

The matter was settled by the parties on mutually agreeable terms.

UNITED STATES DISTRICT COURT SOUTHERN
DISTRICT OF NEW YORK

JASMINE BURGESS, individually, and on
behalf of all those similarly situated,

Plaintiff,

- against -

MAJOR MODEL MANAGEMENT, INC.
and GUIDO DOLCI,

Defendants.

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: No.: 1:20 Civ. 2816 (JLR) (GWG)
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x


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SETTLEMENT AND RELEASE

This Settlement and Release ("Agreement") is entered into by and among: (i) Jasmine Burgess; (ii) Guido Dolci ("Dolci"); and (iii) Major Model Management, Inc. ("Major") (Dolci and Major collectively, "Defendants") (Defendants together with Plaintiff, the "Parties"), in the settlement of a civil proceeding styled *Jasmine Burgess v. Major Model Management, Inc.*, Case No. 1:20-cv-02816, pending in the United States District Court for the Southern District of New York, (JLR) (GWG) (the "Action").

RECITALS



WHEREAS, on April 3, 2020, Plaintiff filed a Complaint, and subsequently amended the Complaint (the "Amended Complaint") to become a putative class and collective action Complaint pursuant to the federal Fair Labor Standards Act ("FLSA") and the New York Labor Law ("NYLL") alleging that she, and a putatively similarly situated class and collective of models, were "employees," as defined under the FLSA and NYLL, rather than bona fide independent contractors, and were therefore entitled to, among other things, minimum wages, and that Defendants were in violation of, among other things, frequency of pay, wage deduction and recordkeeping laws. The Amended Complaint also included claims of retaliation under the FLSA and NYLL.

WHEREAS, Defendants assert that since such time as Mr. Dolci became President of Major in 2017, Major has at all times been operated in a professional and orderly fashion, especially its accounting department. Defendants further assert that Mr. Dolci is a family man and takes seriously Major's obligations to all models represented by Major.

WHEREAS, Plaintiff asserts that Defendants misclassified her and the putative class as independent contractors.

WHEREAS, the Parties initially agreed to attempt to resolve the litigation through mediation through the SDNY court-annexed alternative dispute resolution program, and subsequently through a settlement conference with Magistrate Judge Gabriel W. Gorenstein, both of which efforts were unsuccessful.

WHEREAS, Major has received a bankruptcy discharge of all debts due prior to July 28, 2023, for which proofs of claim were not filed in a bankruptcy proceeding *In re Major Model Management, Inc.*, No. 22-10169 (S.D.N.Y. Bankr.).

WHEREAS, Plaintiff alleges that Major is liable for retaliation violations of the New York Labor Law and Fair Labor Standards Act anti-retaliation provision and violation of NYLL § 193 based on acts or omissions occurring after July 28, 2023.

WHEREAS, in *In re Major Model Management, Inc.*, No. 22-10169 (S.D.N.Y. Bankr.), Chief Bankruptcy Judge Glenn denied Plaintiff's request to file a class proof of claim in that proceeding.

WHEREAS, the litigation in this action was originally filed on April 3, 2020.


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WHEREAS, based upon their analysis of a number of factors, including the litigation risks, the bankruptcy filing and discharge of Major, previously expended costs and expenses, and additional significant costs and expenses that would be incurred through further litigation, including the time and costs of motions, a trial before a jury, Plaintiff's allegations of claims against Major arising after July 28, 2023, and anticipated appeals, the Parties are satisfied that the terms and conditions of this Agreement are fair, reasonable, and adequate.

WHEREAS, without acknowledging or conceding any liability or damages whatsoever, and without admitting that Plaintiff is an "employee" of Defendants or that Plaintiff is entitled to any pay (including unpaid wages and/or overtime pay), both Plaintiff and Defendants maintain that they have agreed to this settlement on the terms and conditions set forth in this Agreement, to avoid the burden, expense, and uncertainty of litigation and a potential jury trial.

NOW, THEREFORE, in consideration of the mutual covenants and promises set forth in this Agreement, as well as the good and valuable consideration provided for herein, the Parties agree to a full and complete settlement of the Action on the following terms and conditions:

1. Upon approval of this Agreement by the Court as required by *Cheeks*, the Parties' counsel will execute a Stipulation and Proposed Order of Dismissal with Prejudice (the "Stipulation"), attached hereto as **Exhibit D**, dismissing the Action with prejudice. Upon receipt of the fully-executed Agreement, counsel for Plaintiff shall file the fully-executed Agreement with the Court, and upon receipt of the fully-executed Stipulation, shall file the fully-executed Stipulation following, and subject to, the approval of Plaintiff's unopposed motion for approval of this Agreement.



