

MUTUAL SETTLEMENT AGREEMENT AND RELEASE

A. PARTIES:

This Mutual Settlement Agreement and Release of All Claims (hereinafter “Agreement” and/or “Release”) is entered into this 15th day of March, 2021, by CASPAR JOHNATHON MARTIN and DAVID ALAN SHELDON on the one hand (hereinafter, collectively referred to as “Plaintiffs”) and, on the other hand, RAPHAEL BERRY and HORTENSIA MAGANA aka HORTENSIA BERRY (hereinafter, collectively referred to as “Defendants”).

B. RECITALS:

Plaintiffs own the residential property located at 8430 Edwin Drive, Los Angeles, California, 90046 (“Plaintiffs’ Property”).

Defendants own the residential property located at 8414 Edwin Drive, Los Angeles, California, 90046 (“Defendants’ Property”).

WHEREAS, on August 21, 2018, Plaintiffs filed a Complaint entitled *Caspar Johnathon Martin, et al. v. Raphael Berry, et al.*, Los Angeles County Superior Court Case No. BC718725 (the “Action”). Plaintiffs’ operative Second Amended Complaint dated March 21, 2019 and Defendants’ Answer dated September 13, 2019 are incorporated herein strictly for purposes of setting forth the events which comprise the subject of the Action, which shall be referred to as the “Issues.” The Issues and the Action shall be referred to herein as “The Litigation.”

Plaintiffs and Defendants shall be referred to hereinafter collectively as the “Settling Parties.”

WHEREAS, it is the desire of the Settling Parties to fully and finally resolve The Litigation as more fully set forth herein.

C. SETTLEMENT TERMS:

1. Payment to Plaintiffs: Upon thirty days of Defendants’ receipt of Plaintiffs’ execution of this Agreement, Defendants shall pay the total sum of Two hundred and twenty five thousand dollars (\$225,000) to Plaintiffs, as follows: Defendants’ insurance carrier, Fire Insurance Exchange, shall pay to Plaintiffs the sum of Seventy-five thousand dollars (\$75,000), and; Defendants shall pay Plaintiffs the sum of One-hundred and fifty thousand dollars (\$150,000) (the “Settlement Payments”). The Settlement Payments shall be in the form of drafts or checks payable to Caspar Johnathon Martin and David Alan Sheldon. Plaintiffs’ counsel shall provide Defendants’ counsel with a current executed W-9 Form pertaining to the payees prior to issuance of the Settlement Payments

2. Dismissal With Prejudice: Within 15 days of receipt of the entirety of the Settlement Payments set forth in Section C.1. of this Agreement, Plaintiffs’ counsel shall file a Request for Dismissal of the entire Action, with prejudice, or deliver such a Request for Dismissal of the entire Action, with prejudice, to Defendants’ counsel for filing. If, for any

reason, the Request for Dismissal of the entire Action, with prejudice, is not entered by the Court, Plaintiffs' counsel shall cure any deficiencies and ensure that the Request for Dismissal is entered by the Court. Plaintiffs' counsel shall also provide to Defendants' counsel a conformed copy of the Request for Dismissal within 10 days after it is entered by the Court.

Plaintiffs' injunction against Defendants will dissolve and the bond will be exonerated once the Request for Dismissal is entered by the Court, however, if the injunction is not dissolved and the bond is not exonerated, Plaintiffs will undertake any efforts as necessary to ensure that the injunction is dissolved and the bond is exonerated.

3. Removal of Lis Pendens and Liens: Within 30 days of receipt of the entirety of the Settlement Payments set forth in Section C.1. of this Agreement, Plaintiffs shall remove any liens and/or lis pendens it filed pertaining to Defendants' property.

4. No Interference:

Plaintiffs agree that neither themselves, nor their agents, attorneys, and any other entities or individuals acting on Plaintiffs' behalf will interfere with, delay, obstruct or object to any proceedings that Defendants or Defendants' agents may be involved in to obtain approval with the City of Los Angeles or any Commission, or any other municipal or government entity, with regard to the subject matter of this lawsuit and that would be necessary to remove an Order to Comply, as long as the work is done in conformity with applicable laws and codes.

Defendants agree that neither themselves, nor their agents, attorneys, and any other entities or individuals acting on Defendants' behalf will interfere with, delay, obstruct or object to any proceedings that Plaintiffs or Plaintiffs' agents may be involved in to obtain approval with the City of Los Angeles or any Commission, or any other municipal or government entity, with regard to the subject matter of this lawsuit and that would be necessary to remove an order to comply, as long as the work is done in conformity with applicable laws and codes.

