

Packet for Plaintiff's Lawyers

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Smithers & Associates, P.A.

Memorandum

To: Kim and Pat

From: Chris

Date: November 4, 2023

RE: *Neruda v. Heritage Homes, et al.*
File No. 00844
Settlement Conference

As we discussed, you two will be handling the settlement discussions scheduled in this matter. We have a meeting with our client next week. The judge has ordered us to discuss possible settlement options before submitting any of the motions *in limine* for trial. By the way, it looks like trial is being pushed to the end of the year.

I have talked with Sal many times about settlement, and I have not made much progress. You two should certainly sit down with Sal and see what you can do. It sounds like he might be interested in continuing to work for Heritage, despite this lawsuit. They have not assigned him work in two years, but Sal still thinks that they need Sal more than Sal needs them. We'll see.

As far as the money piece, Sal is pretty open but is concerned about the time frame. He doesn't have any roofing work lined up so cash is needed now to cover bills (remember the kids). Sal also wants Heritage to "pay for" what they did.

Sal is also very interested in somehow reforming the entire roofing industry and eliminating "a widespread conspiracy" across the country (or at least the state). Sal likes to talk about all of the other roofers who have lost business because they are perceived as foreigners. But whenever I ask for specifics, he seems to lose track of names. Who knows, but this is an important piece for Sal and will complicate negotiations since Heritage has made clear that it needs confidentiality to protect its so-called "good name."

I have attached for your review some (but not all) of the primary correspondence between counsel on this matter and some of the key documents. As you can see, we have been talking settlement since day one, without much progress. I think both sides are a little fatigued frankly, but the judge is excited to clear her calendar, so here we go again (or at least here you go). It is a pretty simple case, so don't bother wading through the pleadings.

I attached a couple of old settlement agreements in case you need them. They are not perfect of course so use your judgment in relying on them.

We have discussions with the other side scheduled to begin next week. You will also have plenty of opportunities to meet with Sal. We may have other counsel around as well. I am in deposition all week, but I look forward to hearing about your progress.

Miller Jenkins Hoff

Real Defense For The Real Problems

600 Marquette Avenue #2200 ♦ Minneapolis, MN 55415

October 20, 2023

Chris Smithers
Smithers & Associates, P.A.
1231 Wilkens Avenue, Suite 20
St. Paul, MN 55105

RULE 408 SETTLEMENT DISCUSSION

RE: *Neruda v. Heritage Homes, et al.*

Dear Chris:

That's fine. The judge is right. You and I clearly are not on the same wavelength and you seem to easily bog down in minutiae and memory lapses. Let's bring in a fresh team.

My remaining client is interested to the extent anything reasonable can be discussed. In the meantime, I will continue to prepare for trial.

I remain

Morgan Stritch, Esq.

Smithers & Associates, P.A.

1231 Wilkens Avenue, Suite 20
St. Paul, MN 55105
Telephone Number: 651-555-1122
Fax Number: 651-555-1123

October 19, 2023

Morgan Stritch, Esq.
MILLER JENKINS HOFF
600 Marquette Avenue #2200
Minneapolis, MN 55415

Re: *Neruda v. Heritage Homes, et al.*

Dear Morgan,

The judge's suggestion that you and I allow other counsel to negotiate a possible settlement for the above matter is probably a good idea. I cannot separate your behavior and conduct from my consideration of this case, and that may get in the way of exploring all options. You have continually made this about the two of us, and that should not continue.

Although I will miss your terse letters, I do look forward to the conclusion of this matter one way or another.

I propose that we each assign the matter to two lawyers in our respective offices to handle the negotiation, and that you and I play no role in those discussions whatsoever. Agreed?

Very truly yours,

Smithers & Associates, P.A.

Chris Smithers, Esq.

Smithers & Associates, P.A.

Memorandum

To: File

From: Chris

Date: October 18, 2023

RE: *Neruda v. Heritage Homes, et al.*
File No. 00844
Settlement Conference

In advance of meeting with the judge for the settlement conference, I am clarifying for the file a few assumptions and discussion points that I just shared with Salvador Neruda on the telephone.

Mr. Neruda told me that he does not have working email right now, but I want to preserve a written record.

1. Mr. Neruda is still feeling stuck on the offer we made previously (\$300,000). I suggested that we lower our demand, or there is no chance that this will settle. Mr. Neruda promised to think about it. I told him that we can wait to hear back from Heritage, too.
2. I went through our retainer agreement again with him. We are on a contingency agreement where the firm would receive 33% of any recovery in a settlement and 40% of any recovery at trial, and that we would petition the court separately for recovery of our attorneys' fees.
3. To date, Mr. Neruda has paid \$4,580 in costs associated with the litigation out of pocket (including deposition costs, travel, etc.). These costs would be reimbursed off the top of any settlement amount before applying the contingency fee.
4. My assumption is that Heritage will have to pay anywhere from \$75,000 to \$100,000 on the trial, given the hourly rates at that firm.

Miller Jenkins Hoff

Real Defense For The Real Problems

600 Marquette Avenue #2200 ♦ Minneapolis, MN 55415

August 16, 2023

Ms. Chris Smithers
Smithers & Associates, P.A.
1231 Wilkens Avenue, Suite 20
St. Paul, MN 55105

RULE 408 SETTLEMENT DISCUSSION

RE: *Neruda v. Heritage Homes, et al.*

Dear Chris:

You are predictably confused by the judge's summary judgment ruling. This is a huge victory for all of the defendants. The judge threw out all of your claims, save for the rather absurd and inscrutable claim under 42 U.S.C. § 1985(3). I am not sure that you can even collect damages, much less attorney's fees, under that antique provision of 19th century American statutory quicksand, which you dusted off and heaped onto your client's pile of grievances without reading. You might want to look at it.

I will, however, play along and re-start the conversations that I have been working so hard to keep productive, and you have been ignoring – namely the possible resolution of this matter, such as it is.

My clients will not pay anything beyond whatever remaining fees and costs they anticipate incurring as a result of the litigation. Every day you stall costs your client potential settlement value, because Heritage is paying me rather than your client (who is then going to presumably hand you the lion's share). Furthermore, any settlement will require silence on your client's part and relinquishment of any and all fantasies relating to attorney's fees.

I suspect that the judge will have to play a heavy role in keeping perspectives in check. You clearly have client management issues, particularly concerning expectations.

December is fine – tick, tock.

I remain

Morgan Stritch, Esq.

Smithers & Associates, P.A.

