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COURT OF APPEALS NO. ~~70741-9-1~~

WASHINGTON STATE COURT OF APPEALS  
DIVISION ONE AT SEATTLE

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MANUEL CRUZ, GILBERTO RAMIREZ, and  
EPIFANIO RIOS

Respondents

v.

ABEL CHAVEZ and JANE DOE CHAVEZ,  
and the marital community thereof; and  
CHAVEZ LANDSCAPING, LLC, a limited liability company;  
Appellant/Petitioners

APPELLANT'S OPENING BRIEF

Dated: 13 December 2013

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CERTIFICATE OF SERVICE. I certify that a true copy of this brief of appellant was served by  
ABC Legal messenger upon attorney for plaintiffs John Frawley at 5800 36th St SW in  
Mountlake Terrace, WA 98043 this 16 day of Dec 2013. *M.A. Jacobson*

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**3a. ASSIGNMENTS OF ERROR**

- A. Did the trial court err in its 07/03/2013 Order (Dkt 192) On Motions For Enforcement of Settlement?
- B. Did the trial court err in its 07/03/2013 Order awarding a money judgment on account of Rios?
- C. Did the trial court err in its 07/17/2013 Order (Dkt 195) Re Motion for Reconsideration?

**3b. ISSUES RELATING TO ASSIGNMENTS OF ERROR**

- A. Granting in July 2013 plaintiff's motion to deny enforcement of the Ramirez/Chavez Agreement to Desist from Claims as executed by plaintiff Gilberto Ramirez, did the court misapply the governing law interpreting CR 2A which concerns signed, materially undisputed, enforceable Agreements?
  - A1 Is Review of the Order Denying Enforcement of Settlement De Novo and Subject to Summary Judgment Standards?
    - A2(i) Must a signed CR 2A agreement be enforced in the absence of facts admissible in evidence disputing the purport of agreement?
    - A.2 (ii) Did Ramirez' undisputed objective acts manifest his intent to be bound?
  - A3 Is a party-to-party signed writing an enforceable CR 2A Agreement without signature approval by the lawyer?
  - A4 Was the Ramirez/Chavez party-to-party negotiation and settlement by a litigant represented by counsel a routine, lawful, non-coercive

action?

B. Awarding money damages in 2013 upon Rios' claims for conduct alleged to occur in 2012, did the trial court misapply the law of release and discharge?

C. Issuing its Order Denying Enforcement upon 5 days' notice instead of 28 days' notice, was the trial court required to furnish Chavez a meaningful CR 59 reconsideration correctly applying the governing law and deriving the facts from objective bases?

D. Should CR 56d Relief Enforcing the CR 2A Ramirez Agreement be Granted in favor of Chavez?

#### **4. STATEMENT OF THE CASE.**

##### **Pre-Trial Events.**

Ramirez, along with coworkers Cruz and Rios<sup>1</sup> ("the workers"), sued Chavez Landscaping LLC and its owner, Chavez<sup>2</sup>, for underpaid statutory or contract wages occurring in fiscal years 2008 and 2009. (Clerk's Papers, page 358-362) (hereafter "CP 358-362") After a MAR arbitration hearing, defendant requested trial de novo. (CP 349-352) A 6 November 2012 trial date was set, then stricken at the urging of the workers. (CP 328-329) The matter was re-set for trial to occur February

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<sup>1</sup> Plaintiffs Cruz and Rios were dismissed with prejudice by Order dated 17 Oct. 2013. (CP 613-614)

<sup>2</sup> The court's Order dated 4/9/12 dismissed Defendant Amer. Contr. Indem. Co. (CP 356-57)

11, 2013. (CP 313) At the call of the 11 Feb 2013 trial calendar, the workers' attorney asked the court to strike the trial date without recourse. (CP 159, 161) Chavez was then in possession of executed release agreements bearing the signatures of each of the three workers. (CP 313, 154-55) (CP 31¶7)

A six month blackout period had predated the 11 February 2013 call of the case for trial, during which period the workers' attorney John Frawley had no contact whatsoever with all the workers.

....I was unable to even reach the plaintiffs.... I have had no communication from any of the plaintiffs for more than four months....the plaintiffs have made it impossible for me to effectively represent them... (Dated 17 January 2013 by John Frawley) (CP 227)

...we have communicated with the plaintiffs through a facilitator....she is now in Guatemala for an extended stay, making it impossible for us to communicate with her and, as a result, to communicate with the plaintiffs....Without her, we have been unable to reach the plaintiffs to discuss the issues in this case. Dated 16 October 2012 by John Frawley (CP 233-234)

At the February, 2013 call of the trial calendar, Attorney Frawley questioned his authority to act for Ramirez in connection with Ramirez' release agreement, given the continuing lack of communication.

...I feel uncomfortable signing off on any order since Mr. Ramirez terminated his communication with me, I guess, following his

settlement of the claims. And **I don't think I have authority**<sup>3</sup> to do that. (CP 159) (emp added)

In spite of these disqualifying conditions, attorney Frawley offered to the trial court his own dissenting, personal opinion about Ramirez' written consent to settle: "I don't think the court ought to enforce this agreement." (CP 159) The trial court deferred the question of enforcing the Ramirez settlement to another department. (CP 313, 159)

### **The Ramirez Settlement**

In September 2012, Chavez met privately with plaintiff Ramirez to negotiate settlement of Ramirez' claims. The men conversed, traded figures, and converged on a \$4000 settlement figure. (CP 29-30¶4,6) Chavez and Ramirez are native Spanish speakers (CP 30 ¶5) and their discussions and their Agreement to Desist from Claims are in the Spanish

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Attorney Frawley apparently had in mind RPC 1.4 which asserts:

(a) a lawyer shall (3)keep the client reasonably informed about the status of the matter.

Comment 5 The client should have sufficient information to participate intelligently in decision concerning the objectives of the representation and the means by which they are to be pursued to the extend the client is willing and able to do so.

RPC 1.2 further provides:

(a).. A lawyer shall abide by a client's decision whether to settle a matter.

