

1 DIVISION OF LABOR STANDARDS ENFORCEMENT
2 Department of Industrial Relations
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9 Attorney for the DIVISION OF
10 LABOR STANDARDS ENFORCEMENT

11
12 **BEFORE THE DIVISION OF LABOR STANDARDS ENFORCEMENT**
13 **DEPARTMENT OF INDUSTRIAL RELATIONS**
14 **STATE OF CALIFORNIA**
15

16 In the matter of the
17 Debarment Proceeding Against,

18 ULTIMATE, INC.,

19 And,

20 Enrique Vera, an Individual

21 Respondents.

22 **Case No.: LB 5655 & LB5659**

23 **ORDER OF THE LABOR**
24 **COMMISSIONER ON STIPULATION**
25 **TO DEBARMENT**

26 Whereas, Respondent stipulated to debarment as follows:

27 1. Respondent Ultimate, Inc. is the holder of California Contractor's license
28 number 949229.

1. Respondent Enrique Vera is an individual who is and was at all relevant
times the RMO/CEO/President of Ultimate, Inc.

1 3. Respondents entered into the attached SETTLEMENT AGREEMENT
2 AND RELEASE including a STIPULATION FOR DEBARMENT, see Paragraph 12,
3 subsection (b)iii.

4 4. Based on the STIPULATION FOR DEBARMENT, Respondents
5 ULTIMATE, INC. and ENRIQUE VERA shall be ineligible for a period of three years,
6 beginning December 1, 2015 to do either of the following:
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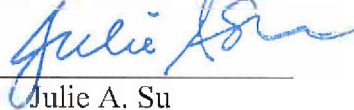
8 A) Bid on or be awarded a contract for a public works project; or

9 B) Perform work as a subcontractor on a public works project as defined
10 as Labor Code sections 1720, 1720.2, and 1720.3.

11 IT IS HEREBY ORDERED.

12
13 DIVISION OF LABOR STANDARDS
14 DEPARTMENT OF INDUSTRIAL RELATIONS
15 STATE OF CALIFORNIA

15 Dated: 11/12/15

16 By: 
17 Julie A. Su
18 State Labor Commissioner
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SETTLEMENT AGREEMENT AND RELEASE

PARTIES

The parties to this Agreement, which was made as of the 4th day of November, 2015, consist of the DIVISION OF LABOR STANDARDS ENFORCEMENT, Department of Industrial Relations, State of California (hereafter "DLSE"), ULTIMATE, INC. (hereafter "ULTIMATE"), and ENRIQUE VERA an individual dba ULTIMATE CONSTRUCTION (hereafter "VERA"), hereinafter jointly referred to as the "PARTIES."

RECITALS

1. On March 12, 2015, DLSE served a Civil Wage and Penalty Assessment (hereafter "CWPA-HITCH") (attached hereto as "Exhibit 1") in DLSE Case No. 40-43918-212, to ICON WEST, INC. (hereinafter "ICON WEST"), ULTIMATE, VERA, HARTFORD FIRE INSURANCE COMPANY (hereafter "SURETY"), and the UCLA CONTRACTS ADMINISTRATION (hereafter "AWARDING BODY") claiming wages and training funds due and owing in the amount of \$1,243,802.37; combined penalties for violations of Labor Code sections 1775 and 1813 in the amount of \$807,700.00; penalties under Labor Code section 1777.7 in the amount of \$2,480.00 and potential liquidated damages in the amount of \$1,243,802.37; said amounts alleged to be due and owing by ICON WEST, ULTIMATE and VERA as a result of violations of the prevailing wage laws of the State of California involving workers employed by ULTIMATE and/or VERA on a public works project known as "HITCH SUITES RENOVATION" (hereafter "PROJECT-HITCH"), awarded by the AWARDING BODY to ICON WEST as the prime contractor, with ULTIMATE and/or VERA as their subcontractor on the PROJECT.

2. On March 20, 2015, DLSE served a Civil Wage and Penalty Assessment (hereafter "CWPA-SAXON") (attached hereto as "Exhibit 2") in DLSE Case No. 40-43245-129,

to ICON WEST, ULTIMATE, VERA, HARTFORD FIRE INSURANCE COMPANY (hereafter "SURETY"), and the UCLA CONTRACTS ADMINISTRATION (hereafter "AWARDING BODY") claiming wages and training funds due and owing in the amount of \$641,970.52; combined penalties for violations of Labor Code sections 1775 and 1813 in the amount of \$431,600.00; penalties under Labor Code section 1777.7 in the amount of \$1,680.00 and potential liquidated damages in the amount of \$641,970.52; said amounts alleged to be due and owing by ICON WEST, ULTIMATE and VERA as a result of violations of the prevailing wage laws of the State of California involving workers employed by ULTIMATE on a public works project known as "SAXON SUITES RENOVATION" (hereafter "PROJECT-SAXON"), awarded by the AWARDING BODY to ICON WEST as the prime contractor, with ULTIMATE as their subcontractor on the PROJECT.

