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OLYMPUSAT, INC. and TOM MOHLER

**UNITED STATES DISTRICT COURT**  
**CENTRAL DISTRICT OF CALIFORNIA**

MARIA LUZ ZUCHELLA, an individual,  
Plaintiff,

vs.

OLYMPUSAT, INC., a Florida corporation;  
TOM MOHLER, an individual, and DOES  
1 through 50, inclusive,

Defendants.

OLYMPUSAT, INC., a Florida corporation;  
and TOM MOHLER

Counter-Claimants,

vs.

MARIA LUZ ZUCHELLA, an individual,

Counter-Defendant.

Case No. 2:19-cv-07335-DSF-PLA

*Hon. Dale S. Fischer, Judge*  
*Hon. Paul L. Abrams, Magistrate*

**DEFENDANTS' ANSWER TO THE  
UNVERIFIED COMPLAINT,  
AFFIRMATIVE DEFENSES, AND  
COUNTER-CLAIMS**

**JURY TRIAL DEMANDED**

## **INTRODUCTION**

Maria Zucchella brought false claims of sexual harassment against Olympusat and Mohler as a pre-emptive strike to avoid prosecution for her taking kickbacks. As detailed in Exhibit A, Zucchella threatened Joel Nunez (a content producer) by telling him that he would be precluded from working on any Olympusat project if he did not pay her a \$10,000.00 per episode kickback. As a result of her threat, a payment of \$10,000.00 was paid to Zucchella in and around May 2017.

Shortly before filing her lawsuit, Zucchella was made aware that Olympusat had filed a civil action for commercial bribery against her friend, Dina Almeida, for taking similar kickbacks. Shortly before that action was filed, Almeida's lawyer told Olympusat's lawyer that if Olympusat did not resolve its dispute with Almeida, she would file a sexual harassment lawsuit against Olympusat and Mohler. True to her word, approximately two and a half months **after** Olympusat sued Almeida in Florida, Almeida retaliated by filing a false sexual harassment lawsuit against Olympusat and Mohler in California.

Knowing that she had also received kickbacks in violation of her April 1, 2014, employment agreement (attached as Exhibit B), Zucchella would have known that Olympusat would likely terminate her employment and would eventually file suit against her, just as they had against Almeida. Zucchella decided to take preemptive action in a transparent effort to get ahead of this anticipated action by instantly filing her own false sexual harassment lawsuit against Olympusat and Mohler, trying to make everyone focus on her false claims rather than the facts surrounding her own misconduct.

Zucchella violated her employment agreement in other ways too. On September 30, 2019, Zucchella testified under oath that she currently owns *Perro Blanco* Films, LLC. *See* Dkt 19-1. However, on April 2, 2014, Zucchella signed her employment contract and promised, as a condition of employment, that she "will be transferring

1 ownership of *Perro Blanco Films*” to Gabriel Simon. In Zucchella’s own words, this  
2 transfer never happened.

3       Upon further inquiry, it was also discovered that Zucchella’s company has been  
4 trading on the goodwill of Olympusat and Mohler in order to generate revenue. Never  
5 thinking anyone would find out, Zucchella’s company falsely lists Mohler and another  
6 Olympusat employee, Arturo Chavez, as employees of *Perro Blanco Films*. See  
7 Exhibit C. However, neither Mohler nor Chavez are or ever have been employees of  
8 Zucchella’s company.

9       Not being content with simply receiving kickbacks and making knowingly false  
10 statements to give her company credibility, it was also discovered that Zucchella had  
11 submitted false receipts to Olympusat to obtain expense reimbursements she was not  
12 entitled to. For example, as shown in Exhibit D, Zucchella submitted a receipt in the  
13 amount of **\$1,406.59** for the purchase of a laptop computer. However, upon  
14 investigation, in her haste to defraud the company, Zucchella was sloppy and it is  
15 clear that the receipt submitted was actually for the **refund** of the computer, not for a  
16 computer purchase.

17       Olympusat emailed Zucchella twice to inquire about this fraudulent expense  
18 reimbursement request. However, Zucchella ignored both requests to discuss the  
19 issue, likely because she knew she had been caught red handed and had no reasonable  
20 explanation. Ultimately, and as a result of Zucchella’s theft, embezzlement, lies and  
21 failure to respond to simple questions about her expense submissions, Olympusat  
22 terminated her employment on October 11, 2019.

### 23                               **ANSWER TO COMPLAINT**

24       Pursuant to Rule 8 of the Federal Rules of Civil Procedure, Defendants  
25 Olympusat, Inc., and Thomas Mohler answer the Complaint for Damages  
26 (“Complaint”) of Maria Luz Zucchella’s (“Plaintiff”) as follows. If an averment is not  
27 specifically admitted, it is hereby denied.  
28

**NATURE OF THE ACTION**

1. Defendants deny each and every allegation contained in Paragraph 1.

2. Defendants deny each and every allegation contained in Paragraph 2, except to the extent Paragraph 2 contains legal conclusions, to which no response is required.

3. Defendants are without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in Paragraph 3 and therefore deny the allegations contained in Paragraph 3.

4. Defendants admit that Olympusat is a Florida corporation and that its principal place of business is in Florida. Except as expressly admitted herein, Defendants deny the allegations contained in Paragraph 4.

5. Defendants admit that Mohler is a resident of Florida corporation and is the founder and CEO of Olympusat. Except as expressly admitted herein, Defendants deny the allegations contained in Paragraph 5.

6. Defendants admit that Olympusat is a Florida corporation and that Olympusat allows employees to work remotely from other locations, but that work is ultimately performed for the benefit of Olympusat's operations in Florida. Except as expressly admitted herein, Defendants deny the allegations contained in Paragraph 6.

7. Defendants admit that Olympusat allows employees to work remotely from other locations, but that work is ultimately performed for the benefit of Olympusat's operations in Florida. Except as expressly admitted herein, Defendants deny the allegations contained in Paragraph 7.

