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7
 8 UNITED STATES DISTRICT COURT
 9 FOR THE NORTHERN DISTRICT OF CALIFORNIA

11 DISTRICT COUNCIL 16 NORTHERN
 CALIFORNIA HEALTH AND WELFARE TRUST
 12 FUND, et al.,
 13 Plaintiffs,
 14 v.
 15 ESTATE MAINTENANCE SERVICES (E.M.S.)
 INC., a California corporation; STEVEN KRAL, an
 16 individual,
 17 Defendants.

Case No.: C15-01299 MEJ

**NOTICE OF ACKNOWLEDGMENT;
 and JUDGMENT PURSUANT TO
 STIPULATION**

19 IT IS HEREBY STIPULATED and AGREED (the “Stipulation”) by and between the
 20 parties hereto, that Judgment shall be entered in the within action in favor of Plaintiffs District
 21 Council 16 Northern California Health And Welfare Trust Fund, et al. (“Plaintiffs” or “Trust
 22 Funds”) and against Defendants Estate Maintenance Services (E.M.S.) Inc., a California
 23 corporation; Estate Maintenance Services, a sole proprietorship, and Steven Kral, an individual and
 24 formerly doing business as Estate Maintenance Services (collectively “Defendants”¹), and/or alter

25 _____
 26 ¹ Defendant E.M.S operated as a sole proprietorship, with Defendant Steven Kral as the sole owner, and later
 27 incorporated with the Secretary of State. Defendants have informed Plaintiffs’ counsel that they are in the process of
 28 filing the requisite documents with the California Contractors Licensing Board to change their entity status from a sole
 proprietorship to a corporation. By entering into this Stipulation, Defendants agree that the terms herein shall apply to
 Defendants, as currently incorporated, as well as to Defendant E.M.S as a sole proprietorship.

1 egos and/or successor entities, as follows:

2 1. Defendants are signatory to and bound by the terms of the Northern California
3 Painters Master Agreement (“Master Agreement”) between District Council 16 (“Union”) and
4 Northern California Painting And Finishing Contractors Association. Individual Defendant Steven
5 Kral executed the Agreement of Employers Regarding Bay Area Painters and Tapers Trust Funds
6 (“Employer Agreement”) on behalf of Defendant Estate Maintenance Services (E.M.S.) Inc., which
7 provides that the individual signing on behalf of Defendant Estate Maintenance Services (E.M.S.)
8 Inc. is personally and individually liable for its contributions as required by the collective
9 bargaining agreement. The Master Agreement and Employer Agreement are collectively referred to
10 herein as the “Bargaining Agreement.” The Bargaining Agreement is still in full force and effect.

11 2. Defendant, Steven Kral, in his capacity as current Executive Vice President of
12 Defendant Estate Maintenance Services (E.M.S.) Inc., and as former sole owner of Estate
13 Maintenance Services, a sole proprietorship, hereby acknowledges that he is authorized to receive
14 service on behalf of Defendants and has received the following documents in this action: Complaint
15 (Dkt. #1); Civil Cover Sheet (Dkt. #1-1); Proposed Summons (Dkt. #2); Proposed Summons (Dkt.
16 #3); Certification of Interested Entities or Persons Pursuant to Civil Local Rule 3-16 (Dkt. #4);
17 Notice of Case Assignment (Dkt. #5); Standing Orders for Magistrate Judge Maria-Elena James;
18 ECF Registration Information; Filing Procedures (San Francisco); Notice of Assignment of Case to
19 a United States Magistrate Judge for Trial; Consent to Proceed Before A United States Magistrate
20 Judge (Blank Form); Declination to Proceed Before a Magistrate Judge and Request for
21 Reassignment to a United States District Judge (Blank Form); Standing Order for All Judge of the
22 Northern District of California, Contents of Joint Case Management Statement; ADR Dispute
23 Resolution Procedures; Instructions for Completion of ADR Forms Regarding Selection of an ADR
24 Process; Stipulation and Proposed Order Selecting ADR Process (Blank Form); Notice of Need for
25 ADR Phone Conference (Blank Form); ADR Certification by Parties and Counsel (Blank Form);
26 and (Proposed) Notice of Acknowledgment; and Judgment Pursuant to Stipulation.

