

SETTLEMENT AND RELEASE AGREEMENT

PARTIES

This Settlement and Release Agreement dated March 5, 2021 is made by and between and amongst GUILLERMO JIMENEZ, BYRON AGUILAR, JOSE ANAYA, PEDRO OSORIO, and JUAN PAZ (hereinafter collectively referred to as "Plaintiffs"); and NEW WEST PAINTING, INC. and THOMAS ECKES (hereinafter collectively referred to as "Defendants"). Throughout this Settlement Agreement, Plaintiffs and Defendants shall be collectively referred to as "the Parties."

RECITALS

WHEREAS, Plaintiffs allege that Defendants caused Plaintiffs injury and damages during and pertaining to their employment by Defendants, and that Defendants failed to abide by employment laws, statutes and ordinances;

WHEREAS, Plaintiffs filed the case entitled *Jimenez v. New West Painting, Inc.*, Superior Court of California, County of Orange, Case #30-2020-01141069-CU-OE-CXC, against Defendants seeking damages, penalties, and attorney fees and litigation costs (the "Action");

WHEREAS, Plaintiffs allege various claims, including a claim under the California Labor Code Private Attorneys General Act of 2004 ("PAGA");

WHEREAS, Defendants deny any and all wrongdoing and deny any and all liability related to Plaintiffs' employment with Defendants;

WHEREAS, the Parties seek to resolve all disputes, claims, and controversies pertaining to the Action, and any and all disputes, claims and controversies that the Parties may have, now known or unknown, disclosed or undisclosed by, between, amongst and against each other;

NOW, THEREFORE, the Parties agree as follows:

AGREEMENT

1. **Recitals Incorporated.** The Recitals above are incorporated into this Settlement Agreement as if set forth in full.
2. **Effective Date.** This Settlement Agreement shall be deemed effective on the date it is approved by the Court.
3. **Dismissal of PAGA Claim.** Since initiating the Action, Plaintiffs learned that the PAGA action is infeasible due to the small number of alleged aggrieved employees and other issues;

therefore, Plaintiffs will dismiss their PAGA claim without prejudice, upon the Court's approval.

4. **Settlement Payment.** Defendants agree to pay NINETY-NINE THOUSAND TWO HUNDRED SEVENTY-NINE DOLLARS AND SEVENTY-SEVEN CENTS (\$99,279.77) to the five named Plaintiffs. The above amount will be allocated as follows:

- i) Of this Settlement Sum, Ninety-Nine Thousand Two Hundred Seventy-Nine Dollars and Seventy-Seven Cents (\$99,279.77) will be paid without any deductions and shall be allocated toward settling Plaintiffs' claims for expense reimbursement, interest, penalties, and Plaintiffs' attorney's fees and costs incurred in the Action. The check for this amount shall be made payable to the Jones, Bell LLP Client Trust Account, c/o Asha Dhillon, 601 South Figueroa Street, Suite 3460 Los Angeles, CA 90017 and delivered to Plaintiffs' counsel of record in the Action. This amount will be reported on IRS form 1099-MIS and sent to both Plaintiffs and their counsel.
- a. All checks shall be sent to Plaintiffs' counsel at Jones, Bell, Abbott Fleming & Fitzgerald LLP, c/o Asha Dhillon, 601 South Figueroa Street, Suite 3460 Los Angeles, CA 90017.
- b. The Payment breakdown for the Settlement Amount is as follows:

ITEM	TOTAL
<u>BYRON AGUILAR</u>	<u>\$13,049.65</u>
<u>JOSE ANAYA</u>	<u>\$15,294.77</u>
<u>GUILLERMO JIMENEZ</u>	<u>\$12,444.01</u>
<u>PEDRO OSORIO</u>	<u>\$11,725.31</u>
<u>JUAN PAZ</u>	<u>\$4,766.03</u>
<u>FEES AND COSTS</u>	<u>\$42,000</u>
TOTAL:	<u>\$99,279.77</u>

- c. Payment is due in one payment on March 31, 2021.
5. **Mutual Releases.** In exchange for the Settlement Payment referenced above and all other consideration provided for in this Settlement Agreement, the sufficiency and adequacy of which is hereby confirmed acknowledged by the Parties and on behalf of their respective heirs, executors, administrators, personal representatives, agents, and assigns; principals, officers, directors, employees, predecessors, successors, agents, attorneys, accountants, insurers, and affiliates, hereby absolutely, completely and forever releases and discharges each other, and each of its owners, principals, officers, directors, employees, predecessors, successors, principals, subcontractors, attorneys, accountants, insurers, affiliates, and assigns, from any and all claims, debts, liabilities, demands, obligations, injuries, damages, losses, causes of action, costs, expenses, and attorneys' fees, whether known or unknown, whether contingent or fixed, whether wholly or only partially accrued, and existing as of the date hereof, including, without limitation, all claims, liabilities and causes of action arising out of or in any way related to Plaintiffs' employment with Defendant New West Painting, Inc.

