

CONFIDENTIAL SETTLEMENT AGREEMENT AND RELEASE

This Confidential Settlement Agreement and Release (“Agreement”) is made and entered into by DANIEL MORALES (“Plaintiff”), an individual on the one hand, and WISEGUYS CUSTOM HOME THEATER, LLC (“Defendant”), on the other hand. Plaintiff and Defendant shall be collectively referred to herein as the “Parties,” with reference to the following facts:

A. Plaintiff filed a Complaint against Defendant on November 27, 2019, titled *Morales v. Wiseguys Custom Home Theater, LLC*, Case Number 37-2019-00070151-CU-OE-CTL, in the County of San Diego Superior Court (the “Action”).

B. Defendant denies all of Plaintiff’s allegations and denies that it has any legal or equitable responsibility for the damages, wages, or penalties alleged by Plaintiff.

C. Plaintiff and Defendant desire to fully and finally compromise, settle, and release all claims arising out of and related to Plaintiff’s employment with Defendant, and any and all other lawsuits, actions, causes of action and claims, whether in law or equity, grievances, debts, liens, contracts, agreements, promises, demands, liabilities, obligations, suits, indebtedness, controversies, losses, damages, costs, fees, expenses or harm, rights and/or charges of any kind or nature whatsoever, fixed or contingent and whether known or unknown, suspected or unsuspected, arising out of or based on any fact, matter or event which occurred prior to the date of this Agreement.

D. Now, THEREFORE, in consideration of the covenants and conditions set forth below, the receipt and adequacy of which are hereby acknowledged, the Parties, intending to be legally bound hereto, agree as follows:

1. PAYMENT OF MONEY

In consideration for the execution of the general release, Plaintiff’s compliance with and performance of all terms and conditions including the general release set forth herein, and in full and complete settlement of each and every one of Plaintiff’s claims, Defendant will pay twenty thousand dollars (\$20,000.00) (“Settlement Sum”). The Settlement Sum shall be paid within

fifteen (15) months from the date of final approval by the Court in the Action of the settlement agreement of Plaintiff's class and PAGA claims arising from the Action made payable in the following amounts: (1) one check in the amount of eight hundred ninety three dollars and thirty three cents (\$893.33) to "DANIEL MORALES," for non-wage damages, which shall not be subject to withholdings or deductions and will be reported on a 1099 form each month during fifteen (15) months, for a total thirteen thousand four hundred dollars (\$13,400.00); and (3) one check in the amount of four hundred forty dollars (\$440.00) to "Mahoney Law Group, APC," for the payment of attorneys' fees and costs, which shall not be subject to withholdings or deductions and will be reported on a 1099 form as necessary during the fifteen (15) month time period, for a total of six thousand six hundred dollars (\$6,600.00) in attorney's fees and costs.

Cure Period. The Parties agree that Defendant shall be entitled to a Cure Period, as follows: If any one of the payments listed above does not arrive within five (5) business days of its due date, Plaintiff or Plaintiff's counsel shall contact Defendant's counsel at The Watkins Firm (tel. 858-535-1511). After that contact date, Defendant shall have three (3) business days to cure the late payment by mailing or delivering the missing payment to Plaintiff's counsel's office and Defendant will be deemed to not be in breach of this Agreement so long as the missing payment arrives within that three business day grace period.

The consideration paid by Defendant is specifically in exchange for Plaintiff's full and complete release of any and all claims he had or may have against Defendant and the Releasees and Plaintiff's waiver of any claim of any kind or character against Defendant and the Releasees for all forms of monetary relief, including but not limited to, wages, benefits, economic and non-economic damages, bonuses, commissions, compensation, penalties, attorneys' fees and litigation-related expenses, and all declaratory or injunctive relief. Plaintiff further agrees that the settlement sums above compensate him for all harm allegedly caused by Defendant's conduct, including but not limited to, all economic and non-economic damages, injuries to reputation, emotional pain and suffering, unpaid wages, bonuses, commissions, penalties and interest,

attorneys' fees and costs, and any other damages or claims of any kind or nature allegedly caused by the purported conduct of Defendant or any party released herein.