27 3. Defendant Steven Kral confirms that he is authorized to enter into this Stipulation on
28 behalf of Defendants. Defendants specifically consent to the Court’s jurisdiction, as well as the use

1 of a Magistrate Judge for all proceedings, including entry of judgment herein. Defendants further
 2 confirm that all successors in interest, assignees, and affiliated entities (including, but not limited to,
 3 parent or other controlling companies), and any companies with which Defendants join or merge, if
 4 any, shall also be bound by the terms of this Stipulation as Guarantors. This shall include any
 5 additional entities in which Defendants are officers, owners or possess any controlling ownership
 6 interest. All such entities shall specifically consent to the Court's jurisdiction, the use of a
 7 Magistrate Judge for all proceedings herein, and all other terms herein, in writing, at the time of any
 8 assignment, affiliation or purchase.

9 4. Defendants have become indebted to the Trust Funds as follows:

10 Work Month	Total Contributions	Unpaid Contributions	Liquidated Damages (20% of Total Contributions)	Interest (5% Per Annum, through 5/5/15)	Subtotals
13 October 2014	\$45,316.11	\$45,316.11	\$9,063.22	\$968.76	\$55,348.09
14 November 2014	\$24,576.76	\$24,576.76	\$4,915.35	\$421.25	\$29,913.36
14 December 2014	\$22,479.44	\$22,479.44	\$4,495.89	\$289.52	\$27,264.85
15 January 2015	\$31,924.39	\$31,924.39	\$6,384.88	\$288.42	\$38,597.69
15 February 2015	\$21,693.96	\$28.08	\$4,338.79	\$50.66	\$4,417.53
16 March 2015	\$25,106.95	\$25,106.95	\$5,021.39	\$120.40	\$30,248.74
Attorneys' Fees (through 5/4/15):					\$3,321.00
Complaint Filing Fee:					\$400.00
GRAND TOTAL DUE:					\$189,511.26

19 5. Defendants shall *conditionally* pay the amount of **\$155,291.74**, representing all of
 20 the above amounts, less liquidated damages in the amount of **\$34,219.52**. *This conditional waiver is*
 21 *expressly conditioned upon Trustee approval following timely compliance with all of the terms of*
 22 *this Stipulation*, as follows:

23 (a) Beginning on **May 29, 2015**, and on or before the last business day of each
 24 month thereafter, for a period of twelve (12) months, through and including April 29, 2016,
 25 Defendants shall pay to Plaintiffs the amount of **\$13,294.13** per month;

26 (b) Payments may be made by joint check, to be endorsed by Defendants prior to
 27 submission. Payments made by joint check may be applied toward Defendants' monthly stipulated
 28 payment provided that the issuer of the joint check is not requesting a release in exchange for the

1 payment. Joint check payments in which a release is requested may not be applied toward
2 Defendants' monthly stipulated payment, but shall be deducted from the total balanced owed under
3 this Stipulation provided the payment is for contributions included in this Stipulation;

4 (c) Defendants shall have the right to increase the monthly payments at any time
5 and there is no penalty for prepayment;

6 (d) Payments shall be applied first to unpaid interest and then to unpaid
7 principal. The unpaid principal balance shall bear interest from **May 6, 2015**, at the rate of 5% per
8 annum in accordance with the Bargaining Agreement and Plaintiffs' Trust Agreements;

9 (e) Checks shall be made payable to the *District Council 16 Northern California*
10 *Trust Funds*, and delivered on or before each due date to Michele R. Stafford, Esq. at Saltzman &
11 Johnson Law Corporation, 44 Montgomery Street, Suite 2110, San Francisco, California 94104, or
12 to such other address as may be specified by Plaintiffs;

13 (f) Plaintiffs may require that Defendants pay electronically by wire transfer;

14 (g) At the time that Defendants make the twelfth (12th) stipulated payment,
15 Defendants may submit a written request for a waiver of their liquidated damages directed to the
16 Board of Trustees, but sent to Saltzman and Johnson Law Corporation with their twelfth (12th)
17 payment. Such waiver will not be considered until and unless all other amounts are paid in full and
18 Defendants' account is otherwise current;

