2015, Mr. Muchnick, an investigative journalist, filed with the
5 United States Citizenship and Immigration Services (“USCIS”), a subdivision of DHS, a Freedom of
6 Information Act (“FOIA”) request seeking documents related to George Gibney’s immigration to the
7 United States. In the 1990s, Gibney was accused, but not convicted, of multiple counts of sexual assault
8 stemming from his time as a coach of the Irish national swimming team.. Mr. Muchnick sought to know
9 why American authorities let Gibney enter the country and remain here;

10 WHEREAS, in response to Mr. Muchnick’s FOIA request, USCIS released 4 pages and withheld
11 98 pages of Mr. Gibney’s Alien File;

12 WHEREAS, on July 1, 2015, Mr. Muchnick filed this FOIA Action (*Muchnick v. DHS*, Case No.
13 15-03060-CRB), challenging the agency’s withholdings;

14 WHEREAS, on February 3, 2017, the U.S. District Court for the Northern District of California
15 (the Honorable U.S. District Court Judge Charles R. Breyer) granted Mr. Muchnick’s motion for
16 summary judgment, denied DHS’s motion for summary judgment, and ordered DHS to disclose
17 specified portions of Gibney’s Alien File related to Gibney’s alleged crimes and immigration
18 applications. *Muchnick v. DHS*, 225 F. Supp. 3d 1069, 1078 (N. D. Cal. 2016).

19 WHEREAS, the Court also acknowledged that DHS properly withheld “identifying information
20 about third parties other than Gibney, as well as Gibney’s past addresses, salary history, A-number, and
21 the like,” *see Id.*;

22 WHEREAS, DHS timely filed an appeal to the United States Court of Appeals for the Ninth
23 Circuit;

24 WHEREAS, the parties wish to terminate litigation in *Muchnick v. DHS*, Case No. 15-03060-
25 CRB, and resolve the issues between them.

26 IT IS HEREBY AGREED THAT:
27
28

1 1. Within five (5) business days of the parties having jointly filed this agreement with this
2 Court, DHS shall provide the following documents and information to Mr. Thomas R. Burke, Mr.
3 Muchnick’s counsel of record:

- 4 ■ All of the materials ordered disclosed by the district court that are related to Gibney’s visa
5 application;
- 6 ■ Portions of a 2010 letter from U.S. Immigrations and Customs Enforcement indicating that
7 Gibney is not removable because he has not been convicted of a crime; and,
- 8 ■ A portion of the USCIS’s 2010 decision indicating the disposition of Gibney’s application
9 for naturalization.

10 2. Pursuant to this settlement, DHS has also prepared – and already provided to Mr.
11 Muchnick – a supplement to the Supplemental Vaughn Index that was previously filed in district court.

12 3. DHS shall pay \$70,000.00 directly to Mr. Muchnick’s attorneys in full and complete
13 satisfaction of any and all claims for FOIA attorney’s fees, costs, and expenses in the above-captioned
14 matter that Mr. Muchnick has made, or could make in the future. This payment shall constitute full and
15 final satisfaction of any and all claims Mr. Muchnick has made, or could make in the future, for
16 attorneys’ fees, costs, and litigation expenses in the above-captioned matter, including fees and costs
17 associated with both the litigation before the district court and mediation in the court of appeals, and is
18 inclusive of any interest. The payment shall be for Muchnick’s attorneys fees and out of pocket costs
19 and will be made directly to Muchnick’s attorneys. Payment of this money will be made by check or a
20 wire transfer to the “Davis Wright Tremaine LLP Client Trust Account” within 60 days after the
21 Effective Date of this Stipulation.

22 4. The parties agree that execution of this Settlement Agreement will constitute full
23 compliance with the district court’s final judgment in this case. By entering into this Settlement
24 Agreement, Mr. Muchnick hereby releases DHS and its successors, the United States of America, and
25 any department, agency, or establishment of the United States, and any officers, employees, agents,
26 successors, or assigns of such department, agency, or establishment, from any claims raised by Mr.

1 Muchnick in this lawsuit and any past, present, or future claims for attorneys' fees, expenses, or costs in
2 connection with this litigation.

3 5. This Settlement Agreement is not, is in no way intended to be, and should not be
4 construed as, an admission of liability or fault on the part of the United States, its agencies, components,
5 officials, agents, servants, or employees; and the United States specifically asserts that the district
6 court's judgment in this case was erroneous. This settlement is entered into by all parties solely for the
7 purpose of compromising disputed claims and avoiding the expenses and risks of further litigation.

8 6. This Settlement Agreement constitutes the entire agreement between the parties. The
9 parties expressly agree and understand that this Settlement Agreement has been freely and voluntarily
10 entered into by the parties with the advice of counsel, who have explained the legal effect of this
11 Settlement Agreement. The parties further acknowledge that no warranties or representations have been
12 made on any subject other than as set forth in this Settlement Agreement. This Settlement Agreement
13 may not be altered, modified or otherwise changed in any respect except by writing, duly executed by all
14 of the parties or their authorized representatives.

15 7. In consideration of the payment of attorney fees and costs and the other terms of this
16 Agreement, Mr. Muchnick's attorneys shall immediately upon execution of this Agreement also execute
17 a Stipulation of Dismissal. The Stipulation of Dismissal shall dismiss the Complaint with prejudice,
18 subject to the terms of this settlement. The fully-executed Stipulation of Dismissal will be filed
19 immediately with the District Court and the District Court shall be requested as part of that Stipulation
20 of Dismissal to expressly retain jurisdiction over the case for 90 days following the dismissal to assure
21 that all parties' obligations are met and that the terms of the settlement are properly implemented.

22 8. If any provision of this Stipulation shall be held invalid, illegal, or unenforceable, the
23 validity, legality, and enforceability of the remaining provisions shall not in any way be affected or
24 impaired thereby.

25 9. This Stipulation may not be altered, modified or otherwise changed in any respect except
26 in writing, duly executed by all of the parties or their authorized representatives.

10. The Stipulation may be executed in counterparts and is effective on the date by which both parties have executed the Stipulation (“Effective Date”).

SO STIPULATED AND AGREED.

Dated: December 8, 2017

DAVIS WRIGHT TREMAINE LLP

By: s/Thomas R. Burke
Thomas R. Burke
Counsel for Plaintiff
IRVIN MUCHNICK

By: s/Roy S. Gordet
Roy S. Gordet
Counsel for Plaintiff
IRVIN MUCHNICK

Dated: December 8, 2017

U.S. DEPARTMENT OF JUSTICE

By: s/ Patrick G. Nemeroff
Patrick G. Nemeroff
Attorney, Civil Division, Appellate Staff
Counsel for Defendant
U.S. DEPARTMENT OF HOMELAND
SECURITY

By: s/ James A. Scharf
James A. Scharf
Assistant United States Attorney
Counsel for Defendant
U.S. DEPARTMENT OF HOMELAND
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