2. MUTUAL RELEASE OF ALL CLAIMS

Plaintiff recognizes and agrees that Defendant and the Released Parties, as part of this Agreement, do not admit any violation of law or any liability of any kind or nature to Plaintiff or to anyone else as a result of or arising out of Plaintiff's relationship and/or employment and/or Plaintiff's separation of employment with Defendant. Plaintiff, for himself and for his heirs, family members, executors, administrators, successors, attorneys, agents, representatives, and assigns ("Releasors), hereby fully and forever releases and discharges Defendant and Defendant's future, past and present parent corporations, subsidiaries, divisions, affiliates, partners, shareholders, members, employees, agents, owners, directors, officers, attorneys, landlords, licensees, lessors, insurers, reinsurers, employee benefit plans and plan fiduciaries, representatives, predecessors, successors, assigns, transferees, heirs, executors, administrators, and related entities, and all other persons, firms, corporations, associations, partnerships, or entities having any legal relationship to each other (collectively "Released Parties") of and from any and all claims, demands, actions, causes of actions, obligations, judgments, rights, fees, damages, debts, obligations, liabilities and expenses (inclusive of attorneys' fees) of any kind whatsoever, whether known or unknown, from the beginning of time to the Effective Date (as defined herein), including, without limitation, any Claims under any federal, state, local or foreign law, that Releasors may have, have ever had or may in the future have arising out of, or in any way related to Plaintiff's hire, benefits, employment, termination or separation from employment with Releasees and any actual or alleged act, omission, transaction, practice, conduct, occurrence or other matter, including, but not limited to Title VII of the Civil Rights Act of 1964; The Civil Rights Act of 1991; Sections 1981 through 1988 of Title

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42 of the United States Code, as amended; The Employee Retirement Income Security Act of 1974 (“ERISA”) (as modified below); The Immigration Reform and Control Act; The Americans with Disabilities Act of 1990; The Age Discrimination in Employment Act of 1967 (“ADEA”); The Workers Adjustment and Retraining Notification Act; The Occupational Safety and Health Act; The Sarbanes-Oxley Act of 2002; The Fair Credit Reporting Act; The Family and Medical Leave Act; The Equal Pay Act; The Genetic Information Nondiscrimination Act of 2008; California Family Rights Act – Cal. Gov’t Code § 12945.2; California Fair Employment and Housing Act – Cal. Gov’t Code § 12900 et seq.; California Unruh Civil Rights Act – Cal. Civ. Code § 51 et seq.; Statutory Provisions Regarding the Confidentiality of AIDS Information – Cal. Health & Safety Code § 120775 et seq.; California Confidentiality of Medical Information Act – Cal. Civ. Code § 56 et seq.; California Equal Pay Law – Cal. Lab. Code § 1197.5; California Whistleblower Protection Law – Cal. Lab. Code § 1102.5; California Military Personnel Bias Law – Cal. Mil. & Vet. Code § 394; California Bane & Ralph Act – Cal. Civ. Code § 52.1; Statutory Provision Regarding California Family and Medical Leave – Cal. Lab. Code § 233; Statutory Provisions Regarding California Electronic Monitoring of Employees – Cal. Lab. Code § 435; The California Occupational Safety and Health Act, as amended, California Labor Code § 6300 et seq., and any applicable regulations thereunder; California Obligations of Investigative Consumer Reporting Agencies Law – Cal. Civ. Code § 1786.10 et seq.; California Political Activities of Employees Law – Cal. Lab. Code § 1101 et seq.; California Domestic Violence Victim Employment Leave Law – Cal. Lab. Code § 230.1; California Court Leave Law – Cal. Lab. Code § 230; The California Private Attorney’s General Act; those other provisions of the California Labor Code that lawfully may be released; Los Angeles AIDS-Based Discrimination Ordinance, Los Angeles Municipal Ordinance § 45.80 et seq.; California Business & Professions Code; any other federal, state or local

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civil or human rights law or any other federal, state or local law, regulation or ordinance; any public policy, contract, tort or common law; and/or Any basis for recovering costs, fees or other expenses including attorneys' fees incurred in these matters.

Claims Not Released. Plaintiff is not waiving any rights Plaintiff may have to: (i) benefits or rights to seek benefits under applicable workers' compensation (except as to claims under Labor Code §§ 132a and 4553 which are expressly released herein), (ii) unemployment insurance statutes; (iii) pursue claims which by law cannot be waived by signing this Settlement Agreement; or (iv) enforce this Settlement Agreement. Plaintiff understands and agrees, however, that he has not notified anyone that he has or is making a workers compensation claim.