19 (h) Prior to the last payment pursuant to this Stipulation, Plaintiffs shall advise
20 Defendants in writing, by first class mail and email to mike@estate-ems.com, as to the final
21 amounts due, including additional interest and all additional attorneys' fees and costs incurred by
22 Plaintiffs in connection with the collection and allocation of the amounts owed to Plaintiffs under
23 this Stipulation. Defendants shall pay all additional interest, attorneys' fees and costs regardless of
24 whether or not Defendants default herein. Any additional amounts due pursuant to the provisions
25 hereunder shall also be paid in full with the final stipulated payment due on April 29, 2016; and

26 (i) Failure to comply with any of the above terms shall constitute a default of the
27 obligations under this Stipulation and the provisions of ¶ 13 shall apply.

28 6. In the event that any check is not timely submitted or fails to clear the bank, or is

1 unable to be negotiated for any reason for which Defendants are responsible, Defendants shall be
2 considered to be in default of the Judgment entered. If this occurs, Plaintiffs shall make a written
3 demand to Defendants, by first class mail and email to mike@estate-ems.com, to cure said default
4 *within seven (7) days of the date of the notice from Plaintiffs*. If caused by a failed check, default
5 will only be cured by the issuance of either a replacement *cashier's check*, delivered to Saltzman
6 and Johnson Law Corporation, or by transmission of funds electronically, by wire transfer, to an
7 account specified by Plaintiffs, to be received within the seven (7) day cure period. If Defendants
8 elect to cure said default, and Plaintiffs elect to accept future payments, *all such future payments*
9 *shall be made by either cashier's check or electronically, by wire transfer* at Plaintiffs' request. In
10 the event default is not cured, all amounts remaining due hereunder shall be due and payable on
11 demand by Plaintiffs.

12 7. Beginning with contributions due for hours worked by Defendants' employees
13 during the month of **April 2015**, and for every month thereafter until this Judgment is satisfied,
14 **Defendants shall remain current in reporting and payment of contributions** due to Plaintiffs
15 under the current Collective Bargaining Agreement and under all subsequent Collective Bargaining
16 Agreements, if any, and the Declarations of Trust as amended. The Collective Bargaining
17 Agreement and Trust Agreements provide that all benefit contributions are due on or before the
18 fifteenth (15th) day of the month following the month in which hours were worked and are
19 delinquent if not received by the last business day of that month.

20 8. Until this judgment is satisfied, Defendants shall **submit all monthly contribution**
21 **reports and payments directly to Saltzman and Johnson Law Corporation.** The reports and
22 payments shall be delivered to Michele R. Stafford, Esq. at Saltzman & Johnson Law Corporation,
23 44 Montgomery Street, Suite 2110, San Francisco, California 94104, or to such other address as
24 may be specified by Plaintiffs, by the last business day of each month. Defendants may submit
25 their monthly contribution reports by email to compliance@sjlawcorp.com, or to such other email
26 address as may be specified by Plaintiffs, by the last business day of each month. All such emails
27 must include Defendants' name in the subject line.

28

1 Defendants shall send copies of its contribution reports and payments to the Trust Funds.
2 Plaintiffs may require that Defendants pay contributions electronically by wire transfer. Failure by
3 Defendants to timely submit current contribution reports and payments, or a report of “no
4 employees” if applicable, shall constitute a default of the obligations under this Stipulation and the
5 provisions of ¶ 13 shall apply.

6 9. Beginning with the month of **May 2015**, and for every month thereafter, **Defendants**
7 **shall fully disclose all jobs on which they are working by providing Plaintiffs with fully**
8 **completed job reports** on the form attached hereto as Exhibit A. Upon request by Plaintiffs,
9 Defendants shall also provide Plaintiffs with copies of Certified Payroll Reports for any and all
10 Public Works jobs, or any other job for which Certified Payroll Reports are required. Defendants
11 updated monthly job reports and Certified Payroll Reports (if requested) shall be delivered to
12 Michele R. Stafford, Esq. at Saltzman & Johnson Law Corporation, 44 Montgomery Street, Suite
13 2110, San Francisco, California 94104, or to such other address as may be specified by Plaintiffs,
14 by the last business day of each month. Defendants may alternatively submit its monthly job reports
15 by email to compliance@sjlawcorp.com, or to such other email address as may be specified by
16 Plaintiffs, by the last business day of each month. All such emails must include Defendants’ name
17 in the subject line.

