

## SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release ("Settlement Agreement" or "Agreement") is confidential to the extent permitted by law and is made and entered into this 23 day of January, 2019 among the following:

"Plaintiffs": FELIPE HERNANDEZ and ELIJAH HERNANDEZ

"Defendants": COUNTY OF SAN BERNARDINO, JOHN HOLMES, ISABEL JARAMILLO, JERRY SMITH, KORY OBERLIES, and CARLOS CAMACHO

Plaintiffs and Defendants may be each referred to as "Party" or collectively as "Parties".

### RECITALS

- A. Plaintiffs filed a Complaint for Damages against Defendants on or about July 12, 2017, in the United States District Court, Central District of California, Case No. 17-CV-1398 ("the Action").
- B. Defendants denied and continue to deny all of Plaintiffs' allegations.

### AGREEMENT

Plaintiffs and Defendants agree as follows:

#### 1.0 Release and Discharge

- 1.1 In consideration of the payments set forth in Section 2.0, Plaintiffs hereby completely release and forever discharge Defendants from any and all past, present and future claims, demands, obligations, actions, causes of action, rights, damages, costs, losses, fees, expenses and compensation of any nature whatsoever, whether legal or equitable, which Plaintiffs now have and/or which may hereafter accrue or otherwise acquire arising out of the Action against Defendants.
- 1.2 This release and discharge shall also apply to Defendants past, present and future officers, directors, stockholders, attorneys, agents, servants, representatives, employees, subsidiaries, affiliates, partners, reinsurers, insurers and its employees, predecessors and successors in interest, and assigns, and all other persons, firms or corporations with whom any of the former have been, are now, and/or may hereafter be affiliated.
- 1.3 This release on the part of Plaintiffs is a fully binding and complete settlement between Plaintiffs and Defendants, their heirs, assigns and successors.
- 1.4 Plaintiffs acknowledge and agree the release and discharge set forth above is a general release. Plaintiffs expressly waive and assume the risk of any and all claims for damages which exist as of this date, but of which Plaintiffs do not know or suspect to exist, whether through ignorance, oversight, error, negligence, or

otherwise, and which, if known, would materially affect Plaintiffs' decision to enter into this Settlement Agreement. Plaintiffs further agree that Plaintiffs have accepted payment of the sums specified herein as a complete compromise of matters involving disputed issues of law and fact. Plaintiffs assume the risk that the facts or law may be other than Plaintiffs believe.

- 1.5 It is understood and agreed by the parties that this settlement is a compromise of disputed claims, and the settlement payment herein is not an admission of liability on the part of Defendants, by whom liability is expressly denied.
- 1.6 There is a risk that, after the execution of this Agreement, Plaintiffs will manifest new damage, the scope, location, and character of which is unknown and/or not discovered at the time this Agreement is signed. There is a risk that the damage of which Plaintiffs and their attorneys presently are aware may become more serious or otherwise increase in magnitude (qualitatively and/or quantitatively). Plaintiffs shall, and hereby do, assume the above-mentioned risks. This release is expressly intended to cover and include all future damages, defects and discoveries, including all rights and causes of action arising against the Defendants therefrom. Plaintiffs are aware of the provisions of California Civil Code section 1542, which provide:

**"A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR."**

Plaintiffs hereby expressly waive the provisions of the above section 1542 as to all matters within the scope of the claims released hereby. Plaintiffs hereby warrant and guarantee that they have full and complete authority to release all such claims on behalf of themselves, heirs, assigns, and successors in interest.

- 1.7 a) In consideration of the payment referred to herein, Plaintiffs hereby fully and forever completely release, acquit, and discharge Defendants from any and all claims, costs, demands, losses, damages, attorneys' fees, expenses, liens, and rights which arise from, and/or are directly or indirectly related to, or are connected with, or caused by, the Action.
- b) Plaintiffs specifically agree to hold Defendants harmless, and to indemnify Defendants for and against any lien, any lienholder, its agents, officers, directors, shareholders, attorneys, insurers, representatives, employees, subsidiaries, partners, predecessors, successors in interest, assignees, firms, or corporations which have arisen or may arise from the Action known to Plaintiffs, their attorneys and/or representatives, agents of any kind whatsoever which could be known to them after a reasonable inquiry consistent with both the ordinary standard of care and the highest standard of care they may be held to according to their position and obligation.

- c) Plaintiffs agree to hold Defendants harmless and to indemnify Defendants for and against any claim made by Plaintiffs, their agents, attorneys, insurers, employees, representatives, and successors in interest against Defendants which may have arisen or may arise from the Action.

## **2.0 Payments**

In consideration of the release set forth above, the Defendants agree to pay to the individual(s) named below ("Payee(s)") the sums outlined in this Section 2 below:

- 2.1 Payments due at the time of settlement as follows: \$25,000.00 payable to Felipe Hernandez and Elijah Hernandez and their attorney of record, The Hemming Firm.

