

AGREEMENT
BETWEEN
THE MASSACHUSETTS OFFICE OF THE ATTORNEY GENERAL,
UNWRAPPED, INC.,
AND
STEPHEN A. KATZ

I. PARTIES

- A. The Commonwealth of Massachusetts, through the Office of the Attorney General (“Attorney General”) is charged with enforcement of, among other things, various wage and hour laws, including but not limited to, the Wage Act (G.L. c. 149, § 148), minimum wage and overtime laws (within G.L. c. 151), child labor laws (contained in G.L. c. 149, §§ 56 through 105), Temporary Worker Right to Know Law (G.L. c. 149, §159C), and the Massachusetts Earned Sick Time Law (G.L. c. 149, § 148C), as well as the laws requiring true and accurate payroll record creation and retention (G.L. c. 151, §§ 15, 19(3)) and related to retaliation (G.L. c. 149, § 148A and G.L. c. 151, § 19(1)) and other related statutes and regulations.
- B. UnWrapped, Inc. (“UnWrapped”) is a sewing factory with a principal place of business of 95 Rock Street, Lowell, MA 01854.
- C. At all relevant times, Stephen A. Katz, of _____, operated as the President of UnWrapped.

II. THE INVESTIGATION AND FINDINGS

- A. During February 2016, an individual filed a complaint with the Massachusetts Council on the Underground Economy against UnWrapped and Stephen Katz (hereinafter referred to jointly as the “Employer”) alleging wage and hour violations of state and federal law.
- B. The Attorney General and the United States Department of Labor (“Department of Labor”) conducted a joint site visit at Employer’s principal place of business on April 28, 2016. The Department of Labor issued a subpoena and the Attorney General requested payroll documents from Employer pursuant to G.L. c. 151, § 15.
- C. As a result of the aforementioned investigation, which covered the time period April 6, 2014 through April 2, 2016, the Attorney General determined the following:
 - (1) Employer had a general practice or policy of paying employees for hours worked on a weekly basis. Employer was aware that its

employees were employed for longer than 40 hours per week. As a general practice or policy, Employer paid straight time, and not one and one-half times the regular rate, for all hours worked over 40 per week for those workers.

- (2) Employer had a general policy or practice of paying employees less than minimum wage;
- (3) Employer failed to make, keep, and preserve accurate records of employees' wages, hours and other conditions and practices of employment. Employer's records failed to show adequately and accurately, among other things, the hours worked each workday and the total hours worked each workweek with respect to many employees, including workers who completed work while at home in the evenings, and also failed to show the regular rates at which they were paid.
- (4) Employer failed to grant temporary and permanent employees access to earned sick time, as of July 1, 2015, in violation of G.L. c. 149, § 148C. This was evidenced through the lack of an earned sick time policy, lack of documentation demonstrating Employer's tracking of employees' earned sick time, lack of documentary evidence of employees taking sick time since July 1, 2015, and statements of employees that they did not have access to sick time.
- (5) UNNAMED MINOR worked for Employer from October 2015 until June 2016. The minor has a date of birth of June 28, 2004 and was eleven years old when working for Employer.
- (6) On June 3, 2016, Employer terminated UNNAMED WORKER #1 and UNNAMED WORKER #2 after a work meeting. Both employees communicated with the Department of Labor and Attorney General during their joint site visit on April 28, 2016. Employer was aware of both employees' cooperation with the aforementioned investigation. After admitting that he was "emotional" at the time that he terminated both employees, Stephen Katz agreed to reinstate WORKER #1 and WORKER #2 on June 9, 2016 and paid them for 40 hours of work for that workweek.
- (7) UnWrapped and Katz are deemed to be an employer of all workers at the sewing factory located at 95 Rock Street, Lowell, MA, regardless of whether they were on UnWrapped, Inc.'s payroll documents or the payroll of any staffing and/or placement agencies.

- D. Employer disputes the findings of fact but has agreed to pay restitution and special assessments to the Attorney General according to the Terms of Agreement set forth below.

III. TERMS OF AGREEMENT

WHEREAS,

- A. This Agreement (“Agreement”) is entered into between the Commonwealth of Massachusetts, acting through its Attorney General, and Employer.
- B. The effective date of this Agreement is March __, 2017.
- C. The Attorney General wishes to assure compliance by Employer with the Commonwealth’s wage and hour laws.
- D. Employer has agreed to pay \$8,350 to the Department of Labor for child labor violations and \$893,882.49 to its employees for overtime and Massachusetts minimum wage violations on all hours work in excess of forty hours per week; the amount paid to its employees includes liquidated damages and both payments are pursuant to a settlement agreement entered into with the Department of Labor, which is a result of the joint investigation undertaken by the Attorney General and Department of Labor, described above.
- E. Employer wishes to avoid the costs associated with litigation and to resolve fully and finally any and all claims or causes of action that may be brought by the Attorney General, now or in the future, under state wage and hour laws, including the earned sick leave law, pertaining to the conduct and time period described in Section II. above.