1231 Wilkens Avenue, Suite 20
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Telephone Number: 651-555-1122
Fax Number: 651-555-1123

August 15, 2023

Morgan Stritch, Esq.
MILLER JENKINS HOFF
600 Marquette Avenue #2200
Minneapolis, MN 55415

Re: *Neruda v. Heritage Homes, et al.*
Rule 408 Correspondence

Dear Morgan,

I am sure that by now you have seen the judge's order in the summary judgment ruling. I hope that you are not too disappointed. I thought that your briefs and your oral argument went completely overboard, but I am relieved to see that the judge was able to see through all of those smoke screens.

I am sure that you also noticed that the judge has ordered us to discuss possible settlement options. I appreciate your client's persistence in wanting to talk about this in unrealistic terms, but I know that with your powers of persuasion, you can help them understand the risks that await them at trial.

My client naturally still insists on recovering the substantial economic damages that he has suffered. As the judge made clear, my client's civil rights claims will be heard at trial. Given the significant public policy issues at stake and in the spirit of looking at options, I wanted to share with you my client's interests in finding nonmonetary solutions as well. He believes that your client could take a stand against such discrimination in the future and could implement a number of policies to remove such practices from their business, for starters. He would also consider working with your client again, under more transparency and improved working conditions.

Morgan Stritch
August 15, 2023
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In addition, my client wants people to understand how widespread this practice is. Perhaps some sort of joint press release could be included. Since they are still included in the lawsuit, Ms. Jackson and Mr. Gustafson could participate and explain how this is wrong (and they were wrong).

Lastly, the dates proposed by the judge do not work for me. I am in trial on another matter that first week in November. Could we look at December? In the meantime, please respond to my ideas above so that we can let the judge know whether your clients plan to participate seriously in discussing possible settlement.

Very truly yours,

Smithers & Associates P.A.

Chris Smithers, Esq.

Miller Jenkins Hoff

Real Defense For The Real Problems

600 Marquette Avenue #2200 ♦ Minneapolis, MN 55415

July 2, 2023

Chris Smithers
Smithers & Associates, P.A.
1231 Wilkens Avenue, Suite 20
St. Paul, MN 55105

RULE 408 SETTLEMENT DISCUSSION

RE: *Neruda v. Heritage Homes, et al.*
Mediation Summary

Dear Chris:

I thought it might be helpful to memorialize the main points from the mediation proceeding from last week. I am sure that the judge will be interested in an update, so we can decide whether to jointly submit something or if this letter will suffice. Please let me know your preference by end of the day, if possible.

The mediation session was abruptly ended when your client decided that he would rather “stick a needle in his eye” than spend any more time talking about resolving this matter. To be honest, so would I. I cannot imagine why you thought raising your proposed settlement amount from \$250,000, the absurd amount from your initial demand letter, to double that amount would have any productive effect.

My clients still maintain that Mr. Neruda should find another line of work besides roofing, and to the extent that he may have been passed over for work, it was out of concern for the quality of his services. Nevertheless, as we discussed during the mediation, my client is willing to consider a “cost of defense” settlement amount, something along the lines of \$10,000. On top of that, they would even consider instituting some of the reform ideas that you suggest about having more diversity in their brochures. Both of these ideas were presented to you during mediation without any feedback or counterproposals.

If you have any serious interest in discussing a possible resolution to this matter, please let me know. Otherwise, I will have to presume that you do not.

Happy holiday weekend.

I remain

Morgan Stritch, Esq.

Smithers & Associates, P.A.

Memorandum

To: Kim and Pat

From: Chris

Date: March 31, 2023

RE: *Neruda v. Heritage Homes, et al.*
File No. 00844
Depo Excerpts

Attached are key excerpts from depositions in this case pertaining to an overview of the roofing business and background information on the parties. I have assembled these excerpts for some associates who are working on the case from time to time.

Schedule of attachments:

1. Deposition of Roger Arness (pp.17-24)
2. Deposition of Salvador Neruda (pp. 65-74)

Deposition of Roger Arness
Taken on January 28, 2022

<p>1. Q. Thorstein Veblen Community College in 2. 1978? 3. A. Correct. 4. Q. When did you start working at Heritage 5. Homes? 6. A. Summer of 2016 – June of 2016, I believe. 7. Q. What was your title at that time? 8. A. I was hired as a crew coordinator. I think 9. there were a few of us at that time. 10. Q. What were your responsibilities? 11. A. I decided which roofing crews would work 12. on specific jobs. 13. Q. How many roofing crews did Heritage 14. Homes use in 2017? 15. A. I do not recall. 16. MS. KZINSKI: Objection to the form of 17. the question. Calls for speculation. 18. Q. MR. DEMPSEY: You can answer the 19. question, if you know. Can you make an 20. estimate? 21. MS. KZINSKI: Same objection.</p> <p style="text-align: center;">Page 17</p>	<p>1. Q. MR. DEMPSEY: You can answer the 2. question, Mr. Arness. About how many 3. roofing crews? 4. A. Probably 10-15 or so. I can't be sure. 5. Q. More than just a few? 6. A. Yes, we need many different crews. We 7. send work out all the time and we need to 8. have crews available at all times. So we need 9. more than just a few. I would say more than a 10. dozen. 11. Q. OK. Um. So when you said previously in 12. your sworn testimony that Heritage Homes 13. used between 10 and 15 crews, you were 14. saying something that was incorrect. You 15. were low-balling your prior estimate, is that 16. correct? 17. MS. KZINSKI: Objection to the 18. characterization of his testimony and 19. therefore to the question. You may answer 20. the question, if you can. 21. Q. Off the record. (A recess was taken.)</p> <p style="text-align: center;">Page 18</p>
<p>1. Q. Mr. Arness, can you please give a very 2. brief overview of how roofing jobs were 3. assigned to roofing crews at Heritage Homes? 4. A. It is actually a pretty simple process. 5. Homeowners call us to request a new roof or a 6. roof repair and we assign the job to one of the 7. roofing crews we use. 8. Q. How did you decide which crew to assign 9. to a particular customer? 10. A. It was hard sometimes because we would 11. get busy and all of the crews would be booked 12. up for weeks. It is still hard, even with the 13. economy, to have enough crews ready to go. 14. Q. So you would – 15. A. Right. We would basically have to call a 16. few crews and see who might be available the 17. soonest. 18. Q. You and the other crew coordinators 19. would call the crews to see who might be able 20. to work on a particular roof the soonest? Is 21. that what you said?</p> <p style="text-align: center;">Page 19</p>	<p>1. A. It was pretty informal. I would get a call 2. and then call a crew that I thought should be 3. able to do the job the soonest. Each crew 4. coordinator managed their own list of 5. customers, for the most part. 6. Q. Did the crew coordinators ever talk to one 7. another about which crew to assign to a 8. particular customer? 9. A. Sure. We were all in the same space, this 10. small cubby space in the back, and sometimes 11. it was helpful to talk to the other coordinators, 12. you know? Some coordinators knew some 13. crews better than others. 14. Q. Were the roofing crews employees of 15. Heritage Homes? 16. A. No. 17. Q. Were they independent contractors then? 18. What was – rather – uh – what was the 19. relationship between the roofing crews and 20. Heritage Homes then? 21. A. Most roofing crews are sole proprietors.</p> <p style="text-align: center;">Page 20</p>