Comment 1...The decision specified in paragraph (a) such as whether to settle a civil matter, must also be made by the client

language (CP 620-21).<sup>4</sup> Chavez paid \$4000 by check to Ramirez, which Ramirez cashed. (CP 629, 31 ¶6) Ramirez signed Chavez' agreement "To Desist From Any Claim" (CP 30¶5; 621), which was presented to Ramirez in his native Spanish as "Desistir Toda Demanda", upon which version Ramirez inscribed his signature. (CP 620-621) Ramirez' promises under the Agreement to Desist from any Claim includes his "compromise not to sue any of the released parties for any claim existing up to the date that he signs this document." and includes ""known and unknown claims in existence..." Also "the contractor (Ramirez) "intends to release any party...of any claim..." (CP 624) The Ramirez/Chavez agreement recites Ramirez' acceptance of the \$4000 settlement payment. (CP 624) Ramirez' signature appears on the back of Chavez' \$4000 settlement

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Chavez asked his office manager to take a file copy of a 2011 English Language settlement agreement signed by Chavez with a man named Ortiz and translate it into Spanish. (CP 30 ¶5) Chavez' office manager wrote a Spanish language translation. (CP 30 ¶5) Ramirez signed the Spanish language version titled "Desistir Toda Demanda" on

4 September 2012. (CP 620-621) . The English language **re-translation** of the Ramirez/Chavez agreement, titled "To Desist from All Claims" (CP 624-25) was created on 9 October 2012 (CP 623, 627) This English version was created more than one month since Ramirez and Chavez met and more than one month since Ramirez signed the back of Chavez' \$4000 settlement check. (CP 629) The original Ortiz agreement underwent two translations—one English to Spanish by the Chavez office manager, (CP 30¶5) and one Spanish to English by translator Dopps (CP 627)

check. (CP 629) Identical examples of Ramirez' signature appear on his company paychecks (CP 631-633) and on Ramirez' interrogatory answers. (CP 98)

When attorney Frawley interrupted his six month communication blackout in late January 2013—sending the workers to Ramirez' home to plan trial strategy together—Ramirez admitted he knew he'd signed a paper with Chavez and, for him, the case was finished:

"as the case approached trial,...we...tried to talk to him about the case, and got our attorney on the phone. Mr. Ramirez essentially refused to discuss the matter, said that he could not provide us with the paper that he had signed... and sent us away". (CP 575)

### **The Cruz/Rios Settlement**

In the course of mediation with Cruz and Rios on 7 Feb 2013, a CR 2A settlement agreement was executed by Cruz and Rios and their lawyer. (CP 86-87) Cruz and Rios agreed to release all **claims in existence on this day**, including any claim for prevailing party counsel fees (Id ¶2) in exchange for the settlement payments. (Id ¶1) The obligation promised by Cruz and Rios in exchange for settlement payments was not timely delivered. (CP 93) In April 2013, the workers' lawyer wrote: "...it appears that there will be no agreement on the form of the release necessary to conclude this matter." (CP 608) Ultimately, workers Cruz and Rios had to

be ordered by an arbitrator to sign a formal memorandum of their release agreements and to execute the agreed dismissal in a prescribed form (CP 6-9). Even after ordered in arbitration to comply, the trial court had to order workers Cruz and Rios to face a possible court action if they did not furnish their compliance before 28 August 2013. (CP 615-616) Rios and Cruz signed and delivered the formal memorandum of their earlier release agreements on 30 September 2013. (CP 607) The claims of Rios and Cruz were dismissed with prejudice by the trial court. (CP 613-614)

### **3 JULY ORDER DENYING ENFORCEMENT OF SETTLEMENT.**

Upon motion filed by plaintiff, the trial court issued its 3 July 2013 Judgment and Order adjudicating that Ramirez' signed settlement agreement was unenforceable. (CP 117-120) The 3 July 2013 Judgment and Order held

¶II.1 (e) ...the court will not enforce the settlement agreement... (CP 119)

First, the Court reviewed the twice-translated English language version of the Desistir Toda Demanda agreement signed by Ramirez and found the English translation would have been confusing to Ramirez. (CP 118, ¶

II.1)<sup>5</sup> Second, the Court asserted that CR 2A was violated by party-to-party negotiations. (Id.)<sup>6</sup> In addition, the Court held that RPC 4.2 does **not** permit a client to be coached about his right to conduct party-to-party negotiations. (CP 118)<sup>7</sup> The Court expressed dissatisfaction that the Ramirez settlement was not promptly shared with Ramirez' lawyer. (CP

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Ramirez' sworn certification in his 2011 interrogatory Answer asserts that he understood the Spanish Language translation furnished to him. (CP 98) The Desistir Toda Demanda Agreement inscribed with Ramirez' signature is the Spanish Language version, not the English re-translation. (CP 620-621) Attorney Frawley's sworn testimony to the court is that "none of the plaintiffs speak English" and "Spanish is their native language." (CP 226, 233) Nonetheless, the Judgment and Order found:

¶II.1(a) ... (the Ramirez / Chavez release document) is written in a language that is unclear and would be difficult for a **non-native speaker** to understand (CP 118 )(Emph added)

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" The Order held:

¶II.1 (d) ...the document which is offered by the defendants as a "release" does not comport with CR 2A as it was not acknowledged ...by the attorney for the plaintiff. (CP 119)

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RPC 4.2 (comment 4) provides:

Parties to a matter may communicate directly with each other and a lawyer is not prohibited from advising a client concerning a communication that the client is legally entitled to make.

Yet the Court found:

¶II.1(b)... the court is troubled by Mr. Jacobson's comment at oral argument that a lawyer is entitled to coach a client about communications with represented parties. (CP 118)

The Court held:

¶II.1 c) ...the court was troubled by the delay of many months in disclosing that purported “release” to the court, to the attorney for the plaintiffs, and to the other parties involved. (CP 119)

Non-disclosure of the release had been debated with Judge Downes at the trial call in February, 2013, after Cruz and Rios had joined Ramirez in signing settlement agreements. (CP 160-61) The English Translation of Ramirez’ agreement “To Desist” had created an authenticity issue, as it was marked by the translator “signature ... illegible.” (CP 625) This required defendants to secure from Ramirez a trial admission that he signed the settlement and the settlement check.(CP 160-161) According to the admissions on file by attorney Frawley, Chavez had summoned Ramirez to attend the trial call—first on 6 November, then again on 11 February. (CP 273,287) The CR 43f notices also assured Chavez that, if a trial admission of consent to settle could not be acquired from Ramirez, that Ramirez’ CR 32a2 “party admissions” (CP 158) harmful to the workers’ interests (See, eg. CP 30¶4) would be read to the jurors (See, CP 104-109 ER 904 exhibits 32,34,39 ) So informed, Judge Downes was “scratching his head...” (CP 162) then struck the parties’ trial date without a rescheduling, and ordered plaintiff’s motion to enforce settlement to be presented on the civil motions calendar. (CP 162)

Plaintiff Cruz nonetheless furnished the court his sworn testimony asserting his belief that the undisclosed settlement hurt him and his trial interests.

