

Exhibit A

UNITED STATES OF AMERICA
OCCUPATIONAL SAFETY & HEALTH REVIEW COMMISSION

SECRETARY OF LABOR,

Complainant,

v.

ALJ HOME IMPROVEMENT, INC.
amended herein to ALJ Home Improvement,
Inc. and JOSE LEMA,

Respondents.

OSHRC DOCKET NOS.

22-0052, 22-0053, 22-0054

STIPULATED SETTLEMENT AGREEMENT

Based upon the following recital, the Complainant and the Respondents Jose Lema and ALJ Home Improvement, Inc. (“ALJ”) (collectively the “Parties”) herein agree to the following as a conclusion of this consolidated matter:

1. The Parties agree to amend the citation and the case caption to include Jose Lema as a cited employer. The Complainant hereby amends the citations and notifications of proposed penalty to incorporate the terms of this Settlement Agreement, including the abatement measures set forth in Paragraph 5 below, as required abatement of the citations, and to amend the total proposed penalties issued in connection to the above-referenced consolidated docket to \$125,000 to be apportioned consistent with the following table. None of the citation items, including the cited standards and classification, are otherwise amended.

Docket No. (Investigation No.)	Citation & Item	Original Proposed Penalty	Amended Proposed Penalty
22-0052 (OSHA# 1552624)	Citation 1, Item 1	\$25,745.00	\$13,157.00
22-0052 (OSHA# 1552624)	Citation 1, Item 2	\$25,745.00	\$13,158.00
22-0052 (OSHA# 1552624)	Citation 1, Item 3	\$30,037.00	\$15,351.00
	<i><u>Docket Total:</u></i>	<i><u>\$81,527.00</u></i>	<i><u>\$41,666.00</u></i>
22-0053 (OSHA# 1552619)	Citation 1, Item 1	\$25,745.00	\$13,158.00

22-0053 (OSHA# 1552619)	Citation 1, Item 2	\$25,745.00	\$13,158.00
22-0053 (OSHA# 1552619)	Citation 1, Item 3	\$30,037.00	\$15,351.00
	<i>Docket Total:</i>	<i>\$81,527.00</i>	<i>\$41,667.00</i>
22-0054 (OSHA# 1529976)	Citation 1, Item 1	\$25,745.00	\$13,158.00
22-0054 (OSHA# 1529976)	Citation 1, Item 2	\$25,745.00	\$13,158.00
22-0054 (OSHA# 1529976)	Citation 1, Item 3	\$30,037.00	\$15,351.00
	<i>Docket Total:</i>	<i>\$81,527.00</i>	<i>\$41,667.00</i>
	Grand Total:	\$244,581	\$125,000

2. Respondents affirmatively state that:

a. The violations alleged in the citations have been abated, except as to Citation 1, Item 3 of each matter, which will be abated as set forth in Paragraph 5 below, and Respondents will submit abatement documentation as specified in Paragraph 5 below;

b. Respondents will comply in the future with the Occupational Safety and Health Act.

3. Respondents will pay the total amended proposed of \$125,000 consistent with the following terms:

a. Within 30 days after the Order Terminating Proceeding becomes an OSHRC final order, Respondents will make the first of 36 monthly payments for the proposed amended penalty.

b. The first payment will be in the amount of \$6,000.

c. Each of the 35 subsequent monthly payments, each in the amount of \$3,550, must be made by the fifteenth day of each month until the total amended proposed penalty is paid.

d. All such payments must be made electronically via www.pay.gov. The direct link to make a payment is: <https://www.pay.gov/paygov/forms/formInstance.html?agencyFormId=53090334>.

e. A ten-day grace period shall be allowed for receipt of each payment. In the event that OSHA does not receive any payment within ten days after it is due, OSHA will notify Respondents of such fact by regular mail. If OSHA does not receive payment within ten days of sending such notification, the entire original penalty of \$244,581, less any amounts already remitted, shall become due immediately. No action or non-action by OSHA shall constitute waiver of this paragraph.

4. Respondents represent that from at least May 10, 2021 through the present, Respondent Lema:

- a. Has been responsible for procuring all work for Respondents and the workers who perform work for Respondents;
- b. Has been responsible for procuring and providing all tools and materials required for Respondents' employees' work;
- c. Has had the authority to and in fact did assign work to Respondents' employees;
- d. Has had the authority to and in fact did control how Respondents' workers performed their work;
- e. Has had the authority to and in fact did control the work schedules/hours of Respondents' employees;
- f. Has determined how much and by what means Respondents' employees are paid.