Plaintiff acknowledges that the consideration identified in paragraph 1 of this Agreement is made in full and complete satisfaction of any and all present and prospective claims, demands, actions, causes of action, liabilities, and/or damages of any kind whatsoever claimed by Releasors, and hereby releases and forever discharges the Released Parties from all such claims, demands, actions, causes of action, liabilities, and/or damages.

It is the Parties' intention that the execution of this Agreement will forever bar every claim, demand, cause of action, charge and grievance against the Released Parties and Plaintiff existing at any time prior to and through the date of execution of this Agreement. Because this is the Parties' intention, they each expressly waive any and all rights and benefits conferred upon them by the provisions of Section 1542 of the California *Civil Code*. Section 1542 provides:

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.

The Parties understand that the General Release does not release any claims that they cannot lawfully release. The Parties are not waiving any right that cannot be waived by law.

Plaintiff is not waiving the right to file a charge or participate in an administrative investigation or proceeding with the Equal Employment Opportunity Commission ("EEOC") and similar state and local government agencies as long as he does not personally seek reinstatement, damages, remedies, or other relief against Defendant as to any claim that Plaintiff has released, any rights to which Plaintiff hereby waives herein. Plaintiff will not accept individual monetary or equitable relief for himself with respect to these claims. This general release shall not in any way release Plaintiff's claims as alleged in the class action filed by Plaintiff on November 27, 2019, titled *Morales v. Wiseguys Custom Home Theater, LLC*, San Diego County Superior Court Case No. 37-2019-00070151-CU-OE-CTL.

3. TAX LIABILITY

Defendant's payment to Plaintiff described above in Paragraph 1 represents a compromise of Plaintiff's bona fide disputed claims against Defendant. Plaintiff recognizes that Defendant is not withholding any federal or state income taxes, FICA or any other type of payroll deduction from the Non-Wage Payment of the Total Settlement amount and that no FICA contribution is being made by Defendant on such payment. Plaintiff agrees that any liability for Plaintiff's state or federal share of employee income tax payments or penalties arising from said payment shall be Plaintiff's sole responsibility. Plaintiff agrees to indemnify and to hold harmless Defendant and Released Parties from any and all actions, claims or demands brought by any tax or other authority based upon Plaintiff's employee tax obligations arising from the payment to be made pursuant to this Agreement, and agrees specifically to reimburse Defendant for any employee share of taxes, interest and penalties paid by Defendant and for the costs, legal fees, and any other expenses incurred by Defendant as a result of any such actions, claims or demands which are reasonable and necessary. Defendant shall first inform Plaintiff of any notice of any employee tax liability for Plaintiff and shall make a demand for the same before taking any action to pay any such employee share of taxes as a result of this Settlement.

Plaintiff understands and agrees that Defendant is neither providing tax nor legal advice, nor making representations regarding tax obligations or consequences, if any, related to this Agreement. Plaintiff further understands and agrees that Defendant and Released Parties will have no obligation to defend any action brought against Plaintiff by any taxing authority.

Defendant and Plaintiff further acknowledge that each has the right to seek tax advice, and to review this Agreement with a tax attorney or tax consultant, prior to signing.

4. CONFIDENTIALITY

a. Plaintiff hereby states, represents, warrants, and agrees that the terms and conditions of this Agreement and each and every document and communication regarding this Agreement, including, but not limited to, the fact of and the amount of the payment required herein, are strictly confidential. Plaintiff agrees that he will not seek nor promote publicity nor cooperate in any efforts to promote or publicize any of the terms or conditions of this Agreement, including, but not limited to, the fact of and the amount of any of the payments required herein.