Deposition of Roger Arness
Taken on January 28, 2022

<p>1. Individuals who then just pay their workers 2. cash or something like that. They are not on 3. Heritage Homes' payroll. 4. Q. Do they have – 5. A. We pay them as independent contractors 6. rather. 7. Q. -- contracts? Do you contract with them? 8. A. Yeah. Informally. Um. We just, you know, 9. just tell them which house, right? And how much 10. they will be paid. Yeah. 11. Q. How much does each roofing job pay? 12. A. Roofing contracts run anywhere from 13. \$10,000 to \$30,000 depending on the size and 14. slope of the roof, the complexity of the 15. structure – 16. Q. What does complexity refer to? 17. A. Dormers, vents, condition of the wood, 18. right? Even gutters can get fancy and then 19. other vents and things and so forth, 20. depending. We sometimes let the roofers do the 21. bid for the job. Oh, and our jobs are often</p> <p style="text-align: center;">Page 21</p>	<p>1. premium roofs with fancy shingles. That can 2. cost a lot more. Labor is more on those, too. 3. Q. How do you split the payment? 4. A. Sorry? 5. Q. How do you split the payment? How 6. much does the roofing crew get of the total 7. amount paid by the customer? 8. A. The general rule of thumb is that the 9. roofing crew gets 1/3, we get 1/3 and the 10. remainder pays for materials. Around that. 11. Q. Are most jobs in the \$10,000 range or in 12. the \$30,000 range? 13. A. Uh -- it really varies – but for the last four 14. or five years the average has been right around 15. \$20,000 per job. 16. Q. Has the price changed much since 2017? 17. A. No, actually. It is still about the same. The 18. market is about the same as it was in 2017. 19. Prices for home repair of all kinds are about 20. the same, you know? 21. Q. Oh, one thing I wanted to just clarify if I</p> <p style="text-align: center;">Page 22</p>
<p>1. can. How do the people who assign jobs at 2. Heritage Homes decide on which roofing crews 3. will get the job? How much discretion is there 4. exactly? 5. MS. KZINSKI: Objection to the form of 6. the question. Can you pick one question and 7. stick with that? And didn't we already cover 8. this? 9. Q, MR. DEMPSEY: You can answer the 10. question. How do you decide which crew gets 11. the job? Do you understand? 12. A. We have wide discretion. That is our job. 13. There is no guarantee that any crew will ever 14. get a job from us. We make that clear to them 15. upfront. If we have work, and we think they 16. are the right crew for the work, that crew gets 17. that particular job – 18. Q. So you pick the crew based on – 19. A. -- usually the next crew up gets the job. 20. We use a list. But we can always just assign 21. crews. Like I said before, it was often hard to</p> <p style="text-align: center;">Page 23</p>	<p>1. find a crew who can get to the job even in the 2. next month. We would call around sometimes. 3. Sometimes I could just call a crew I knew would 4. be done by such and such a date. 5. Q. Is it difficult to keep enough good crews 6. on your list so that you always have at least 7. one crew available for a new job? 8. A. Yeah, although some crews are better 9. than others, right? 10. Q. Do you still work at Heritage Homes? Did 11. you -- 12. A. I am no longer employed. 13. Q. Do you mean at Heritage? 14. A. I lost my job in August. 15. Q. At Heritage? 16. A. Yeah. Heritage. I lost my job in August. 17. Q. Last year? 18. A. Last year. Yeah, 2021. 19. Q. Were you fired or laid off? 20. A. They asked me to leave after an 21. incident with one of the customers pertaining</p> <p style="text-align: center;">Page 24</p>

Deposition of Salvador Neruda
Taken on December 22, 2021

<p>1. when I was a child growing up in Arizona. My 2. parents and I were all born in Chile. 3. Q. When did you work for Heritage Homes? 4. A. I started working for them in 2017 – 5. February 2017, right about then. 6. Q. Were you an employee? 7. A. What? 8. Q. Were you an employee of Heritage 9. Homes? 10. A. No. I had my own crew. My cousin and I 11. and some other roofers from home. 12. Q. So you were independent contractors. Is 13. that right? 14. A. Yup. But we did not have a contract or 15. paperwork like that. I just met with their crew 16. coordinators, Thomas Nelson, Roger Arness 17. and Skip somebody or something like that. I 18. think it was Skip Hayes or Hendricks. 19. Q. Did they – 20. A. Maybe it was Steve, not Skip. Skip was a 21. sales manager –</p> <p style="text-align: center;">Page 65</p>	<p>1. Q. How did they let you know if they needed 2. you for a particular job? 3. A. Yeah. One of those guys would just call 4. and assign jobs. Not Skip but the other guys. 5. Q. You said that you started in 2017, is that 6. right? You started working for Heritage Homes 7. in 2017? 8. A. Yes. In February. 9. Q. Was that February of 2017? 10. MS. SMITHERS: Objection. Asked and 11. answered. Can we move on? 12. MR. STRITCH: I need to clarify. Your 13. client is taking a long time between answers 14. and I want to make sure we have a clear record 15. of when he started working for Heritage 16. Homes. 17. MS. SMITHERS: Can we agree that normal 18. conversation volume is appropriate here? I 19. don't think anyone is hard of hearing. I don't 20. appreciate you yelling. Can the record reflect 21. that counsel for the defendant is now shouting</p> <p style="text-align: center;">Page 66</p>
<p>1. at counsel for the plaintiff? Will you please 2. include that in the record? 3. MR. STRITCH: No one is shouting. Can 4. we please just get an answer? Your objection 5. is noted for the record. 6. MS. SMITHERS: You can answer again, if 7. you can. 8. A. OK. I started working for Heritage in 9. February of the year 2017. Yeah. I don't know 10. the exact day but it was before Valentine's 11. Day. I think then. 12. Q. Before Valentine's Day. How long did you 13. work for Heritage? 14. A. My last job was in March. After the lawsuit 15. started, Heritage told me they wouldn't call 16. any more. March of this year. 17. Q. They would not call? 18. A. No more jobs. They said, "You are suing." 19. They said they would no longer use my crew. 20. Q. So between 2017 and 2020, how many 21. jobs did you do for Heritage Homes? Before</p> <p style="text-align: center;">Page 67</p>	<p>1. you answer, I do have the invoices here and 2. we can go through them all, but first can you tell m 3. what your recollection is about how many jobs you 4. did during those years for Heritage Homes? 5. MS. SMITHERS: Which years exactly? 6. MR. STRITCH: Did he work for Heritage 7. during any other time frame between 2017 and 8. 2020 – for the years 2017, 2018, 2019, and 2020? 9. MS. SMITHERS: Are you asking me? 10. MR. STRITCH: You worked for Heritage 11. from 2011 through 2014, correct? 12. A. Yes. I started working for Heritage in 13. February of 2017 before Valentine's Day and my 14. last job was this past March, 2021. 15. Q. Did you work for Heritage before 2017? 16. A. No, I was in Florida before that. Actually, I 17. did go to Wisconsin and – 18. Q. Yes or no, please, did you work for Heritage 19. Homes before 2017? 20. MS. SMITHERS: He is trying to answer. Can 21. you let him answer your question before you ask</p> <p style="text-align: center;">Page 68</p>