Plaintiffs agree not to interfere with any criminal proceedings against Raphael Berry, but may comply with any compulsory process such as subpoenas for documents or deposition.

5. Access to Plaintiffs' Property: Defendants will perform and fund any and all work necessary to remove the City of Los Angeles' Order to Comply directed to Defendants. Plaintiffs will provide Defendants' contractors with access to Plaintiffs' property during reasonable hours (excluding holidays and weekends) and with reasonable notice, as necessary, for Defendants' contractors to perform construction work in connection with Defendants' efforts to remove the City of Los Angeles' Order to Comply directed to Defendants. Under no circumstances shall Plaintiffs be liable for any premises liability or other liability issues that arise as a result of Defendants' access to Plaintiffs' Property, and Defendants agree to indemnify Plaintiffs and hold them harmless for any premises liability-based claims made by Defendants' contractors against Plaintiffs arising from Defendants' contractors accessing Plaintiffs' Property.

6. Defendants' Retention of Contractors: Defendants shall only retain licensed, bonded contractors to perform any construction work in connection with removing the City of Los Angeles' Order to Comply directed to Defendants. Defendants shall furnish confirmation of

this information to Plaintiffs upon Defendants' retention of contractors before Defendants' contractors are permitted to access Plaintiffs' Property.

7. Omitted.

8. Plaintiffs' Property: Plaintiffs will perform and fund any and all work necessary to remove the City of Los Angeles' Order to Comply directed to Plaintiffs. Additionally, Plaintiffs will fund construction of a drain on Plaintiffs' Property.

9. Parties to Bear Their Own Costs: Defendants shall bear their own costs, attorneys' fees and any other expenses, including but not limited to expert fees and investigation costs incurred in connection with The Litigation. Plaintiffs shall bear their own costs, attorneys' fees and any other expenses, including but not limited to expert fees and investigation costs incurred in connection with The Litigation.

10. Release of All Claims by Plaintiffs: With the exception of the obligations arising out of this Agreement, Plaintiffs, on behalf of themselves as well as their relatives, family members, representatives, attorneys, insurers, partners, agents, successors, heirs, and/or assigns, hereby releases and forever discharges Defendants and any and all of Defendants' former, present and future representatives, family members, principals, affiliates, parent or subsidiary companies, relatives, related entities, fiduciaries, attorneys, officers, directors, partners, employees, insurers, reinsurers, successors, and/or assigns, from any and all claims, liens, costs, expenses, rights, demands, damages, actions, and causes of action of every kind, whether past, present or future, known or unknown, arising out of or related in any manner to the Litigation and/or the relationship between Plaintiffs and Defendants, including without limitation, claims that may be, but have not been, made in the Litigation.

11. Plaintiffs' Waiver of Civil Code section 1542: Plaintiffs know and understand that there is a risk that, subsequent to the execution of this Agreement, Plaintiffs may incur or suffer personal injury, loss, damages and/or property damage or any of these which are in some way caused by the Issues, but which are unknown or unanticipated at the time this Agreement is signed; and further, there is a risk that an injury or other damage presently known may become more serious than Plaintiffs now expect or anticipate. Plaintiffs shall assume the above-mentioned risks and this Release shall apply to all unknown or unanticipated results of the occurrence described above, as well as those known or anticipated and, upon advice of legal counsel, Plaintiffs hereby waive all rights under California Civil Code section 1542, which section has been fully explained to Plaintiffs by their attorneys and which provides:

“A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.”

It is acknowledged and understood that the foregoing waiver of the provisions of Section 1542 of the Civil Code was separately bargained for. Plaintiffs agree that this Release shall be given full force and effect in accordance with each and all of the expressed terms and provisions including those terms and provisions relating to unknown and unsuspected claims to the same extent as those terms and provisions relating to any other claims hereinabove specified.

Plaintiffs' waiver of Section 1542 set forth in this Section C.11. shall not apply to future failure of the Large Retaining Wall on Defendants' Property or any subsequent retaining wall the Defendants may construct on Defendants' Property. For purposes of this section, future failure shall mean an inability of the Large Retaining wall to support its load, resulting in collapse or destruction of the Large Retaining Wall onto Plaintiffs' Property.