During the course of preparing for trial in this matter, we spent many hours with our attorney discussing ...the common elements in our claims. **In the closing months prior to trial**, this was made extremely difficult because Mr. Ramirez would not contact us and because the defendants and their attorney had not informed us that they had settled the claims.....(CP 575)(emp added)

Mr. Cruz’ beliefs are specifically contradicted by his own lawyer. What made preparations difficult **in the closing months prior to trial** was the six month communication blackout between Cruz and his lawyer prior to trial

I have needed the **assistance of these plaintiffs to prepare for trial for several months**. There were discovery issues which arose in the fall of 2012 and I was **unable to even reach the plaintiffs** to assist in that process. I have had **no communication from any of the plaintiffs for more than four months**....The plaintiffs have made it impossible for me to effectively represent them.... Dated 17 January 2013 by John Frawley (CP 69)(emp added)

The trial court ignored without comment this objective evidence that the Ramirez settlement was meaningless to the other workers’ trial preparation, as if such evidence did

Finally, the Court awarded plaintiffs a money judgment for the benefit of Rios as a penal sanction for an asserted 2012 discovery rule violation. (CP 121, 119 ¶II.2(a,b))<sup>9</sup> However, prior to Rios' motion in the trial court demanding judgment against Chavez, Rios had previously signed an agreement and reaffirmed in a subsequent agreement that

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not exist.

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The trial court's basis for sanctions was asserted in a declaration from third party witness McLaughlin. McLaughlin asserted he was "gamed" [CP 266] when he received in his email a signed subpoena "Michael Jacobson attorney for plaintiff Rios," (CP 263) asserting it was the sole evidence in his file. (CP 264) However, the **8 August 2012** email transmittal of the subpoena contained "enclosure(s) ...**a letter** and subpoena" (CP 195) The letter fully informed McLaughlin of the situation and its proper context

**A proposed subpoena** duces tecum is attached for your review.... **I represent the defendant**, Chavez Landscaping. Mr. Rios is a former employee of yours and the plaintiff. ... I would be happy to serve this subpoena to you by messenger. I will need to impose upon you to tell me at what location you could receive our messenger...You should discuss with your counsel ...questions about this routine operation.... (CP 191, 195)(emp added)(See also, CP 199 ¶6,7)

After 25 years serving as "attorney for plaintiffs" exclusively Jacobson became attorney for defendant in the Chavez litigation for the first time. (CP 126) Attorney Jacobson regretted his serious error in failing to edit the subpoena form on file on his computer, which contains the identifier "attorney for plaintiff." (CP 126) But "gaming" a witness and "improper service" upon Mr. McLaughlin was disputed by objective evidence, (CP 126; CP 191; CP 199) which evidence the trial court ignored without comment, as if such evidence did not exist. Furthermore, the McLaughlin disclosure was a duplication of the trial court's Order re: Compelling Discovery of Washington Employment Security Records (CP 208-09) which disgorged to Chavez the identical record of Rios' wage earning history (CP 111-112) as did the unserved subpoena. The duplicate disclosure of Rios wage records by court order was disregarded without comment by the trial court as if such evidence, too, did not exist.

“ ... Cruz and Rios..release and forever discharge Chavez...for all claims...in existence as of **7 February 2013** ... [signed] Epifanio Rios.”  
(CP 607; CP 86-87¶2)

**POST JUDGMENT EVENTS.** A timely reconsideration and timely notice of appeal was filed. (CP 300; CP 1) Plaintiff Ramirez pursued no further proceedings in the trial court in the 150 days since his \$4000 settlement was invalidated by Court order. Nor had Ramirez in the first instance participated or given sworn testimony or penetrated the communication blackout with his attorney (CP 227, 233, 159) in connection with the motion to deny enforcement of settlement. Rios had been fully paid for all installments of his 7 Feb 2013 settlement with Chavez (CP 115 ¶3) at the time he petitioned the trial court to award a money judgment.

## **5. ARGUMENT.**

### **A1 Review of a CR 2A agreement is a question of law subject to summary judgment standards and de novo review**

The review of a CR 2A agreements is determined by summary judgment standards.

An agreement is disputed within the meaning of CR 2A only if there is a genuine dispute over the existence or material terms of the agreement.... (A)nd the dispute must be a genuine one....Rather, the purpose of CR 2A ... is not served by barring enforcement of an

alleged settlement agreement that is not genuinely disputed, for a non-genuine dispute can be, and should be, summarily resolved without trial.

In re Patterson v. Taylor, 93 Wn App 579, 584-585, 969 P.2d 1106 (1999) Accord, Brinkerhoff v. Campbell, 99 Wn App 692, 697, 994 P.2d 911 (2000) (“We see no reason why the summary judgment standard of review should not also apply where, as here, there is a dispute of material fact about a defense to the agreement.”)

A grant or denial of summary judgment is reviewed de novo, engaging the appeal court anew in the analysis undertaken by the trial court. Roger Crane & Assocs v. Felice, 74 Wn App 769, 875 P.2d 705 (1994). Summary judgment is granted if “a **genuine** issue as to any material fact” cannot be shown to exist, or the moving party is “entitled to judgment as a matter of law.” CR 56c (emp. added) In a summary judgment proceeding, the court “shall if practicable ascertain what material facts exist without substantial controversy....(and) thereupon make an order specifying the facts that appear without substantial controversy...” CR 56d.<sup>10</sup>

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CR 56d provides in pertinent part:  
If on motion under the rule judgement is not rendered upon the whole case....the court at the hearing of the motion by examining the pleadings and the evidence before it and by interrogating counsel shall if practicable ascertain what material facts exist without

In addition, a Court may reconsider an order which is contrary to law pursuant to Civil Rule 59(a)(8). Reopening is an exercise of discretion, reviewed for its abuse. Zulauf v. Carton, 30 Wn 2d 425, 192 P.2d 328 (1948). But there is no discretion to misapply the law. Schneider v. Seattle, 24 Wn App 251, 256, 600 P.2d 666 (1979) ("...(A)n issue of law.... we review for error only, as no discretion inures in the trial court's decision.")

Discretionary choices among the evidentiary components may be reviewed for abuse. An abuse of discretion occurs where the fact finder disregards the material evidence without comment, as if such material evidence did not exist. Hillis v. State, DOE, 131 Wn 2d 373m 383 (1997) (evidentiary choices “taken **without regard** to the attending facts or circumstances”)(emp added) See, Bach v. Sarich, 74 Wn 2d 575, 583 (findings “irreconcilable with the total evidentiary composition viewed in a favorable light”); State Ex. Rel. Carrol v. Junker, 79 Wn 2d 12, 25-26 (1971). “conclusions (not) drawn from objective criteria.”

**A2 A signed CR 2A agreement must be enforced in the absence of**

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substantial controversy....It shall thereupon make an order specifying the facts that appear without substantial controversy ... Upon the trial of the action the facts so specified shall be deemed established.