8. Defendants deny each and every allegation contained in Paragraph 8.

9. Defendants admit that Plaintiff was an employee of Olympusat from 2014 until 2019, and that prior to that Plaintiff's company was hired to perform services for Olympusat in Florida. Except as expressly admitted herein, Defendants deny the allegations contained in Paragraph 9.

10. Defendants are without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in Paragraph 10 and therefore deny each and every allegation contained in Paragraph 10.

**JURISDICTION AND VENUE**

11. Paragraph 11 contains legal conclusions to which no response is required. To the extent Paragraph 11 is intended to include any allegations of fact, Defendants are without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in Paragraph 11 and therefore deny each and every allegation contained in Paragraph 11.

12. Defendants admit that Olympusat allows employees to work remotely from other locations, but that work is ultimately performed for the benefit of Olympusat's operations in Florida. Except as expressly admitted herein, Defendants deny the allegations contained in Paragraph 12.

13. Paragraph 13 contains legal conclusions to which no response is required. To the extent Paragraph 13 is intended to include any allegations of fact, Defendants are without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in Paragraph 13 and therefore deny each and every allegation contained in Paragraph 13.

**FACTUAL ALLEGATIONS**

14. Defendants admit that it issues marketing materials, the contents of which speak for themselves, that Mohler is the founder and CEO of Olympusat, and that Olympusat has affiliated entities. Except as expressly admitted herein, Defendants deny the allegations contained in Paragraph 14.

15. Defendants deny each and every allegation contained in Paragraph 15.

16. Defendants deny each and every allegation contained in Paragraph 16.

17. Defendants deny each and every allegation contained in Paragraph 17.

1           18. Defendants admit that Mohler initially met Plaintiff in Australia in  
2 around 2000. Defendants are without knowledge or information sufficient to form a  
3 belief as to the truth or falsity of the remainder of the allegations in Paragraph 18 and  
4 therefore deny each and every other allegation contained in Paragraph 18.

5           19. Defendants admit that after Mohler initially met Plaintiff, he emailed her  
6 regarding a potential work project. Defendants are without knowledge or information  
7 sufficient to form a belief as to the truth or falsity of the remainder of the allegations  
8 in Paragraph 19 and therefore deny each and every other allegation contained in  
9 Paragraph 19.

10           20. Defendants admit that Plaintiff was required to perform some initial  
11 training in Florida and that she could perform her work remotely for the benefit of  
12 Olympusat's operations in Florida. Except as expressly admitted herein, Defendants  
13 deny the allegations contained in Paragraph 20.

14           21. Defendants deny each and every allegation contained in Paragraph 21.

15           22. Defendants admit that Mohler had a consensual relationship with  
16 Plaintiff. Except as expressly admitted herein, Defendants deny the allegations  
17 contained in Paragraph 22.

18           23. Defendants are without knowledge or information sufficient to form a  
19 belief as to the truth or falsity of the remainder of the allegations in Paragraph 23 and  
20 therefore deny each and every other allegation contained in Paragraph 23.

21           24. Defendants are without knowledge or information sufficient to form a  
22 belief as to the truth or falsity of the remainder of the allegations in Paragraph 24 and  
23 therefore deny each and every other allegation contained in Paragraph 24.

24           25. Defendants are without knowledge or information sufficient to form a  
25 belief as to the truth or falsity of the remainder of the allegations in Paragraph 25 and  
26 therefore deny each and every other allegation contained in Paragraph 25.

27           26. Defendants deny each and every allegation contained in Paragraph 26.  
28

27. Defendants deny each and every allegation contained in Paragraph 27.

28. Defendants deny each and every allegation contained in Paragraph 28.

29. Defendants deny each and every allegation contained in Paragraph 29.

30. Defendants deny each and every allegation contained in Paragraph 30.

31. Defendants admit that Olympusat hosted a company ski trip in 2016 that Plaintiff did not attend. Except as expressly admitted herein, Defendants deny the allegations contained in Paragraph 31.

32. Defendants deny each and every allegation contained in Paragraph 32.

33. Defendants deny each and every allegation contained in Paragraph 33.

34. Defendants admit that Olympusat hired Ray Alleri in 2016 as the Chief Revenue Officer. Except as expressly admitted herein, Defendants deny the allegations contained in Paragraph 34.

35. Defendants deny each and every allegation contained in Paragraph 35.

36. Defendants admit that Olympusat hosted a company dinner in May of 2018. Except as expressly admitted herein, Defendants deny the allegations contained in Paragraph 36.

37. Defendants deny each and every allegation contained in Paragraph 37.

38. Defendants deny each and every allegation contained in Paragraph 38.

39. Defendants deny each and every allegation contained in Paragraph 39.

40. Defendants deny each and every allegation contained in Paragraph 40.

41. Defendants deny each and every allegation contained in Paragraph 41.

42. Defendants deny each and every allegation contained in Paragraph 42.

43. Defendants deny each and every allegation contained in Paragraph 43.

44. Defendants deny each and every allegation contained in Paragraph 44.

45. Defendants deny each and every allegation contained in Paragraph 45.

46. Defendants deny each and every allegation contained in Paragraph 46.



**EXHAUSTION OF ADMINISTRATIVE REMEDIES**

47. Defendants are without knowledge or information sufficient to form a belief as to the truth or falsity of the remainder of the allegations in Paragraph 47 and therefore deny each and every other allegation contained in Paragraph 47.

**CONTINUING VIOLATION**

48. Defendants deny each and every allegation contained in Paragraph 48.

**FIRST CAUSE OF ACTION**

**(Discrimination in Violation of the FEHA)**

**(On Behalf of Plaintiff against Defendant Olympusat)**

49. With respect to the allegations contained in Paragraph 49, Defendants incorporate by reference as if set forth and repeated verbatim its responses to Paragraphs 1 through 48.