5. Respondents agree to implement the following abatement measures:

a. Jose Lema and any of Respondents' supervisors and foremen will complete an OSHA 30-hour safety training course by 30 days after the Order Terminating Proceeding becomes an OSHRC final order. All other Respondents' employees will complete at least an OSHA 10-hour safety training course by 30 days after the Order Terminating Proceeding becomes an OSHRC final order. Respondents will provide proof of these training completions to the OSHA Tarrytown Area Office no later than 45 days after the Order Terminating Proceeding becomes an OSHRC final order.¹

b. For a period of 4 years beginning with the date the Order Terminating Proceeding becomes an OSHRC final order, Respondents will ensure that any new employees hired during the relevant period will have had at least an OSHA 10-hour safety training or ensure that they receive such training within 30 days of hiring. Respondents will maintain records of such verification or training of any employee and make such records available to OSHA upon request.

c. Within 60 days of the date this Stipulated Settlement Agreement is signed by the Parties, Respondents will retain the services of a qualified, professional safety consultant. "Retain" for purposes of this paragraph means that Respondents and the safety consultant will have an executed contract in place.

i. No later than 60 days after Respondents retain the safety consultant, Respondents, in consultation with the safety consultant, will develop and

¹ For all purpose under this Settlement Agreement, any and all any and all documents and notification that must be sent or communicated to OSHA shall be sent to OSHA Tarrytown Area Director Robert Garvey at garvey.robert@dol.gov and to Assistant Area Director Peter West at west.peter@dol.gov, or to any other person so communicated to Respondents in writing. For all purposes under this Settlement Agreement, Respondent Lema shall be the main point of contact on behalf of Respondents. Respondent Lema contact information for purposes of this Settlement Agreement is: Email: joselema1783@gmail.com , Telephone: 845-721-2273, and Mailing Address: 648 Chestnut Ridge Road, Spring Valley, NY 10977 . It is at all times Respondent Lema's responsibility to ensure OSHA is kept aware of any changes to this contact information.

implement a comprehensive written company safety and health plan (“Written Safety Plan”), related to the work performed by Respondents. Respondents will implement the Written Safety Plan immediately upon the completion of the Written Safety Plan’s development. Respondents will provide a copy of its Written Safety Plan to OSHA Tarrytown Area Office within 5 days of developing the plan.

ii. The Written Safety Plan will include a safety program with safety rules, communication of the safety rules to employees, including supervisory employees, and enforcement of the safety rules with a progressive disciplinary policy for violations of the safety rules. Among its safety rules, the Written Safety Plan must include comprehensive provisions related to ladder safety, fall hazards, fall protection, eye safety, and head safety consistent with the Occupational Safety and Health Act and any applicable standards promulgated thereunder.

iii. The Written Safety Plan will include a written daily safety checklist to be used by the onsite safety supervisor at each worksite.

iv. Respondents will ensure that any current or future employee will receive a copy of the Written Safety Plan and training on the Written Safety Plan, both in a language understood by the employee, prior to permitting any such employee to perform work of any kind at any worksites.

d. For each of their worksites/jobs, Respondents shall develop and implement a site-specific safety plan, addressing anticipated worksite hazards including but not limited to fall hazards, ladder use hazards, eye and head protection hazards, and other anticipated hazards.

e. At each of Respondents' worksites/jobsites, Respondents will designate an onsite safety supervisor with authority to correct hazardous conditions, and with responsibility to ensure the Written Safety Plan, including the daily safety checklist, and the site-specific safety plan, are implemented and enforced at the worksite. Respondent Jose Lema may be the designated onsite safety supervisor. When Respondent Lema is absent from the worksite, Respondents will designate another individual to serve as the onsite safety supervisor to ensure an onsite safety supervisor is always present on Respondents' worksites.

f. For each of Respondents' worksites/jobs, the designated onsite safety supervisor will conduct a site safety assessment/inspection on at least a daily basis. The designated site safety supervisor will complete and maintain a daily safety checklist to document: (i) proper use of necessary personal protective equipment, including eye and head protection; (ii) proper use of necessary fall protection, including guardrails, safety nets, and/or personal fall arrest systems; (iii) proper use of ladders and scaffolding; (iv) environmental factors, (v) weather conditions, and (vi) any safety deficiencies observed and/or corrections made by the safety supervisor during the workday. Respondents will retain the completed checklists for at least six months and make them available to OSHA upon request.

