

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Office of the Attorney General



In the Matter of
Prestige Drywall LLC

SETTLEMENT AGREEMENT

The Attorney General for the District of Columbia, on behalf of the District of Columbia (“District”), and In the Matter of Prestige Drywall LLC (“Prestige Drywall”) (collectively, the “Parties”) hereby enter into this Settlement Agreement (“Agreement”), and agree as follows:

I. THE PARTIES

1. The District of Columbia, a municipal corporation empowered to sue and be sued, is the local government for the territory constituting the seat of the government of the United States. D.C. Code § 1-102. The Attorney General for the District of Columbia is the chief legal officer for the District of Columbia. Pursuant to D.C. Code § 32-1306, the Attorney General for the District of Columbia is authorized to bring civil actions seeking back wages, liquidated damages, civil penalties, costs, attorneys’ fees, and equitable relief for violations of the District’s Workplace Fraud Act (“WFA”), D.C. Code § 32-1331.01 *et seq.*, Minimum Wage Revision Act (“MWRA”), D.C. Code § 32-1001, *et seq.*, and Sick and Safe Leave Act (“SSLA”), D.C. Code § 32-531.01 *et seq.*

2. Prestige Drywall LLC is a Virginia limited liability company, licensed and authorized to provide subcontracting services relating to drywall installation in the District of Columbia and neighboring states.

3. The District alleges that from 2018 through the present, Prestige Drywall completed construction projects in the District of Columbia by contracting directly with dozens of workers (hereinafter, “direct engagements”), and by entering into agreements with subcontractors, who in turn supplied Prestige Drywall with construction workers (hereinafter, “subcontracted workers”).

4. The District alleges that direct engagements and subcontracted workers (collectively, “Eligible Employees”), as identified in Appendix A tab (“Eligible Employees”), were often misclassified as independent contractors when they should have been classified as employees, and that this misclassification violates the WFA, MWRA, and SSLA.

5. The District alleges that Prestige Drywall exercised extensive supervision and control over both direct engagements and subcontracted workers and as a result, is liable for subcontractors’ misclassification violations of the WFA, MWRA, and SSLA as a joint employer. In the alternative, the District alleges that Prestige Drywall is strictly liable for subcontractors’ misclassification violations pursuant to D.C. Code § 32-1303(5).

6. The District alleges that Prestige Drywall often failed to pay Eligible Employees overtime pay in violation of the MWRA pursuant to D.C. Code § 32-1003(c).

7. Prestige Drywall denies the allegations in Paragraphs 3-6 and denies that its practices violated District law. Moreover, this Settlement Agreement does not constitute an express, implied or imputed admission by Prestige Drywall of the District’s allegations.

8. To avoid delay, uncertainty, inconvenience, and the expense of any protracted litigation or further investigation, subpoenas or other actions, the Parties have reached a full and final Settlement Agreement as set forth below.

9. The “Effective Date” of this Agreement shall be the last date upon which any party executes the Settlement Agreement.

II. PAYMENT TERMS

10. Prestige Drywall agrees to pay, in the manner set forth below, a total of six hundred and four thousand, six hundred forty dollars, and twenty-five cents (\$604,640.25) (the “Total Settlement Amount”). The Total Settlement Amount consists of (a) a “Worker Share” equaling three hundred fifty-nine thousand, six hundred sixty-five dollars, and twenty-five cents (\$359,665.25) to be paid to Eligible Employees, and (b) a “Penalty Share” equaling two hundred forty-four thousand, nine hundred seventy-five dollars (\$244,975) to be paid to the District. The Total Settlement Amount shall be paid out in the following manner:

