

**Confidential Packet
for Salvador Neruda
(Plaintiff)**

Prep Sheet for Salvador Neruda (Plaintiff)

Background

- In 2021, you sued Heritage Homes and two of its customers alleging that they had denied you roofing jobs because of your national origin. Customers had apparently requested “No Foreigners” as roofers and Heritage Homes honored those requests.
- Trial will begin soon and the judge has ordered one last attempt at settlement. All but one claim of your lawsuit has been thrown out by the court. Your remaining claim is under the Ku Klux Klan Act.
- Previous attempts at settlement have been unsuccessful. The lawyers in the case seem to have made it a personal battle between the two of them. New counsel are being brought in to try to find a possible resolution. You will be meeting with those new counsel to help them prepare.
- Your relationship with Heritage Homes was as an independent contractor. Heritage uses multiple roofers and sends them jobs at its discretion. You have done many jobs for Heritage in the past.
- You first started working for Heritage in 2017. From 2017 until the end of 2020, you averaged about 20-25 roofing jobs a year. You filed your lawsuit in 2021, and they discontinued sending you any roofing work (more information on this and the next points is in your deposition transcript in the lawyers’ materials).
- Each roofing job earned you approximately 1/3 of the roofing contract price (the rest going to Heritage, the crew and materials). Roofing contracts run anywhere from \$10,000 to \$30,000 depending on the size and slope of the roof, the complexity of the structure (dormers, vents, etc.), the style of shingle, and the condition of the underlying wood.
- During the time that you worked for Heritage, you did so exclusively. Since the lawsuit, you have done a few roofing jobs (as a crew member) and some landscaping work, but earned hardly anything. You had to sell your house and your truck. You and your family (5 kids and spouse) are currently living with your cousin. You are basically broke.

Critical Interests

- Financial – two key dimensions: short-term cash flow and long-term financial stability
 - Will sacrifice amount in exchange for speed – needs something immediately after long year of no work and winter approaching (upfront probably more important than long-term)
 - Guaranteed money in the future is valuable, too – you want to get back to earning regular money so that you can get your life back
 - You are willing to work for some of the money, although you prefer huge cash to working (although huge cash is not realistic, it is worth asking for)
 - Some guarantee of # of jobs and actual work
 - Some guarantee of fairness – no discrimination (you can’t go back there unless it’s fair)
 - Some guarantee of durability – can’t fire right away, for example (don’t trust Heritage)
- Justice – two key dimensions: changes at Heritage and impact on the industry
 - Heritage must change its practices (not just treating you fairly) – don’t let them just sweep it under the rug
 - Reform of the roofing industry, to the extent possible (at least point out that this kind of discrimination is rampant in the roofing industry) – some kind of statement or project by Heritage could go a long way given Heritage’s prominence in the industry
 - Worries about other roofers suffering similar fate with Heritage and other providers
- Dignity – you need a settlement that you can explain to your family and crew – it has to be worth the long fight – “what am I going to tell my family about why I did this lawsuit?”
 - Has to be able to explain that he “won” in some respect (this gets at the confidentiality clause and the type of reforms mentioned above)

General Instructions:

Overall approach

- You are not quite as hard boiled as the Standstill Project clients – you are much more interested in getting advice from counsel. Frankly, at this point, you are exhausted by the litigation process (and so is your family). You feel personally attacked by what some of the pleadings have said (“terrible roofer,” “liar,” and “con man.”). You have had enough.
- You do not understand why you would not just go to court (“we have come this far”), and you are convinced you have a good case. Smithers told you in 2021 that she had never seen evidence so good – “they never put this stuff in writing!” she had told you.
- You do not want to waste time with lawyers and dumb questions, although you are less savvy and experienced about legal process. Questions about facts or your background should be met with annoyance, particularly if there is no explanation as to why they are asking – “don’t you have all of that?”
- Be aggressive about what you want at this point – in your experience with lawyers, you have learned that you have to sound confident like you have a good case and also push them to be aggressive.
- You expect a lot from them – that is why they are getting 1/3 of your money, if you win.
- Make your counsel work for the information – short answers (yes, no, I am not sure) wherever plausible.
- Watch for coordination issues between pairs – they should be organized.

Specific positions

- Avoid any specific “bottom line” on any issue – you will need to see how the full package looks before agreeing to any “concessions” (just like a roofing contract – you don’t agree to one issue at a time).
 - Damages calculations that led to \$500k offer and \$300K offer came from Smithers (“she said that this was worth a million dollars – that is why I agreed to sue; this was all her idea”).
 - If necessary, make clear that *you expect money and all of the other things, too* – you are not choosing between these items and only accepting one rather than all (which they will likely push for).
 - You are willing to consider going back to work for Heritage, but only if there are lots of guarantees in place – number of jobs, freedom from discrimination, e.g.
 - No deals until the end – you can continue to be a little unrealistic about money – “more than six figures, for sure” plus press release, e.g.
 - If you need a little extra content, ask them how this all works with your retainer agreement.
 - Clarifications on facts or damages should still be met with some annoyance – “Smithers has this all figured out, doesn’t she – we are almost at trial!”
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