2. It is understood and agreed that this Agreement, and the settlement it represents is intended solely for the purpose stated herein, and Defendants maintain that they have entered into it for the purpose of avoiding further expenses and costs of litigation and trial. The Parties agree and affirm that there has not been a finding of Defendants' liability under the FLSA or NYLL in this proceeding. This Agreement and the settlement it represents may not be cited as and does not constitute and should not be construed to be an admission by Defendants of any violation of any federal, state or local law, or of any duty whatsoever (other than duties provided for in this Agreement), whether based in statute, common law, or otherwise, and Defendants expressly deny that any such purported violation has occurred as to Plaintiff or any other member of a class or collective, or model.

3. In consideration of the representations, warranties, covenants and releases contained herein, Defendants, including any successors, assigns, and/or subsidiary companies, for a period of ten years from the date this Agreement is approved by the Court, and beginning sixty days (unless otherwise specified below) after the approval of this Settlement Agreement by the Court, shall:

a. Provide to all MM Models (as defined below) who currently are signed to agreements concerning or relating to modeling with Major (or had an agreement concerning or relating to modeling renewed) and/or who sign agreements concerning or relating to modeling with Major, at any point within the next ten years from the date this Agreement is approved by the Court (collectively "MM Models"), access to a smartphone application, which application will provide, within three business days of the date of payment receipt by Major, information on any and all payments concerning and/or relating to the MM Models' work, including, the client name, invoice number, invoiced amount (not including Major's agency and/or service fee), the receipt of payment by Major, and the payment amount received by Major,

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concerning each payment to Major, including but not limited to, with respect to all bookings and usages. For purposes of this Agreement, the date of payment receipt by Defendants is the date the funds are reflected as received in Major's bank statement. The application shall be provided by a third party and models shall pay the subscription fee to such third-party, which is currently \$1.99 per month. Plaintiff has approved the PortfolioPad Premium application for this purpose. In the event of an increase by more than an additional \$2 per month in any calendar year thereafter, Major will use commercially reasonable efforts to obtain a replacement smartphone application.

b. Electronically notify, free of any direct or indirect charge or cost to the MM Models (*i.e.*, whether charged by Defendants or any app or service provider) above any annual website fee amount charged to all MM Models, MM Models' scheduling information concerning all bookings, castings, options, go-sees, or similar scheduling, concerning any modeling work assignments, and/or engagements, promptly after the scheduling and finalization of such, bookings, castings, options, and/or go-sees.

c. Provide payment to MM Models for their modeling work, including, but not limited to, for their bookings and usages, without any requirement or need for them to request payment from Defendants, within thirty (30) calendar days of Defendants' receipt of payment concerning or relating to their modeling work (unless the model opts out of such automatic payment pursuant to the procedure described herein or does not submit their payment information as detailed below). For purposes of this Agreement, the date of payment receipt by Defendants is the date the funds are reflected as received in Major's bank statement.

d. Within thirty (30) calendar days of the approval of this Agreement by the Court, Defendants will send all MM Models an automatic payment designation form, to provide ACH payment designation for designating the bank account to which their payments from Defendants will be sent, and opt-out form attached hereto as **Exhibit B**.

e. Include within all new modeling contracts with MM Models, an ACH payment designation for designating the bank account to which their payments from Defendants will be sent, and opt-out form, attached hereto as **Exhibit B**.


f. Require any changes to the account payment designation forms in **Exhibit B** to be memorialized in a change of payment form (attached hereto as **Exhibit C**). Any MM Model who opts out of the automatic payment provision of Paragraph 3(c) may opt back in at any time by providing new banking information through the change of payment form (attached hereto as **Exhibit C**).

4. Defendants shall notify by email, using all available last known email information (including but not limited to all email contact information utilized to provide notice in *In re Major Model Management, Inc.*, No. 22-10169 (S.D.N.Y. Bankr.)), all MM Models of Major's adoption of the policies contained in Paragraphs 3(a)-(c), within fourteen calendar days of the approval of this Agreement by the Court.

