

ORIGINAL

**SETTLEMENT AGREEMENT AND MUTUAL GENERAL RELEASE**FILED  
LOS ANGELES  
SUPERIOR COURT

This SETTLEMENT AGREEMENT AND MUTUAL GENERAL RELEASE (the "Agreement") is entered into as of March 30, 2004 by and between Mark Ryan ("Ryan"), on one hand, and Defendant Brock Pierce ("Pierce"), on the other hand.

JUN 24 2004  
JOHN A. CLARKE, CLERK

BY M. WHITE, DEPUTY

**I. RECITALS**

On or about July 20, 2000, Ryan and others filed a complaint against Pierce and others entitled *Burton v. Collins-Rector et al.*, Los Angeles Superior Court, Case No. LC053103 (the "Action").

The purpose of this Agreement is to settle and compromise all disputes, claims and controversies existing between the parties, without admission of any liability or of any fact, claim or defense. Ryan and Pierce intend that this Agreement effects a total resolution and compromise of all claims between them including, without limitation, those claims related to or arising from the Action.

NOW THEREFORE, in consideration of the mutual covenants and promises contained in this Agreement and other good and valuable consideration, and to avoid further and protracted litigation, it is hereby agreed among the parties as follows:

**II. DISPOSITION OF ALL CLAIMS**

A. Assistance re Collection on Default Judgment. Pierce also agrees to, and shall, provide any and all information in his possession, to the best of his knowledge, that would or might assist Ryan in collecting on the default judgment that has been entered in his favor against certain other defendants in this Action.

**B. General Releases Of All Claims.**

1. It is understood and agreed that in consideration of the mutual promises and covenants contained in this Agreement, and after consultation with counsel, Ryan, himself and his respective heirs, representatives, agents, successors and assigns, irrevocably and unconditionally release and forever discharge Pierce, and his representatives, heirs, insurers, attorneys and agents, from any and all causes of action, claims, actions, rights, judgments, obligations, damages, demands, accountings or liabilities of whatever kind or character, which Ryan may have against them by reason of or arising out of, touching upon or concerning the Action, or any statutory claims, or any and all other matters of whatever kind, nature or description, whether known or unknown, occurring prior to the date of the execution of this Agreement, including without limitation those claims set forth or arising out of, touching upon or concerning the Action, and any other claims arising from or in any way related to the Action, including any alleged claims by Ryan for attorneys' fees. Ryan acknowledges that this general release of claims specifically includes, but is not limited to, any and all claims for assault, battery, negligence, intentional or negligent infliction of emotional distress, or any other wrongful conduct based upon events occurring prior to the date of the execution of this Agreement.

2. Ryan represents and warrants that he has not assigned or subrogated any of his rights, claims or causes of action relating to the Action or claims raised therein, including any claims referenced in this Agreement, or authorized any other person or entity to assert such

claim or claims on his behalf, and he agrees to indemnify and hold harmless Pierce against any assignment of said rights, claims and/or causes of action.

3. It is understood and agreed that in consideration of the mutual promises and covenants contained in this Agreement, and after consultation with counsel, Pierce irrevocably and unconditionally releases and forever discharges Ryan from any and all causes of action, claims, actions, rights, judgments, obligations, damages, demands, accountings or liabilities of whatever kind or character, which Pierce may have against Ryan by reason of or arising out of, touching upon or concerning the Action, or any and all other matters of whatever kind, nature or description, whether known or unknown, occurring prior to the date of the execution of this Agreement.

4. Pierce represents and warrants that he has not assigned or subrogated any of his rights, claims or causes of action relating to the Action or claims raised therein, including any claims referenced in this Agreement, or authorized any other person or entity to assert such claim or claims on his behalf, and he agrees to indemnify and hold harmless Ryan against any assignment of said rights, claims and/or causes of action.

C. Waiver of California Civil Code Section 1542.

1. Ryan and Pierce do hereby, for themselves and for each of their respective heirs, representatives, and agents, expressly waive and relinquish all rights and benefits afforded by California Civil Code Section 1542 and do so understanding and acknowledging the significance and consequences of such specific waiver of California Civil Code Section 1542.