- a. **Worker Share.** Prestige Drywall shall be responsible for distribution of these payments and will manage the distribution as follows:
 - i. *Creation of Claims Ledger.* Within 35 days after the Effective Date of this Settlement Agreement, Prestige Drywall will prepare and submit to the District a ledger (the “Claims Ledger”) in Excel spreadsheet format that identifies each Eligible Employee’s (a) name; (b) available contact information, including phone, email, and address; and (c) amount owed (the “Claim Payment”). The Claim Payment will contemplate \$1,000 for each Eligible Employee (the “Restitution Payment”), plus any additional amount owed to specific Eligible Employees for unpaid overtime (the “Overtime Payment”) as identified in the attached Appendix A (tab “Amounts Due”).
 - ii. *Reasonable efforts to identify Eligible Employees and their contact information.* Prestige Drywall shall use an Eligible Employee’s last-known contact information to create the Claims Ledger. If an Eligible Employee’s last-known contact information is unknown, Prestige Drywall shall retain a vendor to conduct a skip trace search to locate last-known contact information.

- iii. *Reasonable efforts to contact Eligible Employees and distribute Claim Payments.* Prestige Drywall shall begin making attempts to contact each Eligible Employee by phone, mail, or email regarding distribution of their Claim Payment on a rolling basis within 30 days after the Effective Date of this Settlement Agreement. Prestige Drywall must make multiple attempts to contact all Eligible Employees by phone, mail, and email within 90 days after the Effective Date of this Settlement Agreement.
- iv. *Distribution of Claim Payments.* Within 365 days after the Effective Date, Prestige Drywall will distribute Claim Payments to Eligible Employees on a rolling basis via check. Prestige Drywall will record the recipients, dates, and amounts of all Claim Payments distributed in the Claims Ledger. In addition, Prestige Drywall will distribute a Notice and Release Form, attached as Appendix B, to Eligible Employees. The Notice and Release Form will include information for Eligible Employees summarizing this settlement, and the reason Eligible Employees are receiving a Claim Payment. The Notice and Release Form shall allow the Eligible Employee to document receipt of the Claim Payment and release Prestige Drywall from liability in a manner consistent with the release in this Settlement Agreement.
- v. *Recordkeeping.* Prestige Drywall will keep and maintain records of all Claim Payments and Notice and Release Forms distributed to Eligible Employees for at least three (3) years after the Effective Date of this Settlement. The District shall have the right to inspect such records, and Prestige Drywall shall furnish such records to the District upon request.
- vi. *Reporting.* Within 365 days after the Effective Date of this Settlement, Prestige Drywall shall provide a report to the District documenting (a) disbursements made to Eligible Employees; (b) for all Eligible Employees to whom no payment was made, all efforts made to contact Eligible Employees; and (c) the amount of the undistributed payments to Eligible Employees (“Undistributed Funds”).
- vii. *Payment of Undistributed Funds to the District.* Within 90 days after providing the report required by paragraph (vi) above, Prestige Drywall shall make a payment to the District in the amount of the Undistributed Funds. Payments made to the District pursuant to this term may be used by the District for any lawful purpose, including but not limited to payment in restitution to current and former workers who performed work for Prestige Drywall or payment applied to the District’s restitution fund; defrayal of the costs of the inquiry leading hereto; defrayal of the costs of administration or distribution; payment to the litigation support fund; or for other uses permitted by District law, at the sole discretion of the Attorney General for the District of Columbia. Prestige Drywall agrees to cooperate with the District in obtaining any modification to the language of this paragraph

needed to facilitate the administration of the District's payment under this paragraph.

b. **Penalty Share.** Prestige Drywall shall pay the Penalty Share as follows:

i. Within sixty (60) days after the Effective Date, Prestige Drywall shall make a payment to the District in the amount of the full Penalty Share. Payments made pursuant to the Penalty Share may be used for any lawful purpose, including, but not limited to, deposit to the District's litigation support fund; defrayal of the costs of the inquiry leading hereto; defrayal of the costs of administration or distribution; or for other uses permitted by District law, at the sole discretion of the Attorney General for the District of Columbia. Prestige Drywall agrees to cooperate with the District in obtaining any modification to the language of this paragraph needed to facilitate the administration of the District's payment under this paragraph.

c. **Delivery.** Payments made by Prestige Drywall pursuant to this paragraph shall be in the form of a certified or cashier's check made payable to the "D.C. Treasurer" and mailed with tracking information requested, sent by overnight courier with tracking information requested, or hand delivered to Conny Tello, Staff Assistant, Public Advocacy Division, Office of the Attorney General for the District of Columbia, 400 Sixth Street, N.W., 10th Floor, Washington, D.C. 20001.

