

1. THE HONORABLE THOMAS ZILLY  
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8. UNITED STATES DISTRICT COURT  
9. WESTERN DISTRICT OF WASHINGTON  
10. AT SEATTLE

11. FRANCISCO MIRANDA, an individual,  
12. Plaintiff,  
13. v.  
14. ALASKA LONGLINE, LLC, OCEAN  
15. PROWLER, LLC and PROWLER FISHERIES,  
16. LLC.,  
17. Defendants.

Case No. 2:15-cv-00148-TSZ  
STIPULATED JUDGMENT,  
SETTLEMENT AGREEMENT, AND  
COVENANT NOT TO EXECUTE

18. I. PARTIES

19. This Stipulated Judgment, Settlement Agreement and Covenant Not to Execute  
20. ("Agreement") is entered into by and between Defendants Alaska Longline, LLC, Ocean  
21. Prowler, LLC and Prowler Fisheries, LLC (collectively "Defendants") and Plaintiff  
22. Francisco Miranda ("Plaintiff"). Defendants and Plaintiff are collectively referred to  
23. herein as "the Parties."

24. II. AUTHORITY

25. The Parties have consulted with their respective counsel and are mindful of the  
26. authorities of *Besel v. Viking Ins. Co.*, 146 Wn.2d 730, 49 P.3d 887 (2002) and *Howard v.*

1. *Royal Specialty Underwriting, Inc.*, 121 Wn.App. 372, 89 P.3d 265 (2004), which the  
2. Parties believe to be instructive as to the mechanism for entering into stipulated  
3. judgments and assignments of claims.

### 4. III. PURPOSE OF THE AGREEMENT

5. The purpose of this Agreement is to secure a judgment against Defendants for the  
6. benefit of Plaintiff and to protect Defendants' assets, earnings and individual liability  
7. from claims by Plaintiff that will very likely result in a verdict exceeding Defendants'  
8. one-million-dollar Employment Practices Liability policy limit.

### 9. IV. RECITATIONS OF THE PARTIES CONCERNING LIABILITY

10. This action arises out of Plaintiff's employment with Defendants aboard the  
11. fishing vessel *Ocean Prowler* with claims under the Washington Law Against  
12. Discrimination, RCW 49.60, *et seq.* ("WLAD"), Title VII of the Civil Rights Act of  
13. 1964, as amended by the Civil Rights Act of 1991, 42 U.S.C. § 2000(e), *et seq.* ("Title  
14. VII"), and 42 U.S.C. § 1981, *et seq.* ("Section 1981"). Plaintiff alleges that Defendants  
15. subjected him to harassment and discrimination on the basis of his race (Hispanic) and  
16. national origin (Mexican), and retaliation for engaging in protected activity in violation  
17. of WLAD, Title VII and Section 1981.

18. **A. Plaintiff has presented substantial evidence supporting his claims of race and  
19. national-origin-based harassment, discrimination and retaliation.**

20. **Plaintiff's Allegations and Evidence:** Mr. Miranda has produced direct evidence  
21. of Defendants' discriminatory animus and racially harassing conduct, including the  
22. sworn testimony of multiple third-party witnesses. These witnesses claim to have seen  
23. and heard the highest levels of management on board the vessel, the Captain and the  
24. First Mate making egregious, racially offensive comments to or about Mr. Miranda and  
25. other Hispanics or African Americans.

1. Mr. Miranda is a 37 year old Hispanic and of Mexican national origin. He was  
2. born in Los Angeles and grew up mostly in the United States, though he has also lived in  
3. Mexico. He speaks English and Spanish fluently. He worked as a Processor for  
4. Defendants on a 180 foot fishing vessel called the Ocean Prowler. He completed about  
5. eight back-to-back fishing voyages on the Bering Sea with Defendants.