18 This requirement remains in full force and effect regardless of whether or not Defendants
19 have ongoing work, whether Defendants’ account with the Trust Funds is active, or whether
20 Defendants are signatory to a Collective Bargaining Agreement with the Union. If, for any reason,
21 Defendants have no work to report during a given month, Defendants shall submit the job report
22 form (Exhibit A) indicating that there are no current jobs. **Defendants’ first job report (regarding**
23 **May 2015 jobs) is due on or before May 31, 2015.**

24 Failure by Defendants to timely submit fully completed monthly job reports and Certified
25 Payroll Reports (if requested and applicable) as described above shall constitute a default of the
26 obligations under this Stipulation and the terms of ¶ 13 shall apply.

27 10. **Audit:** Should the Trust Funds request an audit of Defendants’ payroll records in
28 order to confirm proper reporting and payment of contributions pursuant to the Bargaining

1 Agreements, any failure by Defendants to comply with said request shall constitute a default of the
2 obligations under this Agreement, which Defendants shall have ten (10) days to cure from receipt of
3 written notice from Plaintiffs.

4 (a) In the event that amounts are found due on audit, Plaintiffs shall send a
5 written demand to Defendants by first class mail and email to mike@estate-ems.com, for payment
6 in full of the amounts found due in the audit, including a full copy of the audit report and any
7 findings, including contributions, liquidated damages, interest and audit fees owed.

8 (b) Defendants will be provided with ten (10) days in which to review the audit,
9 and provide evidence to contest the findings. In the event that Defendants do not agree with the
10 total found due, Plaintiffs shall provide any additional information or clarification requested by
11 Defendants in writing within ten (10) days of the request therefor, or as soon as reasonably possible,
12 and Defendants' time to respond to the audit report or comply with payment requirements shall then
13 run from the time that Defendants receive Plaintiffs' response. Once the ten (10) day review period
14 expires, in the event that the audit is not contested, payment in full shall be delivered to Michele R.
15 Stafford at the address provided above.

16 (c) If the audit is contested, and Defendants provide documentation in support of
17 the dispute, Defendants shall be notified as to whether revisions will be made to the audit. If
18 revisions are not made, payment will be immediately due.

19 (d) If revisions are made to said audit as a result of the dispute, payment in full
20 of the revised amount shall be due within ten (10) days of Defendants' receipt of the revised billing.

21 (e) If Defendants are unable to make payment in full, Defendants may submit a
22 written request to revise this Stipulation, modifying the payment plan (by monthly amount and/or
23 payment term), to add the amounts found due in the audit to this Stipulation, subject to the terms
24 herein. If the Stipulation is so revised, Defendants shall execute the Amended Judgment or
25 Amendment to Judgment within ten (10) days of Plaintiffs' preparation of said Amended Judgment
26 or Amendment to Judgment. Failure to execute the revised agreement shall constitute a default of
27 the terms herein.

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1 (f) Failure by Defendants to submit either payment in full or a request to add the
2 amounts due to this Judgment within ten (10) days of the date due per the terms written above shall
3 constitute a default of the obligations under this agreement. All amounts found due on audit shall
4 immediately become part of this Judgment.

5 11. Failure to comply with any of the above terms shall constitute a default of the
6 obligations under this Stipulation and the provisions of ¶ 13 shall apply.

7 12. Any unpaid or late-paid contributions, together with 20% liquidated damages and
8 5% per annum interest accrued on the contributions shall be added to and become a part of this
9 Judgment and subject to the terms herein. Plaintiffs reserve all rights available under the applicable
10 Bargaining Agreements and Declarations of Trust of the Trust Funds for collection of current and
11 future contributions, and for any additional past contributions and related amounts not included
12 herein as may be determined by Plaintiffs to be due pursuant to employee timecards or paystubs, by
13 audit, or other means, and the provisions of this agreement are in addition thereto. Defendants
14 specifically waive the defense of the doctrine *res judicata* as to any such additional amounts
15 determined as due.