6. **Waiver of Civil Code Section 1542.** Each Party for himself, itself and its principals, officers, directors, employees, predecessors, successors, agents, attorneys, accountants, insurers, affiliates, and assigns ("Affiliates") has read, understood, consulted with their respective attorneys (or has waived the right to do so) and been fully advised as to the contents and meaning of California Civil Code Section 1542.

Each Party hereby expressly, voluntarily, and knowingly waives and relinquishes any and all rights they have or might have under California Civil Code § 1542 and under any other statute(s) or common law principle(s) of similar effect.

Accordingly, each Party for themselves and their Affiliates hereby warrants and represents as follows: (a) that they are familiar with the provisions of California Civil Code § 1542, which reads as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS
THAT THE CREDITOR OR RELEASING PARTY DOES NOT
KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT
THE TIME OF EXECUTING THE RELEASE AND THAT, IF
KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY
AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR
OR RELEASED PARTY.

and (b) that they have been fully advised by counsel of his or its own choosing regarding the rights and/or benefits afforded by California Civil Code § 1542, or has waived the right to do so, and (c) that they fully and completely understand the rights and/or benefits afforded by California Civil Code § 1542, and, therefore, (d) that the foregoing waiver and relinquishment of any and all rights under Civil Code § 1542 and any other statute or common law principal of similar effect was knowingly and voluntarily made.

7. **Release of Claims.** In exchange for the sum paid under this Agreement, Plaintiffs, on behalf of themselves and their agents, representatives, heirs, and assigns, hereby release and forever discharge Defendant New West Painting, Inc., and individual agents, directors, officers, employees, shareholders, partners, managers, employees, attorneys, insurers, affiliates, affiliates of its officers or directors, heirs, and assigns ("Defendant Releasees") from any and all manner of action or actions, claims, liabilities, demands, losses, damages, costs, expenses, and obligations, whether known or unknown, claimed or unsuspected, that Plaintiffs have or may have had, arising out of or in any way related to their employment with Defendant New West Painting, Inc. or termination of their employment with Defendant New West Painting, Inc.; provided, however, that nothing in this section shall release or discharge Defendant New West Painting, Inc. from its obligations under any of the other provisions of this Agreement. This release includes, but is not limited to: (a) any and all claims, direct or indirect, relating to the matters described in the foregoing sentence which might otherwise be made under any applicable state or federal authority, including, without limitation, any claim arising under the state statutes dealing with discrimination in employment, such as Title VII of the Civil Rights Act of 1964, as amended, including the Civil Rights Act of 1991, (42 U.S.C. § 2000e et seq.); the Equal Pay Act of 1963 (29 U.S.C. § 206(d)), the federal Americans with Disabilities Act of 1990 ("ADA," 42 USC § 12101 et seq.), the Age

Discrimination in Employment Act of 1967, as amended, including the Older Workers Benefit Protection Act ("ADEA," 29 U.S.C. § 621 et seq.); , the National Labor Relations Act ("NLRA," 29 U.S.C. §§ 151-169); and the California Fair Employment and Housing Act, as amended ("FEHA," Cal. Gov. Code § 12900 et seq.). This release also extends to all matters relating to or arising out of Plaintiffs' employment with, or the termination of their employment from, Defendant New West Painting, Inc., including, without limitation, all causes of action arising under or based upon: the Fair Labor Standards Act of 1938 ("FLSA," 29 U.S.C. § 201 et seq.); the so-called Reconstruction Statutes, in particular Sections 1981, 1983 and 1985 of the Civil Rights Act of 1866 (42 U.S.C. §§ 1981, 1983 & 1985);; the Rehabilitation Act of 1973, (29 U.S.C. § 701, et seq.); the Employee Retirement Income Security Act of 1964 ("ERISA", 29 U.S.C. § 1001 et seq.); Executive Order 11246; the Racketeer Influenced and Corrupt Organizations Act (RICO) 18 U.S.C. § 1961, et seq.; the Veteran's Reemployment Rights Act, 38 U.S.C. § 2021 et seq., the California Labor Code, and any other local, state, or federal statute, public policy, order, or regulation, however promulgated, affecting or relating to claims or rights of employees, including any and all suits at law or in equity, including torts and contracts. The foregoing release also includes any, such as breach of an express or implied contract, whether oral or written; promissory estoppel; *quantum meruit*; actual and constructive misrepresentation; defamation, including libel and slander; interference with economic advantage; tortious interference with either a contract or prospective contractual relations; intentional or negligent infliction of emotional distress; invasion of privacy whether intentional or negligently caused; wrongful termination for any reason, including any allegations of termination based either on a refusal to commit, inquire about, or reporting on an act believed by Plaintiffs to be illegal; breach of the covenant of good faith and fair dealing; prima facie tort, conversion, fraud, constructive fraud, negligent misrepresentation, gross negligence, negligence, or conspiracy to commit any of the above, whether known or unknown, liquidated or unliquidated, fixed or contingent, direct or indirect that Plaintiffs ever had, has, or can assert to have had against the Defendant Releasees occurring at any time prior to the date of execution of this Release. By signing this Agreement, Plaintiffs intend to give up any rights they may have under these or any other laws with respect to their employment and to the termination of their employment with Defendant New West Painting, Inc.