3. To the extent that the AWARDING BODY has withheld any funds in response to the CWPA, the AWARDING BODY could possibly become duty bound to promptly transmit withheld funds to DLSE pursuant to Labor Code sections 1727 and/or 1742.

4. ICON WEST filed that certain Request for Review of the CWPA with DLSE, which resulted in the Director of the Department of Industrial Relations (hereafter "DIRECTOR") appointing as the DIRECTOR'S Hearing Officer (hereafter "HEARING OFFICER"), an attorney employed by the Department of Industrial Relations, Office of the Director, Legal Unit (hereafter "ODL"), to preside over ICON WEST's Request for Review of the CWPA. This matter is now pending before ODL entitled *In the Matter of the Request for Review of: Icon West, Inc.*, ODL Case No. 15-0141-PWH (hereafter "THE LITIGATION-ICON-HITCH").

5. TOWER filed that certain Request for Review of the CWPA with DLSE, which resulted in the Director of the Department of Industrial Relations (hereafter "DIRECTOR") appointing as the DIRECTOR'S Hearing Officer (hereafter "HEARING OFFICER"), an attorney employed by the Department of Industrial Relations, Office of the Director, Legal Unit (hereafter "ODL"), to preside over ULTIMATE's Request for Review of the CWPA. This matter is now pending before ODL entitled In the Matter of the Request for Review of: Tower Select Insurance Co., ODL Case No. 15-0135-PWH (hereafter "THE LITIGATION-TOWER-HITCH").

5. ULTIMATE filed that certain Request for Review of the CWPA with DLSE, which resulted in the Director of the Department of Industrial Relations (hereafter "DIRECTOR") appointing as the DIRECTOR'S Hearing Officer (hereafter "HEARING OFFICER"), an attorney employed by the Department of Industrial Relations, Office of the Director, Legal Unit (hereafter "ODL"), to preside over ULTIMATE's Request for Review of the CWPA. This matter is now pending before ODL entitled In the Matter of the Request for Review of: Ultimate Construction, Inc., ODL Case No. 15-0104-PWH (hereafter "THE LITIGATION-ULTIMATE-HITCH").

6. ICON WEST filed that certain Request for Review of the CWPA with DLSE, which resulted in the Director of the Department of Industrial Relations (hereafter "DIRECTOR") appointing as the DIRECTOR'S Hearing Officer (hereafter "HEARING OFFICER"), an attorney employed by the Department of Industrial Relations, Office of the Director, Legal Unit (hereafter "ODL"), to preside over ICON WEST's Request for Review of the CWPA. This matter is now pending before ODL entitled In the Matter of the Request for

Review of: Icon West, Inc., ODL Case No. 15-0142-PWH (hereafter "THE LITIGATION-ICON-SAXON").

7. ULTIMATE filed that certain Request for Review of the CWPA with DLSE, which resulted in the Director of the Department of Industrial Relations (hereafter "DIRECTOR") appointing as the DIRECTOR'S Hearing Officer (hereafter "HEARING OFFICER"), an attorney employed by the Department of Industrial Relations, Office of the Director, Legal Unit (hereafter "ODL"), to preside over ULTIMATE's Request for Review of the CWPA. This matter is now pending before ODL entitled In the Matter of the Request for Review of: Ultimate Construction, Inc., ODL Case No. 15-0106-PWH (hereafter "THE LITIGATION-ULTIMATE-SAXON").

8. On or about July 7, 2015, DLSE and ICON WEST reached a settlement on the CWPA-SAXON, now fully executed, where ICON WEST withdrew their Request for Review (THE LITIGATION-ICON-SAXON), and paid \$505,127.17 to DLSE in exchange for a Release for ICON WEST and SURETY.

9. On or about July 20, 2015, DLSE, ICON WEST and TOWER reached a settlement on the CWPA-HITCH, which will be fully executed by the end of January 2016, where ICON WEST and TOWER withdrew their respective Requests for Review (THE LITIGATION-ICON WEST-HITCH and THE LITIGATION-TOWER-HITCH), and will pay to a total of \$1,033,965.13 (only \$51,975.00 remains due and owing on or before January 25, 2016) to DLSE in exchange for a Release for ICON WEST, SUERTY and TOWER.

