

SETTLEMENT AGREEMENT AND RELEASE OF ALL CLAIMS

This Settlement Agreement and Release of All Claims (“Agreement”), is entered into by and between Jorge Luis Vasquez (“Plaintiff”), and J & A Rents & Sells, Inc., and Bob Binns (collectively “Defendants”). Plaintiff and Defendants are collectively referred to herein as the “Parties.” Certain disputes, claims and alleged causes of action have existed by and between the Parties and arose out of and are related to Plaintiff’s employment relationship with Defendants and the cessation of that employment.

RECITALS

A. THE ACTION

Plaintiff filed a civil action against Defendants on October 28, 2020, for claims of negligent hiring, supervision, and retention, assault, battery, retaliation, and for various claims arising under the California Labor Code, entitled *Jorge Luis Vasquez v. J & A Rents & Sells, Inc., et al.*, Los Angeles County Superior Court Case No. 20STCV41441 [the “Action”].

B. DENIAL OF LIABILITY

Defendants deny both Plaintiff’s allegations in the Action and any liability arising from his allegations. Nevertheless, the Parties desire to avoid further litigation and settle all differences now existing between them related to Plaintiff’s employment with Defendants and the allegations in the Action.

C. SETTLEMENT

The Parties, through their counsel, have engaged in good faith settlement discussions and agreed that, in exchange for the payment of a certain sum, Plaintiff shall execute a full release of all claims arising from his employment relationship with Defendants, the cessation of his employment, and the allegations in the Action. The terms and conditions of the settlement are set forth below in this Agreement.

TERMS AND CONDITIONS OF AGREEMENT

In consideration of the terms and conditions of this Agreement as set forth below, the adequacy of which is hereby acknowledged, and in light of the circumstances outlined in the Recitals, which are incorporated fully herein by this reference, and in order to fully settle all claims between the Parties, it is agreed as follows:

1.0 SETTLEMENT PAYMENT AND CONSIDERATION

In consideration for the execution of the general release, dismissal of his individual claims with prejudice and/or withdrawal of pending claims as applicable, including any claims pursuant to PAGA, and other representations by Plaintiff herein, Defendants will pay to Plaintiff, the LWDA and the other aggrieved employees the total aggregate sum of One-Hundred and Twenty-Five Thousand Dollars (\$125,000.00) (hereinafter the “Settlement Sum”) as set forth below:

a. Individual Settlement Allocation

As consideration in exchange for Plaintiff's release of his individual causes of action and claims, and Plaintiff's general and full release of Plaintiff's claims, and Plaintiff's individual waiver of *Civil Code* section 1542, Defendants agree to pay Plaintiff, the gross sum of \$117,000.00, to be paid as set forth below.

i. Within thirty (30) days of the Parties' execution of this Agreement and the Court's approval of the Agreement, whichever is later, Defendants shall deliver a check in the gross amount of \$117,000.00, made payable to "Chami Law, PC Client Trust Account" to counsel for Plaintiff at Chami Law, PC 11845 W. Olympic Blvd., Suite 700, Los Angeles, CA 90064. Such amount is paid toward satisfaction of claims Plaintiff may have for alleged non-economic damages, including any claims for alleged assault, battery, negligent hiring, retaliation, and other compensatory damages, and attorneys' fees and costs. A form 1099 will be issued in accordance with IRS regulations. Plaintiff's Counsel agrees to execute and provide a Form W-9.

b. Settlement of PAGA Claim

i. The Parties further agree that \$8,000.00 ("PAGA Settlement Amount") of the Settlement Sum shall be apportioned to the settlement of the PAGA claim alleged in the Action. The PAGA Settlement Amount shall be paid to Plaintiff, the alleged aggrieved employees, Plaintiff's counsel, and the LWDA, for civil penalties, fees and costs. Defendants shall make these payments, characterized as non-wages, as set forth in the attached Schedule A, via checks without making tax or other deductions, as set forth below:

(1) Defendants shall pay \$6,000.00 of the PAGA Settlement Amount (75% of the PAGA Settlement Amount) directly to the LWDA.