**facts admissible in evidence disputing the purport of agreement.**

In Re Ferree, 71 Wn App 35, 856 P.2d 706 (1993) is the leading case in explaining the application of CR 2(a) to written settlements. When a party proposes to enforce a settlement within the purview of CR 2(a), the Ferree court describes the central CR 56 issue to be: is the “purport of the agreement...disputed” Ferree, 71 Wn. App. at 39, 40. “Purport” of an agreement is its “meaning,... substance or legal effect.” Ferree, 71 Wn. App. at 40.

The Ferree court analyzed a husband’s challenge enforcing the terms written by his then-lawyer in a memorandum confirming an oral settlement. The Court held.

(Moving party) Ms. Ferree carried her burden by producing affidavits ...(which) stated that an agreement had been reached and that its material terms were incorporated in (former counsel’s) proposed findings and decree.

Mr. Ferree failed to carry his burden. **He produced no testimony by affidavit, declaration, or any other means**, and the assertions of his new counsel lacked any foundation in personal knowledge or the record. We conclude that reasonable minds could reach but one conclusion ...a settlement was reached ...its purport is not disputed within the meaning of CR 2(a)....

Ferree, 71 Wn. App. at 45 (emp added); See, CR 56e (“affidavits...shall set forth such facts as would be admissible in evidence...”)

In our case, Ramirez’ manifested intentions to settle were

undisputed. Ramirez' signature is inscribed on the agreement with Chavez. Chavez' affidavit furnished firsthand evidence that the men met together privately, conversed in their native language, and agreed on a figure. Also, Chavez watched Ramirez sign the agreement To Desist from Claims, delivered the indicated settlement check, and retrieved from the bank a copy of his cleared settlement check bearing Ramirez' signature –the same signature inscribed on Ramirez' Agreement and on the backs of Ramirez' paychecks. As in Feree, Ramirez did **not** furnish any fact whatsoever controverting Chavez' testimony. Ramirez did not ever seek to disavow settlement, nor agree to return the consideration. The purport and meaning of the words of agreement signed by Ramirez are 100 percent undisputed by facts admissible in evidence.

**A.2. (ii) Ramirez' objective acts manifest his intent to be bound.**

“The Washington court has long adhered to the objective manifestation theory in construing the words and acts of alleged contractual parties.” Patterson, 93 Wn App at 588.

We impute to a person an intention corresponding to the reasonable meaning of his words and acts. Unexpressed intentions are nugatory when the problem is to ascertain the legal relations, if any, between two parties... Mistake as to the effect of the "CR 2A" provisions, therefore, did not give rise to a genuine dispute of material fact.

Patterson, 93 Wn App at 588. In the instant case, the only manifested intentions of Ramirez are those stated in the Ramirez/Chavez agreement bearing his signature. The Spanish language agreement asserted in paragraph 2 that the contractor (identified as “Ramirez”)

intends to release any party mentioned here....the term “to release”... covers without limitation the contractor’s agreement and his compromise not to sue any of the released parties for any claim existing up to the date he signs this document. (CP 624)

The agreement clearly identifies Chavez’ settlement payment as the quid pro quo for Ramirez to surrender rights. (CP 624) Ramirez again accepted the benefits and obligations of settlement on the day he signed the back of Chavez’ \$4000 settlement check (CP 629)

Subjective doubts about the binding nature of a signed settlement constitute no contract defense. In Patterson, weeks after the parties met together **without their counsel present** and signed a memorandum of settlement, Patterson asserted the onset of doubts. Patterson contended that he didn’t mean what he had written and didn’t understand its legal effect, asserting he “never agreed that any agreement would be binding on me until and unless it was approved and reviewed by my own attorney .” The court disagreed.

(Patterson)...could have refused to sign until he met with his counsel. Patterson signed the agreement. He may have made a

mistake, but the court is not compelled to relieve him of it.

Patterson, 93 Wn App at 588-89.

The trial court misapplied the law governing contractual intent. The court mistakenly inferred it was “troubled by the manner in which the “release” which was presented to Mr. Ramirez was obtained” ( Apx p 2-3; ¶ II.1a,c,e) on a wholly blank record. The admissible facts in evidence are devoid of any manifestation by Ramirez signifying an irregularity in how Chavez presented or obtained consent.

Our facts match the facts in Feree in other respects as well. The affidavit testimony of the attorney resisting enforcement of the Ferree agreement lacked any foundation in personal knowledge about offer and acceptance, just as attorney Frawley lacked any personal knowledge about the Chavez/Ramirez agreement, its formation, or facts disputing the testimony of Chavez about it. What is more, attorney Frawley admitted to Judge Downes his “doubt(ed)... authority<sup>11</sup> to act for Ramirez in connection with Ramirez’ settlement due to a six-month lack of

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In law, Frawley had a duty to Ramirez to support Ramirez’ expressed wish to settle. “A lawyer shall abide by client’s decision whether to settle a matter.” RPC 1.2.

communications with Ramirez. (CP 159) Ramirez' admissions against interest in January 2013 emphasized Attorney Frawley's lack of authority to oppose Ramirez' settlement: Cruz reported Ramirez to admit the existence of papers he signed with Chavez along with Ramirez' understanding that, as to him, the case was done. (CP 575)

In addition, the affidavit testimony of Cruz lacked any foundation in personal knowledge about Chavez' agreement with Ramirez or facts disputing the testimony of Chavez about it.<sup>12</sup> In sum, the purport of the Ramirez agreement was undisputed by **any fact** admissible in evidence. Absent disputed purport, the motion to deny enforcement of the CR 2A agreement must be denied. Alternatively stated, the Court, standing in the

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The testimony of Cruz depicts a business owner highly motivated to settle disputes. Chavez visited Cruz at home in 2012 to present to him settlement options. (CP 574-575) While Cruz asserts that Chavez required as a condition of settlement the elimination of lawyers from the settlement process, there was no such condition. During the interval described by Cruz –starting in October 2013 (CP 609) and continuing in November, December (2012), and January (CP 100-102) Chavez' lawyer communicated through opposing counsel Chavez' priority to convene a mediation conference with worker Cruz. (CP 100-102) Neither party-to-party negotiations nor mediated settlement negotiations to settle disputes are irregular—both are good social policy and good business policy. Regardless, none of Cruz' experiences assert Cruz' personal knowledge of a fact admissible in evidence creating a disputed purport as to Ramirez' Agreement to Desist From Claims. None of Cruz' experiences contradict the declaration of Chavez asserting that he met privately with Ramirez and acquired Ramirez' consent to discharge claims by furnishing a financial consideration.

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shoes of the trial court, should issue a CR 56(d) order “specifying the facts that appear without substantial controversy” to include Ramirez’ undisputed intent to release all claims against Chavez, and reverse the Judgment and Order as to Ramirez, and dismiss Ramirez’ claims pursuant to agreement.