12. Release of All Claims by Defendants: With the exception of the obligations arising out of this Agreement, Defendants, on behalf of themselves as well as their relatives, family members, representatives, attorneys, insurers, partners, agents, successors, heirs, and/or assigns, hereby releases and forever discharges Plaintiffs and any and all of Plaintiffs' former, present and future representatives, family members, principals, affiliates, parent or subsidiary companies, relatives, related entities, fiduciaries, attorneys, officers, directors, partners, employees, insurers, reinsurers, successors, and/or assigns, from any and all claims, liens, costs, expenses, rights, demands, damages, actions, and causes of action of every kind, whether past, present or future, known or unknown, arising out of or related in any manner to the Litigation and/or the relationship between Plaintiffs and Defendants, including without limitation, claims that may be, but have not been, made in the Litigation.

13. Defendants' Waiver of Civil Code section 1542: Defendants know and understand that there is a risk that, subsequent to the execution of this Agreement, Defendants may incur or suffer personal injury, loss, damages and/or property damage or any of these which are in some way caused by the Issues, but which are unknown or unanticipated at the time this Agreement is signed; and further, there is a risk that an injury or other damage presently known may become more serious than Defendants now expect or anticipate. Defendants shall assume the above-mentioned risks and this Release shall apply to all unknown or unanticipated results of the occurrence described above, as well as those known or anticipated and, upon advice of legal counsel, Defendants hereby waive all rights under California Civil Code section 1542, which section has been fully explained to Defendants by their attorneys and which provides:

“A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.”

It is acknowledged and understood that the foregoing waiver of the provisions of Section 1542 of the Civil Code was separately bargained for. Defendants agree that this Release shall be given full force and effect in accordance with each and all of the expressed terms and provisions including those terms and provisions relating to unknown and unsuspected claims to the same extent as those terms and provisions relating to any other claims hereinabove specified.

14. Enforcement: The Settling Parties and their counsel hereby acknowledge, agree and stipulate that the Settling Parties each have the right to enforce any provision of this Agreement by filing any appropriate action, proceeding, or motion, including without limitation, a motion pursuant to California Code of Civil Procedure section 664.6 or 664.7, in the Los Angeles County Superior Court, which shall retain jurisdiction over the Settling Parties in order to enforce any terms in this Agreement. The Settling Parties further acknowledge, agree and

stipulate that the Los Angeles County Superior Court shall retain jurisdiction over the Settling Parties to hear any motion brought pursuant to California Code of Civil section 664.6 or 664.7. The Settling Parties further agree that, should any Court intervention be necessary in order to enforce the terms of this Agreement, the prevailing party shall be entitled to his or her attorneys' fees and costs.

15. Future Contacts: Defendants herein agree that any and all of their communications to Plaintiffs relating to the Issues, the Litigation, and/or the terms this Agreement shall be directed to Plaintiffs' attorneys via Defendants' counsel. Plaintiffs herein agree that any and all of their communications to Defendants relating to the Issues, the Litigation, and/or the terms this Agreement shall be directed to Defendants' attorneys via Plaintiffs' counsel. The Settling Parties herein agree not to directly contact the other in connection with the Issues, the Litigation, and/or the terms this Agreement.

16. Disclosure of this Agreement: The Settling Parties agree that written confirmation of this settlement and the terms herein, including a copy of this Agreement, can be disclosed to the City of Los Angeles or any Commission, or any other municipal or government entity, as necessary, in connection with any parties' efforts to remove an Order to Comply.

17. Mutual Non-disparagement: Plaintiffs agrees to refrain from making any statement, written or verbal, to any entity, which is disparaging, derogatory, slanderous or reasonably likely to be harmful to the goodwill, reputation, or business standing of Defendants or any of Defendants' businesses, employees, principals, or agents, at any time in the future. Plaintiffs agree to refrain from posting such statements to the internet, including but not limited to a blog or social networking site, or by communicating any such statements to any members of the media or any governmental related entities via email or verbally. However, that this non-disparagement clause shall not prevent Plaintiffs from providing a good faith response to any inquires under oath or in response to any governmental inquiry.

Defendants agree to refrain from making any statement, written or verbal, to any entity, which is disparaging, derogatory, slanderous or reasonably likely to be harmful to the goodwill, reputation, or business standing of Plaintiffs or any of Plaintiffs' businesses, employees, principals, or agents, at any time in the future. Defendants agree to refrain from posting such statements to the internet, including but not limited to a blog or social networking site, or by communicating any such statements to any members of the media or any governmental related entities via email or verbally. However, that this non-disparagement clause shall not prevent Defendants from providing a good faith response to any inquires under oath or in response to any governmental inquiry.

D. GENERAL PROVISIONS AND REPRESENTATIONS:

18. No Admission of Liability: It is agreed and understood that Plaintiffs and Defendants deny any and all allegations of liability that have been alleged against the other and have agreed to resolve this matter solely for the purpose of compromising and settling The Litigation. Such compromise and settlement does not constitute an admission of the truth or validity of the matters in controversy, nor shall it be construed as such.