Deposition of Salvador Neruda
Taken on December 22, 2021

<p>1. another question? I think that makes sense. 2. MS. STRITCH: It is the same question. 3. Q. Did you work for Heritage Homes before 4. 2017, yes or no? 5. A. No. I was in Wisconsin. OK? 6. Q. Did you work for Heritage Homes since 7. your last job this past March? 8. A. No. 9. Q. Have you worked any roofing jobs since 10. then? 11. A. Yeah. Only a few, though. 12. Q. How many jobs did you work for Heritage 13. Homes between 2017 and 2020 – strike that – 14. how many total jobs did you work for Heritage 15. Homes, to the best of your recollection? 16. A. I worked about 20 or 25 jobs each year from 17. 2017 through 2020 and 3 jobs this year. I 18. should have worked more but some jobs were 19. given to other crews instead of me. Those 20. were big jobs that I missed – they kept giving 21. me smaller jobs for smaller customers.</p> <p style="text-align: center;">Page 69</p>	<p>1. Q. We'll get to your allegations. For now, can 2. you tell me how much money you earned on 3. each job? 4. MS. SMITHERS: Are you going to use the 5. exhibits – the invoices? You are not asking him 6. to give you a job by job total are you, off the 7. top of his head? 8. MR. STRITCH: A general ballpark figure is 9. fine for now, I think. We can go through the 10. invoices later today or tomorrow. Of course, if 11. each answer takes this long, we may be here 12. through the end of the week. 13. A. Yeah. I can answer. I usually received 14. about \$8,000 or so per job, depending on the 15. size of the roof and the type of shingle. But 16. the overall average was probably \$7,000, 17. \$10,000 on some. 18. Q. Is it fair to say that you received on 19. average between \$7,000 and \$8,000 per job? 20. A. It would be more fair to say between 21. \$7,000 and \$10,000 per job. I usually kept</p> <p style="text-align: center;">Page 70</p>
<p>1. about 1/3 of the total price and most jobs cost 2. between \$25,000 and \$30,000. Well, most 3. jobs? I would say smaller jobs were about 4. \$10,000 and bigger jobs were around \$30,000 5. or so. So an average per job is probably 6. \$20,000 – give or take. 7. Q. Did prices change from 2011 to 2014? 8. A. If anything they fell. Went down totally. 9. The market was really huge in 2011 and 2012 10. with all of the storms, you see. People were 11. much more interested in a lot of the extra 12. work then – like dormers, really fancy shingles, 13. you know? The works. Now, everybody 14. is definitely hurting. Fewer jobs, I think. In 15. 2017 and 2018, I probably could have done 16. double the number of jobs than what Heritage 17. gave me – they were definitely overbooking 18. themselves, but lots of the spendy customers 19. did not want foreigners. I probably lost 20 or 20. 30 jobs maybe 40, huh, those two years alone. 21. Big jobs, too.</p> <p style="text-align: center;">Page 71</p>	<p>1. Q. I would appreciate it, Mr. Neruda, if you 2. would just answer my questions. I will give you a 3. chance to talk about the allegations in your 4. complaint and your claims against Heritage, but it 5. just slows us down if you continue to use every 6. silence as an opportunity to make a speech about 7. your case. Counsel, I would appreciate it if you 8. would instruct your client to answer only those 9. questions put to him. If you feel like I did not 10. adequately cover any topic, once we are finished, 11. I will provide ample time for you to question your 12. client and add whatever you need to the record. 13. Can we go off the record for a second? 14. (A recess was taken) 15. Q. Did you work for other companies, besides 16. Heritage, during the years 2017 to 2020? 17. A. I don't think so. 18. Q. Why not? 19. A. Heritage is the biggest in town. I did not 20. want to lose out on my chance with them. 21. Q. If they were treating you so poorly, as you</p> <p style="text-align: center;">Page 72</p>

Deposition of Salvador Neruda
Taken on December 22, 2021

1. allege, why not try to make a go of it with other
2. providers, besides Heritage?
3. MS. SMITHERS: Objection to the form.
4. Mischaracterizes plaintiff's complaint and
5. allegations.
6. MR. STRITCH: You can answer.
7. A. OK. Thomas had told me that he preferred
8. crews that were loyal to Heritage.
9. Q. Thomas Nelson?
10. A. Yeah, Mr. Nelson made it clear that working
11. for other companies would be a bad idea. And to
12. be honest, most of the other companies are more
13. low-end in terms of prices. Heritage gets a lot
14. more for its roofs and has a much higher income
15. clientele. He needed us available for scheduling.
16. Q. For scheduling? Mr. Nelson said scheduling
17. reasons you should work only for Heritage?
18. A. He wanted us to be available.
19. Q. Have you spoken with Mr. Nelson -- strike
20. that -- when was the last time you spoke
21. with Mr. Arness?