Plaintiff may contend that the trial court found the English language re-translation of the “Desistir Toda Demanda” imprecise and confusing to a **non-native** speaker, to wit:

¶II.1(a)...the [Ramirez/Chavez release] document is written in a language that is unclear and would be difficult for a non-native speaker to understand. (Apdx p2)

This is a finding drawn without an objective basis in the record. See, Junker, 79 Wn.2d at 25-26. The Spanish language was not unclear to Ramirez; he is a native Spanish speaker. Chavez conversed with him about it in Spanish, and Ramirez signed a Spanish language document on September 4, 2012. Ramirez experienced no “non-native speaker” impairment– Ramirez never saw the English language re-translation created a month later on 9 October. Ramirez manifested his comprehension of the agreement in a series of actions– he bargained with Chavez, inscribed his signature on the agreement, signed the back of Chavez’ settlement check, **and told his co-plaintiffs he had a signed**

**paper and that the case, for him, was over.** The trial court asserted the existence of an English language comprehension barrier without an anchor in the objective facts and must be reversed.

**A3 A party's signed writing without the endorsement of counsel is an enforceable CR 2A Agreement.**

“A party may settle a case with or without an attorney.” Patterson 93 Wn App at 585.

The opening portion of CR 2A,...reads "No agreement or consent between parties or attorneys." The rule clearly anticipates that parties may directly enter into settlements. Moreover, an attorney is only an agent. A party may settle a case with or without an attorney. When the party undertakes a settlement directly with the other party, reduces it to writing, and signs it, as in this case, the requirements of CR 2A are met just as if the attorney had participated.

Patterson, 93 Wn App at 585. Patterson, like Ramirez, was represented by counsel when Patterson signed a settlement contract. Counsel's consent is immaterial to a written agreement of the parties. “CR 2A... precludes enforcement of a disputed settlement agreement not made in writing or put on the record...However, **it does not affect an agreement made in writing,**” Patterson, 93 Wn App at 582-83 (emp added). The trial court misapplied the governing law, asserting:

The document which was offered by the defendants as a “release” does not comport with CR 2A as it was...not acknowledged by the

attorney for the plaintiff, despite the fact that the plaintiff was represented by counsel at all times.

(Apx p2-3 ¶II.1(d,e)) No discretion is afforded to misapply the law.

The Order denying enforcement must be reversed. The Order on

Reconsideration must be reversed.

**A4 The party-to-party negotiation and settlement between litigants represented by counsel was a routine, lawful, non-coercive action.**

Our facts are like those in Patterson, where the plaintiff asserted that presentation of a settlement agreement without his counsel's presence or participation was inherently coercive. The court held:

Patterson bore the burden of proving coercion. ...Given the lack of evidence Patterson presented to support his coercion claim, the trial court did not abuse its discretion by rejecting that claim.

Patterson, at 586. Ramirez' failure of proof of coercion is even more stark. To this day, Ramirez has never uttered a word to disavow settlement or offer to return his \$4000 consideration. His only admissible testimony about settlement—apart from his authorizing signature on the agreement and the settlement check— was an admission against interest, asserting to plaintiff Cruz that he wanted nothing more to do with the case and its preparations. <sup>13</sup>

Against this backdrop, the trial court inferred coercive effects from phantoms.

¶1(b)...the court is troubled by Mr. Jacobson's comment during oral argument that a lawyer is entitled to coach<sup>14</sup> a client about communications with represented parties.(CP 118)

The rules of professional conduct section 4.2 specifically approve coaching a client to execute his legal rights to engage the other party in direct settlement discussions.

A lawyer shall not communicate about the subject of representation with a person the lawyer knows to be represented by another lawyer in the matter, unless the lawyer has the consent of the other lawyer or is authorized by law or a court order  
**(Comment 4)....Parties to a matter may communicate directly with each other and a lawyer is not prohibited from advising a client concerning a communication that the client is legally entitled to make.**

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Attorney Frawley rightfully questioned his own authority to contradict Ramirez' settlement decision.

...since Mr. Ramirez terminated his communication with me....I don't think I have the authority to do that...(CP 159)

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The Court may take judicial notice of the dictionary definition of the word "coach" used as a verb, found in Www.dictionary.com: (Indent?)"Coach" The word "coach" in its usage as a verb means verb (used with object) 12. to give instruction or advice to in the capacity of a coach; instruct:

RPC 4.2; RPC 4.2 comment 4. (Emp added) The affidavit testimony of Jacobson and Chavez, asserting that a private party-to-party negotiation between Chavez and Ramirez occurred, is undisputed by any fact in evidence. The trial court misapplied the governing legal standard fixing counsel's duty to his client. The Order denying enforcement must be reversed for this added reason.

Attorney Frawley argued to the trial court that none of Chavez' evidence was before the court or suitable for consideration. However, until a formal order granting or denying the motion for summary judgment is entered, a party may file affidavits to assist the court in determining the existence of an issue of material fact. Cofer v. County of Pierce, 8 Wn App 258, 261, 505 P.2d 476 (1973); citing Felsman v. Kessler, 2 Wn App 493, 468 P.2d 691 (1970); Nicacio v. Yakima Chief Ranches, Inc., 63 Wn.2d 945, 389 P.2d 888 (1964). The trial court disregarded attorney Frawley's argument and "considered the materials submitted by the parties", specifying in particular "the reply declaration of Jacobson." (CP 118; citing CP 122-131)

Further, a party's failure to make a **timely** motion to strike waives any deficiencies in affidavits submitted in support of a motion. Meadows v. Grant's Auto Brokers, Inc., 71 Wn.2d 874, 881, 431 P.2d 216 (1967)

Attorney Frawley's untimely Motion to Strike Chavez' evidence was signed and submitted to the trial court on 24 June (CP 167-169) to be heard the following day (CP 121). The motion did not furnish the CR 6(d) five day notice period. The trial court exercised its discretion and "considered the materials submitted by the parties." (CP 118) Attorney Frawley's objections to Chavez' evidence were waived by untimeliness. And the objections were mooted when the trial court reviewed the identical evidence asserted in the Reply Declaration. For this added reason, the Order Denying Enforcement is unlawful and must be reversed.