10. ULTIMATE is an active California Corporation registered with the California Secretary of State as entity number C2541907 (see Secretary of State website printout attached as Exhibit "3"). ULTIMATE is also a contractor licensed with the Contractors State Licensing

Board (hereafter "CSLB") of the State of California under Contractor's license number 846590 (see CSLB website printout attached as Exhibit "4"). During all times mentioned herein, Mr. Enrique Vera (VERA) was listed with the CSLB as the "RMO/CEO/PRESIDENT" of ULTIMATE. No other "OFFICERS" were listed for ULTIMATE on the CSLB website. In entering into this Agreement, ULTIMATE and VERA expressly confirm that said persons retain their corporate offices with ULTIMATE as stated herein.

11. ULTIMATE and VERA hereby represent that they are only currently working on one Public Works project known as the HUNTINGTON BEACH SENIOR CENTER, awarded to them by the CITY OF HUNTINGTON BEACH, with an expected completion date on or around April 2016 (hereafter "HUNTINGTON PROJECT").

SETTLEMENT AGREEMENT

12. DLSE, ULTIMATE and VERA, agree to resolve all disputes between them concerning the CWPA-HITCH identified in Paragraph 1, CWPA-SAXON identified in Paragraph 2, the LITIGATION-ULTIMATE-HITCH identified in Paragraph 5 above, and the LITIGATION-ULTIMATE-SAXON identified in Paragraph 7 above, as follows:

- (a) ULTIMATE will withdraw its respective Requests for Review referenced in Paragraphs 5 and 7 above on or before **November 9, 2015** and the CWPA-HITCH and CWPA-SAXON will be deemed "final orders" no longer subject to judicial review;
- (b) DLSE agrees that ICON WEST and TOWER will satisfy these "final orders" by:
 - i. ULTIMATE and/or VERA will pay to DLSE, the sum of \$532,720.00 (hereafter "SETTLEMENT AMOUNT"),

representing penalties pursuant to Labor Code sections 1775 and 1777.7.

ii. THE PARTIES AGREE that the SETTLEMENT AMOUNT will be satisfied according to the following payment schedule:

- Two checks (one for each CWPA) in the amount of \$22,196.67 due on or before June 1, 2016 (total amount due \$44,393.34);
- Two checks (one for each CWPA) in the amount of \$22,196.67 due on or before January 1, 2017 (total amount due \$44,393.34);
- Two checks (one for each CWPA) in the amount of \$22,196.67 due on or before June 1, 2017 (total amount due \$44,393.34);
- Two checks (one for each CWPA) in the amount of \$22,196.67 due on or before January 1, 2018 (total amount due \$44,393.34);
- Two checks (one for each CWPA) in the amount of \$22,196.67 due on or before June 1, 2018 (total amount due \$44,393.34);
- Two checks (one for each CWPA) in the amount of \$22,196.67 due on or before January 1, 2019 (total amount due \$44,393.34);

- Two checks (one for each CWPA) in the amount of \$22,196.67 due on or before June 1, 2019 (total amount due \$44,393.34);
- Two checks (one for each CWPA) in the amount of \$22,196.67 due on or before January 1, 2020 (total amount due \$44,393.34);
- Two checks (one for each CWPA) in the amount of \$22,196.67 due on or before June 1, 2020 (total amount due \$44,393.34);
- Two checks (one for each CWPA) in the amount of \$22,196.67 due on or before January 1, 2021 (total amount due \$44,393.34);
- Two checks (one for each CWPA) in the amount of \$22,196.67 due on or before June 1, 2021 (total amount due \$44,393.34);
- Two checks (one for each CWPA) in the amount of \$22,196.67 due on or before January 1, 2022 (total amount due \$44,393.34);

iii. ULTIMATE by its authorized corporate officer, Mr. Enrique Vera, also stipulates as follows (these terms are hereafter referred to as the terms of the "DEBARMENT STIPULATION"):

- 1) ULTIMATE holds the California Contractor's license number 846590.

2) Mr. Enrique Vera holds the position of "RMO/CEO/PRESIDENT" within ULTIMATE's corporate structure.

3) There are no other corporate officers besides Mr. Enrique Vera within ULTIMATE's corporate structure.