(2) Defendants shall pay \$2,000.00 of the PAGA Settlement Amount (25% of the PAGA Settlement Amount), divided equally among the alleged aggrieved employees, resulting in individual checks for approximately \$16.00 per aggrieved employee. Defendants shall send these payments to the last known address of each aggrieved employee.

ii. Defendants agree that these payments are intended to compensate Plaintiff and all aggrieved employees for civil penalties, costs and fees under PAGA. A form 1099 will be issued in accordance with IRS regulations.

iii. Plaintiff agrees that the above-referenced consideration set forth in Section 1a of this Agreement compensates him for all damages allegedly caused by Defendants' conduct, as well as damages allegedly incurred while employed with J & A Rents & Sells, Inc. Plaintiff agrees that the above-referenced Settlement Sum compensates him for all economic damages, penalties, personal injuries, injuries to reputation, and emotional pain and suffering allegedly caused by Defendants' conduct, as well as damages allegedly incurred while employed with J & A Rents & Sells, Inc.

1.1 Within five (5) days of Defendants' payment in full of the Settlement Sum referenced in Sections 1.0(a) and 1.0(b), Plaintiff will file a Request for Dismissal of the entire action with prejudice and release all Defendants and Releasees.

1.2 Plaintiff acknowledges and agrees that Defendants have made no representations to him regarding the tax consequences of the monies paid to him pursuant to this Agreement. Plaintiff agrees to pay federal and state taxes, if any, which are required by law to be paid with respect to this settlement. Plaintiff further agrees to indemnify and hold Defendants harmless from any claims, demands, deficiencies, levies, assessments, executions, judgments or recoveries by any governmental entity against Defendants for any amounts claimed due on account of this Agreement to the extent the liability is Plaintiff's and he is provided with reasonable notice giving him an opportunity to cure, or pursuant to claims made under any federal or state tax laws, and any costs, expenses or damages sustained by Defendants by reason of any such claims, including any amounts paid by Defendants as taxes, deficiencies, levies, assessments, fines, penalties, interest or otherwise.

2.0 RELEASE OF ALL CLAIMS

2.1 In consideration of the payments set forth in Section 1.1 above, and to the fullest extent permitted by law, Plaintiff individually and on behalf of his successors, assigns, heirs, estates, executors, administrators, agents, representatives and attorneys, and each of them, voluntarily, irrevocably and unconditionally releases, acquits and forever discharges Defendants and any of its present and former companies, parents, subsidiaries, affiliates, officers, shareholders, equity partners, partners, owners, directors, trustees, employees, former employees, and agents, as well as any of its representatives, attorneys, insurers, reinsurers, and/or any of the predecessors, successors and assigns of Defendants (collectively referred to as "Defendants and Releasees"), and each of them, from any and all charges, complaints, claims, promises, agreements, controversies, suits, demands, costs, losses, debts, actions, causes of action, damages, judgments, obligations, liabilities and expenses of whatever kind and character, known or unknown, suspected or unsuspected, including any claims for attorneys' fees and costs, except claims that the law does not permit Plaintiff to waive by signing this Agreement, which Plaintiff now has, owns, holds or claims to have, own or hold, or may have had, owned or held, or may claim to have, own or hold against Defendants and Releasees, or any of them, regarding events that have occurred in connection with or related to Plaintiff's employment or the cessation of his employment with Defendants, or any acts of Defendants and Releasees, including, without limitation, any and all claims that have or could have been asserted in the Action, any claims that in any way relate to the facts and circumstances alleged in the Action, or any claims under the Americans with Disabilities Act of 1990, the Family and Medical Leave Act of 1993, the Employee Retirement Income Security Act of 1974, the Civil Rights Act of 1991, the Fair Labor Standards Act, Title VII of the Civil Rights Act of 1964, Sections 503 and 504 of the Rehabilitation Act of 1973, the Age Discrimination in Employment Act of 1967, as amended, the California Government Code, the California Fair Employment and Housing Act, the California Family Rights Act, the California Labor Code, the California Business & Professions Code, penalties under the Private Attorneys General Act sections 2698, *et seq.*, and any amendments to any of these statutes, and any other federal, state or local statute, ordinance, regulation or common law. This shall not affect Plaintiff's pending workers' compensation claim, if any.

2.2 Plaintiff agrees that all of his rights under Section 1542 of the Civil Code of the State of California that are related or in any manner incidental to the matters encompassed by this Agreement are hereby waived. Section 1542 provides 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.