**B. Awarding money damages in 2013 upon Rios' claims for conduct alleged to occur in 2012, the trial court misapplied the law of release and discharge.**

"Washington courts favor amicable settlement of disputes and are inclined to view settlements with finality." Rosen v. Ascentry Technologies, Inc., 143 Wn. App. 364,372, 177 P.3d 765 (2008).<sup>15</sup> The

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<sup>15</sup> See, e.g., *Am. Safety Cas. Ins. Co. v. City of Olympia*, 162 Wn.2d 762, 772, 174 P.3d 54 (2007) ("Washington law strongly favors the public policy of settlement over litigation."); *City of Seattle v. Blume*, 134 Wn.2d 243,258,947 P.2d 223 (1997) ("[T]he express public policy of this state ... strongly encourages settlement."); *Seafirst Ctr. Ltd. P'ship v. Erickson*, 127 Wn.2d 355,366, 898 P.2d 299 (1995) (referring to "Washington's strong public policy of encouraging settlements"); *Haller v. Wallis*, 89 Wn.2d 539, 545, 573 P.2d 1302 (1978) ("[T]he law favors amicable settlement of disputes .... "); *Martin v. Johnson*, 141 Wn. App. 611, 622, 170 P.3d 1198 (2007) ("The express public policy of this state strongly encourages settlement."); *Puget Sound Energy v. Certain Underwriters at Lloyd's, London*, 134 Wn. App. 228,237, 138 P.3d 1068 (2006) (noting "the public policy in Washington of encouraging settlement"); *Lakes v. von der Mehden*, 117 Wn. App. 212,218-19,70 P.3d 154 (2003) ("To hold otherwise

party seeking enforcement of a settlement and discharge agreement need only prove that there is no genuine dispute over the existence and material terms of the agreement. Brinkerhoff v. Campbell, 99 Wn. App. 692, 696-97, 994 P.2d 911 (2000).

Worker Rios signed the 7 February 2013 “CR 2A agreement” with Chavez and confirmed, in a subsequent formal memorandum, that Rios accepted the benefit of a stream of settlement payments from Chavez in exchange for the obligation to **discharge Chavez from all liabilities existing as of 7 February 2013.** (CP 607; 86-87)(emp added) Rios and his attorney specifically approved that agreement. The record is devoid of any dispute about its purport. Contrary to these undisputed and enforceable written obligations, Rios pursued and the trial court awarded judgment for Rios on the basis of an asserted 2012 CR 26a discovery violations (CP 121), overriding Rios’ duty to discharge that 2012 liability. The trial court mistakenly adjudicated an event dating from 2012, which Rios had discharged. Rios had already agreed to a cash settlement for this

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would penalize stipulating parties by exposing them to the risk of prejudgment interest, contrary to the express public policy of this state that strongly encourages stipulations and settlements.”); *Mut. of Enumclaw Ins. Co. v. State Farm Mut. Automobile Ins. Co.*, 37 Wn. App. 690, 693, 682 P.2d 317 (1984) (observing that the law has recognized a “strong policy of encouraging the private settlement of disputes”).

discharge of liability. (CP 86-87) The money judgment is contrary to law and must be reversed.

**C. The Order Denying Enforcement upon 5 days' notice required the Court to furnish a meaningful CR 59 reconsideration upon meaningful notice**

The Supreme Court in Mathews v. Eldridge, 424 US 319, 333, 96 S. Ct. 893, 47 L. Ed. 2d 18 (1976) held that "the fundamental requirement of due process is the opportunity to be heard at a meaningful time and in a meaningful manner." accord, Young v. Konz, 91 Wn 2d 532, 539, 588 P.2d 1360 (1979) ("The essential elements of the constitutional guaranty of due process, in its procedural aspect, are notice and an opportunity to be heard or defend before a competent tribunal in an orderly proceeding adapted to the nature of the case.") Where affidavits or declarations are necessary to reveal a dispute as to the **purported** legal effect of a settlement agreement, the trial court proceeds as if considering a motion for summary judgment. Brinkerhoff 99 Wn App. at 696; Ferree, 71 Wn App. At 43. But the moving party in the instant case secured the Judgment and Order on appeal upon a five-day hearing notice. The moving party short circuited a full CR 56(c) record on a full CR 56(c) 28-day notice period, depriving Chavez of a meaningful hearing at a meaningful time. Young, 91 Wn 2d at 539; Cf. Goucher v. J.R. Simplot Co., 104 Wn.2d

662, 665 (1985) (the opportunity for “countervailing oral argument and to submit case authority in support of his position... allowing the plaintiff additional time to provide authority in opposition to the motion” negated the rules violation) Cf. Hockley v. Hargitt, 82 Wn.2d 337, 347 (1973) (the rules violation was cured where ample time to provide countervailing arguments and affidavits was provided)

Plaintiff may argue that the CR 59 reconsideration papers are defective or without effect. But Chavez’ CR 59 appendices 1-24 and arguments A-G (CP 11-113; 3-9) “cure” the need for a meaningful summary judgment hearing at a meaningful time **only if** Chavez receives a due process hearing on his CR 59 materials.

"...(A)n issue of law.... we review for error only, as no discretion inures in the trial court's decision.") Schneider v. Seattle, 24 Wn. App. 251, 256, 600 P.2d 666 (1979) The trial court order denying reconsideration (CP 12 )<sup>16</sup> misapplied the governing law applicable to Rios’ settlement and discharge agreement and must be reversed.

In addition, an abuse of discretion occurs where the fact finder

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Chavez’ CR 59(a) motion to reconsider notified the trial court that the asserted CR 26a violation had been discharged by settlement and release. (CP 11-12 and CP 86-87)

disregards the material evidence without comment, as if such material evidence did not exist. See, Bach v. Sarich, 74 Wn 2d 575, 583 (findings “irreconcilable with the total evidentiary composition viewed in a favorable light”); State Ex. Rel. Carrol v. Junker, 79 Wn 2d 12, 25-26 (1971) (where “conclusions are (not) drawn from objective criteria.”) See, Hillis v. State, DOE, 131 Wn 2d 373 (1997) (“choices among the evidence taken without regard to the attending facts or circumstances”) The trial court disregarded Rios’ CR 2A agreement (CP 86-87; CP 3-9) without comment, as if no evidence of a CR 2A discharge of liability existed. The Order denying reconsideration must be reversed.

**D. CR 56d Relief Enforcing the CR 2A Ramirez Agreement Should be Granted in favor of Chavez**

Indisputably, Ramirez signed a compromise not to sue and to desist from all legal claims and signed and deposited a settlement check under unremarkable circumstances signifying that Ramirez understood and intended the natural consequences of his actions. No admissible facts in evidence upon personal knowledge were asserted by Ramirez or anyone else to materially dispute the purport of Ramirez’ manifested actions. Under these facts, a partial summary judgment is required asserting that Ramirez accepted the benefits and obligations of his agreement to desist

from all claims and release Chavez from all claims made by Ramirez.

**6. CONCLUSION.** The Judgment and Order Denying Enforcement should be reversed. Directions should be issued to the trial court to dismiss all claims by Ramirez pursuant to agreement and to hold for naught the money judgment against Chavez. Alternatively, the Court should step into the shoes of the trial court and issue a CR 56d Order Enforcing the Ramirez Agreement to Desist from All Claims and reversing and holding for naught the money judgment.