NOW, THEREFORE, the parties set forth the following Terms of Agreement:

- F. Employer agrees to make full payment of restitution to all of the employees listed in Attachment A in the total amount of **\$235,285** (two hundred and thirty-five thousand, two hundred and eighty-five dollars). This restitution figure reflects the total restitution for minimum wage and earned sick time violations. The segmented restitution figures for each citation are displayed below:
- Violations of the Minimum Wage Law: \$174,555 (doubled damages)
 - Violations of the Earned Sick Time Law: \$60,730 (single damages)
- G. Following a reasonable search, employer shall mail, hand deliver or make direct deposit payments directly to the current and former employees in amounts listed in Attachment A, less standard withholding and deductions, in one lump sum on March __, 2017.

Proof of these payments, in the form of copies of paychecks or other similar records showing all deductions shall be provided to the Attorney General on or before March 17, 2017 in the same manner detailed below in Paragraph III.J.

- H. Employer shall provide, in both Khmer and English, a notice prepared by the Attorney General's Office to each employee listed on Attachment A. This notice, attached as Attachment B in English, states that the payments are the result of a settlement with the Attorney General's Office for alleged violations of state wage and hour laws.
- I. Employer shall maintain a record of all checks returned to Employer by the U.S. Postal Service or which are otherwise undeliverable or which the Employer was unable to issue.
- J. With regard to the restitution referenced in Paragraph III.F. and Attachment A, a check for the total net amount of any returned checks and any checks that were unable to be issued, as referenced in Paragraph III.I., shall be remitted to the Attorney General along with a list containing the name, and, if known, social security number, date of birth and last known address of each employee to whom a returned check was sent or was unable to be issued. This amount, and the list, shall be provided to the Attorney General no later than April 17, 2017.

The method of payment shall be by check, money order, or cashier's check payable to the Office of the Attorney General and mailed or otherwise delivered to: Office of the Attorney General, Fair Labor Division, P.O. Box #6303, Boston, MA 02114, Attention Cynthia Mark, Esq.

- K. Employer shall maintain a record of all restitution checks that were not returned to Employer by the U.S. Postal Service, or were otherwise deliverable, but remain uncashed for 90 days after issuance. Employer may cancel all such uncashed checks 90 days after issuance.
- L. Employer shall calculate and send a check for the total net amount of uncashed checks relevant to the restitution outlined in Paragraph III.F. and Attachment A, and referenced in Paragraph III.K., to the Attorney General along with a list containing the name, and, if known, social security number, date of birth and last known address of all employees to whom such checks were sent. This amount, and the list, shall be sent to the Attorney General by not later than June 30, 2017.

The payments shall be made in the same manner detailed above in Paragraph III.J.

Employer shall also provide the Attorney General with proof of the payments to workers, in the form of fronts and backs of paychecks or similar records that demonstrate that the checks were cashed by the payee (or his/her proper designee), for all payments that the Employer deems were issued, delivered and cashed. The aforementioned proof of payments should be provided to the Attorney General by not later than June 30, 2017.

- M. Employer further agrees to pay a total of **\$57,885** (fifty-seven thousand, eight hundred and eighty-five dollars), in the payment of a special assessment that will be treated as a voluntary payment pursuant to G.L. c. 12, § 4A and shall be used

to conduct outreach and other activities in order to locate employees entitled to restitution pursuant to paragraph III.F. This payment shall be used at the sole discretion of the Attorney General.

The segmented special assessment figures for each violation are displayed below:

- Violations of the Minimum Wage Law: \$43,669
- Violations of the Earned Sick Time Law: \$12,216
- Retaliation: \$2,000

Said payment shall be made to the Attorney General's Trust Fund no later than March __, 2017, in the form of a certified check or money order, identified as a "restitution distribution cost," payable to the "Massachusetts Attorney General," and shall be delivered to:

Office of the Attorney General
Fair Labor Division
P.O. Box 6303
Boston, MA 02114.
Attn: Cynthia Mark, Esq.

After the Attorney General has made reasonable attempts to locate such employees, any remaining funds shall be transferred to the general fund.