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1. A. Brian Arness?
2. Q. Roger Arness, right? His name is Roger.
3. Do you have the sheet there? It's Roger. Did you
4. call him Brian? No, I am quite sure it is Roger.
5. MS. SMITHERS: Right here. Roger. Roger,
6. Roger. Get it?
7. A. His name is Roger Nelson? I always thought
8. it was Brian. Actually he may have introduced
9. himself as Brian, not Roger.
10. Q. We are talking about the same person, right,
11. the crew coordinator named Arness?
12. A. Yeah, Nelson. I mean Arness. Roger Arness.
13. Q. Have you spoken with Mr. Nelson?
14. A. Yeah. I saw him at the state fair.
15. Q. This year?
16. A. Yeah. Must have been.
17. Q. How about Mr. Arness? Have you --
18. A. Arness? I saw him when I picked up my
19. last check this past June.
20. Q. Have you spoken with either Mr. Nelson
21. or Mr. Arness about this case?

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Smithers & Associates, P.A.

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December 14, 2021

Morgan Stritch, Esq.
MILLER JENKINS HOFF
600 Marquette Avenue #2200
Minneapolis, MN 55415

Re: *Neruda v. Heritage Homes, et al.*

Dear Morgan,

This letter is to confirm our agreed upon deposition schedule. I will have Mr. Neruda available to you next Wednesday and Thursday at your offices. We can begin at 8:00 as you insist, although I still find it difficult to understand why you need two full days to depose my client.

Regarding your documents, I am still awaiting answers to Document Requests 18-27. I know that the office manager has a family medical emergency with his sick father, but is there anyone else who can provide the invoices I need? It seems a little strange that it takes two months to find invoices from the past five years.

Lastly, the mediation agenda you sent is fine with me. To be honest, given your client's refusal to respond to our initial proposal, I am not sure that our mediation will be very productive. Do you plan on having Ms. Jackson and Mr. Gustafson attend personally?

Very truly yours,

Chris Smithers, Esq.

Smithers & Associates, P.A.
Memorandum

To: File
From: Elsayed Osako
Date: April 19, 2021
RE: Transcript of Voicemail

The following message was left on the voicemail of Chris Smithers.

“Yes, this is Mr. Millard Gustafson on Willow Drive. I don’t really understand your letter. I did not hire Mr. Neruda to do my roof. I hired Heritage Homes. What I do with my home is none of your business anyways. I am quite sure I have the right to hire who I please. I am not a company; I am a resident. I can do whatever I want on my property. I do not appreciate your letter whatsoever, but I will be sure to discuss it with the Attorney General’s Office. Good day, sir. [slam]”

PROTECTIVE ORDER – FOR COUNSEL EYE’S ONLY

NER001399

Miller Jenkins Hoff

Real Defense For The Real Problems

600 Marquette Avenue #2200 ♦ Minneapolis, MN 55415

April 12, 2021

Mr. Chris Smithers
Smithers & Associates, P.A.
1231 Wilkens Avenue, Suite 20
St. Paul, MN 55105

BY FAX ONLY
651-555-1123

RE: Allegations of Sal Neruda

Dear Mr. Smithers:

I have been retained by Heritage Homes, Inc. to handle the above-referenced matter. I have also volunteered to defend the two private citizens who have also been implicated in this matter. Please address all further correspondence concerning this matter for them to me directly.

Naturally, my clients are a bit surprised by your letter. Heritage has nearly fired your client numerous times for substandard work. To give you a flavor, I am attaching a recent letter submitted by one of Heritage's customers concerning the work of your client.

To the extent your client has been denied any work by Heritage, it has been for the sole reason that he is a bad roofer. His roofs leak. His associates smoke and litter on customers' yards. He is incapable of quality work. Any allegations to the contrary are without foundation and made in true ignorance of the actual facts.

As to what possessed Mr. Nelson, a disgruntled former Heritage employee, to defame Heritage and to also perjure himself will have to be sorted out later. I feel some need to share with you as my professional colleague that I have successfully moved for sanctions under Rule 11 more than once in my career, and your case strikes me as an easy matter for me to do so again.

Lastly, why you have chosen to torture two elderly people with these claims is unknowable to me. They are alarmed and bewildered, and I am stunned by your insensitivity. To the extent you still feel the need to pursue this matter formally after you conduct a more thorough investigation of the facts, I will kindly accept service on behalf of Heritage, Ms. Jackson, and Mr. Gustafson.

I remain

Morgan Stritch, Esq.

Enclosed Letter

David Prodinsky
601 Berkeley Avenue
St. Paul, MN 55104

August 28, 2020

Attn: Customer Service Department
Heritage Homes, Inc.
1616 Golden Ridge
Edina, MN 55422

To Whom It May Concern:

I hired Heritage Homes to replace my roof and siding last spring and it has been nothing but trouble ever since. I have made many calls and talked to "Sylvia"; "Ralon"; "Oliver" and others at Heritage – they all told me that everything would be fixed. Yet nothing has been done!

My roof is still leaking. My yard is still covered with cigarette butts and other debris. That roofer seems totally incapable of quality work. He has been back several times and still everything is terrible.

Can someone help me? Please do not send that roofer back – I can't take it.

His name is Saddle(?) Neruda. His truck has his last name on the door.

Sincerely,

David Prodinsky
(former customer)

p.s. Please do not call me after 9pm. I have a newborn and trying to get her to sleep is challenging enough without late phone calls. Thanks.

Smithers & Associates, P.A.

1231 Wilkens Avenue, Suite 20
St. Paul, MN 55105
Telephone Number: 651-555-1122
Fax Number: 651-555-1123

April 2, 2021

Terry Burns
Chief Operating Officer
Heritage Homes, Inc.
1616 Golden Ridge
Edina, MN 55422

Re: Notice of Breach of Contract and Violations of Civil Rights

Dear Ms. Burns:

Please be advised that my law firm has been retained by Salvador Neruda, an American citizen, to pursue a cause of action against your company based on breach of contract and conduct violating Minnesota common law and federal civil rights law, 42 U.S.C. § 1985(3) (the Ku Klux Klan Act of 1871). This letter constitutes notice to your company of our client's complaint against it, and demand for damages of at least \$250,000 or the maximum allowable under state and federal law. My client will also be seeking attorney's fees pursuant to 42 U.S.C. § 1988.

The facts giving rise to this complaint are as follows: Your company contracted with my client to provide roofing services for your customers. Your company withheld numerous roofing jobs from my client, despite an oral agreement between your company and my client that he would be provided with as many roofing jobs as he could fulfill. In addition, your company conspired with many of your customers to deny certain roofing jobs to my client based on his national origin.

I have attached three documents to this letter. The first document is an invoice from your company to Hazel Jackson, one of your customers, in the amount of \$14,400. As you can see, one of your employees has written under "Special Notes" that this customer has requested that "No Foreigners" work on her home. This job was referred to Ryan Howard, who supervises an "all-Minnesota" roofing crew, which unlawfully excluded perceived foreigners.