2. Ryan and Pierce acknowledge that they are being represented in this matter by counsel, and that they are familiar with the provisions of California Civil Code Section 1542. California Civil Code Section 1542 provides as follows:

A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor.

Thus, notwithstanding the provisions of California Civil Code Section 1542, and for the purpose of implementing a full and complete release and discharge of the other, Ryan and Pierce expressly acknowledge that this Agreement is also intended to include in its effect, without limitation, all claims which they do not know or expect to exist in his favor at the time of execution and that this Agreement contemplates the extinguishment of any such claim or claims.

D. Denial of Liability. The parties acknowledge that Pierce has denied and continues to deny any and all liability to Ryan for any and all claims in connection with the Action or otherwise. Each party expressly recognizes that this Agreement shall not in any way be construed as an admission by Pierce of any unlawful or wrongful acts whatsoever with respect to Ryan or any other person. Pierce expressly denies any violation of any state or federal law or regulation. Pierce specifically denies any liability to, or wrongful acts against, Ryan or any other person on the part of Pierce. This Agreement shall not be admissible in any proceeding as evidence of or any admission by Pierce of any violation of any law or regulation or wrongful act. This Agreement may, however, be introduced as evidence in any proceeding to enforce this Agreement.

E. Dismissal with Prejudice. Immediately following the execution of this Agreement by Ryan and Pierce, Ryan's counsel shall execute, file and serve a Request for

Dismissal of the Action with prejudice. Ryan agrees to take all further steps, and to execute any other documents, which may be necessary to effect a dismissal of the Action in its entirety, with prejudice, and will immediately cause such documents to be sent to counsel for Pierce. Ryan and Pierce are to bear their own costs and attorneys' fees.

F. Warranties.

1. Ryan specifically represents that other than the Action, he has no other pending complaints or charges against Pierce with any state or federal court or any local, state or federal agency or in any other country based on any events occurring prior to the date of execution of this Agreement. Pierce represents that he has no pending complaints or charges against Ryan with any state or federal court or any local, state or federal agency or in any other country based on any events occurring prior to the date of execution of this Agreement.

2. Ryan further represents that he will not in the future file, participate in, instigate or encourage the filing of any lawsuit by any person or entity in any state or federal court or any proceeding before any local, state or federal agency claiming that Pierce has violated any local, state or federal laws, statutes, ordinances or regulations, including but not limited to any laws, statutes or regulations of the State of California or concerning any allegations of tortious conduct, intentional or negligent infliction of emotional distress, or any other wrongful conduct, based upon events occurring prior to the date of the execution of this Agreement.

III. **GENERAL PROVISIONS**

A. Costs and Fees. It is agreed and understood that Ryan and Pierce shall bear their own costs and attorneys' fees with respect to the Action, including all costs and attorneys' fees incurred in connection with, or in any way related to, the negotiation or consummation of this Agreement.

B. Counsel. The parties acknowledge and represent that, prior to execution of this Agreement, they have consulted with their respective counsel concerning the terms and conditions set forth in this Agreement.

C. Knowing and Voluntary. Ryan and Pierce acknowledge and represent that they have carefully read and fully understand all of the provisions of this Agreement, and the terms and conditions set forth in this Agreement. The parties further acknowledge and represent that they enter into this Agreement freely, knowingly and without coercion and based on their own judgment.

D. Arbitration. Any and all disputes, controversies or claims between Ryan and Pierce arising out of or in any way related to this Agreement, including without limitation, fraud in the inducement of this Agreement, or relating to the validity, enforceability or application of this Agreement, shall be filed in Los Angeles, California and submitted to final and binding arbitration under the auspices and rules of the Judicial Arbitration and Mediation Services, Inc., or if it is no longer in existence, the American Arbitration Association. There shall be one arbitrator. The parties agree that they have waived any right to trial by jury. The decision of the arbitrator shall be final and binding. The prevailing party in any such arbitration proceeding shall be entitled to his or its costs and reasonable attorneys' fees. Judgment upon any award rendered may be entered in any court of competent jurisdiction.