6. Mr. Miranda and other Hispanic crewmembers were subjected to severe and  
7. pervasive racial harassment. Crewmember Syrian Seth (Caucasian) witnessed Captain  
8. Jay Monroe and First Mate Nick Robbins refer to Mexican employees as "Wetbacks,"  
9. Beaners," "Dirty Mexicans" and "Stinky Mexicans" multiple times. Chief Steward  
10. Steven Brett (also Caucasian), who had extensive contact with Captain Jay Monroe  
11. through constantly serving him food and drink in the wheelhouse, testified similarly. He  
12. testified in a declaration that Captain Monroe "was racist towards the Mexican people on  
13. the boat... He would call them 'Spics,' 'Wetbacks,' and 'Beaners,'" and made comments  
14. such as, "Fucking Mexicans ought to be back in Mexico," "They [Mexicans] should all  
15. swim back to Mexico," and "Fucking Mexicans are taking white guys' jobs." Chief  
16. Steward Brett testified that he personally witnessed Captain Monroe call Mr. Miranda a  
17. "god damn Spic" after Mr. Miranda arrived at a meeting.

18. Additionally, crewmember Jose Gonzalez (Hispanic) confirmed Captain  
19. Monroe's racially harassing conduct in an interview with the Equal Employment  
20. Opportunity Commission ("EEOC"). Gonzales told the EEOC that Captain Monroe  
21. treated Mexicans different than their white crewmates and would say things like, "oh  
22. that's right you are lazy and you are Mexican," and Mexicans are "lazy and that they  
23. couldn't even take care of their own country and they came here (to the U.S.) and we,  
24. meaning the Americans... pay for your kids."

1. Captain Monroe directed racially offensive comments against other non-whites  
2. using the most degrading and demeaning terms. According to Chief Steward Brett: "It  
3. was an almost daily thing. He used and said these things all the time." According to  
4. Syrian Seth "I heard Captain Monroe and First Mate Robins frequently refer to the  
5. Mexican employees as 'Wetback,' 'Beaner,' 'Dirty Mexicans,' and 'Stinky Mexicans.'" Mr. Seth and Mr. Brett also testified that they heard Monroe use the word "Nigger" frequently and pervasively.

8. Chief Steward Brett testified that Monroe used the word "Nigger" "[a]ll the time,  
9. especially if he was mad at someone." And according to Seth, "I heard Captain Monroe  
10. and First Mate Robbins state they 'Could not stand black Niggers,' and that they were  
11. glad black people were killing each other off through gang violence." Seth also testified  
12. that Monroe called President Obama a "Nigger" who should be assassinated, said "he  
13. would not let a 'Nigger' inside of his house," called hip-hop music "Nigger music," and  
14. stated he "would never allow his daughter to 'marry a Nigger, or any race besides  
15. white.'" Mr. Seth testified that these racially offensive comments "were being made in  
16. the wheelhouse openly and on the floor in front of Francisco Miranda and Jose  
17. Gonzales."

18. Mr. Gonzales stated that Captain Monroe would refer to people being "hit with a  
19. nigger beater," meaning a policeman's stick. Captain Monroe's use of the word "Nigger"  
20. and regular use of other racial slurs contributed substantially to the hostile environment  
21. directed against non-whites.

22. Mr. Miranda and multiple other witnesses have testified that on a voyage with  
23. Defendants, they witnessed a Hispanic crewmember, Oracio Gomez-Jimenez, being  
24. literally worked to death. Crewmembers Oscar Gandarilla, Oliver Nava, Emilio Vargas  
25.

1. Xhurape and Francisco Miranda testified that Monroe repeatedly told the Hispanic  
2. workers that, if they quit during this voyage, they would not get paid, forcing Mr.  
3. Gomez-Jimenez to work despite being deathly ill. Chief Steward Brett testified that the  
4. same day that Gomez-Jimenez died, Jay Monroe had come into the galley and told Mr.  
5. Brett that "Oracio was a 'lazy fucking Mexican,' 'dumb motherfucker,' 'a wetback' and  
6. 'always falling asleep.'"

7. According to Oliver Nava, Oscar Gandarilla and other witnesses, even as Mr.  
8. Gomez-Jimenez became unable to breathe normally or walk without assistance, First  
9. Mate Monroe yelled at him over the loudspeaker, "Hey! Wake UP!" and ordered him to  
10. work. Monroe told the Hispanic crew that if they didn't like how he was treating them,  
11. including Mr. Gomez-Jimenez, they could quit and "swim back to Mexico."