2.3 Plaintiff agrees and acknowledges that the terms of settlement herein stated constitute a complete compromise of matters involving disputed issues of law and fact. Plaintiff expressly and voluntarily assumes the risk that the facts or law may be other than the Parties presently believe. It is understood and agreed by Plaintiff that the settlement is a compromise of doubtful and disputed claims and that no portion of the terms of the settlement shall be construed as an admission of liability by a Party hereto.

2.4 Plaintiff acknowledges that this Agreement does not limit any Party's right, where applicable, to file or participate in any investigative proceeding of any federal, state or local government agency. To the extent permitted by law, Plaintiff agrees that, if such an administrative charge is made, Plaintiff shall not be entitled to recover any individual monetary relief or other individual remedies.

2.5 Medicare Release: It is understood and agreed that Plaintiff accepts full responsibility for discharging any and all liens, including any liens by Medi-Cal or MediCare, or any other governmental entities, or any other healthcare providers that have cared for Plaintiff, or any liens by any insurers or other entities that have paid for such care, or any prior attorneys of Plaintiff, and also including any other liens that may exist or which may be filed in the future and will defend, indemnify and hold harmless Defendants and Releasees from any claims by any existing or future lienholders.

2.5.1. Warranty of Medicare Ineligibility: Plaintiff hereby warrants and represents that he has never received, is not currently receiving, and did not apply to receive Medicare or Medicaid for any injuries released by this Agreement. Plaintiff further warrants that he is not eligible for benefits under the Federal Medicare program and does not anticipate applying for Medicare or Medicaid benefits.

2.5.2. Indemnification: Plaintiff represents that there are no liens or reimbursement rights by Medicare or Medicaid enforceable against the proceeds of the Settlement Payment, or the persons, firms or corporations making the payment herein. If such a lien or reimbursement right is asserted against the proceeds herein or against Defendants and Releases or any person, firm or corporation making payment herein, then, in consideration of the payment made to Plaintiff, he agrees to indemnify Defendants and Releases, their attorneys and/or their insurers against lien claims and/or fines or penalties imposed by Medicare or their agents. Plaintiff agrees to pay and satisfy such asserted lien or reimbursement right, fines and/or penalties or to satisfy the same.

2.5.3. Medicare Confirmation

Definitions:

“Conditional Payments” shall have the meaning ascribed to it under the MSP Statute and implementing regulations.

“MMSEA” means the Medicare, Medicaid, and SCHIP Extension Act of 2007 (P.L. 110-173), which, in part, amended the Medicare Secondary Payer statute at 42 U.S.C. § 1395y(b)(7) and (8). This portion of MMSEA is referred to herein as “Section 111 of MMSEA”.

“MSP Statute” means the Medicare Secondary Payer (“MSP”) statute. 42 U.S.C. § 1395y(b).

Plaintiff represents that he is not enrolled in the Medicare/Medicaid program and was not enrolled during his employment with Defendants or anytime thereafter through the date of this Agreement.

Plaintiff represents and warrants that the information provided to Defendants and Releasees for confirmation of Plaintiff’s Medicare/Medicaid status, including his name, gender, date of birth and Social Security Number, are complete, accurate and current as of the date of this Agreement.

Plaintiff represents and warrants that no Medicare/Medicaid payments have been made to or on behalf of Plaintiff and that no liens, claims, demands, subrogated interests or causes of action of any nature or character exist or have been asserted arising from or related to any released claims. Plaintiff further agrees that Plaintiff, and not Defendants and Releasees, shall be responsible for satisfying all such liens, claims, demands, subrogated interests or causes of action that may exist or have been asserted or that may in the future exist or be asserted with respect to the released claims.