b. Plaintiff further agrees that, except as provided in this paragraph, he will not: (1) communicate, discuss, disclose, disseminate, or publish the amount of the payment made by Defendant, or (2) communicate, discuss, disclose, disseminate, or publish the fact that Plaintiff has received a payment in any amount from Defendant as a result of this Agreement. Upon inquiry, Plaintiff shall respond in substance by stating only that "this matter has been resolved." Plaintiff expressly agrees that he has received full and fair consideration for the promises made in this Agreement. Notwithstanding the foregoing, Plaintiff may communicate the terms of this Agreement if compelled by subpoena or as otherwise required by law or a court of competent jurisdiction. Plaintiff may also communicate the terms of this Agreement to his legal counsel, spouse, tax advisors and accountants, provided that he first advise them of the confidentiality provisions of this Agreement and secures their agreement not to communicate, discuss, disclose, disseminate, or publish the terms and conditions of this Agreement.

c. Plaintiff also agrees that he will not hereafter file, or cause to be filed, or otherwise voluntarily participate in the filing, investigation and/or prosecution of any other charges, complaints, petitions or accusatory pleadings brought by any other person in any court or with any governmental agency in which Defendant or any other party released herein is named as a Defendant or responding party, and will not testify unless compelled by a subpoena or lawful court order.

d. Plaintiff agrees that he will not knowingly encourage any other individual to pursue any litigation or administrative claim against Defendant and will not testify in a lawsuit or government proceeding against Defendant unless compelled by a subpoena or lawful court order.

5. NON-DISPARAGEMENT

The Parties further represents that he will not, either orally or in writing, make defamatory or otherwise injurious statements concerning any of the Released Parties, which includes postings in any internet forum. This provision is a material, essential, and indispensable condition of this Agreement.

6. LIQUIDATED DAMAGES

The Parties understand that Paragraphs 4 and 5 above, are essential to this Agreement and that, in the event of a breach of this provision, damages would be difficult, if not impossible, to quantify. Because of the difficulty of determining such resulting damages, Parties agree that in the event the other Party proves in a court of competent jurisdiction or arbitration forum that offending Party violated the Confidentiality provision, the non-offending Party will be awarded liquidated damages in the amount of Seven Hundred and Fifty Dollars and Zero Cents (\$750.00) for each proven breach of the confidentiality provision of this Agreement as agreed-on damages and not as a penalty.

7. NEUTRAL REFERENCE

In responding to requests related to future employment or references, Defendant will provide only information regarding Plaintiff's employment start date, separation date and job titles. Plaintiff agrees to direct any future or prospective employer to Defendant's Human Resources.

8. WAIVER OF REEMPLOYMENT

Plaintiff acknowledges that he has no intent to apply for re-employment with Defendant. Plaintiff acknowledges that Defendant and the Released Parties and its agents have the right to refuse rehire for non-discriminatory and non-retaliatory reasons and Plaintiff acknowledges that Released Parties' position is that such legitimate non-discriminatory and non-retaliatory reasons exist. Plaintiff acknowledges that because of non-discriminatory and non-retaliatory circumstances unique to Plaintiff that Plaintiff shall not be eligible for re-hire with Released Parties.

9. VOLUNTARY EXECUTION

The Parties acknowledge that they have executed this Agreement knowingly, voluntarily, and without coercion. The Parties further acknowledge that they have been advised and provided the opportunity to seek the advice of independent legal counsel and have in fact been so advised at all stages incident to the execution of this Agreement.

10. SEVERABILITY

If any term or provision of this Agreement is held to be invalid or unenforceable, the Agreement shall be considered as if the invalid and/or unenforceable portion did not exist, with all remaining portions considered valid and enforceable.

11. ASSIGNMENT OF CLAIMS

Plaintiff hereby represents and warrants that he has not heretofore assigned or transferred or purported to assign or transfer to anyone or any entity any claims, assertions of claims, demands, actions, causes of action, or suits based upon, arising out of, pertaining to, concerning or connected with any other matters herein released. Plaintiff agrees to defend, indemnify and hold harmless Released Parties against any claim, demand, damage, debt, liability, account, action, cause of action, attorneys' fees actually paid or incurred, cost, or expense arising out of or in connection with any such transfer, assignment, or purported or claimed transfer or assignment.

12. INTEGRATION CLAUSE

This Agreement constitutes and contains the entire agreement and understanding between the Parties and supersedes and replaces all prior negotiations and agreements proposed or otherwise, whether written or oral, concerning the subject matter of this Agreement. The Parties understand and agree that this Agreement constitutes the sole Agreement between the Parties and that, in signing this Agreement, the parties have not relied on any other promises, inducement, or representations, other than as expressly set forth herein, in deciding to sign this Agreement. This is an integrated document.