III. INJUNCTIVE TERMS

11. **Certified Payroll.** Prestige Drywall will require all subcontractors retained for projects in the District to submit weekly certified payroll reports to Prestige Drywall that certify that the subcontractor is in compliance with the WFA, MWRA, and SSLA. Prestige Drywall shall utilize a certified payroll form that requires the subcontractor to certify (a) identifying information pertaining to the subcontractor and project, (b) the names of their workers, (c) their classification as employees or independent contractors, (d) their hours worked each day, (e) their rate of pay, (f) their gross earnings, (g) tax deductions, (h) net earnings, and (i) a sworn certification that the subcontractor is in compliance with the WFA, MWRA, and SSLA. Certified payroll records may be modeled on U.S. Department of Labor Form WH-347. Additionally, Prestige Drywall will require all subcontractors retained for projects in the District to annually submit certifications with accompanying records to Prestige Drywall indicating their compliance with the SSLA. Prestige

Drywall shall maintain the above-referenced certified payroll records for a period of at least five (5) years.

12. **Auditing.** For each subcontractor retained by Prestige Drywall to perform work on a construction project in the District, Prestige Drywall will also complete and include in the Annual Report referenced below in Section 13, at least one (1) random audit for the subcontractor for each District-located project on which the subcontractor is retained during the time period in which the subcontractor is completing the work. The audit shall compare the subcontractor's certified payroll records with a randomized sample of the subcontractor's payment and/or pay stub records to verify the subcontractor's compliance with the WFA, MWRA, and SSLA.

13. **Reporting.** For calendar years 2023 through 2028, Prestige Drywall shall submit an Annual Report to the District that certifies it is in compliance with its obligations under the Settlement Agreement. Prestige Drywall shall submit each Annual Report to the District by February 28 of the following year, pursuant to Paragraph 24.

14. **Corrective Action.** If Prestige Drywall has knowledge, through an audit or other source, that a subcontractor is in violation of the WFA, MWRA, or SSLA, Prestige Drywall shall take action within fourteen (14) days to ensure that the subcontractor comes into compliance and pays any applicable restitution to any affected worker to remedy the violation.

15. **Debarment.** Prestige Drywall is prohibited from bidding on or providing work on any projects in the District of Columbia for a period of five (5) years as of the Effective Date.

16. **Penalties in Future Actions.** In any future action, for a violation of the WFA, MWRA, or SSLA, by Prestige Drywall within two years of the Effective Date, the District shall calculate penalties with respect to violations according to the framework of D.C. Code § 32-1331.07(e).

17. **Notice of Settlement to Prestige Drywall Management.** Prestige Drywall shall deliver a copy of this Settlement Agreement to each of its current and future principals, officers, directors, and managers who have managerial authority with respect to the subject matter of this Settlement Agreement.

18. **Use of Subcontractors.** The Company shall not contract with any subcontractor to perform future work in the District (including any officers or owners of the subcontractor or their affiliated entities) with whom the Company contracted in the District during the relevant time period, unless either (1) such a subcontractor has produced documents and information to the District showing that its workers were not misclassified, or (2) such a subcontractor enters into a separate settlement with the District that includes injunctive relief ensuring it will no longer engage in misclassification.

IV. RELEASE

19. Upon payment by Prestige Drywall of the Total Settlement Amount, the District releases Prestige Drywall from any and all civil claims that the Attorney General could have brought under the WFA, MWRA, or SSLA, arising out of work performed by Prestige Drywall or by any of Prestige Drywall's subcontractors in the District before the Effective Date. The foregoing release shall not affect the District's right to take appropriate enforcement action against Prestige Drywall with respect to the payment terms and injunctive terms set out in Sections II and III of this Settlement Agreement, nor shall it, or anything in this agreement, affect the District's right to bring any enforcement action for conduct that is not specifically released with respect to the District's allegations in this matter or for any conduct that post-dates the Effective Date of the Settlement Agreement.