5. In consideration of the provisions described above and for other good and valuable consideration, Plaintiff hereby releases and forever discharges Defendants, as well as Defendants' shareholders, employees, officers, directors, as well as Defendants' agents (with respect to any acts or omissions concerning or relating to Defendants), from all claims which Plaintiff ever had, now has, or which may arise in the future, regarding any matter arising on or before the date of Plaintiff's execution of this Agreement, including, but not limited to, all such claims (whether known or unknown) for injunctive or declaratory relief, the nonpayment or inaccurate payment of

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minimum and overtime wages, spread-of-hours pay, wage parity pay, all other wage and hour claims, wage notice claims, wage statement claims, and claims for any other payments, benefits, or form of notice, remuneration or compensation under any state or local wage and hour law, including but not limited to, any and all claims under the NYLL, as amended, including but not limited to Articles 6 and 19, § 190 *et seq.* and § 650 *et seq.*, and any and all regulations issued thereunder, including the Minimum Wage Order for miscellaneous industries and occupations, N.Y. Comp. Codes R. & Regs. tit. 12, § 142, all as amended, and the Fair Labor Standards Act, as amended, 29 U.S.C. § 201, *et seq.*, and any and all regulations issued thereunder, as amended; provided, however, that Plaintiff does not release her claim for \$37,910.00 contained in her individual proof of claim filed in *In re Major Model Management, Inc.*, No. 22-10169 (S.D.N.Y. Bankr.), which has been submitted to the jurisdiction of the bankruptcy court. This Agreement may not be cited as, and does not constitute any admission by Defendants of, any violation of any such law or legal obligation. This Agreement does not release any claim to enforce this Agreement.



6. Defendants release and forever discharge Plaintiff from all debts, obligations, promises, covenants, agreements, contracts, endorsements, bonds, controversies, suits, actions, causes of action, judgments, damages, expenses, claims or demands, in law or in equity, which Defendants ever had, now have, or which may arise in the future, regarding any matter arising on or before the date of Defendants' execution of this Agreement, including but not limited to all such claims (whether known or unknown) by Defendants or on Defendants' behalf regarding Plaintiff's engagement or professional services contractual agreement with, or alleged and disputed employment with or termination of employment from, Defendants; any contract (express or implied); any claim for equitable relief or recovery of punitive, compensatory, or other damages or monies; attorneys' fees; any tort; and claims for any other payments, benefits, or form of notice, remuneration or compensation, except for disputes concerning this Agreement, including but not limited to its interpretation or enforcement by either party. This Agreement may not be cited as, and does not constitute any admission by Plaintiff of any violation of, any law or legal obligation. This Agreement does not release any claim to enforce this Agreement.

7. Commencing for the calendar year starting January 1, 2025, Defendants will within 30 days of the end of each calendar year provide each MM Model receiving a Form 1099, either (A) access to a smartphone application, which application will, provide a statement for the preceding calendar year showing: (1) all bookings and/or engagements that occurred in the prior calendar year, identified by the client name and invoice number; (2) the amount invoiced by Major for each such booking and/or engagement; (3) the date the invoice was sent to the client for each such booking and/or engagement; (4) the amount paid by the client for each such booking and/or engagement (not including agency and/or services fees) (5) the receipt of payment by Defendants from the client for each such booking and/or engagement; and (6) the date and amount of payment to each MM Model for each such booking and/or engagement - Plaintiff has approved the PortfolioPad Premium application for this purpose; or (B) an email of a statement prepared by Major containing the foregoing information.

8. The Parties agree and acknowledge that there is good and sufficient consideration for the execution of this Agreement by the Parties.

9. This Agreement constitutes the entire agreement between the Parties, and supersedes and cancels all prior and contemporaneous written and oral agreements, if any, between the Parties in connection with the Action, and Plaintiff's claims and allegations asserted therein. Plaintiff affirms that, by entering into this Agreement, she is not relying upon any oral or written promise or statement made by anyone at any time on behalf of Defendants. Defendants affirm that, by entering into this Agreement, Defendants are not relying upon any oral or written promise or

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statement made by anyone at any time on behalf of Plaintiff.

10. This Agreement is binding on the Parties' successors, assigns, and/or subsidiaries.

11. The Agreement is contingent upon its approval by the Court. If the Court fails to approve the Agreement, then the Parties' proposed settlement, as memorialized in full in this Agreement, shall be deemed null and void.

12. If any of the provisions, terms or clauses of this Agreement is declared illegal, unenforceable or ineffective in a legal forum, those provisions, terms and clauses shall be deemed severable, such that all other provisions, terms and clauses of this Agreement shall remain valid and binding upon both parties.