50. Defendants deny each and every allegation contained in Paragraph 50.

51. Defendants deny each and every allegation contained in Paragraph 51.

52. Defendants deny each and every allegation contained in Paragraph 52.

53. Defendants deny each and every allegation contained in Paragraph 53.

54. Defendants deny each and every allegation contained in Paragraph 54.

55. Defendants deny each and every allegation contained in Paragraph 55.

56. Defendants deny each and every allegation contained in Paragraph 56.

57. Defendants deny each and every allegation contained in Paragraph 57.

**SECOND CAUSE OF ACTION**

**(Harassment in Violation of the FEHA)**

**(On Behalf of Plaintiff against Defendant [sic])**

58. With respect to the allegations contained in Paragraph 58, Defendants incorporate by reference as if set forth and repeated verbatim its responses to Paragraphs 1 through 47.



1           59. Paragraph 59 contains legal conclusions to which no response is required.  
2 To the extent Paragraph 59 is intended to include any allegations of fact, Defendants  
3 are without knowledge or information sufficient to form a belief as to the truth or  
4 falsity of the allegations in Paragraph 59 and therefore deny each and every allegation  
5 contained in Paragraph 59.

6           60. Defendants deny each and every allegation contained in Paragraph 57.

7           61. Defendants deny each and every allegation contained in Paragraph 57.

8           62. Paragraph 62 contains legal conclusions to which no response is required.  
9 To the extent Paragraph 62 is intended to include any allegations of fact, Defendants  
10 are without knowledge or information sufficient to form a belief as to the truth or  
11 falsity of the allegations in Paragraph 62 and therefore deny each and every allegation  
12 contained in Paragraph 62.

13          63. Defendants deny each and every allegation contained in Paragraph 63.

14          64. Defendants deny each and every allegation contained in Paragraph 64.

15          65. Defendants deny each and every allegation contained in Paragraph 65.

16          66. Defendants deny each and every allegation contained in Paragraph 66.

17          67. Paragraph 67 contains legal conclusions to which no response is required.  
18 To the extent Paragraph 67 is intended to include any allegations of fact, Defendants  
19 are without knowledge or information sufficient to form a belief as to the truth or  
20 falsity of the allegations in Paragraph 67 and therefore deny each and every allegation  
21 contained in Paragraph 67.

22          68. Defendants deny each and every allegation contained in Paragraph 68.  
23  
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**THIRD CAUSE OF ACTION**

**(Hostile Work Environment in Violation of the FEHA)**

**(On Behalf of Plaintiff against Defendant [sic])**

69. With respect to the allegations contained in Paragraph 69, Defendants incorporate by reference as if set forth and repeated verbatim its responses to Paragraphs 1 through 48.

70. Defendants deny each and every allegation contained in Paragraph 70.

71. Defendants deny each and every allegation contained in Paragraph 71.

72. Defendants deny each and every allegation contained in Paragraph 72.

73. Defendants deny each and every allegation contained in Paragraph 73.

74. Defendants deny each and every allegation contained in Paragraph 74.

75. Defendants deny each and every allegation contained in Paragraph 76.

76. Paragraph 76 contains legal conclusions to which no response is required. To the extent Paragraph 76 is intended to include any allegations of fact, Defendants are without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in Paragraph 76 and therefore deny each and every allegation contained in Paragraph 76.

77. Defendants deny each and every allegation contained in Paragraph 77.

**FOURTH CAUSE OF ACTION**

**(Retaliation in Violation of the FEHA)**

**(On Behalf of Plaintiff against Defendant [sic])**

78. With respect to the allegations contained in Paragraph 78, Defendants incorporate by reference as if set forth and repeated verbatim its responses to Paragraphs 1 through 77.

79. Defendants deny each and every allegation contained in Paragraph 79.

80. Defendants deny each and every allegation contained in Paragraph 80.

81. Defendants deny each and every allegation contained in Paragraph 81.

1           82. Defendants deny each and every allegation contained in Paragraph 81.

2           83. Defendants deny each and every allegation contained in Paragraph 83.

3           84. Defendants deny each and every allegation contained in Paragraph 84.

4           85. Paragraph 85 contains legal conclusions to which no response is required.

5 To the extent Paragraph 85 is intended to include any allegations of fact, Defendants  
6 are without knowledge or information sufficient to form a belief as to the truth or  
7 falsity of the allegations in Paragraph 85 and therefore deny each and every allegation  
8 contained in Paragraph 85.

9           86. Defendants deny each and every allegation contained in Paragraph 86.

10                           **FIFTH CAUSE OF ACTION**

11           **(Failure to Prevent Discrimination and Harassment in Violation of the FEHA)**

12                           **(On Behalf of Plaintiff against Defendant Olympusat)**

13           87. With respect to the allegations contained in Paragraph 87, Defendants  
14 incorporate by reference as if set forth and repeated verbatim its responses to  
15 Paragraphs 1 through 86.

16           88. Defendants deny each and every allegation contained in Paragraph 88.

17           89. Defendants deny each and every allegation contained in Paragraph 89.

18           90. Defendants deny each and every allegation contained in Paragraph 90.

19           91. Defendants deny each and every allegation contained in Paragraph 91.

20           92. Defendants deny each and every allegation contained in Paragraph 92.

21           93. Defendants deny each and every allegation contained in Paragraph 93.

22           94. Paragraph 94 contains legal conclusions to which no response is required.

23 To the extent Paragraph 94 is intended to include any allegations of fact, Defendants  
24 are without knowledge or information sufficient to form a belief as to the truth or  
25 falsity of the allegations in Paragraph 94 and therefore deny each and every allegation  
26 contained in Paragraph 94.

1           95. Defendants admit that Plaintiff is seeking in excess of \$75,000, but  
2 Defendants deny that Plaintiff has suffered any damages.

3                           **SIXTH CAUSE OF ACTION**

4                                   **(Civil Conspiracy)**

5   **(Against All Defendants)**

6           96. With respect to the allegations contained in Paragraph 87, Defendants  
7 incorporate by reference as if set forth and repeated verbatim its responses to  
8 Paragraphs 1 through 86.

9           97. Defendants deny each and every allegation contained in Paragraph 97.