Plaintiff agrees to indemnify and hold harmless Defendants and Releasees from any and all claims, demands, liens, subrogated interests and causes of action of any nature or character that have been or may in the future be asserted by Medicare/Medicaid and/or persons or entities acting on behalf of Medicare/Medicaid, or any other person or entity, arising from or related to this Agreement, the payment of the Settlement Amount, any Conditional Payments made by Medicare/Medicaid, or any medical expenses or payments arising from or related to any released claims that are subject to this Agreement or the release set forth herein, including, but not limited to: (a) all claims and demands for reimbursement of Conditional Payments or for damages or double damages based upon any failure to reimburse Medicare/Medicaid for Conditional Payments; (b) all claims and demands for penalties based upon any failure to report, late reporting or other noncompliance with or violation of Section 111 of MMSEA that is based, in whole or in part, upon late, inaccurate or inadequate information provided to Defendants and Releasees by Plaintiff or his counsel or upon any failure of Plaintiff or his counsel to provide information; and (c) all Medicare/Medicaid liens. This indemnification obligation includes all damages, double damages, fines, penalties, attorneys’ fees, costs, interest, expenses and judgments incurred by or on behalf of Defendants and Releasees in connection with such claims, demands, subrogated interests or causes of action.

3.0 CONFIDENTIALITY AND NON-DISCLOSURE

3.1 Plaintiff hereby agrees that he will not, without compulsion of legal process, or as necessary to seek approval of the Agreement as referenced under Section 1 of the Agreement, disclose to any third party any of the terms of this Agreement, including the amounts referred to herein, except that he may disclose such information to his spouse, attorneys, accountants or other professional advisors to whom disclosure is necessary to effect the purposes for which he consulted such professional advisor(s). Plaintiff hereby understands that nothing contained herein shall preclude his from acknowledging that the dispute has been resolved. Furthermore, Plaintiff shall not incite, encourage, support, or solicit litigation by others against Defendants and Released Parties.

4.0 NON-DISPARAGEMENT AGREEMENT

4.1 Plaintiff agrees that he will not defame or disparage Defendants or any of its related entities, and will not say or do anything that damages or impairs in any way the reputation of Defendants or its related entities. Defendants' officers and directors agree that they will not defame or disparage Plaintiff, and will not say or do anything that damages or impairs in any way the reputation of Plaintiff.

5.0 AGREEMENT NOT TO DISCLOSE INFORMATION OR DOCUMENTS

Plaintiff agrees not to disclose, produce, discuss or make available in any manner to any individual or entity any documents, pleadings, discovery, emails or correspondence, witness statements or information relating to this Action, Plaintiff's lawsuit or this Agreement absent a Court Order to do so, or as necessary to seek approval of the Agreement as referenced under Section 1 of the Agreement. Plaintiff agrees to notify Defendants in the event that any outside entity attempts to subpoena any of the documents relating to this case.

6.0 ATTORNEYS' FEES

The Parties to this Agreement shall bear their own attorneys' fees and costs arising from the actions of their own counsel in connection with this Agreement, the matters and documents referred to herein, including the Action and all related matters. In the event that any Party shall institute any action or proceeding against another Party to enforce the provisions of this Agreement, the prevailing Party shall be entitled to recover their expenses, including reasonable attorneys' fees, in addition to any other relief to which the Party is found entitled.

7.0 VOLUNTARY AND INFORMED EXECUTION

Plaintiff represents that he has relied upon the advice of his attorney, who is the attorney of his own choice, concerning the legal and tax consequences of this Agreement; the terms of this Agreement have been completely read and explained to his by his attorneys; the terms of this Agreement are fully understood and voluntarily accepted by her; he knowingly and voluntarily intends to be legally bound by the same; and he is releasing Defendants and Releasees from any and all claims he may have against them.

8.0 WARRANTY OF CAPACITY TO EXECUTE AGREEMENT

Plaintiff represents and warrants that: (1) no other person or entity has, or has had, any interest in the claims, demands, obligations or causes of action referred to in this Agreement, except as otherwise set forth herein; (2) Plaintiff has the sole right and exclusive authority to execute this Agreement and receive the sums specified in it; and (3) Plaintiff has not sold, assigned, transferred, conveyed or otherwise disposed of any of the claims, demands, obligations or causes of action referred to in this Agreement to any other person or entity.

9.0 ENTIRE AGREEMENT

The Parties understand and agree that this Agreement constitutes the entire Agreement between the Parties concerning the scope of the settlement of the Action and the related release of claims and that this Agreement supersedes any and all prior oral or written agreements and understandings on such issues. No warranty, representation, condition, understanding or agreement of any kind with respect to the subject hereof shall be relied upon by the Parties unless incorporated herein. Notwithstanding any other provision contained herein, this Agreement may be pled as a thorough and complete defense to, and may be used as the basis for an injunction against, any action, suit or other proceeding that may be instituted, prosecuted or attempted in breach of the provisions contained herein.

