

“Standstill Agreement”
Steps to Resolving a Legal Dispute (Yildiz v. SuperStore)

**Confidential Packet
for Plaintiff Helena Yildiz**

Prep Sheet for Helena Yildiz

Background

- You are Vice President of Sales for SuperStore, a very large manufacturing and distribution multinational corporation. You have worked in this job for nearly 9 years.
- You have authorized counsel to negotiate a standstill agreement with counsel for SuperStore. The purpose of the standstill agreement is to suspend all legal action, including the possible filing of a complaint by you against Superstore, while the parties investigate your allegations.
- You allege management has been deliberately undervaluing your commission by at least 25%. You base this allegation entirely on two emails from Otis Estridge, former Associate Finance Director for SuperStore, discussing the pattern. You do not have any further documentation of the alleged undervaluing at this time. You sent a memo to the CEO and General Counsel of SuperStore about these allegations. Your memo also included the two emails from Mr. Estridge about these commissions (see attached documents).
- You allege you have been deprived of at least \$300,000 due to this undervaluing. You also believe that other sales executives have been deprived of their full commission, although the emails from Mr. Estridge are a bit vague.
- Your base salary is \$175,000 per year. In addition, you also have made between \$100,000 and \$200,000 in commissions over the last five years. In 2023, you made \$130K in commissions.

Critical Interests

- Time
 - Saving time and money by avoiding time consuming and costly litigation.
 - Settlement = guaranteed quick money and continued, productive working relationships with SuperStore leadership.
- Payment
 - Prefer to stay on the job and collect regular salary plus commissions during standstill
 - Commissions:
 - Ideal: Payment on Stanza Chicken Account and Enzymatic Polisher Account.
 - Acceptable: As much money as possible but ultimately will accept any amount of additional commissions (including no commissions). It would be nice to be paid ASAP.
 - Regular Salary: You do not see why they would ask you to take a pay cut
- Continued contact with key customers - this should be in SuperStore's interest as well
- Confidentiality
 - Protecting conversations between counsel during investigations.
- Scope of investigation
 - Past performance issues documented in personnel file over past 2 years, including alleged verbal abuse of co-workers, failure to properly train staff, and failure to properly document sales contacts. These should be off limits for the investigation.
- Timeframe (standstill period): as little time as possible (60 days seems reasonable)
- Effectiveness of investigation (reporting on progress or some way of assuring they are doing more than just stalling on your lawsuit)
- Job Duties
 - Maintain current job title (Vice President of Sales)/no demotion.
 - Continue working and keep current accounts - contact with key customers.

Instructions

- Initial meeting with counsel (all of the students representing you will be together)
 - You are angry with SuperStore about being “ripped off” on your commissions and you are annoyed that they want to delay your lawsuit.
 - You do not understand the value of a standstill agreement (what is in it for you?).
 - Be aggressive about what you want at this point – you have been in sales long enough to know that you get more by asking for more, and you are convinced (at least at this point) that your counsel needs a reminder that you expect a lot from your legal representatives. You may even contradict the authority that you apparently provided as outlined in counsel’s letter to you (see attached documents).
 - Make your counsel work for the information – short answers (yes, no, I am not sure) wherever plausible.
 - Avoid any specific “bottom line” on any issue – you will need to see how the full package looks before agreeing to any “concessions.”

- During the meeting between counsel on the first day (you will be available in the hallway, but not present at the negotiations) – no agreements on the first day, so be reluctant to make concessions – push counsel to explain value of concessions:
 - Continue to be emotionally upset by the commissions issue.
 - Keep pushing for as much as you can and follow much of the directions above.
 - While you should not agree to any full agreement during the first day of discussions, you can make some concessions that you feel are appropriate along the following guidelines:
 - No salary reduction
 - Continued contact with key customers
 - Some payment of the underpaid commissions from the emails (escrow okay if there is payment upon confirmation of the underpayment, but let them suggest that option)
 - Some guarantee that the process will be completed quickly and thoroughly
 - Narrow scope of investigation (limit what they can search out about your behavior – see personnel file issue above)

- During the meeting between counsel on the second day (you will still be available in the hallway, but not present at the negotiations) – an agreement is OK but keep making your counsel work for it:
 - Continue to push hard during the earlier part of the discussion (the first 15 minutes).
 - Approaching an agreement during the midpoint is idea – this will allow students a chance to get a draft agreement done for your review
 - Look for opportunities to find problems with the draft agreement – vague language, unclear or unfamiliar provisions, e.g.
 - No deal is okay – let counsel advise you on whether an agreement makes sense toward the end of class

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March 18, 2024

Helena Yildiz
44 Fluffy Leaf Way
Wayzata, MN 55433

Re: Legal Claims against SuperStore

Dear Helena:

It was good seeing you this morning. Here is a quick summary of our conversation.

As we discussed, you have authorized my firm to negotiate a “standstill” agreement with counsel for SuperStore. The purpose of the standstill agreement is to suspend all legal action, including the possible filing of a legal complaint by you and any possible legal action by SuperStore, while the parties investigate your claims and conduct damages calculations. It is not the same as a settlement agreement and so you do not have to worry about waiving your right to assert a legal claim against SuperStore if you sign a standstill agreement; it’s simply for purposes of placing your legal action on hold while SuperStore looks into the matter from its end. Still, I understand your strong interest in moving forward on this matter as quickly as possible, but giving SuperStore the opportunity to investigate this matter outside of formal legal action may be beneficial to your hopes of settling without incurring substantial legal expenses and maintaining your strong relationships at SuperStore.