12. According to these witnesses, and as alleged in a lawsuit later filed by Mr.  
13. Gomez-Jimenez's estate, he eventually died after being forced to work 22 to 24 hour  
14. shifts despite his obvious illness. Witnesses have testified that, following his death,  
15. Defendants forced other Hispanic processors for days to work in the presence of Gomez-  
16. Jimenez's body, which Defendants callously and invidiously ordered to be left exposed  
17. on deck—despite objections from Hispanic crewmembers. Mr. Miranda testified that  
18. fellow Hispanic Crewmember Gomez-Jimenez was "put into a survival suit which was  
19. then wrapped in plastic and secured with duct tape. The body was placed in an area  
20. where we had to walk by and work around it on a daily basis." Steve Brett similarly  
21. testified: "I had to step over the body to get in and out of the walk-in freezer. They kept  
22. the body there for several days. I told the captain I didn't like it, but they didn't move it."

23. Mr. Miranda will testify that Defendants' callous treatment of Mr. Gomez-  
24. Jimenez was intentionally disrespectful and harassing toward Mr. Miranda and other  
25.

1. Hispanic crewmembers, and that a white crewmember would not be treated in such a  
2. manner. Mr. Miranda became very depressed and discouraged by Defendants' treatment  
3. of Mr. Gomez-Jimenez.

4. Mr. Miranda has provided direct testimony of discriminatory motive for his  
5. termination. Mr. Seth testified that he was present and heard Captain Monroe and First  
6. Mate Robbins discussing Mr. Miranda and deciding to fire him because he was Mexican.  
7. Mr. Seth testified:

8. Captain Monroe told First Mate Robbins that they should fire Mr. Miranda  
9. and get rid of him permanently. He said Mr. Miranda should be fired  
10. because he was Mexican and other crewmembers did not like to take  
11. orders from him. Captain Monroe also said that he wanted to fire another  
12. Hispanic processor, Jose Gonzalez, because he "smelled like a dirty  
13. Mexican" and never took showers. First Mate Robbins exclaimed  
14. something to the effect of "Thank god we are getting rid of Cisco [Mr.  
15. Miranda]. I've had enough of that Mexican! I can't stand him!"

16. Mr. Miranda filed a charge with the EEOC. The EEOC determined that there was  
17. reasonable cause to believe that Mr. Miranda had been subjected to an "illegal hostile  
18. working environment, consisting of harassment on the basis of his national origin." The  
19. Ninth Circuit has unequivocally held that an EEOC finding that there is reasonable cause  
20. to believe an employer committed discrimination is per se admissible in trial. *Plummer v.*  
21. *Western Intern. Hotels Co., Inc.*, 656 F.2d 502, 505 (9th Cir. 1981).

22. The above are primarily allegations supported by third-party witnesses and are not  
23. exhaustive of the allegations supporting liability in this case.

24. **B. Defendants agree and admit that they are very likely to face a verdict and  
25. judgment that exceeds their one-million-dollar insurance policy limits.**

26. Defendants are insured for employment practices under an Employment Practices  
Liability Insurance Policy with United States Liability Insurance Group (USLI) with a  
one-million-dollar policy limit. Based on the substantial evidence supporting Mr.

1. Miranda's claims, Defendants have agreed and admitted that Mr. Miranda's chances of  
2. successfully prosecuting his lawsuit are very high and that his damages likely will exceed  
3. the one-million dollar policy limits, even without factoring in a supplemental judgment  
4. for fees and costs that would shift to Defendants if Miranda prevailed.

5. The Parties also agreed in the Joint Status Report in this case that completing  
6. discovery would require 20 or more depositions, most of which would occur outside of  
7. Washington and/or the United States. Many of the witnesses reside in Alaska, Arizona  
8. and various other states and some also live in Mexico. Under the insurance policy, any  
9. supplemental judgment for attorney's fees and costs is included in the policy limit. Thus,  
10. Defendants are subject to a significant "excess" verdict beyond their insurance limits.