8. **Claims Released.** The Parties understand the word "claims" to include all actions, claims, and grievances, whether actual or potential, known or unknown, whether arising out of Plaintiffs' employment with Defendant New West Painting, Inc. or otherwise, excluding any claims that by operation of law cannot be released. All such claims, with the exception stated above, are forever barred by this Agreement and without regard to whether those claims are based on any alleged breach of a duty arising in a statute, contract, or tort; any alleged unlawful act, including, without limitation, harassment, retaliation, discrimination, or defamation; any other claim or cause of action, including without limitation, failure to pay wages; and regardless of the forum in which it might be brought.
9. **Waiver of Rights Under the Age Discrimination in Employment Act.** In accordance with the Age Discrimination in Employment Act and Older Workers' Benefit Protection Act (collectively, for the purposes of this Section, the "Act"), Plaintiffs acknowledge that:

- i. They have been advised in writing to consult with an attorney prior to executing this Agreement, and have had the opportunity to do so;
 - ii. They are aware of certain rights to which they may be entitled under the Act;
 - iii. In exchange for executing this Agreement, Plaintiffs will receive severance pay to which they would otherwise not be entitled, and in addition to the compensation and benefits that they earned as an employee of New West Painting, Inc.;
 - iv. By signing this Agreement, they will not waive rights or claims under the Act which may arise after the execution of this Agreement;
 - v. They have been given a period of at least 21 days to consider this Agreement, and understand that if they do not sign this Agreement they will not receive the Settlement Amount described in paragraph 2 above; and
 - vi. Plaintiffs further acknowledge that they have a period of seven days from the date of execution within which to revoke this Agreement by written notice to Marta R. Vanegas, Esq. (marta@martinvanegaslaw.com). In the event Plaintiffs do not exercise their right to revoke this Agreement, the Agreement shall become effective on the date immediately following the seven-day revocation period described above.
10. **No Admission of Liability.** Nothing in this Settlement Agreement shall constitute or be construed as an admission of liability on behalf of any of the Parties as to the validity of any of the claims, defenses, or allegations. Nor shall this Settlement Agreement be admissible in any court, administrative agency, or tribunal for any purpose whatsoever, with the sole exception of any proceeding to enforce or interpret the terms of this Settlement Agreement.
11. **Voluntarily Entered.** The Parties represent and warrant that this Settlement Agreement is executed voluntarily and by the parties with the full knowledge of the consequences and implications of the obligations contained herein. Each Party acknowledges that it may hereafter discover facts in addition to or different from those which such Party now believes to be true with respect to the subject matter of the claims released hereunder, but hereby stipulates and agrees that, as set forth herein, they nonetheless have fully, finally and forever released any and all disputes, claims and controversies pertaining in any way to Plaintiffs' employment with Defendant New West Painting, Inc.
12. **Right to Counsel.** The Parties represent and warrant that they have had the opportunity to be represented by legal counsel of their choice throughout the negotiations which preceded the execution of this Settlement Agreement, and in connection with the preparation and execution of this Settlement Agreement, and that they have carefully and thoroughly reviewed this Agreement in its entirety with their attorneys or have knowingly and voluntarily waived the right to do so.
13. **Successors and Assigns.** All rights and obligations under this Settlement Agreement shall be binding upon and inure to the benefit of the Parties' successors and assigns.
14. **Breach.** Any Party who breaches any provision of this Settlement Agreement shall pay all costs and expenses, including reasonable attorney's fees, incurred by any other Party as a result of the breach or as a result of having to enforce this Settlement Agreement.
15. **Complete Integration/Modification.** This Settlement Agreement constitutes the full and complete integration of the Parties' agreement with respect to settlement of the disputes and

matters described herein, and all statements, negotiations and/or prior agreements or understandings with respect to these matters are merged herein. This Settlement Agreement may be modified only by a written instrument signed by all Parties hereto.