E. Governing Law. This Agreement shall be construed and governed exclusively by the laws of the State of California, without giving effect to its conflict of laws provisions.

F. Ambiguities. It is agreed and understood that the general rule that ambiguities are to be construed against the drafter shall not apply to this Agreement. In the event that any language of this Agreement is found to be ambiguous, each party shall have an opportunity to present evidence as to the actual intent of the parties with respect to any such ambiguous language.

G. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, all of which together shall constitute one and the same instrument.

H. Waiver. No waiver by any party of any breach of any term or provision of this Agreement shall be a waiver of any preceding, concurrent or succeeding breach of this Agreement or of any other term or provision of this Agreement. No waiver shall be binding on the part of, or on behalf of, any other party to this Agreement.

I. Amendments Or Modifications. Any amendment or modification of this Agreement must be in writing and signed by Ryan and Pierce.

J. Severability. If any provision of this Agreement is deemed to be illegal, invalid, or unenforceable, the legality, validity and enforceability of the remaining provisions shall not be affected.

K. Enforcement Costs. In the event any dispute, controversy or claim arises out of or in connection with this Agreement or the claims released in this Agreement, the prevailing party shall be entitled to all reasonable attorneys' fees, costs and expenses.

L. Entire Agreement. This Agreement contains all of the terms and conditions agreed upon by the parties regarding the subject matter of this Agreement. Any prior agreements, promises, negotiations or representations, either oral or written, relating to the subject matter of this Agreement are of no force or effect. This Agreement is executed without reliance upon any representation by any person concerning the nature or extent of injuries, damages or legal liability.

THE SIGNATORIES HAVE CAREFULLY READ THIS ENTIRE AGREEMENT. ITS CONTENTS HAVE BEEN FULLY EXPLAINED BY THE RESPECTIVE ATTORNEYS. THE SIGNATORIES FULLY UNDERSTAND THE FINAL AND BINDING EFFECT OF THIS AGREEMENT. THE ONLY PROMISES MADE TO ANY SIGNATORY ABOUT THIS AGREEMENT, AND TO SIGN THIS AGREEMENT, ARE CONTAINED IN THIS AGREEMENT. THE SIGNATORIES ARE SIGNING THIS AGREEMENT VOLUNTARILY.

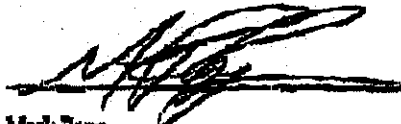
FROM :

FAX NO. :

Apr. 30 2004 11:13AM P2

**PLEASE READ CAREFULLY.  
THIS SETTLEMENT AGREEMENT AND GENERAL RELEASE INCLUDES  
A RELEASE OF ALL KNOWN AND UNKNOWN CLAIMS.**

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date set forth above.



Mark Ryan

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Brock Pierce

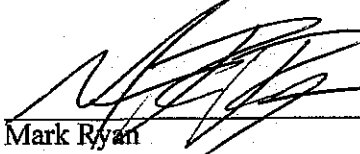
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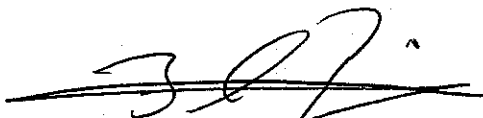
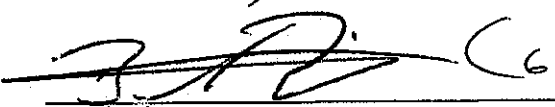
By:

\_\_\_\_\_  
Gregory D. Thibodeau  
Attorney for Defendant Brock Pierce

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 (6-12-04)  
Mark Ryan

  (6-12-04)  
Brock Pierce

APPROVED AS TO FORM:

~~David Rivers~~ DAN CHEREN  
Attorney for Plaintiff Mark Ryan

GREENBERG TRAURIG, LLP

By: \_\_\_\_\_  
Gregory D. Trimarche  
Attorneys for Defendant Brock Pierce