## **3.0 Dismissal with Prejudice**

In consideration of the agreements and obligations recited herein and in reliance thereon, consistent with and pursuant to the Federal Rules of Civil Procedure, Plaintiffs agree to dismiss Defendants from the Action WITH PREJUDICE.

## **4.0 Representation of Comprehension of Document**

In entering into this Settlement Agreement, Plaintiffs represent that Plaintiffs have relied upon the advice of Plaintiffs' attorneys, who are the attorneys of Plaintiff's own choice, concerning the legal and income tax consequences of this Settlement Agreement; that the terms of this Settlement Agreement have been completely read and explained to Plaintiffs by Plaintiffs' attorneys; and the terms of the Settlement Agreement are fully understood and voluntarily accepted by Plaintiffs.

## **5.0 Warranty of Capacity to Execute Agreement**

Plaintiffs represent and warrant that no other person or entity has, or has had, any interest in the claims, demands, obligations or causes of action referred to in this Settlement Agreement, except as otherwise set forth herein; that Plaintiffs have the sole right and exclusive authority to execute this Settlement Agreement and receive the sums specified in it; and that Plaintiffs has not sold, assigned, transferred, conveyed, or otherwise disposed of any of the claims, demands, obligations or causes of action referred to in this Settlement Agreement.

## **6.0 Governing Law**

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

## **7.0 Confidentiality of Settlement**

All parties agree that the confidentiality provision of this settlement is to be applicable only to the parties to the action, subject only to court order, requests under the Public Records Act, or, "any tax reason(s), limiting the parties to the statement that, if asked, "the case was resolved to the satisfaction of the parties."

## **8.0 Entire Agreement and Successors in Interest**

This Settlement Agreement contains the entire agreement between Plaintiffs and Defendants with regard to the matters set forth in it and shall be binding upon and inure to the benefit of the executors, administrators, personal representatives, heirs, successors and assigns of each.

## **9.0 Effectiveness**

This Settlement Agreement shall become effective immediately following execution by each of the parties.

## **10.0 Invalidity of Any Condition or Covenant**

In the event any condition or covenant herein contained is held to be invalid or void by a court of competent jurisdiction, the same shall be deemed severable from the remainder of this Settlement Agreement and shall in no way affect any other covenant or condition herein contained. If such condition or covenant shall be deemed invalid due to scope or breadth, such condition or covenant shall be deemed valid to the extent of the scope or breadth permitted by law.

## **11.0 Amendment of Settlement Agreement**

This Settlement Agreement may be amended only by a written Agreement executed by Plaintiffs and Defendants.

## **12.0 No Prevailing Party; Plaintiff to Cover All Liens**

Plaintiffs and Defendants agree to bear their respective attorneys' fees and costs. There is no prevailing party. Plaintiffs will satisfy all liens, including all medical, statutory, and equitable liens, and will hold Defendants harmless for all liens, including all medical, statutory, and equitable liens.

## **13.0 Enforceability and Admissibility**

Pursuant to California Evidence Code section 1123(b), this Settlement Agreement is enforceable, binding, and admissible in a court of law in the State of California. The Agreement is enforceable under Code of Civil Procedure section 664.6, except to the extent that federal law governs, in which case, the Court retains jurisdiction to enforce any provision of federal law necessary to accomplish the terms set forth herein.

## **14.0 Assumption of Risk**

The Parties fully understand and declare that if the facts or law with respect to which this Agreement is executed are found hereafter to be different from the facts or law now believed to be true, or if the facts or the law change in any way after execution of this Agreement, the Parties assume the risk of such possible difference or change in the facts or law and hereby agree this Agreement shall be in effect and shall remain in effect notwithstanding such difference or change

in the facts or law. The Parties represent and covenant that they are fully informed regarding all facts and law related to this Agreement and assume the risk of any change in any way of the facts or law after execution of this Agreement and will not seek to void, rescind, set aside, or alter this Agreement on an assertion of mistake of fact or law now believed to be true or any change in any way of the facts or law after execution of this Agreement.

#### 15.0 No Admission of Liability

It is expressly understood, acknowledged, and agreed to by the Parties, that by reason of entering into this Agreement, no party admits, expressly or impliedly, any fact or liability of any type or nature with respect to any matter, whether or not referred to herein, or the sufficiency of any claims, allegations, assertions, or positions of any party; no party has made any such admissions; and this Agreement is entered into solely by way of compromise and settlement only.

#### 16.0 No Prior Assignment or Transfer

Each Party to this Agreement represents and warrants there has been no assignment or other transfer of any claims or causes of action which they are releasing pursuant to the terms of this Agreement.