**7. APPENDICES.** The settlement and discharge agreements at issue are set forth in the appendices:

Apdx 1: Ramirez / Chavez agreement to desist from all claims, 9/4/12

Apdx 2 Rios / Chavez CR 2A agreement, 2/7/13

Apdx 3 Rios and Cruz release of claims, 9/30/13

APPENDIX 1

#### DESISTIR TODA DEMANDA

PREAMBULO. Chavez Landscaping LLC, sus duenos Abel Chavez ("Chavez"), a cierto punto empleo los servicios de ~~Gilbert Ramirez~~ (contratista). Una disputa a cerca de los servicios y la compensacion ha surgido entre el contratista y el contratador (Chavez) los mencionados. Chavez no esta de acuerdo con la cantidad reclamada. Sin embargo, se desea evitar alguna disputa. A resultado, las partes an acordado desistir cualquier reclamo que exista y que el contratista pueda levantar en contra de Chavez, sus agents o sus familiares, (las partes liberadas) y el contratista, sus agentes, y sus familiares.

CONSIDERACION. Un pago de ajuste sera hecho de parte de Chavez a el contratista en la cantidad de \$4,000.00 el contratista ha pedido que el cheque sea entregado a el en persona a menos que otras instrucciones especificas sean sugeridas. Este pago sera reconocido cuando el cheque numero 3652 (copia anexada) es entregada a el contratista.

LIBERACION. En intercambio de esta consideracion identifica aqui arriba, el contratista acuerda que liberara cualquier reclamo comprensivamente que el tenga o pueda hacer en contra de las partes liberadas o cualquier dolencia en existencia hasta la fecha que este documento sea firmado. El contratista pretende liberar cualquier parte mencionada aqui de cualquier reclamo el pueda hacer, o cualquier otra persona actuando como su agente o designada por el pueda hace de su parte hacia las partes liberadas en existencia hasta la fecha. El contratista acuerda con su firma (encontrada en este documento) sea retirada y nula. El termino liberar es intencionado en su maxima sin limitaciones de cancelacion. Abarca sin limitacion el acuerdo de el contratista y su compromiso a no demandar a ninguno de las partes liberadas por cualquier reclamo existente hasta la fecha en que el firme este documento. El termino reclamo es intencionado y expansivo en su significado. Incluye cualquier violacion acertada de las leyes communes, las estatus revisadas de Washington, el codigo de los Estados Unidos, o cualquier entidad gubernamental regulada, Incluye contratos, agravios, fraude o cualquier otra teoria legal o cualquier otro reclamo de alivio, compensacion o re-embolso. Incluye reclamos conocidos y desconocidos que esten en existencia hasta la fecha en que este documento sea firmado.

AFFIRMACION. El contratista acuerda que nunca se le indujo en ninguna forma mas que lo descrito en este documento con su firma abajo. El ha afijado su firma libre y voluntariamente. El acuerda que ha consultado su familia y asesores comerciales o legales de su desear, incluyendo cualquier abogado y es satisfecho que este acuerdo es por su libre y voluntaria decision.

ESTE DOCUMENTO ES UNA DESISTENCIA DE CUALQUIER RECLAMO CONOCIDOS O POR CONOCER. AL FIRMAR ESTE DOCUMENTO USTED ACUERDA QUE HA LEIDO, ENTIENDE Y ESTÁ DE ACUERDO CON ESTOS TERMINOS MENCIONADO ARRIBA.

ACORDADO ESTE 04 DIA DE 07 2012 Cathy EVERETT WA  
CONTRATISTA (CIUDAD)

TESTIGO ESTE 09 DIA DE 04 2012 Luz M. Diaz Everett WA  
TESTIGO (CIUDAD)

APPROVADO ESTE 09 DIA DE 04 2012 [Signature]  
PARA CHAVEZ LANDSCAPING LLC

**CERTIFICATE OF TRANSLATION**

I, Maria C. Dopps, declare that I am a CERTIFIED INTERPRETER AND TRANSLATOR of the SPANISH and ENGLISH languages, and that I have translated the attached document titled "TO DESIST FROM ANY CLAIM" from its Spanish language original titled "DESISTIR DE TODA DEMANDA". I have completed this translation to the best of my abilities.

*Maria C. Dopps*

Maria C. Dopps  
Certified Spanish/English Translator  
State of Washington Court Identification No. 009812  
State of Washington DSHS certification number: TC1901,

Translated on this 9th day of October, 2012

## TO DESIST FROM ANY CLAIM

PREAMBLE. Chavez Landscaping LLC, its owners Abel Chavez ("Chavez"), at some point employed the services of Gilberto Ramirez (contractor). A dispute arose between the contractor and one of the parties to a contract<sup>1</sup> (Chavez). Chavez does not agree with the claimed amount. However, a dispute wants to be avoided. As a result, the parties have agreed to desist to any claim that may exist and that the contractor may raise against Chavez, his agents or relatives, (the released parties) and the contractor, his agents or relatives.

CONSIDERATION. Chavez will issue an adjusted payment to the contractor for the amount of \$4,000.00, the contractor has asked for the check to be delivered personally to him unless there are some other suggestions for specific instructions. This payment will be acknowledged when check number 3652 (copy attached) be [sic: is] delivered to the contractor.

RELEASE. As an exchange of this consideration identify [sic: identified] here above, the contractor agrees to release of any comprehensible claim that he may have or that he could raise against the released parties or any existing affliction up to the date that this document be signed. The contractor intends to release any party mentioned here of any claim that he may do, or any other person acting as his agent or designated by him may do on his own towards the released parties in existence up to date. The contractor agrees by his signature (given in this document) be withdrawn and voided. The term "to release" is deliberate at its fullest, without limitations of cancellation. It covers without limitation the contractor's agreement and his compromise not to sue any of the released parties for any claim existing up to the date that he signs this document. The term claim is deliberate and expansive in its meaning. It includes any pertinent violation of the common laws, the Washington revised status, the United States codes, or any regulated government entity, includes contracts, offenses, fraud or any other legal theory or any other claim of alleviation, compensation or re-tum [sic: return]. It includes known and unknown claims in existence up to the date this document be signed.

AFFIRMATION. The contractor agrees by his signature below that he was never induced in any way different from what it is described in this document. He has affixed<sup>2</sup> his signature freely and voluntarily. He agrees that he has sought advice from his family and legal and commercial advisors, as he wishes, including any attorney and he is satisfied that this agreement is made freely and voluntarily.

THIS DOCUMENT IS A VOLUNTARY DISMISSAL<sup>3</sup> OF ANY KNOWN AND UNKNOWN CLAIMS. BY SIGNING THIS DOCUMENT YOU AGREE THAT YOU HAVE READ, UNDERSTOOD AND AGREED TO THE TERMS ABOVE.