10          98. Defendants deny each and every allegation contained in Paragraph 98.

11                           **SEVENTH CAUSE OF ACTION**

12                                   **(Defamation)**

13   **(Against All Defendants)**

14          99. With respect to the allegations contained in Paragraph 99, Defendants  
15 incorporate by reference as if set forth and repeated verbatim its responses to  
16 Paragraphs 1 through 98.

17          100. Defendants deny each and every allegation contained in Paragraph 100.

18          101. Defendants deny each and every allegation contained in Paragraph 101.

19          102. Defendants deny each and every allegation contained in Paragraph 102.

20          103. Defendants deny each and every allegation contained in Paragraph 103.

21          104. Defendants deny each and every allegation contained in Paragraph 104.

22          105. Defendants deny each and every allegation contained in Paragraph 105.

23          106. Defendants deny each and every allegation contained in Paragraph 106.

24          107. Defendants deny each and every allegation contained in Paragraph 107.

25          108. Defendants deny each and every allegation contained in Paragraph 108.

26          109. Defendants deny each and every allegation contained in Paragraph 109.

27          110. Defendants deny each and every allegation contained in Paragraph 110.

111. Defendants deny each and every allegation contained in Paragraph 111.

112. Defendants deny each and every allegation contained in Paragraph 112.

**EIGHTH CAUSE OF ACTION**

**(Intentional Infliction of Emotional Distress)**

**(Against All Defendants)**

113. With respect to the allegations contained in Paragraph 113, Defendants incorporate by reference as if set forth and repeated verbatim its responses to Paragraphs 1 through 112.

114. Defendants deny each and every allegation contained in Paragraph 114.

115. Defendants deny each and every allegation contained in Paragraph 115.

116. Defendants deny each and every allegation contained in Paragraph 116.

117. Defendants deny each and every allegation contained in Paragraph 117.

118. Defendants deny each and every allegation contained in Paragraph 118.

119. Defendants deny each and every allegation contained in Paragraph 119.

**NINTH CAUSE OF ACTION**

**(Negligent Infliction of Emotional Distress)**

**(Against All Defendants)**

120. With respect to the allegations contained in Paragraph 120, Defendants incorporate by reference as if set forth and repeated verbatim its responses to Paragraphs 1 through 119.

121. Defendants deny each and every allegation contained in Paragraph 121.

122. Defendants deny each and every allegation contained in Paragraph 122.

123. Defendants deny each and every allegation contained in Paragraph 123.

124. Defendants deny each and every allegation contained in Paragraph 124.

125. Defendants deny each and every allegation contained in Paragraph 125.

126. Defendants deny each and every allegation contained in Paragraph 126.

**TENTH CAUSE OF ACTION**

**(Negligence)**

**(Against All Defendants)**

127. With respect to the allegations contained in Paragraph 127, Defendants incorporate by reference as if set forth and repeated verbatim its responses to Paragraphs 1 through 126.

128. Defendants deny each and every allegation contained in Paragraph 128.

129. Defendants deny each and every allegation contained in Paragraph 129.

130. Defendants deny each and every allegation contained in Paragraph 130.

131. Defendants deny each and every allegation contained in Paragraph 131.

132. Defendants deny each and every allegation contained in Paragraph 132.

133. Defendants deny each and every allegation contained in Paragraph 133.

**ELEVENTH CAUSE OF ACTION**

**(Negligent Hiring, Training, Supervision, and Discipline)**

**(Against Olympusat)**

134. With respect to the allegations contained in Paragraph 134, Defendants incorporate by reference as if set forth and repeated verbatim its responses to Paragraphs 1 through 133.

135. Defendants deny each and every allegation contained in Paragraph 135.

136. Defendants deny each and every allegation contained in Paragraph 136.

137. Defendants deny each and every allegation contained in Paragraph 137.

138. Defendants deny each and every allegation contained in Paragraph 138.

139. Defendants deny each and every allegation contained in Paragraph 139.

**TWELFTH CAUSE OF ACTION**  
**(Interference in Violation of CFRA)**  
**(Against Olympusat)**

140. With respect to the allegations contained in Paragraph 140, Defendants incorporate by reference as if set forth and repeated verbatim its responses to Paragraphs 1 through 139.

141. Paragraph 141 contains legal conclusions to which no response is required. To the extent Paragraph 141 is intended to include any allegations of fact, Defendants are without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in Paragraph 141 and therefore deny each and every allegation contained in Paragraph 141.

142. Defendants deny each and every allegation contained in Paragraph 142.

143. Defendants deny each and every allegation contained in Paragraph 143.

144. Defendants deny each and every allegation contained in Paragraph 144.

145. Defendants deny each and every allegation contained in Paragraph 145.

146. Defendants deny each and every allegation contained in Paragraph 146.

147. Defendants deny each and every allegation contained in Paragraph 146.

**THIRTEENTH CAUSE OF ACTION**  
**(Retaliation in Violation of CFRA)**  
**(Against Olympusat)**

148. With respect to the allegations contained in Paragraph 148, Defendants incorporate by reference as if set forth and repeated verbatim its responses to Paragraphs 1 through 147.

149. Paragraph 149 contains legal conclusions to which no response is required. To the extent Paragraph 149 is intended to include any allegations of fact, Defendants are without knowledge or information sufficient to form a belief as to the



1 truth or falsity of the allegations in Paragraph 149 and therefore deny each and every  
2 allegation contained in Paragraph 149.

3 150. Defendants deny each and every allegation contained in Paragraph 150.

4 151. Defendants deny each and every allegation contained in Paragraph 151.

5 152. Defendants deny each and every allegation contained in Paragraph 152.

6 153. Defendants deny each and every allegation contained in Paragraph 153.

7 154. Defendants deny each and every allegation contained in Paragraph 154.

8 155. Defendants deny each and every allegation contained in Paragraph 155.

9 156. Defendants deny each and every allegation contained in Paragraph 156.