4) ULTIMATE and Mr. Enrique Vera **each** stipulate to Debarment pursuant to Labor Code section 1777.1, subdivision (a) for a period of 3 years beginning on December 1, 2015, following the filing of the Order on Stipulation to Debarment of the Labor Commissioner in this matter. During that 3 year period, ULTIMATE and Mr. Enrique Vera, and any firm, corporation, partnership, or association in which any of said persons has any interest as defined in Labor Code section 1777.1, subdivision (f), or any substantial interest as defined in California Code of Regulations, Title 8, section 16800, shall be ineligible to do either of the following:

(a) Bid on or be awarded a contract for a public works project; or

(b) Perform work as a subcontractor on a public works project.

5) THE PARTIES agree that ULTIMATE and VERA may complete the HUNTINGTON PROJECT

identified in Paragraph 11 above, **and only that specific project**, during the DEBARMENT STIPULATION period.

- iv. In return for the successful completion of the foregoing, DLSE will release ULTIMATE and VERA from further liability relating to the CWPA-SAXON and CWPA-HITCH;
- v. **As a condition of this Agreement, ULTIMATE will provide to DLSE a list of all current Public Works projects they have already begun for compliance monitoring purposes (hereafter "PROJECT LIST").**

(c) DLSE, ULTIMATE and VERA agree that in the event ULTIMATE or VERA, as an individual or in any capacity, or any firm, corporation, partnership, or association in which any of said persons have any interest as defined in Labor Code section 1777.1, subdivision (f), or any substantial interest as defined in California Code of Regulations, Title 8, section 16800, fail to abide by the terms of their debarment, the remainder of liability on the "final orders" entered by this Agreement on the CWPA-HITCH and CWPA-SAXON will become due immediately (less payments made on the SETTLEMENT AMOUNT).

13. The PARTIES agree that signatures to this agreement may be effective upon electronic transmission whether by email, facsimile transmission, or as a PDF attachment to email; that all signatures need not be affixed to a single document to be effective as to the PARTY whose signature is affixed so long as each PARTY signs this Settlement Agreement and Release; and that where this Settlement Agreement and Release is signed by counsel for the

PARTY, such counsel warrants that they are expressly authorized by their client to execute this document on their client's behalf.

RELEASE

14. DLSE agrees that, conditioned upon ULTIMATE and/or VERA's timely payments to DLSE of the SETTLEMENT AMOUNT as set forth in Paragraph 12B, subsections "i" and "ii" of this agreement; ULTIMATE providing the PROJECT LIST to DLSE, **and the successful completion of the terms of the DEBARMENT STIPULATION in paragraph 12B, subsection "iii", and only upon said completion**, DLSE does hereby release ULTIMATE and VERA, their employees, officers, sureties, stockholders, successors and assigns, attorneys and agents from all CLAIMS arising out of DLSE Case Nos. 40-43918-212 and 40-43425-129. This is a full release of all such CLAIMS against ULTIMATE and VERA arising out of said CWPA-HITCH and CWPA-SAXON whether known or unknown, suspected or unsuspected.

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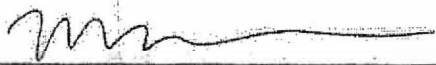
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SIGNATURES

I certify that I have read this Settlement Agreement and Release and fully understand it, and in witness I have executed this Release on this 4th day of November, 2015, at Long Beach, California. The undersigned represents and warrants that he has full authority to execute this Settlement Agreement and Release on behalf of the Division of Labor Standards Enforcement, Department of Industrial Relations, State of California, and that no legislative act or judicial act or approval is necessary to give effect to this Release.

DIVISION OF LABOR STANDARDS ENFORCEMENT
Department of Industrial Relations


By: 
MAX D. NORRIS, Esq.
Attorney for the Labor Commissioner

I hereby certify that I have read this Settlement Agreement and Release and fully understand it, and on behalf of ULTIMATE, INC., as its "RMO/CEO/PRESIDENT", I agree to be bound by the terms of the Agreement and the DEBARMENT STIPULATION. In witness thereof, I have executed this Agreement on this 6th day of November, 2015, at _____, California.

ULTIMATE, INC.

By: 
Enrique Vera, Its RMO/CEO/ President

I hereby certify that I have read this Settlement Agreement and Release and fully understand it, and on behalf of myself as an individual Officer of ULTIMATE, INC., I agree to be bound by the terms of the DEBARMENT STIPULATION. In witness thereof, I have executed this Agreement on this 6th day of November, 2015, at _____, California.

By: 
Enrique Vera, In his Individual Capacity