11. Defendants have no excess coverage. In addition, there are claims for punitive  
12. damages, which have a substantial likelihood of success and the insurer, USLI, declined  
13. coverage for those punitive damages, thus leaving Defendants exposed to an even larger  
14. uninsured claim for punitive damages.

15. **C. Defendants' insurer had an opportunity to settle the case within policy limits  
16. but refused, thereby subjecting Defendants to excess liability.**

17. Mediation has occurred on two occasions concerning Plaintiff's claims. The  
18. mediator, defense counsel and independent counsel for the assured (Michael Barcott)  
19. have all opined that this case carries a very high risk of exceeding the insurance policy  
20. limits.

21. Following the second mediation in this matter, this case could have been settled  
22. for something slightly less than the remaining policy limits. In spite of letters and emails  
23. from defense counsel and independent counsel from the assured, underwriters declined  
24. the opportunity to negotiate further by failing to even agree to a bracket requiring them to  
25. come in well below the policy limits. A demand within the policy limits expired on May  
26.

1. 9, 2016. Plaintiff Miranda had noted five depositions, and was no longer willing to settle  
2. within policy limits removing the last offer from negotiations.

3. Defendants approached Plaintiff's counsel to prepare this stipulated judgment,  
4. settlement agreement and covenant not to sue, after determining that their insurer had  
5. acted in bad faith by refusing to pay less than policy limits to resolve this case prior to  
6. exposing Defendants to a substantial excess judgment.

7. **V. RECITATIONS BY THE PARTIES CONCERNING DAMAGES**

8. Mr. Miranda alleges that he has suffered substantial economic and emotional  
9. distress damages as a result of the discrimination, harassment, and retaliation he suffered.  
10. In addition, Plaintiff seeks uncapped punitive damages under his claims under 42 U.S.C.  
11. § 1981, *et seq.* As a result of the actions of Defendants and of the agents of those for  
12. whom they are responsible, Mr. Miranda alleges that he has suffered and continues to  
13. suffer emotional distress and substantial wage loss.

14. Mr. Miranda has provided evidence that he worked very hard and performed well,  
15. but Captain Monroe refused to promote successful Hispanic processors, like Miranda to a  
16. deckhand position that paid substantially more than processors. Several white processors  
17. with far less experience were promoted over Mr. Miranda to the deckhand position.  
18. Instead, Mr. Miranda was promoted to the lead processor position that increased his  
19. responsibilities but not his pay.

20. Mr. Miranda will testify that he felt at times that his life was in jeopardy. He  
21. witnessed a Hispanic processor, Oracio Gomez-Jimenez, die from what looked to him to  
22. be overwork and neglect. Crewmembers Oscar Gandarilla, Oliver Nava, Emilio Vargas  
23. Xhurape and Francisco Miranda testified that Captain Monroe repeatedly told the  
24. Hispanic workers that, if they quit during this voyage, they would not get paid, forcing  
25.



1. Mr. Gomez-Jimenez to work despite being deathly ill. Mr. Miranda endured that  
2. environment and will testify that his life, like Mr. Gomez-Jimenez's, was put in danger  
3. due to him being targeted.

4. **A. Settlement**

5. Defendants agree to settle the above-referenced claim of Plaintiffs including any  
6. assigned claims on the terms set forth herein.

7. **B. This Document Does Not Constitute a Release**

8. Defendants agree that the terms and conditions of this document do not constitute  
9. a release. Rather, Defendants acknowledge that, for the duration of this Agreement, they  
10. shall be deemed parties, "against whom judgment is taken" pursuant to RCW 4.22.060  
11. and RCW 4.22.070. Defendants further agree that based on the expected testimony of  
12. witnesses in this case, if litigation were to continue, it is likely that a judgment in excess  
13. of one million dollars would be entered against Defendants.

14. **C. Assignment**

15. Defendants hereby assign to Plaintiff any and all claims with regard to any insurer  
16. for any coverage that Defendants have or should have had for liabilities arising out of the  
17. claims made in the Complaint in the above-referenced matter. This assignment includes  
18. all claims. The assignment includes, without limitation, all claims against USLI and any  
19. other insurer that does or may have coverage for Defendants or which may be liable for  
20. bad faith, improper claims handling, violation of statutes and regulations, and recovery of  
21. attorneys' fees and costs.