### 10 **PRAYER FOR RELIEF**

11 All paragraphs following Paragraph 156 and beginning with the word  
12 “WHEREFORE” contain legal conclusions to which no response is required. To the  
13 extent any paragraphs following Paragraph 156 are intended to include any allegations  
14 of fact, Defendants deny each and every allegation, and specifically deny that Plaintiff  
15 is entitled to any of the relief sought therein.

### 16 **AFFIRMATIVE DEFENSES**

17 Without waiving or excusing any of Plaintiff’s own burdens of proof of  
18 evidence, should Defendants have any such burdens herein (which Defendants deny),  
19 Defendants plead the following separate affirmative defenses, each of which applies to  
20 the entire Complaint. Defendants reserve the right to assert additional affirmative  
21 defenses that discovery indicates are proper.

### 22 **FIRST AFFIRMATIVE DEFENSE**

#### 23 **(FAILURE TO STATE A CAUSE OF ACTION)**

24 Plaintiff’s Complaint, and each and every purported cause of action asserted  
25 therein, fails to state facts sufficient to constitute any causes of action against  
26 Defendants.

**SECOND AFFIRMATIVE DEFENSE**

(LACK OF PERSONAL JURISDICTION)

This Court lacks personal jurisdiction over either of the Defendants.

**THIRD AFFIRMATIVE DEFENSE**

(NOT RESPONSIBLE FOR ACTS OF DOES)

Defendants are not legally responsible for the alleged acts/omissions of those defendants named herein as DOES 1 through 10.

**FOURTH AFFIRMATIVE DEFENSE**

(STATUTES OF LIMITATION)

Plaintiff's claims are barred, in whole or in part, by the provisions of California Code of Civil Procedure sections 338, 339, 340, 343, California Government Code sections 12960-12965, 29 USC § 2617(c), and/or other applicable statutes of limitation.

**FIFTH AFFIRMATIVE DEFENSE**

(LEGITIMATE BUSINESS PURPOSE/NECESSITY/  
BUSINESS JUDGMENT RULE)

Any and all conduct of which Plaintiff complains, and which is attributed to Defendants, was a just and proper exercise of management's discretion, undertaken for lawful, fair, and honest reasons under the circumstances then existing and was the substantial motivating factor for the actions taken.

**SIXTH AFFIRMATIVE DEFENSE**

(GOOD FAITH)

Plaintiff is not entitled to recover damages prayed for in the Complaint on the grounds that at all times material herein, Defendants acted toward Plaintiff reasonably and in good faith.

1                                   **SEVENTH AFFIRMATIVE DEFENSE**

2                                   (WAIVER)

3           Defendants are informed and believe that the Complaint, and each alleged cause  
4 of action therein, is barred by waiver. By her conduct, Plaintiff waived any right to  
5 recover any relief under the Complaint or any purported cause of action alleged  
6 therein.

7                                   **EIGHTH AFFIRMATIVE DEFENSE**

8                                   (ESTOPPEL)

9           Defendants are informed and believe that each and every alleged cause of  
10 action in the Complaint is barred by the doctrine of estoppel. Plaintiff has engaged in  
11 conduct with respect to the activities that are the subject of the Complaint, and by  
12 reason of said activities and conduct, is estopped from asserting any claim for  
13 damages or seeking any other relief against Defendants.

14                                  **NINTH AFFIRMATIVE DEFENSE**

15                                  (LACHES)

16           Defendants are informed and believe that each and every alleged cause of  
17 action in the Complaint is barred by the doctrine of laches. Plaintiff has engaged in  
18 unreasonable delay in commencing the litigation.

19                                  **TENTH AFFIRMATIVE DEFENSE**

20                                  (Failure to Exhaust Administrative Remedies)

21           Defendants maintain that Plaintiff is not entitled to relief in that she failed to  
22 exhaust her administrative remedies regarding all claims asserted pursuant to the  
23 California Fair Employment and Housing Act and California Labor Code and is thus  
24 not entitled to pursue this civil action.

**ELEVENTH AFFIRMATIVE DEFENSE**

(UNCLEAN HANDS)

Defendants are informed and believe that the Complaint, and each alleged cause of action therein, is barred by the doctrine of unclean hands by reason of Plaintiff's conduct and actions.

**TWELFTH AFFIRMATIVE DEFENSE**

(FAILURE TO COMPLY WITH CONDITIONS PRECEDENT)

Defendants are informed and believe that the Complaint, and each alleged cause of action therein, is barred to the extent Plaintiff failed to comply with all contractual and/or legal conditions precedent to filing her Complaint.

**THIRTEENTH AFFIRMATIVE DEFENSE**

(FAILURE TO JOIN PROPER PARTIES)

Defendants are informed and believe that the Complaint, and each alleged cause of action therein, is barred to the extent Plaintiff failed to join necessary and appropriate parties to this action.

**FOURTEENTH AFFIRMATIVE DEFENSE**

(FAILURE TO PERFORM OBLIGATIONS)

Defendants are informed and believe that the Complaint, and each alleged cause of action therein, is barred because Plaintiff failed to fully and properly perform her obligations.

**FIFTEENTH AFFIRMATIVE DEFENSE**

(RELEASE)

Defendants are informed and believe that the Complaint, and each alleged cause of action therein, is barred by release.

1 **SIXTEENTH AFFIRMATIVE DEFENSE**

2 (COLLATERAL ESTOPPEL)

3 Defendants are informed and believe that the Complaint, and each alleged cause  
4 of action therein, is barred by the doctrine of collateral estoppel.

5 **SEVENTEENTH AFFIRMATIVE DEFENSE**

6 (BAD FAITH)

7 Defendants are informed and believe and thereon alleges that Plaintiff has  
8 engaged in conduct and activities tainted with bad faith, by reason of which Plaintiff  
9 should not be permitted to use the process of this court for furtherance of said bad  
10 faith.