The standstill agreement raises a number of possible issues, which we may have to resolve, including the following:

First, we will need to iron out what amount SuperStore will pay you in addition to your regular salary during the term of the standstill agreement (and whether they will pay you anything at all). Payment on the accounts that you reference in your memo seems like a good starting point, but you should prepare yourself for the possibility of less (or no additional) money. You have authorized my firm to accept any amount of additional commissions (including no payment of commissions) necessary to secure the deal, with the express instruction to push as hard as we can to secure whatever funds might be available.

Second, regarding your salary, SuperStore may ask that you take some sort of leave during the investigation. It is not completely uncommon for employees to take time off during

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these types of investigations. I understand that you prefer to stay on the job and continue to collect your regular salary, plus commissions. I also understand how important your relationships are with current customers. You instructed my firm to accept any arrangement, including some sort of leave of absence, that pays you your current salary, allows contact with key customers, and does not include any sort of “demotion” or negative job change.

Third, we will need to include a time frame for the standstill agreement. It is important that there is some deadline to ensure that the investigation moves forward and remains focused. If there is no time frame, SuperStore has no incentive to take this process seriously, because you cannot file your complaint until the expiration of the standstill agreement. I am comfortable with your suggestion that we stick with 60 days, although we may need to be flexible on the final time frame.

Fourth, naturally we will include the necessary boilerplate items, including a provision ensuring that all conversations between counsel during the investigation period are protected under Rule 408, and that none of your possible claims are waived by entering into this agreement, as you suggested.

Please confirm that you are still available for our meeting with SuperStore next week. I do not expect you to participate directly in the negotiations, but I would like you available on site so that we can keep in touch during discussions.

Very truly yours,

LAW OFFICE OF DMITRI HASSAN & ASSOCIATES

Dmitri

Dmitri Hassan, Esq.

SUPERSTORE INTERNAL MEMORANDUM

-- CONFIDENTIAL --

TO: Vivian Turner, Chief Executive Officer
CC: Ashwin Desai, Senior Counsel
FR: Helena Yildiz, Vice President of Sales, North America
DATE: December 29, 2023
RE: Commissions

This memorandum memorializes our conversation this afternoon concerning the systematic and deliberate underpayment of my commission over the past several years. I am glad that I was finally able to get your attention on this important matter.

As we discussed, I have been made aware that for as long as I have been Vice President of Sales for SuperStore, management has been undervaluing my commission by at least 25%. The two emails that I share with you from Otis Estridge, associate finance director, discuss the pattern.

Two recent deals for key customers provide clear evidence. As Mr. Estridge's emails show, I am due at least another \$12,000 from the Enzymatic Polisher deal and another \$7,500 from the Stanza Chicken deal. As the emails state, it is apparent that this pattern of underpayment of my commission has been happening since I first started in this position. My preliminary calculations indicate that I have been deprived of at least \$300,000 due to this undervaluing. It also appears that other sales executives have been deprived of their full commission.

As you know, in addition to my regular salary of \$175,000 per year, I usually make another \$100,000 to \$200,000 in commissions each year. 25% underpayment on those commissions adds up fast (especially over my nine years in this job).

I intend to file a lawsuit to collect on these unpaid sums. I will also talk to others at SuperStore and explore whether a class action might be most appropriate.

Please direct all further communication on this matter to my counsel, Dmitri Hassan (www.hassanlawoffice.com). I will continue, of course, to do my job, and I expect future commissions to be calculated properly (and documented clearly).

Estridge, Otis

From: Estridge, Otis
Sent: Thursday, December 20, 2023 10:14 AM
To: Yildiz, Helena
Cc: Estridge, Otis
Subject: Commission Calculations -- Another Thought

One more thing – it appears that the calculation formula that we have been using since Q2 is incorrect. This could mean as much as 10% more due to you on Stanza.

OE

This email has been scanned for all viruses.

Estridge, Otis

From: Estridge, Otis
Sent: Thursday, December 20, 2023 10:11 AM
To: Yildiz, Helena
Cc: Estridge, Otis
Subject: Commission Calculations

Ms. Yildiz,

As I mentioned on the phone, these commissions are very difficult to measure accurately at this point, given the inscrutable compensation matrix and the many changes that have taken place during the time period of these sales. So right now my thinking is something like the following:

1. Something approaching \$12,000 from the Enzymatic Polisher deal, depending on how much work Charlene put into it and when the final check cleared (you will need to check with the mother ship on those particulars).
2. Between \$4,000 and \$8,000 on the Boulware Shipping deal, depending on how we interpret the contract extension and whether they were to pay all of it upfront.
3. Between \$6,500 and \$7,500 from the Stanza Chicken deal, depending on when your team took over the discussions.

My last day is the 24th so please let me know if you have any questions before then. I have really appreciated working with you. Happy holidays.

All the best,

OE

"There are only two ways to live your life. One is as though nothing is a miracle. The other is as though everything is a miracle."

-Albert Einstein

This email has been scanned for all viruses.