Terry Burns
April 2, 2021
Page 2

The second document is an invoice from your company to Millard Gustafson, one of your customers, in the amount of \$11,950. Again, one of your employees has written under “Special Notes” that this customer has requested that “no foreigners” work on his home. This job was referred to Mike Almquist, who also supervises an “all-Minnesota” roofing crew, an act of unlawful discrimination based on national origin.

The third document is an affidavit from Thomas Nelson, a former crew coordinator at your company. As Mr. Nelson explains in his sworn testimony, “On numerous occasions, I assigned ‘all-Minnesota’ crews to customer jobs where the customer specifically requested that no foreigners work on their home.” These included “jobs that would otherwise have been assigned to Mr. Neruda.” In addition, Mr. Nelson confirms that “Heritage Homes management encouraged this practice to guarantee ‘Customer Satisfaction,’ which was one of our many slogans.”

As a consequence of your company’s acts, Mr. Neruda is entitled to recover from you economic and other damages. In addition, my client is entitled to recover his reasonable and necessary attorney’s fees and costs incurred in prosecuting his claims against your company. To date, my client has incurred attorney’s fees and costs in the amount of \$7,500 in investigating and preparing his claims against your company and other possible defendants. Naturally, in the event that these claims are not resolved without the necessity of filing and prosecuting a lawsuit against your company, my client will incur substantial additional attorney’s fees and costs through the ultimate disposition of any such lawsuit.

This demand letter is sent to you for the purpose of notifying your company that my client has claims against it, in a good faith attempt to resolve these claims, and to inform you that my client will pursue these claims formally if this matter is not resolved within the next sixty (60) days.

Very truly yours,

Smithers & Associates, P.A.

Chris Smithers, Esq.

Enclosures



Heritage Homes

Where What the Customer Wants is Our Business
1616 Golden Ridge, Edina, MN 55422

INVOICE – February 25, 2021

Hazel Jackson
6690 Sidaway Avenue
Brooklyn Center, MN 55433

This invoice is for the following items:

Install new roofing felt 15 lb
Install new Turtle type vents and replace pipe boots
Replace furnace vent rain caps
Installation of ice and water shield on all eaves
Install new gutter apron
A/C units fins combed
25 year Castle port by Shennins – red hash
Waste removal

Total Cost = \$14,400 firm

Terms: 50% to start job / balance due upon completion
Extras to be paid when accepted by customer
To be completed by April 1 (three days job)

Special Notes: *Customer requests no foreigners*

PROTECTIVE ORDER – FOR COUNSEL EYE'S ONLY

NER011900



Heritage Homes

Where What the Customer Wants is Our Business
1616 Golden Ridge, Edina, MN 55422

INVOICE – February 28, 2021

Millard Gustafson
1 Willow Drive
New Hope, MN 55441

This invoice is for the following items:

Removal of shingles
Installation of ice and water shield on all eaves
Install new exposed valley tin with profile
Install new roofing felt 15 lb
New gutter apron
25 year Castle port by Shennins – architectural brown
Waste removal

Total Cost = \$11,950 firm

Terms: 50% to start job / balance due upon completion
Extras to be paid when accepted by customer
To be completed by April 1 (two days job)

Special Notes: *Customer requests no foreigners*

PROTECTIVE ORDER – FOR COUNSEL EYE'S ONLY

NER006224

Salvador Neruda
Plaintiff,

v.

Heritage Homes, Inc.; Hazel Jackson,
Millard Gustafson, et al.

AFFIDAVIT OF THOMAS NELSON

Defendants.

STATE OF MINNESOTA)

)

COUNTY OF RAMSEY)

I, Thomas Nelson, being duly sworn, state:

1. I am a former employee of Heritage Homes, Inc., one of the defendants listed above in this action.
2. I worked for Heritage Homes from January 2018 until June of last year.
3. For the past three years, I was a crew coordinator for Heritage Homes. My job duties included interacting with Heritage Homes customers and management, and assigning roofers to customer work. I was responsible for assigning roofing jobs to numerous roofers, with whom Heritage Homes contracted, including Salvador Neruda.
4. On numerous occasions, customers would call and specifically request that no foreigners work on their home.
5. When I asked management about what to do in such circumstances, I was told to do what the customer requests.
6. On numerous occasions, I assigned “all-Minnesota” crews to customer jobs where the customer specifically requested that no foreigners work on their home. “All-Minnesota” crews were crews that did not have any foreigners or anyone perceived as a foreigner.

7. Many of the jobs where the customers made such requests included jobs that would otherwise have been assigned to Mr. Neruda.
8. Heritage Homes management encouraged this practice to guarantee “Customer Satisfaction,” which was one of our many slogans.

Thomas Nelson

Thomas Nelson

PRINT FULL NAME

SIGNATURE

Sworn to and subscribed before me on this ____15th__ day of __March_____, 2021.

/s/

Notary Public

Smithers & Associates, P.A.

1231 Wilkens Avenue, Suite 20
St. Paul, MN 55105
Telephone Number: 651-555-1122
Fax Number: 651-555-1123

April 2, 2021

Hazel Jackon
6690 Sidaway Avenue
Brooklyn Center, MN 55433

Re: Notice of Violation of Civil Rights

Dear Ms. Jackson:

Please be advised that my law firm has been retained by Sal Neruda to pursue a cause of action against you based on conduct violating federal civil rights law, 42 U.S.C. § 1985(3) (the Ku Klux Klan Act of 1871). This letter constitutes notice to you of our client's complaint against you, and demand for damages of at least \$20,000 or the maximum allowable under state and federal law. My client will also be seeking attorney's fees pursuant to 42 U.S.C. § 1988.

The facts giving rise to this complaint are as follows: You conspired with Heritage Homes to deny my client roofing work on your home based on my client's national origin.

I have attached to this letter a copy of the invoice from Heritage Homes concerning roofing work on your home. As you can see, one of Heritage Homes' employees has written under "Special Notes" that you had requested that "No Foreigners" work on your home. This job was referred to an "all-Minnesota" roofing crew, an act of unlawful discrimination based on national origin.

As a consequence of your acts, Mr. Neruda is entitled to recover from you economic and other damages. In addition, my client is entitled to recover his reasonable and necessary attorney's fees and costs incurred in prosecuting his claims against you. To date, my client has incurred attorney's fees and costs in the amount of \$7,500 in investigating and preparing his claims against your company and other possible defendants. Naturally, in the event that these claims are not resolved without the necessity of filing and prosecuting a lawsuit against you, my client will incur substantial additional attorney's fees and costs through the ultimate disposition of any such lawsuit.