11 **EIGHTEENTH AFFIRMATIVE DEFENSE**

12 (TIME BARRED BY FEHA)

13 Plaintiff's causes of action are barred to the extent that Plaintiff seeks relief for  
14 conduct occurring more than 365 days prior to the filing of an administrative charge  
15 under the provisions of the California Fair Employment and Housing Act. Further,  
16 Plaintiff's claims are time barred to the extent Plaintiff has not timely exhausted her  
17 administrative remedies as to a particular claim.

18 **NINETEENTH AFFIRMATIVE DEFENSE**

19 (WORKER'S COMPENSATION EXCLUSIVITY)

20 To the extent Plaintiff's claims seek damages for alleged work-related injuries  
21 or for alleged emotional distress and/or related injuries, they are barred by the  
22 exclusive remedy provisions of the California Workers' Compensation laws,  
23 including without limitation California Labor Code section 3600, et seq. Plaintiff was  
24 an employee of Olympusat and therefore can recover only under California's  
25 Worker's Compensation Act.

**TWENTIETH AFFIRMATIVE DEFENSE**

(FAILURE TO USE ORDINARY CARE AND DILIGENCE IN  
PERFORMANCE OF DUTIES)

Defendants are informed and believe and thereon allege that any recovery on Plaintiff's Complaint, or on each purported cause of action alleged therein, is barred by California Labor Code sections 2854 and 2856 in that Plaintiff failed to use ordinary care and diligence in the performance of her duties, and Plaintiff failed to comply with the reasonable expectations of her employer as required by California law.

**TWENTY-FIRST AFFIRMATIVE DEFENSE**

(AFTER ACQUIRED EVIDENCE)

Plaintiff's claims are barred and/or reduced under the doctrine of after acquired evidence.

**TWENTY-SECOND AFFIRMATIVE DEFENSE**

(PUNITIVE DAMAGES NOT SUPPORTED)

The conduct of Defendants does not rise to the level by which punitive damages are warranted and based thereon; the claim for punitive damages should be denied and stricken from the complaint based upon a failure to plead adequate facts giving rise to a cause of action as to either of the Defendants. Moreover, Plaintiff has not suffered any actual damages, which is a prerequisite to recovery.

**TWENTY-THIRD AFFIRMATIVE DEFENSE**

(PUNITIVE DAMAGES UNCONSTITUTIONAL)

Plaintiff is not entitled to recover any punitive or exemplary damages as prayed for in the Complaint on the grounds that any award of punitive or exemplary damages under California law in general and/or any such award under California law as applied to the facts of this specific action would violate the Defendants' constitutional rights under provisions of the United States and California Constitutions, including but not

1 limited to the due process clause of the Fifth and Fourteenth Amendments of the  
 2 United States Constitution and the excessive fines and cruel and unusual punishment  
 3 clauses of the Eighth Amendment of the United States Constitution.

4 **TWENTY-FORTH AFFIRMATIVE DEFENSE**

5 (ATTORNEYS' FEES NOT SUPPORTED)

6 Defendants are informed and believe and thereon allege that the Complaint, and  
 7 each alleged cause of action therein, fails to state facts sufficient to support an award  
 8 attorneys' fees, costs, or expenses against either of the Defendants.

9 **TWENTY-FIFTH AFFIRMATIVE DEFENSE**

10 (EMOTIONAL DISTRESS NOT CAUSED BY DEFENDANT)

11 If Plaintiff suffered any emotional distress, which Defendants deny, this  
 12 emotional distress was proximately caused by factors other than Plaintiff's  
 13 employment or working relationship with the Defendants, the actions of either of the  
 14 Defendants, or anyone acting on behalf of either of the Defendants.

15 **TWENTY-SIXTH AFFIRMATIVE DEFENSE**

16 (NO INTENT)

17 Plaintiff's Complaint, and each and every purported cause of action asserted  
 18 therein, is barred in whole or in part because Defendants had no intent to engage in  
 19 any unlawful behavior toward Plaintiff or harm Plaintiff.

20 **TWENTY-SEVENTH AFFIRMATIVE DEFENSE**

21 (SPECULATIVE DAMAGES/NO DAMAGES)

22 Plaintiff is not entitled to any recovery from Defendants because the alleged  
 23 damages, if any, are speculative or do not exist.

24 **TWENTY- EIGHTH AFFIRMATIVE DEFENSE**

25 (NO VIOLATION OF PUBLIC POLICY)

26 Plaintiff was an at-will employee and was terminated for lawful reasons that do  
 27 not violate public policy.  
 28



**TWENTY-NINTH AFFIRMATIVE DEFENSE**

**(LACK OF CAPACITY)**

Defendants are informed and believe that the Complaint, and each alleged cause of action therein, is barred to the extent Plaintiff lacks standing and/or legal capacity to assert the causes of action alleged in the Complaint.

**THIRTIETH AFFIRMATIVE DEFENSE**

**(LACK OF OFFENSIVE CONDUCT)**

Defendants did not engage in or allow any offensive conduct against Plaintiff.

**THIRTY-FIRST AFFIRMATIVE DEFENSE**

**(MIXED MOTIVE/SUBSTANTIAL MOTIVATING FACTOR/  
SAME DECISION)**

To the extent Plaintiff claims that a protected activity was a substantial motivating factor in any decision by Defendants regarding Plaintiff's employment, Plaintiff's claims are barred because Defendants would have taken the same employment actions regardless of the protected activity.

**THIRTY-SECOND AFFIRMATIVE DEFENSE**

**(NO FRAUD, OPPRESSION, OR MALICE)**

Plaintiff is not entitled to recovery of punitive or exemplary damages because Defendants did not engage in any wrongful conduct that amounted to fraud, oppression, or malice against Plaintiff.

**THIRTY-THIRD AFFIRMATIVE DEFENSE**

**(NO INJUNCTIVE RELIEF)**

Plaintiff is not entitled to injunctive relief as Plaintiff has not alleged any basis thereof.

**THIRTY-FORTH AFFIRMATIVE DEFENSE****(AVOIDABLE CONSEQUENCE DOCTRINE)**

The Complaint is barred, in whole or in part, because Plaintiff did not complain of unlawful activity to human resources for an extensive period of time. By Plaintiff's acts and omissions, she did not take steps to avoid any alleged harm.