22. **D. Stipulated Judgment**

23. Defendants hereby agree that pursuant to this Agreement, they shall become a  
24. party against whom judgment is taken for all purposes under Washington and federal law.  
25.

1. Defendants hereby consent to have a judgment entered against them, jointly and  
2. severally:

3. 1) In the amount of \$3,000,000.00 for Plaintiff's claims.  
4. 2) In amount to be determined by stipulation or, at Plaintiff's option, to be  
5. determined by the Court, for reasonable attorneys' fees and costs.  
6. 3) The judgment shall bear interest from December 22, 2016, at the rate of 12%  
7. until paid in full.

8. **E. Reasonableness Hearing**

9. The validity of this Agreement is contingent upon a finding of reasonableness by  
10. the Court. In the event that the court does not determine the Agreement to be reasonable,  
11. Plaintiff, at his sole option, may void the Agreement and place the matter back on the  
12. trial calendar or have the reasonable amount of the settlement determined before an  
13. arbitration panel of three arbitrators as explained below.

14. **F. Cooperation**

15. Defendants agree to provide reasonable cooperation in all matters for all talks and  
16. endeavors necessary to carry out or realize the terms of this Agreement, including  
17. participation in any reasonableness hearing or related proceedings regarding any and all  
18. claims that Plaintiff through this Agreement has the right to pursue against Defendants'  
19. insurer. Defendants will, among other things, attend such proceedings without  
20. compulsion of subpoenas and provide necessary documents and truthful testimony.

21. **G. Covenant Not To Execute or Enforce Judgment**

22. In consideration of the above covenants, Plaintiff hereby agrees, covenants, and  
23. warrants that he will never execute upon or attempt to enforce any judgment against the  
24. assets of Defendants beyond insurance assets referenced herein unless the Agreement is  
25.

1. not determined to be reasonable, as discussed in paragraph E above. Rather, Plaintiff  
2. shall limit his recovery against USLI and any other insurers who are liable for the claims,  
3. the assigned claims, policies of insurance, and remedies identified in this Agreement.

4. **H. Covenant to Enter Full Satisfaction of Judgment in Favor of Defendants**

5. Plaintiff shall execute and file a full satisfaction of judgment in favor of  
6. Defendants upon final resolution or dismissal of the assigned claims. Plaintiff shall, upon  
7. request, issue written confirmation to any third party designated by Defendants that  
8. Plaintiff shall not execute on this Stipulated Judgment beyond the insurance assets  
9. referenced herein unless the Agreement is not determined to be reasonable, as discussed  
10. in paragraph E above.

11. **I. Arbitration**

12. If the amount of the stipulated judgment is not found reasonable by any court,  
13. then at the Plaintiff's sole election, the Parties agree to submit the issue of the amount of  
14. damages owed to an arbitration panel at JAMs composed of three arbitrators to be  
15. governed by the JAMS Arbitration employment rules in Seattle.

16. **J. Warranty of Authority**

17. The Parties and attorneys listed below hereby warrant that they have the authority  
18. to enter into this agreement and that they do so with the full knowledge of the  
19. consequences in an attempt to commit themselves to the obligations set forth above.

20. **K. Execution of This Document**

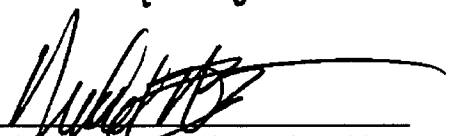
21. The Parties agree that this document may be executed in counterparts and by  
22. faxed signature pages.

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Dated: \_\_\_\_\_

Dated: 12/22/16

Kenny Down  
Title: \_\_\_\_\_  
For Defendants


  
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STIPULATED JUDGMENT, SETTLEMENT AGREEMENT, AND  
COVENANT NOT TO EXECUTE - 12

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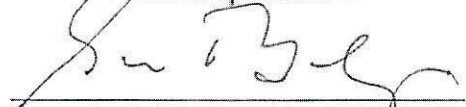
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