10.0 COVENANT NOT TO SUE

Plaintiff agrees that he will not, at any time hereafter, commence, maintain or prosecute any action at law or otherwise, or assert any claim against Defendants and Releasees and/or execute or enforce any judgment against Defendants and Releasees for damages or losses of any kind or amount arising directly or indirectly from events that have occurred in connection with or related to his employment with Defendants or the cessation of his employment, or any acts of Defendants and Releasees, including, without limitation, any and all claims that have or could have been asserted in the Action, any claims that in any way relate to the facts alleged in the Action, or any claims that could have been brought under the acts, statutes or common law referenced in Section 3.0, without repercussion or recourse.

11.0 GOVERNING LAW

The Parties understand and agree that the laws of the State of California govern the terms and enforceability of this Agreement.

12.0 NO ADMISSION

The Parties understand and agree that nothing in this Agreement is intended, or should be construed, as an admission of any liability, misconduct or wrongdoing by Defendants, or as an admission of any violation of the rights of Plaintiff or any other person.

13.0 APPLICABLE LAW AND RETENTION OF JURISDICTION

This Agreement shall be construed and enforced in accordance with and governed by the laws of the State of California, without regard to principles of conflicts of law otherwise applicable to such determination; provided, however, this in no way shall prevent the application of the

benefits of federal law where applicable. The Los Angeles County Superior Court shall retain jurisdiction to enforce the terms of this Agreement pursuant to California Code of Civil Procedure section 664.6. This Agreement shall be admissible in any proceeding to enforce the terms thereof, if necessary, and the prevailing party in any such proceeding shall be entitled to recover costs, including reasonable attorneys' fees, incurred thereby. By virtue of the foregoing language and pursuant to Evidence Code section 1123(b), this written Agreement is intended to be binding and enforceable.

14.0 SCOPE OF AGREEMENT

Plaintiff understands and agrees that this Agreement shall bind him and his successors, assigns, heirs, estates, executors, administrators, agents, representatives and attorneys, and inures to the benefit of the respective Releasees.

15.0 INTERPRETATION OF THE AGREEMENT

Whenever the context requires, any gender referenced includes the other, and the singular number includes the plural, and vice-versa.

Any captions in this Agreement are inserted for convenience of reference and do not define, describe or limit the scope or intent of this Agreement or any of their terms.

No inference, assumption or presumption shall be drawn from the fact that a Party or his or its attorney prepared and/or drafted this Agreement.

Should any provision of this Agreement be declared or be determined by any court of competent jurisdiction to be illegal, invalid or unenforceable, the legality, validity or enforceability of the remaining parts, terms or provisions shall not be affected, and the illegal, unenforceable or invalid part, term or provision shall be deemed not part of this Agreement.

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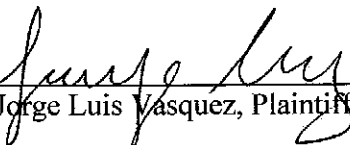
16.0 COUNTERPARTS

This Agreement may be executed in counterparts, each of which may be comprised of original signatures, or copies or facsimiles thereof, but all of which shall taken together constitute the same Agreement and, in pleading or proving any provision of the Agreement, it shall not be necessary to produce more than one such counterpart.

PLEASE READ CAREFULLY. THIS SETTLEMENT AGREEMENT AND GENERAL RELEASE INCLUDES A RELEASE OF ALL KNOWN AND UNKNOWN CLAIMS.

JORGE LUIS VASQUEZ

Dated: 3/23/21

By  _____
Jorge Luis Vasquez, Plaintiff

J & A RENTS & SELLS, INC.

Dated: _____

By _____
Les Sumpter, President of
J & A Rents & Sells, Inc., Defendant

BOB BINNS

Dated: _____

By _____
Bob Binns, Defendant

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JORGE LUIS VASQUEZ

Dated: _____

By _____
Jorge Luis Vasquez, Plaintiff

J & A RENTS & SELLS, INC.

Dated: 7/23/21

By 
Les Sumpter, President of
J & A Rents & Sells, Inc., Defendant

BOB BINNS

Dated: 7/23/21

By 
Bob Binns, Defendant