**THIRTY-FIFTH AFFIRMATIVE DEFENSE****(PRIVILEGED CONDUCT)**

Defendants' actions were privileged. Olympusat had a legal right to terminate Plaintiff and the termination was lawful and consistent with community standards. Defendants had a good faith belief that it had the legal right to engage in such conduct.

**THIRTY-SIXTH AFFIRMATIVE DEFENSE****(MANAGERIAL PRIVILEGE)**

Defendants and their agents were privileged in the exercise of managerial discretion with respect to Plaintiff's employment and, in its conduct toward Plaintiff, neither Defendants nor their agents abused or exceeded their managerial discretion.

**THIRTY-SEVENTH AFFIRMATIVE DEFENSE****(COMMON INTEREST PRIVILEGE — CIVIL CODE § 47)**

Defendants did not act with hatred or ill will toward Plaintiff or show a willingness to vex, annoy, or injure Plaintiff. Plaintiff had no reasonable grounds for believing the truth of any alleged statements. Defendants' actions in regard to Plaintiff were privileged.

**THIRTY-EIGHTH AFFIRMATIVE DEFENSE****(FIRST AMENDMENT BALANCING TEST — PUBLIC INTEREST)**

Defendants have not violated Plaintiff's rights because the public interest served outweighs any interest by Plaintiff.

**THIRTY-NINTH AFFIRMATIVE DEFENSE**

**(FAILURE TO MITIGATE DAMAGES)**

If Plaintiff suffered any damages as a result of the facts alleged in her Complaint, which Defendants deny, Plaintiff is not entitled to recover the amount of damages alleged or any damages, including without limitation general and special damages, due to her failure to make reasonable efforts to mitigate or minimize the damages incurred.

**FORTIETH AFFIRMATIVE DEFENSE**

**(EMPLOYMENT WOULD HAVE CEASED)**

Plaintiff's employment ended regardless of whether or not she had made complaints against or sued Defendants.

**FORTY-FIRST AFFIRMATIVE DEFENSE**

**(AVAILABILITY OF ADDITIONAL AFFIRMATIVE DEFENSES)**

Defendants presently have insufficient knowledge or information upon which to form a belief as to the availability of additional, as yet unstated, affirmative defenses. Therefore, Defendants reserves the right to assert additional affirmative defenses in the event discovery reveals that they would be appropriate.

WHEREFORE, Defendants prays for relief as follows:

1. That the Complaint be dismissed, with prejudice and in its entirety;
2. That Plaintiff take nothing by reason of the Complaint and that judgment be entered against Plaintiff and in favor of Defendants;
3. That Defendants be awarded their reasonable attorneys' fees and costs incurred in defending this action; and
4. That Defendants be granted such other and further relief as the Court may deem just and proper under the circumstances.

## **COUNTERCLAIMS**

These Counter claims are brought by Defendant Olympusat, Inc. and Defendant Mohler, by and through the undersigned attorneys, against Plaintiff Maria Luz Zucchella.

In support of these Counterclaims, Olympusat and Mohler allege as follows:

### **PARTIES**

1. Olympusat is a Florida corporation with its principal place of business in West Palm Beach, Florida.
2. Mohler is an individual who resides in West Palm Beach, Florida.
3. Maria Luz Zucchella is an individual who purports to reside in Los Angeles, California but appears to currently reside in Argentina.

### **JURISDICTION AND VENUE**

4. While Defendants/Counterclaimants allege that this Court has subject matter jurisdiction of these Counterclaims, Defendants allege that the Court lacks personal jurisdiction over them and, accordingly, this dispute, the claims asserted by the Plaintiff, and the counterclaims asserted by Defendants, and preserved this defense by filing their Motion to Dismiss for Lack of Personal Jurisdiction [Dkt. No. 13]. By filing this Answer and asserting these Counterclaims, Defendants are not waiving, and are hereby reserving, their objection to personal jurisdiction. *See Gates Learjet Corp. v. Jensen*, 743 F.2d 1325, 1330 & n.1 (9<sup>th</sup> Cir. 1984) (citing *Niefeld v. Steinberg*, 438 F.2d 423, 428 (3<sup>rd</sup> Cir. 1971)).

### **FACTS COMMON TO ALL ALLEGATIONS**

5. Zucchella was hired as an employee by Olympusat on April 1, 2014. Her job duties required her to develop leads, identify buyers and conduct negotiations for the sale of Spanish language movies originally produced by Olympusat. She was also required to secure rights for Spanish language content for distribution on Olympusat

1 affiliated networks and other third-party distribution outlets through licensing or  
2 sublicensing agreements.

3 6. Prior to her employment with Olympusat, Zucchella performed  
4 consulting work through her company, *Perro Blanco* Films, LLC (“PBF”). However,  
5 it was discovered in and around 2008, that Zucchella was receiving kickbacks on  
6 licensing deals to the detriment of Olympusat. Olympusat discovered Zucchella’s  
7 scheme when one of Zucchella’s kickback checks was accidentally mailed to  
8 Olympusat’s Florida offices.

9 7. As a result of Zucchella’s actions, Olympusat terminated its relationship  
10 with Zucchella and PBF. Olympusat required Zucchella to repay the amount of the  
11 kickback she had received pursuant to an agreement between the parties. In and  
12 around 2009, Olympusat agreed to work with Zucchella and PBF again as long as  
13 Zucchella agree not to receive any further kickbacks.

14 8. In and around 2014, Olympusat modified its relationship with Zucchella  
15 so that she become an employee of the company. As part of the employment  
16 agreement, Olympusat required that Zucchella agree in writing to not take any  
17 kickbacks on any Olympusat deals and asked that Zucchella transfer all ownerships  
18 rights in PBF to her husband, Gabriel Simon, so that Zucchella could and would focus  
19 all of her licensing efforts on Olympusat’s business.