16 13. In the event that Defendants fail to make any payment required herein, or otherwise
17 default on any of their obligations as detailed in this Stipulation, and such default is not timely
18 cured, the following will occur:

19 (a) The entire balance of **\$189,511.26**, plus interest, but reduced by principal
20 payments received from Defendants, in addition to any unpaid contributions then due plus 20%
21 liquidated damages and 5% per annum interest on the unpaid or late-paid contributions, shall be
22 immediately due and payable, together with any attorneys' fees and costs incurred during the term
23 of this Stipulation;

24 (b) A Writ of Execution may be obtained against Defendants without further
25 notice to Defendants, in the amount of the unpaid balance plus any additional amounts due under
26 the terms herein. Such Writ of Execution may be obtained solely upon declaration by a duly
27 authorized representative of Plaintiffs setting forth any payment theretofore made by or on behalf of
28 Defendants and the balance due and owing as of the date of default;

1 (c) Defendants waive any notice of Entry of Judgment or of any Request for a
2 Writ of Execution upon default, and expressly waive all rights to stay of execution and appeal. The
3 declaration or affidavit of a duly authorized representative of Plaintiffs as to the balance due and
4 owing as of the date of default shall be sufficient to secure the issuance of a Writ of Execution,
5 without notice to Defendants; and

6 (d) Defendants shall pay all additional attorneys' fees and costs incurred by
7 Plaintiffs in connection with the collection and allocation of the amounts owed by Defendants to
8 Plaintiffs under this Stipulation, whether or not a default occurs herein.

9 14. Any failure on the part of Plaintiffs to take any action against Defendants as
10 provided herein in the event of any breach of the provisions of this Stipulation shall not be deemed
11 a waiver of any subsequent breach by Defendants of any provisions herein.

12 15. The parties agree that any payments made pursuant to the terms of this Judgment
13 shall be deemed to have been made in the ordinary course of business as provided under 11 U.S.C.
14 Section 547(c)(2) and shall not be claimed by Defendants as a preference under 11 U.S.C. Section
15 547 or otherwise.

16 16. Should any provision of this Stipulation be declared or determined by any court of
17 competent jurisdiction to be illegal, invalid, or unenforceable, the legality, validity, and
18 enforceability of the remaining parts, terms or provisions shall not be affected thereby and said
19 illegal, unenforceable or invalid part, term, or provision shall be deemed not to be part of this
20 Stipulation.

21 17. This Stipulation is limited to the agreement between the parties with respect to the
22 unpaid and delinquent contributions and related sums enumerated herein, owed by Defendants to
23 Plaintiffs. This Stipulation does not in any manner relate to withdrawal liability claims, if any.
24 Defendants acknowledge that Plaintiffs expressly reserve their right to pursue withdrawal liability
25 claims, if any, against Defendants and all of its control group members, as provided by Plaintiffs'
26 Plan Documents, Trust Agreements incorporated into their Bargaining Agreements, and applicable
27 laws and regulations.

28

1 18. This Stipulation contains all of the terms agreed to by the parties and no other
2 agreements have been made. Any changes to this Stipulation shall be effective only if made in
3 writing and signed by all parties hereto.

4 19. This Stipulation may be executed in any number of counterparts and by facsimile,
5 each of which shall be deemed an original and all of which shall constitute the same instrument.

6 20. Defendants represent and warrant that they have had the opportunity to be or have
7 been represented by counsel of their own choosing in connection with entering this Stipulation
8 under the terms and conditions set forth herein, that they have read this Stipulation with care and
9 are fully aware of and represent that they enter into this Stipulation voluntarily and without duress.

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1 21. The parties agree that the Court shall retain jurisdiction of this matter until this
2 Judgment is satisfied.

3 Dated: June 22, 2015

**ESTATE MAINTENANCE SERVICES
(E.M.S.) INC.**

4
5 By: _____ /S/
6 Steven Kral
7 Executive Vice President of Defendant Estate
8 Maintenance Services (E.M.S.) Inc.

9 Dated: June 22, 2015

STEVEN KRAL

10 By: _____ /S/
11 Steven Kral, individually, and as sole owner of
12 Estate Maintenance Services, a sole proprietorship

13 Dated: June 17, 2015

**SALTZMAN AND JOHNSON LAW
CORPORATION**

14 By: _____ /S/
15 Adrian L. Canzoneri, Esq.
16 Attorneys for Plaintiffs

17 Dated: June 17, 2015

VINCE ECHEVERRIA

18 By: _____ /S/
19 Vince Echeverria, Trustee for Plaintiffs

20 Dated: June 16, 2015

MARIAN BOURBOULIS

21 By: _____ /S/
22 Marian Bourboulis, Trustee for Plaintiffs

23 **IT IS SO ORDERED.**

24 IT IS FURTHER ORDERED that the calendar in this matter is vacated, and that the Court shall
25 retain jurisdiction over this matter.