#### 17.0 Miscellaneous Provisions

- 1 Final Agreement: Plaintiffs acknowledge that (1) this Agreement and its reduction to final form is the result of extensive good faith negotiations between the Parties through their respective counsel; (2) said counsel has carefully reviewed and examined this Agreement for execution by Plaintiffs, or any of them; and (3) any statute or rule of construction that ambiguities are to be resolved against the drafting party should not be employed in the interpretation of this Agreement.
- 2 Binding Agreement: This Agreement is and shall be binding upon and shall inure to the benefit of the predecessors, subsidiaries, successors, assigns, parties, agents, officers, employees, associates, legal representatives, heirs, executors and/or administrators of each of the Parties hereto.
3. No Inducement: Plaintiffs warrant that no promise or inducement has been made or offered by any of the Parties, except as set forth herein, and that this Agreement is not executed in reliance upon any statement or representation of any of the Parties or their representatives, concerning the nature and extent of the injuries, damages or legal liability thereof. Plaintiffs further represent they have been represented by legal counsel during the course of the negotiations leading to the signing of this Agreement, and he has been advised by legal counsel with respect to the meaning of this Agreement and its legal effect.
- 5 Counterparts: This Agreement may be executed in counter-parts with the same effect as if all original signatures were placed on one document and all of which together shall be one and the same Agreement.

6. Effective Date: This Agreement to be effective as of the date all signatures are obtained.

DATED: Jan, 23, 2018

Felipe Hernandez  
FELIPE HERNANDEZ, Plaintiff

DATED: Jan 23, 2018

Elijah Hernandez  
ELIJAH HERNANDEZ, Plaintiff

DATED: MARCH 18, 2019

COUNTY OF SAN BERNARDINO

By: [Signature]  
Authorized Representative for County of San Bernardino

DATED: \_\_\_\_\_

\_\_\_\_\_  
JOHN HOLMES, Defendant

DATED: \_\_\_\_\_

\_\_\_\_\_  
ISABEL JARAMILLO, Defendant

DATED: \_\_\_\_\_

\_\_\_\_\_  
JERRY SMITH, Defendant

DATED: \_\_\_\_\_

\_\_\_\_\_  
KORY OBERLIES, Defendant

DATED: \_\_\_\_\_

\_\_\_\_\_  
CARLOS CAMACHO, Defendant

Approved as to form and content:

6. Effective Date: This Agreement to be effective as of the date all signatures are obtained.

DATED: Jan 23, 2018

[Signature]  
FELIPE HERNANDEZ, Plaintiff

DATED: Jan 23, 2018

[Signature]  
ELIJAH HERNANDEZ, Plaintiff

DATED: \_\_\_\_\_

COUNTY OF SAN BERNARDINO

By: \_\_\_\_\_  
Authorized Representative for County of San Bernardino

DATED: 3-18-19

[Signature]  
JOHN HOLMES, Defendant

DATED: \_\_\_\_\_

ISABEL JARAMILLO, Defendant

DATED: \_\_\_\_\_

JERRY SMITH, Defendant

DATED: \_\_\_\_\_

KORY OBERLIES, Defendant

DATED: \_\_\_\_\_

CARLOS CAMACHO, Defendant

Approved as to form and content:

6. Effective Date: This Agreement to be effective as of the date all signatures are obtained.

DATED: Jan 23, 2018

[Signature]  
FELIPE HERNANDEZ, Plaintiff

DATED: Jan 23, 2018

[Signature]  
ELIJAH HERNANDEZ, Plaintiff

DATED: \_\_\_\_\_

COUNTY OF SAN BERNARDINO

By: \_\_\_\_\_  
Authorized Representative for County of San Bernardino

DATED: \_\_\_\_\_

JOHN HOLMES, Defendant

DATED: 3-18-19

[Signature]  
ISABEL JARAMILLO, Defendant

DATED: 3-18-19

[Signature] SMITH  
JERRY SMITH, Defendant

DATED: 3/14/2019

[Signature]  
KORY OBERLIES, Defendant

DATED: 3-18-19

[Signature]  
CARLOS CAMACHO, Defendant

Approved as to form and content:

DATED: 3-18-19

SKANE WILCOX LLP

John G.

Wilcoxson

Digitally signed by John G. Wilcoxson  
DN: cn=John G. Wilcoxson, o, ou,  
email=jwilcoxson@skanewilcox.c  
om, c=US  
Date: 2019.03.19 09:06:27 -07'00'

By:

John Wilcoxson

Attorneys for Defendants, COUNTY OF  
SAN BERNARDINO, ISABEL  
JARAMILLO, JERRY SMITH, KORY  
OBERLIES, and CARLOS CAMACHO

DATED: 2/21/19

SMITH LAW OFFICES LLP

By:

Douglas C. Smith

Douglas C. Smith, Esq.

Attorneys for Defendant, JOHN HOLMES

DATED: 1/23/2019

HEMMING FIRM

By:

Krista Hemming

Krista Hemming

Attorneys for Plaintiffs FELIPE

HERNANDEZ

and ELIJAH HERNANDEZ