Hazel Jackson
April 2, 2021
Page 2

This demand letter is sent to you for the purpose of notifying you that my client has claims against you, in a good faith attempt to resolve these claims, and to inform you that my client will pursue these claims formally if this matter is not resolved within the next sixty (60) days.

Very truly yours,

Smithers & Associates, P.A.

Chris Smithers, Esq.

Enclosures



Heritage Homes

Where What the Customer Wants is Our Business
1616 Golden Ridge, Edina, MN 55422

INVOICE – February 25, 2021

Hazel Jackson
6690 Sidaway Avenue
Brooklyn Center, MN 55433

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25 year Castle port by Shennins – red hash
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Special Notes:

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PROTECTIVE ORDER – FOR COUNSEL EYE'S ONLY

NER011900

Smithers & Associates, P.A.

1231 Wilkens Avenue, Suite 20
St. Paul, MN 55105
Telephone Number: 651-555-1122
Fax Number: 651-555-1123

April 2, 2021

Millard Gustafson
1 Willow Drive
New Hope, MN 55441

Re: Notice of Violation of Civil Rights

Dear Mr. Gustafson:

Please be advised that my law firm has been retained by Sal Neruda to pursue a cause of action against you based on conduct violating federal civil rights law, 42 U.S.C. § 1985(3) (the Ku Klux Klan Act of 1871). This letter constitutes notice to you of our client's complaint against you, and demand for damages of at least \$20,000 or the maximum allowable under state and federal law. My client will also be seeking attorney's fees pursuant to 42 U.S.C. § 1988.

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As a consequence of your acts, Mr. Neruda is entitled to recover from you economic and other damages. In addition, my client is entitled to recover his reasonable and necessary attorney's fees and costs incurred in prosecuting his claims against you. To date, my client has incurred attorney's fees and costs in the amount of \$7,500 in investigating and preparing his claims against your company and other possible defendants. Naturally, in the event that these claims are not resolved without the necessity of filing and prosecuting a lawsuit against you, my client will incur substantial additional attorney's fees and costs through the ultimate disposition of any such lawsuit.

Millard Gustafson
April 2, 2021
Page 2

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Very truly yours,

Smithers & Associates, P.A.

Chris Smithers, Esq.

Enclosures



Heritage Homes

Where What the Customer Wants is Our Business
1616 Golden Ridge, Edina, MN 55422

INVOICE – February 28, 2021

Millard Gustafson
1 Willow Drive
New Hope, MN 55441

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Removal of shingles
Installation of ice and water shield on all eaves
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Extras to be paid when accepted by customer
To be completed by April 1 (two days job)

Special Notes: *Customer requests no foreigners*

PROTECTIVE ORDER – FOR COUNSEL EYE'S ONLY

NER006224

Sample Settlement Agreements

SETTLEMENT AGREEMENT

AGREEMENT made this 1st day of April, 2022, by and between Sampson Electronics Co. ("Sampson"), a corporation of the State of Ohio having a principal place of business in Akron, Ohio; and, Cajun Cooking Fun, Ltd. ("Cajun"), a corporation of the State of Louisiana having a principal place of business in Baton Rouge, Louisiana.

WHEREAS, Sampson and Cajun are desirous of settling the pending litigation referenced herein and thereby in section II hereof; including but not limited to Sampson's claims against Cajun for breach of contract.

NOW, THEREFORE, in consideration of the mutual covenants herein expressed, the parties hereby agree as follows:

Definitions

"Cooking Training" means the program that Cajun was going to conduct during Sampson's annual sales meeting, where participants would engage in a cook-off and have their prepared meals judged in a competition by hotel staff and other passersby.

"Sales Team Flyer" means the monthly e-letter sent by Sampson management to its various sales team members and selected customers.

I. Release

A. Sampson hereby irrevocably grants to Cajun a release from any and all claims of contract breach and any other possible claims concerning the Cooking Training and any other interactions between Sampson and Cajun concerning this dispute.

B. Cajun hereby irrevocably grants to Sampson a release from any and all claims of defamation and other possible claims concerning Sales Team Flyer and any other interactions between Sampson and Cajun concerning this dispute.

II. Pending Litigation

The parties agree to the dismissal with prejudice of the following pending litigation, and specifically agree to cause the filing of Stipulations of Dismissal in the forms annexed as Exhibits A and B hereto:

- (1) Sampson Electronics Co. v. Cajun Cooking Fun, Ltd., Civil Action No. MN 02-1234;
- (2) Cajun Cooking Fun, Ltd. V. Sampson Electronics Co., Civil Action No. MN 02-5678;
and
- (3) Sampson Electronics Co. v. Cajun Cooking Fun, Ltd., Civil Action No. MN 02-6733.

III. Payment

As consideration under this Agreement, Cajun shall pay Sampson the sum of \$600, which sum shall be paid in the following manner:

- (1) Within 30 days after the date of this Agreement, Cajun shall pay to Sampson the sum of \$200 (the "First Payment"). If Orders dismissing all litigation between the parties have not been entered as of the time said payment is due, the First Payment shall be made into an interest-bearing account paying the highest rate reasonably available. Such amount, together with all interest earned, will be delivered to Sampson when Orders dismissing said litigation between the parties have been entered.
- (2) Within one (1) year after the date of the First Payment, Cajun shall pay to Sampson the total sum of \$200 (the "Second Payment").
- (3) Within one (1) year after the date of the Second Payment, Cajun shall pay to Sampson the total sum of \$200.

IV. Effect of Breach

In the event of a failure by Cajun to make a payment in a timely manner in accordance with section 3 of this Agreement, the entire amount due and owing to Sampson under this Agreement shall be immediately due and owing to Sampson, plus interest from the date payment is due until the final time of payment, at the highest rate reasonably available. Cajun shall be liable to Sampson for all costs, including attorney's fees, incurred in collecting said amounts due and owing from Cajun.

V. Representations and Warranties

Each party represents and warrants that it has the full right and power to enter into this Settlement Agreement and execute the releases set forth in section 2 of this Agreement, and that there are no outstanding agreements, assignments, or encumbrances inconsistent with the provisions of said agreement and releases or with any other provision of this Agreement. Neither party makes any other representations or warranties, express or implied.

VI. Press Releases

The parties hereto have agreed that no press releases regarding the terms of this Agreement shall be issued without the consent and approval of all parties hereto.

