

“Standstill Agreement”

Steps to Resolving a Legal Dispute (Yildiz v. SuperStore)

**Confidential Packet
for Ashwin Desai, Esq.
(General Counsel for
the Defendant SuperStore)**

Prep Sheet for SuperStore (Ashwin Desai, General Counsel)

Background

- You have authorized counsel to negotiate a standstill agreement with counsel for SuperStore's Vice President of Sales, Helena Yildiz.
- The purpose of the standstill agreement is to suspend all legal action, including the possible filing of a complaint by Ms. Yildiz, while the parties investigate her allegations.
- Ms. Yildiz alleges management has been deliberately undervaluing her commission by at least 25%. She bases this allegation entirely on emails from Otis Estridge, Associate Finance Director of SuperStore, discussing the pattern. She does not have any further documentation of the alleged undervaluing at this time and the email from Estridge are quite vague.
- Ms. Yildiz alleges she has been deprived of at least \$300,000 due to this undervaluing. She also believes that other sales executives have been deprived of their full commission.
- Her regular salary is \$175,000 per year. In addition, she makes between \$100,000 to \$200,000 in commissions per year, on average (2023 was about \$130K in commissions).
- Ms. Yildiz is a senior executive and runs SuperStore's sales organization.

Critical Interests

- Confidentiality
 - As broad as possible
 - Alleged underpayment
 - Other sales executives
 - Protecting conversations between counsel during investigations
- Timeframe (standstill period):
 - Deadline must provide enough time to complete thorough investigation
 - Acceptable: 3 months, but you would like as much time as possible
- Ms. Yildiz's Job
 - Would prefer to keep her "offsite" as much as possible until this blows over (confidentiality concerns and you don't want her organizing other plaintiffs or conducting other investigations)
 - Suggest a "sabbatical" during the investigations and discontinuance of current job duties
- Wide Scope to Investigation
 - Include everything related to past performance issues that have been documented in personnel file throughout past 2 years, including alleged verbal abuse of co-workers, failure to properly train staff, and failure to properly document sales contacts / leads
- Payment
 - As little as possible - maybe even a reduction in pay if she takes a "sabbatical" and we treat it like a long partially paid leave or something
 - Ideally no payment to her on alleged underpaid accounts unless absolutely necessary
 - Acceptable: Any amount under \$50,000 plus her current salary and any commissions from future work would be acceptable, if necessary
- Relationship between SuperStore and Yildiz
 - Despite the threatened litigation, SuperStore relies heavily on Yildiz and does not want to lose her; nevertheless SuperStore does not appear weak in case litigation is unavoidable - she must understand that we are not afraid to litigate this

Instructions

- Initial meeting with counsel (all of the students representing SuperStore will meet together with you)
 - You are angry about the allegations and that Yildiz would threaten legal action so quickly
 - You do not understand the value of a standstill agreement (why not convince her not to sue at all – a standstill feels like validating her rather flimsy case)
 - Be aggressive about what you want at this point – you have been General Counsel 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 part of the actual 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 threats and the weak claims in the email
 - Keep pushing for as much as you can and follow much of the directions above
 - Slow, hard-fought concessions are OK if you feel they are appropriate along the following guidelines:
 - Ensuring that Yildiz cannot talk about this or do any rabble rousing
 - Some change in her work status – offsite, sabbatical, less pay, e.g.
 - No payment of the underpaid commissions directly to Yildiz (escrow okay if it is a reasonably low commitment of money – let counsel suggest it, though)
 - If Yildiz is to receive any of the underpaid commissions at the conclusion of the investigation period, Yildiz must agree to deduct whatever she is paid from any future litigation proceeds with respect to the underpayments.
 - At least 90 days standstill term if possible
- 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 ideal – 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

Ashwin Desai
General Counsel and Chief Legal Officer
SuperStore Corp.
1 SuperStore Way
Circle Mountain, MN 55422

Re: Potential Legal Claims of Helena Yildiz

Dear Ashwin:

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 Helena Yildiz. The purpose of the standstill agreement is to suspend all legal action, including the possible filing of a complaint by Ms. Yildiz, while we investigate her allegations. We will not be discussing or attempting to settle her claims at this point, only agreeing to suspend litigation during a specific amount of time to be negotiated by the parties. It is not the same as a settlement agreement and so Ms. Yildiz will not waive her right to assert a legal claim against SuperStore in the future just because she has signed the standstill agreement. The standstill agreement raises a number of other possible issues, which we may have to resolve, including the following:

First, we will need to include some sort of confidentiality provision so that the allegations and the investigation are kept quiet. You have indicated to me the company’s strong interest in ensuring the broadest scope possible for that confidentiality provision. We may, of course, need to provide exceptions for counsel and other key individuals, who may be required to complete the investigation (e.g., possible experts or other consultants).

Second, we will need to include a time frame for the standstill agreement. I agree with you that it is in the company’s best interest to have no expiration on the agreement, but we may have to live with a firm deadline so long as it provides a sufficient amount of time to complete the investigation (my estimate is 3 months, but we can always accelerate the process, if need be).

Ashwin Desai
March 18, 2024
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Third, Ms. Yildiz will undoubtedly want to continue working in her current position and may also want to receive payment on some or all of the three accounts mentioned in her memorandum. You have indicated a great deal of flexibility here to secure the standstill agreement, but we will do our best to protect the company's interests in paying as little as possible to her as we can. We may be able to save the company some money, at least at this point. During our discussions with Ms. Yildiz' counsel, it may be worth exploring your idea of a "sabbatical" for Ms. Yildiz where she would be paid half her current salary during the standstill period without continuing her job responsibilities, although as I have mentioned I do not believe Ms. Yildiz will have much incentive to accept such a proposal. As for the alleged underpaid commissions, there is no reason that I see to pay her for the three accounts she mentioned, or any other additional amount, unless absolutely necessary. You have instructed that we could offer some payment of the alleged underpaid commissions if Yildiz will accept less than her full salary during the standstill period.

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 our defenses are waived by entering into this agreement, as you suggested.

Please confirm that you are still available for our meeting with Ms. Yildiz 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,

García, Bergermann & Ali

Roland

Roland Bergermann, 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

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