13. BINDING EFFECT

This Agreement shall be binding upon and inure to the benefit of the respective Parties hereto, his or their respective legal successors, heirs, administrators, executors, assigns, and each of them. Each Party, in signing this Agreement, warrants that they have the authority to bind the entity or individual on whose behalf the party has signed. In signing this Agreement, the Parties agree, understand, and intend that this Agreement shall be binding and enforceable as permitted under law.

14. CAPTIONS

The captions utilized herein have been inserted solely for identification and reference purposes only and shall not be used in the construction or interpretation of this Agreement.

15. NON-ADMISSION OF LIABILITY

The Parties understand and agree that this Agreement does not constitute an admission of liability or wrongdoing on the part of Defendant. Plaintiff acknowledges that Defendant is providing him with the above-recited consideration solely for the purpose of resolving any and all controversies and disputes, known and unknown, by Plaintiff against Defendant and the Released Parties.

16. JOINT DRAFTING

Plaintiff and Defendant agree and understand that this Agreement is deemed to have been drafted jointly by the Parties. Any uncertainty or ambiguity shall not be construed for or against any party based on attribution of drafting to any party.

17. ATTORNEYS' FEES AND COSTS

Nothing in this Agreement, nor the existence of this Agreement, shall be interpreted to render Plaintiff prevailing party for any purpose, including, but not limited to, an award of attorneys' fees and costs. The Parties agree that each party shall bear their own attorneys' fees and costs. Should any party fail to comply with its obligations under this Agreement, in whole or in part, in any action or proceeding brought to enforce the provisions of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees and costs.

18. ENFORCEMENT OF AGREEMENT

In the event any legal action or other proceeding is brought to enforce or interpret any term of this Agreement, or because of an alleged dispute, breach, default or misrepresentation in connection with any of the provisions of this Agreement, the prevailing party shall be entitled to

recover reasonable attorneys' fees and all reasonable litigation related costs and expenses incurred.

The Parties agree that this Agreement shall be deemed admissible as evidence only in an action for breach of this Agreement. The Parties agree that the Agreement is not admissible as evidence in any other action for any purpose whatsoever.

19. COUNTERPARTS

This Agreement may be signed in separate counterparts, which together shall constitute one instrument.

20. FACSIMILE/ELECTRONICALLY TRANSMITTED SIGNATURES

Plaintiff signs this Agreement without reliance upon any representation by Defendant outside of the terms of this Agreement, and Plaintiff has carefully read this Agreement and signs the same of his own free will. A signed facsimile/electronically transmitted version of this Agreement by either party shall have the same force and effect as a signed original of this Agreement.

21. CHOICE OF LAW

This Agreement shall be construed in accordance with the laws of the State of California.

22. WAIVER

No term or condition of this Agreement may be waived except in a writing signed by the Party to be bound thereby.

23. CONTRACTUAL PROVISIONS

The Parties agree that the provisions of this Agreement are contractual and not mere recitals.

24. ADMISSIBILITY OF AGREEMENT

This Agreement is admissible and subject to disclosure for the purpose of enforcing this Agreement pursuant to California *Code of Civil Procedure* section 664.6, or any other procedure

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permitted by law, and the provisions of the confidentiality agreement signed by the Parties relative to the negotiation of this Agreement are waived with respect to this Agreement.

25. MODIFICATION

This Agreement may not be amended, except in writing signed by the Parties hereto.

By their respective signatures, Defendant and Plaintiff acknowledge that: 1) they have carefully read and fully understand all the provisions of this Agreement; 2) they are voluntarily entering into this Agreement with full knowledge of the rights they may be waiving; 3) they have entered into this Agreement based on their own judgment; and 4) they have not relied upon any representations or promises not contained in this Agreement.

IN WITNESS THEREOF, each of the undersigned parties has entered into this Agreement on the dates shown below.

DATED: March 2, 2021

By:

DocuSigned by:
Daniel Morales
Plaintiff DANIEL MORALES

DATED: March 2, 2021

By:

WiseGuys custom
S. GREGORY SHERMAN For Home Theater, LLC
Defendant WISEGUYS CUSTOM HOME
THEATER, LLC
By: *[Signature]*
Its: *Sold member*