16. **No Waiver.** The failure of a party to insist upon strict adherence to any term of this Settlement Agreement on any occasion shall not be considered a waiver of such party's rights or deprive such party of the right thereafter to insist upon strict adherence to that term or any other term of this Settlement Agreement.
17. **Applicable Law.** This Settlement Agreement shall be governed by the laws of the State of California, exclusive of its choice of law rules.
18. **Court to Maintain Jurisdiction.** Pursuant to C.C.P. §664.6, the Parties agree that the Court shall retain jurisdiction over the parties to enforce the settlement until performance in full of the terms of the Settlement Agreement and if necessary, to enter judgment pursuant to the terms of the Settlement Agreement.
19. **Execution in Multiple Counterparts.** This Settlement Agreement may be executed in multiple counterparts, each of which may be treated as an original document.
20. **Copies.** Both facsimile and photocopies of the executed Settlement Agreement may be treated as original documents.
21. **Warranty of Authority.** The undersigned individuals warrant and represent that they are authorized to execute this Settlement Agreement.
22. **Tax Liability.** Defendants shall pay employer side payroll taxes separately and in addition to the amount identified. Defendants make no representations as to the tax treatment or legal effect of the payments to Plaintiffs and Settlement Class Members called for hereunder and Plaintiffs are not relying on any statement or representation by Defendants in this regard. Plaintiffs understand and agree that they will be solely responsible for the payment of any taxes or penalties predicated on the payments to them described herein. Defendants shall be held harmless from and against any claims resulting from treatment of such payments as non-taxable damages, including the treatment of such payments as not subject to withholding or deduction for payroll and employment taxes.
23. **CIRCULAR 230 DISCLAIMER.** EACH PARTY TO THIS AGREEMENT (FOR PURPOSES OF THIS SECTION, THE "ACKNOWLEDGING PARTY" AND EACH PARTY TO THIS AGREEMENT OTHER THAN THE ACKNOWLEDGING PARTY, AN "OTHER PARTY") ACKNOWLEDGES AND AGREES THAT (1) NO PROVISION OF THIS AGREEMENT, AND NO WRITTEN COMMUNICATION OR DISCLOSURE BETWEEN OR AMONG THE PARTIES OR THEIR ATTORNEYS AND OTHER

ADVISERS, IS OR WAS INTENDED TO BE, NOR SHALL ANY SUCH COMMUNICATION OR DISCLOSURE CONSTITUTE OR BE CONSTRUED OR BE RELIED UPON AS TAX ADVICE WITHIN THE MEANING OF UNITED STATES TREASURY DEPARTMENT CIRCULAR 230 (31 CFR PART 10, AS AMENDED); (2) THE ACKNOWLEDGING PARTY (A) HAS RELIED EXCLUSIVELY UPON THEIR OWN, INDEPENDENT LEGAL AND TAX COUNSEL FOR ADVICE (INCLUDING TAX ADVICE) IN CONNECTION WITH THIS AGREEMENT, (B) HAS NOT ENTERED INTO THIS AGREEMENT BASED UPON THE RECOMMENDATION OF ANY OTHER PARTY OR ANY ATTORNEY OR ADVISOR TO ANY OTHER PARTY, AND (C) IS NOT ENTITLED TO RELY UPON ANY COMMUNICATION OR DISCLOSURE BY ANY ATTORNEY OR ADVISOR TO ANY OTHER PARTY TO AVOID ANY TAX PENALTY THAT MAY BE IMPOSED ON THE ACKNOWLEDGING PARTY; AND (3) NO ATTORNEY OR ADVISOR TO ANY OTHER PARTY HAS IMPOSED ANY LIMITATION THAT PROTECTS THE CONFIDENTIALITY OF ANY SUCH ATTORNEY'S OR ADVISOR'S TAX STRATEGIES (REGARDLESS OF WHETHER SUCH LIMITATION IS LEGALLY BINDING) UPON DISCLOSURE BY THE ACKNOWLEDGING PARTY OF THE TAX TREATMENT OR TAX STRUCTURE OF ANY TRANSACTION, INCLUDING ANY TRANSACTION CONTEMPLATED BY THIS AGREEMENT.