13. Without detracting in any respect from any other provision of this Agreement:

a. The Parties understand that, by entering into this Agreement, they are not waiving rights or claims that may arise after the date of their execution of this Agreement, including without limitation any rights or claims that they may have to secure enforcement of the terms and conditions of this Agreement.

b. Prior to executing this Agreement, the Parties have each consulted with the attorneys of their choosing.

14. This Agreement has been reached by mutual and purely voluntary agreement of the Parties, and the Parties by their respective signatures indicate their full agreement with, and understanding of, its terms. Burgess and Dolci affirm that they have no physical or mental impairment of any kind that has interfered with their ability to read and understand the meaning of this Agreement or its terms. The Parties acknowledge that they have been given a reasonable period of time to consider this Agreement, that they have freely, knowingly, and voluntarily decided to accept the terms of this Agreement, and that this Agreement is a binding legal document.

15. This Agreement may not be changed or altered, except by a writing signed by the Parties. This Agreement is entered into in the State of New York, and the laws of the State of New York will apply to any dispute concerning it, excluding the conflict-of-law principles thereof. Furthermore, any action regarding this Agreement or its enforcement shall be subject to the exclusive jurisdiction of the courts of New York County, New York.

16. MM Models are third-party beneficiaries of this Agreement with respect to the provisions of Paragraphs 3 and 7 of this Agreement.

16. The Parties represent and affirm that they are authorized to execute this Agreement on behalf of the Parties indicated below.

17. The Parties agree that when speaking or writing about the lawsuit they will disclose that "the matter was settled by the parties on mutually agreeable terms," except that the Parties need not make such statement: (a) to their spouse; (b) legal counsel; (c) when responding pursuant to the order of a court or a valid subpoena; (d) in oral or written filings or submissions to any court; and/or (e) for purposes of securing enforcement of the terms and conditions of this Agreement, should that ever be necessary. The Parties agree to direct, and hereby direct, their counsel, to also follow the process described in this paragraph, to the fullest extent permitted by the New York Code of Professional Conduct, including but not limited to, Rule 5.6(a)(2), which direction the

Handwritten signatures of the parties, appearing to be 'Burgess' and 'Dolci', written in black ink.

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Parties understand is not directing their counsel to follow such process in their attorney-client privileged communications, within confidential work product protected materials, or in any written or oral filings or submissions, as, with, or to, a court or tribunal.

Date: 1/19/2024 ✓

1/19/2024

Jasmine Burgess Major

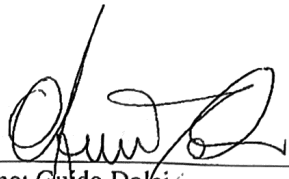
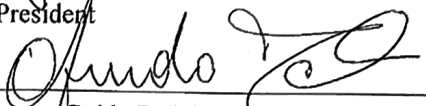
Model Management, Inc.

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Date: 1/19/2024

Date: 1/19/2024

By: 
Name: Guido Dolci
Title: President

Guido Dolci (in his individual capacity)

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Exhibit B

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OPTION 1 **(AUTOMATIC PAYMENT)**

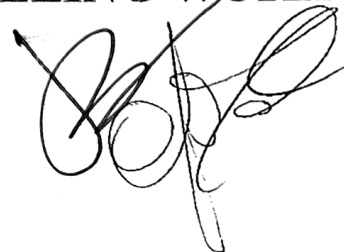
_____ I WANT TO AUTOMATICALLY RECEIVE
PAYMENT WITHIN 30 DAYS OF PAYMENT TO
MAJOR FOR MY MODELING WORK THROUGH
THE BELOW BANK ACCOUNT

Routing Number _____

Bank Account No _____

OPTION 2 **(OPT-OUT OF AUTOMATIC** **PAYMENT)**

_____ I DO NOT WANT TO RECEIVE
AUTOMATIC PAYMENTS. I WANT TO BE FREE TO
SPECIFICALLY REQUEST PAYMENT FROM
MAJOR FOR MY MODELING WORK EACH TIME
MAJOR IS PAID FOR MY MODELING WORK

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Exhibit C

Automatic Payment Change Election Form

Please provide your current bank account payment information on file with Major where you have been receiving payment (leave this blank if you did not previously provide banking information)

Routing Number _____

Bank Account No _____

Please provide your new bank account payment information where you would like to receive payment beginning within seven days of Major's receipt of this signed Automatic Payment Change Election Form.

Routing Number _____

Bank Account No _____

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