- N. Employer agrees to distribute to all of its Massachusetts temporary and permanent employees, regardless of their weekly schedules, Employer's policy under the Massachusetts Earned Sick Time Law, G.L. c. 149 § 148C, in both English and Khmer, no later than thirty (30) days after the execution of this Agreement.
- O. Employer agrees to comply with the Massachusetts Earned Sick Time Law, G.L. c. 149 § 148C, when enforcing its earned sick time policy during the 2017 calendar year. Employer agrees that the restitution paid to workers under this Agreement will not limit workers' access to forty (40) hours of earned sick time during the 2017 calendar year. Within thirty (30) days after the execution of this Agreement, UnWrapped will provide each current worker on site with the number of earned sick time hours each worker accrued and has not used from April 3, 2016 through December 31, 2016. Employer agrees to make said accrued earned sick hours available to workers until they have accrued a total of forty (40) hours to access during the 2017 calendar year.
- P. Employer agrees to require that any temporary employment agency or third-party employer paying wages to workers at UnWrapped's current and future facilities pay their workers overtime and minimum wage as required by Massachusetts law.
- Q. Employer agrees to require that any temporary employment agency or third-party employer paying wages to workers at UnWrapped's current and future facilities record and maintain payroll and timekeeping records for all work performed.

- R. Employer agrees to require that any temporary employment agency paying wages to workers at UnWrapped's current and future facilities provide employees with Job Orders in accordance with G.L. c. 149, §159C and 454 CMR 24.00.
- S. Employer agrees to require that any temporary employment agency or third-party employer paying wages to workers at UnWrapped's current and future facilities issue all wage payments via payroll check accompanied by a suitable paystub as required by G.L. c. 149, § 148.
- T. Employer agrees to record and maintain independent timekeeping records of hours worked by all workers at UnWrapped's current and future facilities, including those hired or provided by a temporary employment agency or third-party employer, in order to verify information provided by any temporary employment agency or third-party employer.
- U. Employer agrees to conduct a monthly audit of payroll and timekeeping records kept by any temporary employment agency or third-party employer paying wages to workers at UnWrapped's current and future facilities, as well as to direct such temporary employment agency or third party employer to rectify any failures to pay wages in accordance with Massachusetts law.
- V. Employer agrees that its failure to comply with the provisions of Paragraphs III.P-III.U shall render it *per se* jointly liable for any wage and hour laws violations by any temporary employment agency or third-party employer paying wages to workers at UnWrapped's current and future facilities.
- W. Employer agrees to abide by all applicable wage and hour laws, both state and federal, as well as other employment related provisions, including but not limited to, laws pertaining to earned sick time, child labor, minimum wage and overtime, as well as those regulating unemployment insurance payments, workers' compensation insurance and income taxation.
- X. Employer's obligations to the Commonwealth of Massachusetts under this Agreement shall be fully discharged upon completion of the obligations described in Paragraphs II.F. through II.W. of this Agreement. Failure by Employer to fully comply with any of the provisions within this Agreement constitutes a material breach of this Agreement. Upon breach, this Agreement shall be voidable by the Attorney General, and shall allow the Attorney General to pursue enforcement actions against Employer, including, but not limited to, any criminal, civil, or administrative proceedings that were available prior to the entry of this Agreement; provided, however, Employer shall be entitled to a set-off for amounts paid as a result of this Agreement.
- Y. This Agreement shall serve as evidence of unintentional civil violations of G.L. c. 149, § 148C pursuant to G.L. c. 149, § 27C(b)(1), admissible in any subsequent

proceedings brought by the Attorney General or any of the Commonwealth's agencies against Stephen Katz, as well as any successor company, corporation, or other business entity.

- Z. In consideration of the foregoing obligations set forth in this Agreement, and conditioned upon full compliance with all terms of this Agreement, the Attorney General hereby releases Employer from any criminal, civil, or administrative enforcement action or penalty for violations of law for the conduct described in Paragraph II.C, and for child labor and overtime violations resolved pursuant to an agreement with the Department of Labor as described in Paragraph III.D.
- AA. Stephen Katz warrants and represents that he is President of UnWrapped and that he has the authority to bind UnWrapped to the terms of this Agreement.
- BB. This Agreement shall be governed by the laws of the Commonwealth of Massachusetts for all purposes including enforcement, and may be amended or modified only in writing executed by the parties.
- CC. The terms of this final settlement between the parties shall not be subject to appeal in any forum. This Agreement constitutes the entire agreement between Employer and the Attorney General with respect to the matters discussed herein only, and it shall not bind any other private or governmental entity, nor release Employer from liability for any other conduct not identified or described herein.
- DD. Employer understands that the Attorney General cannot waive any statutory rights provided to individuals to pursue additional remedies, but nothing in this Agreement is intended to or shall prohibit Employer from asserting in a private action that Employer shall be entitled to a set-off for amounts accepted as a result of this Agreement.
- EE. This Agreement shall be deemed to have been mutually drafted by the parties and shall not be construed against any party as the author thereof.

COMMONWEALTH OF MASSACHUSETTS
MAURA HEALEY
ATTORNEY GENERAL

UNWRAPPED, INC.

By: Cynthia Mark
Jennifer Scully
Assistant Attorneys General
Fair Labor Division
One Ashburton Place, Room 1813
Boston, MA 02108

By: Stephen A. Katz, President

Dated: _____

Dated: _____

STEPHEN A. KATZ, Individually

By: Stephen A. Katz

Dated: _____