26 Dated: June 22, 2015



27 MARIA-ELENA JAMES
28 UNITED STATES MAGISTRATE JUDGE

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**EXHIBIT A
JOB REPORT FORM**

Updated Job Reports shall be delivered to Saltzman & Johnson Law Corporation
at 44 Montgomery Street, Suite 2110, San Francisco, California 94104 or
to compliance@sjlawcorp.com by the last business day of each month

Employer: ESTATE MAINTENANCE SERVICES (E.M.S.) INC.

Report for the month of _____, 20__ Submitted by: _____

Project Name:		Public or Private? (circle one)
Project Address:		
General Contractor:		
General Contractor Address:		
General Contractor Telephone #:	Project Manager Name:	
Project Manager Telephone #:	Project Manager email address:	
Contract #:	Contract Date:	
Total Contract Value:		
Work Start Date:	Work Completion Date:	
Project Bond #:	Surety:	

Project Name:		Public or Private? (circle one)
Project Address:		
General Contractor:		
General Contractor Address:		
General Contractor Telephone #:	Project Manager Name:	
Project Manager Telephone #:	Project Manager email address:	
Contract #:	Contract Date:	
Total Contract Value:		
Work Start Date:	Work Completion Date:	
Project Bond #:	Surety:	

*** Attach additional sheets as necessary ***

1 PROOF OF SERVICE

2 I, the undersigned, declare:

3 I am employed in the County of San Francisco, State of California. I am over the age of
4 eighteen and not a party to this action. My business address is 44 Montgomery Street, Suite 2110,
5 San Francisco, California 94104.

6 On **June 22, 2015**, I served the following document(s) on the parties to this action in the
7 manner described below:

- 8 • Complaint (Dkt. #1); Civil Cover Sheet (Dkt. #1-1);
- 9 • Proposed Summons (Dkt. #2);
- 10 • Proposed Summons (Dkt. #3);
- 11 • Certification of Interested Entities or Persons Pursuant to Civil Local Rule 3-16 (Dkt. #4);
- 12 • Notice of Case Assignment (Dkt. #5);
- 13 • Standing Orders for Magistrate Judge Maria-Elena James;
- 14 • ECF Registration Information; Filing Procedures (San Francisco); Notice of Assignment of Case
15 to a United States Magistrate Judge for Trial; Consent to Proceed Before A United States
16 Magistrate Judge (Blank Form); Declination to Proceed Before a Magistrate Judge and Request
17 for Reassignment to a United States District Judge (Blank Form); Standing Order for All Judge
18 of the Northern District of California, Contents of Joint Case Management Statement;
- 19 • ADR Dispute Resolution Procedures; Instructions for Completion of ADR Forms Regarding
20 Selection of an ADR Process; Stipulation and Proposed Order Selecting ADR Process (Blank
21 Form); Notice of Need for ADR Phone Conference (Blank Form); ADR Certification by Parties
22 and Counsel (Blank Form);
- 23 • (Proposed) Notice of Acknowledgment; and Judgment Pursuant to Stipulation

24 XXBY MAIL, being familiar with the practice of this office for the collection and the processing
25 of correspondence for mailing with the United States Postal Service, and deposited in the
26 United States Mail copies of the same to the business addresses as specified below, in a
27 sealed envelope fully prepared.

28 XX BY ELECTRONIC MAIL, I caused copies of the documents to be sent to the email
address specified below.

Steven Kral
Mike Mehenni
Estate Maintenance Services (E.M.S.) Inc.
30010 S. McArthur Drive
Tracy, CA 95377
mike@estate-ems.com
marias@estate-ems.com

I declare under penalty of perjury that the foregoing is true and correct and that this
declaration was executed on this 22nd day of June 2015, at San Francisco, California.

/S/
Alicia Ramirez Wood
Paralegal