VII. Notices

Any notices that may be made under this Agreement shall be sent by certified mail, return receipt requested as follows:

To SAMPSON:

Mr. Alan Okesy
Chairman
Sampson Electronics Co.
7000 Sampson Lane
Brainerd, MN 55322

To CAJUN:

Mr. John Day
President
Cajun Cooking Fun. Ltd.
333 Rue Français
Baton Rouge, Louisiana 43210

with a copy to the General Counsel of each party at the same address stated above; or to such other place as may be designated in writing by each of the parties hereto.

VIII. Entire Agreement

This Agreement represents the entire agreement and understanding of Sampson and Cajun, and may not be varied or modified other than by a writing executed on behalf of the parties.

SAMPSON ELECTRONICS COMPANY

Date: _____ By: _____
Name: _____
Title: _____

CAJUN COOKING FUN, LTD

Date: _____ By: _____
Name: _____
Title: _____

Settlement Agreement and Release of Claims

SETTLEMENT AGREEMENT made by and between Al Mass ("Mass"), a resident of Fond du Lac, Wisconsin, and Louise Staples ("Staples"), a resident of Flint, Michigan, effective October 19, 1997 (collectively the "Parties").

Background

1. Mr. Mass sued Ms. Staples for breach of contract, assault, and various other intentional torts in Pennington County District Court in South Dakota on November 14, 1996.
2. Mr. Mass' claims were dismissed by the Pennington County District Court on March 5, 1997.
3. Mr. Mass re-filed his claims against Ms. Staples in Outagamie County District Court in Wisconsin on March 6, 1997, and in Wisconsin Federal Court on March 8, 1997.
4. Ms. Staples has filed a motion to dismiss Mr. Mass' claims in both the state and federal litigation.
5. In the interest of resolving this matter once and for all, Mr. Mass and Ms. Staples have agreed to settle this matter for the terms set forth below.

The parties agree as follows:

1. General Release of All Claims. The parties and each of them both personally and on behalf of their principals, beneficiaries, partners, officers, employees, agents, successors in interest, officials, attorneys and legal representatives do waive, release, and forever discharge all other parties and each of them, as well as their principals, beneficiaries, partners, officers, employees, agents, successors in interest, officials, attorneys, and legal representatives of and from any claims, causes of action, demands, or damages whatsoever, whether in law or in equity, which they have had or now have against the other parties, and each of them, and their principals, beneficiaries, partners, officers, employees, agents, successors in interest, officials, attorneys, and legal representatives that in any way relate to, arise from, or are connected with the state litigation or federal litigation, this Agreement, or any matters or facts giving rise to any of them.
2. Successors. The parties, and each of them, acknowledge and agree that the covenants, agreements and obligations herein contained shall extend to, bind, and inure to the benefit of the parties hereto, and each of them, and their

respective personal representatives, heirs, successors, transferees, assigns, officers, officials, principals, beneficiaries, agents, good friends and partners.

3. Attorney's Fees; Costs. The parties, and each of them, agree and acknowledge that no party is a "prevailing party" as such term is described in 42 U.S.C.A. § 1988. The parties, and each of them, further acknowledge and agree that each party hereto shall bear their own fees, costs, and expenses in connection with the federal litigation, the state litigation, and this Agreement.
4. Enforcement. The parties, and each of them, agree that any party to this Agreement may in law or in equity, by suit, action, mandamus or any other proceeding, including specific performance, enforce or compel performance of this Agreement. Any party who is found to be in violation of this Agreement pursuant to an enforcement action hereunder shall be liable for all costs, including attorney's fees, of the enforcing party.
5. Voluntary Action. The parties, and each of them, do hereby represent and agree to the following:
 - a. That each party has been represented by counsel of its own choosing in the negotiation and preparation of this Agreement; and
 - b. That each party enters into this Settlement Agreement and Release of Claims of their own free will and upon advice of counsel, and each party intends to be legally bound by this Agreement.
6. Settlement Procedures. The parties, and each of them, expressly agree, acknowledge and understand that the making and execution of this Agreement are not and shall not be construed as an opinion, admission, or position as to the actual rights and defenses of the parties in connection with the federal litigation or the state litigation. The parties further agree, acknowledge, and understand that all proceedings relating to this Agreement and this Agreement itself are settlement proceedings and shall not be admissible in any proceeding.
7. Integration, Modification and Amendment. The parties, and each of them, understand and agree that there are no representations, covenants, promises or obligations not contained in this Agreement, which form any part of this Agreement or upon which any of them is relying in entering this Agreement. The parties, and each of them, agree and understand that the Agreement shall not be modified, changed, altered, or amended without the written consent of each of the parties hereto.
8. Governing Law. This Settlement Agreement shall be governed by and construed in accord with the laws of the State of Wisconsin.

9. No Admission. This Settlement Agreement and all papers relating to it are not, and shall not be construed to be, an admission by any Party of either the validity of any of the claims or defenses asserted in this case, or of liability with respect to any claims of any wrongdoing by them whatsoever or of the fact of or amount of damages. Nor shall this Settlement Agreement or any of the papers, negotiations, transactions, or proceedings, or any of the Settlement Agreement terms or recitations, be offered or received in evidence in any civil, criminal, arbitration, or administrative action or proceeding as an admission on the part of the Parties, or any of them, of wrongdoing or liability or of the merit or lack of merit of any claim or defense.
10. Public Statements. The Parties shall not initiate any public disclosure or press release concerning this settlement except as provided in this Agreement. The Parties may respond to inquiries by stating that the claims have been settled, and each party shall be entitled to initiate public disclosure that the claims against them have been settled, but the specific terms and participating parties (other than the Party making the statement) shall not be disclosed. The Parties may make such disclosures or statements concerning the settlement of this case as required by law, regulatory authority, the Court, or generally accepted accounting principles. The Parties or any one of their representatives may respond to any inquiries in a manner consistent with the terms of the Settlement Agreement, which shall remain confidential and nonpublic.
11. Arm's-Length Negotiations and Interpretation of Settlement Agreement. This Settlement Agreement was executed after arm's-length negotiations and mediation among the Parties through their counsel and after consultation with the Parties, and reflects the conclusion of counsel that this Settlement Agreement and the settlement contemplated by the Settlement Agreement are fair, equitable, and in the best interests of the Parties.
12. Reasonable Efforts. The Parties, and their respective counsel, agree to use their best efforts and to take all reasonable steps necessary to obtain entries of judgment and to effectuate the settlement set forth in this Settlement Agreement.

Agreed:

Al Mass

Louise Stapes

Date

Date