AGREED ON THIS 9 [sic: 9<sup>th</sup>] of 4 [sic], 2012 Illegible signature Everett WA  
CONTRACTOR (CITY)

WITNESS THIS 09 [sic: 9<sup>th</sup>] DAY OF 4 [sic], 2012 Luz Ma. Diaz Everett WA  
WITNESS (CITY)

APPROVED THIS 09 [sic: 9<sup>th</sup>] DAY OF 4 [sic], 2012 Illegible signature  
FOR CHAVEZ LANDSCAPING

#### TRANSLATOR'S NOTES

1. The original document reads "contratador", which seems to be an atypical use of the word "contratante". (Translator's note)
2. The original document reads "afijado" which seems to be an Anglicism of the word "affixed". (Translator's Note)
3. The original document reads "DESISTENCIA", which seems to be an atypical use of the word "DESISTIMIENTO". (Translator's note)

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR SNOHOMISH COUNTY

Manuel Cruz, Gilberto Ramirez and  
Epifanio Rios,  
Plaintiffs

No. 11-2-05911-0

CERTIFICATE OF TRANSLATOR:  
MARIA DOPPS

Abel Chavez and Jane Doe Chavez,  
H/W and Chavez Landscaping LLC,  
a limited liability company, et. al.

Defendants )

COMES NOW MARIA DOPPS, who makes this declaration based upon personal knowledge.

1. I am a Certified Court Interpreter of the Spanish and English Languages, certified by the Supreme Court of the State of Washington. I am also a Certified Translator of the Spanish and English Languages, certified by the Department of Social and Health Services of the State of Washington.
2. I have translated from the Spanish language to the English language the attached document titled "To Desist from any Claim" [original Spanish language title "Desistir De Toda Demanda"] applying standard procedures accepted in my profession.
3. I have performed this translation to the best of my abilities. I believe it is an accurate translation, and I believe it captures the meaning from the original written Spanish.

Under penalty of perjury under Washington Law, I certify the foregoing is true and correct.

DATED at Everett Washington this 18<sup>th</sup> day of October, 2012.

*María C. Dopps*

María C Dopps, certified Spanish/English Translator  
State of Wash Court ID No 009812/DSHS Cert No TC 1901

## Appendix 2

CR 2A AGREEMENT

The following are the essential terms of a full settlement of the parties pursuant to CR2A.

1. Defendants Chavez Landscaping LLC and Abel and Luz Chavez, Defendants shall pay

- A. [REDACTED] to plaintiffs Manuel Cruz and Epifanio Rios, [REDACTED] plaintiffs in Cruz et al v Chavez Landscaping LLC et al (Snohomish No. 11-2-05911-0) in full and final settlement of all claims.
- B. Payments shall be made in installments without interest as follows; [REDACTED] on or before 15 Mar 2013 and [REDACTED] on the 15<sup>th</sup> of each successive month until payment in full.
- C. Defendants shall reimburse John Frawley, attorney for plaintiffs, for the plaintiffs' involved cost of mediation in the amount of [REDACTED] on or before close of business Monday 11 Feb.
- D. Defendants shall transfer title to the 2000 Jeep Grand Cherokee and deliver keys and executed title for the benefit of Manuel Cruz to El Diamante, c/o Fernando Herrera at State Ave in Marysville, WA. Delivery shall be made by close of business on 7 Feb.
- E. Payments shall be delivered to the office address of attorney John Frawley, payable to the IOLTA trust account of John Frawley, attorney for Cruz and Rios to be received on or before the Due Date.

2. Plaintiff shall execute a General Release of all claims in existence on this day this agreement is executed including claims for prevailing party counsel fees and for the benefit of all defendants. The terms of release shall be commercially reasonable. Plaintiff shall be responsible for satisfying all liens and shall indemnify and hold harmless defendant from the payment of all liens.
3. The claims of Cruz and Rios shall be dismissed with prejudice, upon execution of the documents required to be executed under this agreement. The parties shall bear their own fees and costs.
4. Any disputes relating to this agreement, including but not limited to the drafting of the final documents, shall be submitted to Steve Scott, Judicial Dispute Resolution, for binding arbitration. In the event of arbitration under this agreement, attorney fees may be awarded to the prevailing party in the discretion of the arbitrator.
5. **DEFAULT.** Upon failure to perform any of the payments identified in section 1, plaintiffs shall give notice of default received or postmarked at the office address

of Michael Jacobson, attorney for defendants. Any default uncured for 5 business days shall incur the remedy identified in the Security.

6. SECURITY. To secure the deferred payments in section 1, defendants shall execute and deliver to John Frawley attorney for plaintiffs conditional stipulated judgments for the benefit of plaintiffs Cruz and Rios and to be entered upon the occurrence of an uncured default and which is otherwise of no effect. The stipulated judgment shall be for the gross amount of [REDACTED] for the benefit of Cruz and [REDACTED] for the benefit of Rios, should the agreement not be performed.

Dated: 7 Feb, 2012

MARCEL CRUZ  
Plaintiff Marcel Cruz

[Signature]  
For Defendants Chavez Landscaping LLC

EPIFANIO OLMEDO RIOS  
Plaintiff Epifanio Rios

[Signature]  
For Defendants Chavez, husband and wife

Approved as to form:

[Signature]  
Attorney for plaintiff  
WSB 11369

[Signature]  
attorney for defendants

APPENDIX 3

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GENERAL RELEASE

The undersigned, Manuel Cruz and Epifanio Rios, hereby acknowledge that they have entered into a settlement agreement with defendants Chavez Landscaping, LLC and Abel and Jane Doe Chavez. A copy of that agreement is attached hereto and herein incorporated by this reference.

In return for the consideration outlined in the settlement agreement, Manuel Cruz and Epifanio Rios hereby release and forever discharge Chavez Landscaping, LLC and Abel and Jane Doe Chavez and their heirs, assigns, spouses, employees, representatives, and successors from any and all liability for all claims known or unknown in existence as of February 7, 2013, including claims for prevailing party counsel fees.

Manuel Cruz and Epifanio Rios acknowledge that they have had the opportunity to consult counsel prior to executing this release and, further, acknowledge that they are executing this release of their free and voluntary will. Except as specifically stated in the CR 2A agreement executed by the parties, Manuel Cruz and Epifanio Rios acknowledge that they have been offered no other inducement or promise to execute this release.

The undersigned further agree to indemnify and hold harmless the released parties from payment of all liens.

Dated: 17-09-13

Manuel Cruz  
Manuel Cruz

Dated: 30-09-13

EPIFANIO ALMEDURIOS  
Epifanio Rios

I am an interpreter in the Spanish language, which the plaintiff understands. I have interpreted this document for the defendant from English into that language to the best of my ability. I certify under penalty of perjury under the law of the state of Washington that the foregoing is true and correct.

Signed at Arlington (city), WA on September 17, 2013 and September 30, 2013 (date).

Taylor