19. Advice of Counsel: The Settling Parties warrant and represent that, in executing this Agreement, the Settling Parties relied upon the advice of an attorney of their choice, that the terms of this Agreement and its consequences have been read and completely explained to them by their respective attorneys, and that they understand all of the terms in this Agreement.

20. No Prior Assignments: Each of the Settling Parties represent and warrant that they are the owner of the claims released and that such claims have not been assigned, transferred, whether voluntarily or involuntarily, by subrogation, operation of law or otherwise, to any other individual or entity. This warranty shall survive the execution of this Agreement regardless of any investigation or lack of investigation by the Parties.

21. Integration: This is a full and final release of all claims, and this Agreement integrates and supersedes all other agreements of any kind concerning the subject matter of this Agreement and that the terms and conditions hereof are contractual and not mere recitals.

22. Legal Capacity: Each of the undersigned warrants that he or she is of legal age, legally competent to execute this Agreement and has the authority to execute this Agreement.

23. Successors and Assigns: This Agreement shall be binding upon and inure to the benefit of the Settling Parties and their respective successors and assigns.

24. Investigation: The undersigned further acknowledges that the party for whom the undersigned is executing this Agreement has made an investigation of the facts pertaining to The Litigation and this Agreement and all matters pertaining hereto, as he deems necessary and enters into this Agreement with full knowledge of those facts.

25. Benefit of Counsel: Each of the undersigned further warrants that they have read the entire Agreement, understands it and, in addition, has received independent legal advice from counsel to the extent he or she considers warranted as to the advisability of executing this Agreement and with respect to all matters contained herein.

26. Joint Product: This Agreement is the product of bargained for, arm's length negotiations between the Settling Parties and their counsel in good faith and without collusion, and shall not be construed for or against any Settling Party or its representatives.

27. California Law: This Agreement shall be construed according to the laws of the State of California without respect to conflicts of law.

28. Severability: If any provision of this Agreement is held to be invalid or unenforceable, all of the remaining provisions shall nevertheless continue in full force and effect provided that the Agreement would otherwise remain enforceable under applicable law.

29. Counterpart: This Agreement may be executed in counterparts and, when said counterparts are taken together, shall constitute one original Agreement.

30. Facsimile and Photocopy Signature: The Settling Parties expressly acknowledge and agree that facsimile, PDF scans and photocopy signatures shall be deemed originals, and shall bind the parties accordingly.

31. Cal. Insurance Code § 13550: Plaintiffs represent and warrant herein that they do not owe any past due child support.


32. Modification: This Agreement shall not be modified by any Party by oral representation made before or after the execution of this Agreement. All modifications must be in writing and signed by all Parties.

I HAVE READ THE FOREGOING AND UNDERSTAND AND AGREE AS SET FORTH HEREIN.

DATED: March 26, 2021

By 
CASPAR JOHNATHON MARTIN

DATED: March 26, 2021

By 
DAVID ALAN SHELDON

Acknowledged and Approved as to Form and Content:

DATED: March __, 2021

By _____
CHRIS NELSON, ESQ.
EPPORT, RICHMAN & ROBBINS LLP
Attorneys for CASPAR JOHNATHON
MARTIN and DAVID ALAN SHELDON

DATED: March __, 2021

By _____
MARY LAZARAN, ESQ.
FIDELITY NATIONAL LAW GROUP
Attorneys for CASPAR JOHNATHON
MARTIN and DAVID ALAN SHELDON

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DATED: March __, 2021

By _____
RAPHAEL BERRY

DATED: March __, 2021

By _____
HORTENSIA BERRY

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SIMON ETEHAD, ESQ.

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Attorneys for CASPAR JOHNATHON
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HM

DB

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Attorneys for CASPAR JOHNATHON
MARTIN and DAVID ALAN SHELDON

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HORTENSIA BERRY

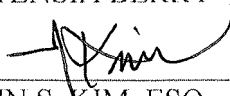
Acknowledged and Approved as to Form and Content:

DATED: March 30, 2021

By  _____
SIMON ETEHAD, ESQ.

ETEHAD LAW, APC
Attorneys for RAPHAEL BERRY and
HORTENSIA BERRY

DATED: March 30, 2021

By 
JUSTIN S. KIM, ESQ.
LEWIS BRISBOIS BISGAARD & SMITH
Attorneys for RAPHAEL BERRY and
HORTENSIA BERRY