V. ADDITIONAL TERMS

20. **No concession that claims were not well-founded.** The District's agreement to enter into this Settlement Agreement does not constitute, and shall not be construed as, a concession that its allegations were not well-founded.

21. **No admission of wrongdoing or liability.** Prestige Drywall's agreement to enter into this Settlement Agreement does not constitute, and shall not be construed as, an admission of any wrongdoing or liability.

22. **Full and complete terms.** This Settlement Agreement represents the full and complete terms of the settlement entered into by the Parties. In any action undertaken by the Parties, neither prior versions of this Settlement Agreement nor prior versions of any of its terms may be introduced for any purpose whatsoever.

23. This Settlement Agreement shall be considered effective and fully executed on the Effective Date. This Settlement Agreement may be executed in counterparts, and a facsimile or .pdf signature shall be deemed to be, and shall have the same force and effect, as an original signature. Copies of signature pages transmitted electronically shall have the same effect as originals of those signature pages.

24. All notices and reports sent pursuant to this Settlement Agreement shall be provided to the following addresses via first class and electronic mail, unless a different address is specified in writing by the party changing such address:

James Graham Lake
Chief, Workers' Rights and Antifraud Section
Office of the Attorney General
400 6th Street, N.W., 10th Floor
Washington, D.C. 20001
Graham.Lake@dc.gov

Counsel for the District of Columbia

Kelly Burchell Esq.
Burchell Law PLLC
1140 3 Street, NE, 2nd Floor
Washington, DC 20002
kelly@burchelllaw.com

Counsel for Prestige Drywall LLC

25. If any clause, provision, or section of this Settlement Agreement shall, for any reason, be held illegal, invalid, or unenforceable, such illegality, invalidity, or unenforceability shall not affect any other clause, provision, or section of this Settlement Agreement and this Settlement Agreement shall be construed and enforced as if such illegal, invalid, or unenforceable clause, section, or other provision had not been contained herein.

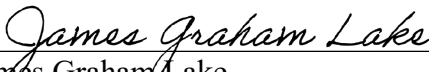
26. Nothing in this Settlement Agreement shall be construed as relieving Prestige Drywall of the obligation to comply with all state and federal laws, regulations, or rules, nor shall any of the provisions of this Settlement Agreement be deemed to be permission to engage in any acts or practices prohibited by such laws, regulations, or rules.

27. Nothing in this Settlement Agreement may be deemed as creating rights in individual or entity third parties.

28. Any failure by any party to this Settlement Agreement to insist upon the strict performance by any other party of any of the provisions of this Settlement Agreement shall not be deemed a waiver of any of the provisions of this Settlement Agreement, and such party, notwithstanding such failure, shall have the right thereafter to insist upon the specific performance of any and all of the provisions of this Settlement Agreement.

29. This Settlement Agreement, its interpretation and any enforcement of its provisions shall be governed by the laws of the District of Columbia.

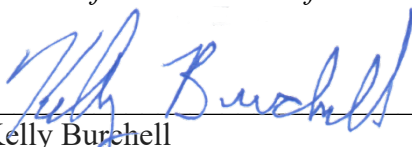
BRIAN L. SCHWALB
Attorney General for the District of Columbia



James Graham Lake
Chief, Workers' Rights and Antifraud Section
Office of the Attorney General
400 6th St., NW, 10th Floor
Washington, D.C. 20001

Date: August 7, 2023

Counsel for the District of Columbia



Kelly Burchell
Burchell Law PLLC
1140 3 Street, NE, 2nd Floor
Washington, DC 20002

Date: August 2, 2023

Counsel for Prestige Drywall LLC