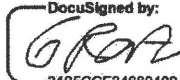
24. **Representations and Warranties.** Each of the Parties warrant that:

- a. **THEY HAVE READ THIS SETTLEMENT AGREEMENT OR HAVE HAD THE PROVISIONS OF THIS SETTLEMENT AGREEMENT READ AND/OR EXPLAINED TO THEM AS NEEDED; AS EACH DEEMED NECESSARY;**
- b. **THEY HAVE MADE SUCH INVESTIGATION OF THE FACTS PERTAINING TO THIS SETTLEMENT AGREEMENT AS EACH DEEMED NECESSARY;**

- c. **THEY HAVE BEEN GIVEN THE OPPORTUNITY TO CONSULT WITH LEGAL COUNSEL OF THEIR SELECTION OR HAVE VOLUNTARILY REFUSED SUCH CONSULTATION;**
- d. **THEY UNDERSTANDS ALL OF THE TERMS OF THIS SETTLEMENT AGREEMENT; AND**
- e. **THEY EXECUTE THIS SETTLEMENT AGREEMENT VOLUNTARILY WITH FULL KNOWLEDGE OF ITS LEGAL CONSEQUENCES.**

IN WITNESS WHEREOF, the parties have caused this Settlement Agreement to be executed on the date of this Settlement Agreement.

DATED: 3/8/2021 | 3:30:39 PM PST

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GUILLERMO JIMENEZ

DATED:

BYRON AGUILAR

DATED:

JOSE ANAYA

DATED:

PEDRO OSORIO

DATED:

JUAN PAZ

DATED: 03 / 10 / 2021



THOMAS R. ECKES, individually, and on
behalf of NEW WEST PAINTING, INC.

- c. **THEY HAVE BEEN GIVEN THE OPPORTUNITY TO CONSULT WITH LEGAL COUNSEL OF THEIR SELECTION OR HAVE VOLUNTARILY REFUSED SUCH CONSULTATION;**
- d. **THEY UNDERSTANDS ALL OF THE TERMS OF THIS SETTLEMENT AGREEMENT; AND**
- e. **THEY EXECUTE THIS SETTLEMENT AGREEMENT VOLUNTARILY WITH FULL KNOWLEDGE OF ITS LEGAL CONSEQUENCES.**

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DATED:

GUILLERMO JIMENEZ

DATED: 3/5/2021 | 2:09:38 PM PST

DocuSigned by:
Byron Aguilar
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BYRON AGUILAR

DATED:

JOSE ANAYA

DATED:

PEDRO OSORIO

DATED:

JUAN PAZ

DATED: 03 / 10 / 2021

Thomas R Eckes

THOMAS R. ECKES, individually, and on
behalf of NEW WEST PAINTING, INC.

- c. **THEY HAVE BEEN GIVEN THE OPPORTUNITY TO CONSULT WITH LEGAL COUNSEL OF THEIR SELECTION OR HAVE VOLUNTARILY REFUSED SUCH CONSULTATION;**
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DATED:

GUILLERMO JIMENEZ

DATED:

BYRON AGUILAR

DATED: 3/5/2021 | 8:51:49 PM PST

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JOSE ANAYA

DATED:

PEDRO OSORIO

DATED:

JUAN PAZ

DATED: 03 / 10 / 2021



THOMAS R. ECKES, individually, and on
behalf of NEW WEST PAINTING, INC.

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DATED:

GUILLERMO JIMENEZ

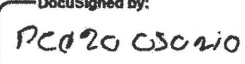
DATED:

BYRON AGUILAR

DATED:

JOSE ANAYA

DATED: 3/5/2021 | 7:42:24 PM PST

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PEDRO OSORIO

DATED:

JUAN PAZ

DATED: 03 / 10 / 2021



THOMAS R. ECKES, individually, and on
behalf of NEW WEST PAINTING, INC.

- c. **THEY HAVE BEEN GIVEN THE OPPORTUNITY TO CONSULT WITH LEGAL COUNSEL OF THEIR SELECTION OR HAVE VOLUNTARILY REFUSED SUCH CONSULTATION;**
- d. **THEY UNDERSTANDS ALL OF THE TERMS OF THIS SETTLEMENT AGREEMENT; AND**
- e. **THEY EXECUTE THIS SETTLEMENT AGREEMENT VOLUNTARILY WITH FULL KNOWLEDGE OF ITS LEGAL CONSEQUENCES.**

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DATED:

GUILLERMO JIMENEZ

DATED:

BYRON AGUILAR

DATED:

JOSE ANAYA

DATED:

PEDRO OSORIO

DATED: 3/5/2021 | 5:07:33 PM PST

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JUAN PAZ

DATED: 03 / 10 / 2021



THOMAS R. ECKES, individually, and on
behalf of NEW WEST PAINTING, INC.