g. The Safety Consultant retained by Respondents will conduct unannounced safety inspections of Respondents' worksites for a period of 2 years from the date Respondents retain the safety consultant. The unannounced worksite safety inspections will be conducted once, every other month, for a period of two (2) years, for a total of 12 unannounced safety inspections at Respondent's worksites. Stated otherwise, the

safety consultant will conduct an unannounced safety inspection at Respondent's worksites once every 60 days, for a period of 2 years.

- i. Following each worksite safety inspection, the safety consultant will prepare a written record of the inspection findings and recommendations for corrective action. Respondents will immediately implement the safety consultants' recommendations.
 - ii. Respondents will maintain copies of the safety consultant's site visit written record of the inspection findings and recommendations for corrective action, for 2 years, during the term of Respondent's contract with the safety consultant. Respondents will make the safety consultant's site visit written inspection record and Respondents' corrective actions available to OSHA upon request.
- h. For a period of four years beginning on the date this Stipulated Settlement Agreement is signed by the Parties, Respondents will permit warrantless entry by OSHA at all of its worksites/jobs.
- i. For a period of four years beginning on the date this Stipulated Settlement Agreement is signed by the Parties, Respondents will provide written, advance, notice of all of Respondents' jobs, in the States of New York and New Jersey, to OSHA.² The written notification will include the job's street address, job's start date, and anticipated job length. Respondents will provide the written job notification at least one week in advance of the job start date. For Respondents' jobs added to the work schedule with less than one-week advance notice, Respondent will send an email schedule update to

² All notifications and communications related to this provision shall be communicated to OSHA consistent with Footnote 2.

OSHA, including the job information requested above. Respondent will send this email schedule update as soon as practicable.

j. In the event that Respondents fail to complete any of the abatement measures set forth in Paragraph 5 and its subparagraphs within 10 days after the due date set forth therein, OSHA will notify Respondents of such fact by regular mail. If OSHA does not receive confirmation that Respondents completed the subject abatement measure within ten days of OSHA sending such notification, the entire original penalty of \$244,581, less any amounts already remitted, shall become due immediately. No action or non-action by OSHA shall constitute waiver of this paragraph.

6. Respondents affirmatively state Respondent Lema has understood and continues to understand each of the health and safety standards (29 C.F.R. §§ 1926.100(a), 1926.102(a)(1), and 1926.501(b)(13)) cited in the underlying citations, as amended, and what those standards require since at least May 10, 2021.

7. Respondents agree that all of the terms in this Settlement Agreement shall apply to any successor entity to Respondent ALJ in addition to Respondents.

8. Respondents agree that all the terms of this Settlement shall be enforceable under Section 11(b) of the OSH Act, 29 U.S.C. § 660(b). Respondents agree that they shall consent to the entry of an order enforcing this Settlement Agreement and the final citations (as amended) by the U.S. Court of Appeals to which the Secretary of Labor presents this Settlement and supporting documents.

9. Respondents agree to a stipulated order under Section 13(a) of the OSHA Act, 29 U.S.C. § 662(a) to be entered in the appropriate U.S. District Court.


10. Respondents affirmatively state that Respondent Lema has read and/or had explained to him, and understands, all of the terms of this Settlement Agreement.

11. Each party hereby agrees to bear its own fees and other expenses incurred by such party in connection with any stage of this proceeding.


12. Respondents withdraw their notices of contest in this matter, and agree that the citations, penalties, and abatement measures (as set forth and amended herein by this Stipulated Settlement) shall become final orders of the Commission on the same date that the Order(s) Terminating Proceeding becomes a final order, as set forth in the Notices of Docketing issued by the Executive Secretary of the Commission.

Date: May 2, 2023

EXECUTED BY:




Jose Lema, as President of ALJ Home Improvement, Inc. and as an individual



Robert Mellman
Counsel for Respondents

On behalf of Respondents ALJ Home Improvement, Inc. and Jose Lema



David J. Rutenberg
Senior Trial Attorney
Office of the Solicitor
U.S. Department of Labor

On behalf of Complainant,
Acting Secretary of Labor.