20 9. Zucchella agreed to these terms as they were outlined in her April 1,  
21 2014 employment agreement which she signed on April 2, 2014.

22 10. In and around 2014, Zucchella introduced Dina Almeida and her  
23 company, Tristan Leo Star Films to Olympusat. As a result of this introduction,  
24 Almeida began working through her own company as a consultant (not an employee)  
25 on licensing deals for Olympusat.

26 11. In and around the late Fall of 2018, Olympusat suspected that Almeida  
27 was receiving kickbacks, and learned in January 2019 that she was, in fact, receiving  
28

1 them. As a result, Olympusat promptly suspended and ultimately ended its consulting  
2 arrangement with Almeida as of February 1, 2019. However, in order to give Almeida  
3 a second chance and as it had done with Zucchella, Olympusat offered to make  
4 Almeida an employee under the same conditions as Zucchella agreed to. Almeida  
5 declined and retained a lawyer to help reinstate her contract. Almeida's counsel told  
6 Olympusat's counsel that if Olympusat did not reinstate Almeida's consulting  
7 arrangement, she would sue Olympusat and Mohler for sexual harassment.

8 12. On or about April 12, 2019, Olympusat sued Almeida in Florida for  
9 commercial bribery seeking a return of all kickbacks Almeida received through  
10 Olympusat licensing deals.

11 13. True to her word, approximately two and a half months after Olympusat  
12 sued Almeida in Florida, Almeida retaliated by filing a false sexual harassment  
13 lawsuit against Olympusat and Mohler in California on or about June 27, 2019.

14 14. Zucchella would have been aware of the claims brought against Almeida  
15 in Florida and was also aware that she (Zucchella) too had received kickbacks in  
16 violation of her April 1, 2014 employment agreement. Accordingly, Defendants are  
17 informed and believe that Zucchella brought false claims of sexual harassment against  
18 Olympusat and Mohler as a pre-emptive strike to avoid prosecution for her taking  
19 kickbacks.

20 15. As detailed in Exhibit A, Zucchella threatened Joel Nunez (a content  
21 producer) by telling him that he would be precluded from working on any Olympusat  
22 project if he did not pay her a \$10,000.00 per episode kickback. As a result of her  
23 threat, a payment of \$10,000.00 was paid to Zucchella in and around May 2017. This  
24 kickback payment violated the following provision of Zucchella's employment  
25 agreement which states, "You further agree not to be paid any compensation from or  
26 through third parties for company related business..." See Exhibit B at page 3.

1 Defendants are informed and believe that Zucchella has used her company PBF to  
2 receive kickbacks of this nature from other sources.

3 16. On or about September 30, 2019, Zucchella declared under oath that she  
4 currently owns PBF. *See* Dkt 19-1. Her failure to transfer the ownership of PBF to  
5 Gabriel Simon violated the following provision of her employment agreement which  
6 states, “you have indicated that as a result of your exclusive employment with  
7 Olympusat, you will be transferring ownership of *Perro Blanco* Films to your  
8 husband, Gabriel Simon...” In Zucchella’s own words, this transfer never happened.

9 17. Olympusat also discovered that Zucchella’s company, PBF, has been  
10 trading on the goodwill of Olympusat and Mohler in order to generate revenue for it.  
11 Zucchella’s company falsely lists Mohler and another Olympusat employee, Arturo  
12 Chavez, as employees of PBF. *See Exhibit C*. However, neither Mohler nor Chavez  
13 are or ever have been employees of Zucchella’s company.

14 18. Olympusat also discovered that Zucchella had submitted false receipts to  
15 obtain expense reimbursements that she was not entitled to. For example, and as  
16 shown in *Exhibit D*, Zucchella submitted a receipt in the amount of **\$1,406.59** for the  
17 purchase of a laptop computer. However, upon investigation, in her haste to defraud  
18 the company, Zucchella was sloppy and it is clear that the receipt submitted was  
19 actually for the **refund** of the computer, not for a computer purchase. *Id.*

20 19. Olympusat emailed Zucchella twice to inquire about this fraudulent  
21 expense reimbursement request. However, Zucchella ignored both requests to discuss  
22 the issue, likely because she knew she had been caught red-handed and had no  
23 reasonable explanation. Ultimately, and as a result of Zucchella’s theft,  
24 embezzlement, lies and failure to respond to simple questions about her expense  
25 submissions, Olympusat terminated her employment on October 11, 2019.



**FIRST COUNTERCLAIM**

**Breach of Contract**

**(BY OLYMPUSAT AGAINST ZUCCHELLA)**

20. Defendants reallege and incorporate herein by reference each and every paragraph of the general allegations, paragraphs 1 through 19 hereinabove set forth, as though set forth in this cause of action.

21. Zucchella owed a contractual duty to Olympusat under her employment agreement to provide Olympusat with the full benefits provided for therein in a fair and honest manner.

22. Zucchella breached her contractual duty by accepting the kickbacks referred to in Exhibit A.

23. Zucchella breached her contractual duty by remaining an owner of PBF after April 1, 2014.

24. As a proximate result of Zucchella's breaches of contract, as herein alleged, Defendants have been damaged in the sum of not less than \$10,000, together with interest thereon at the legal rate from the date Plaintiff accepted the kickback payment until said payment is returned to Olympusat.

**SECOND COUNTERCLAIM**

**Breach of the Implied Covenant of Good Faith and Fair Dealing**

**(BY OLYMPUSAT AGAINST ZUCCHELLA)**

25. Defendants reallege and incorporate herein by reference each and every paragraph of the general allegations, paragraphs 1 through 24 hereinabove set forth, as though set forth in this cause of action.

26. Zucchella owed a contractual duty to Olympusat under her employment agreement to provide Olympusat with the full benefits provided for therein in a fair and honest manner.

1           27.    Zucchella breached her contractual duty by accepting the kickback  
2 referred to in Exhibit A.

3           28.    Zucchella breached her contractual duty by remaining an owner of PBF  
4 after April 1, 2014.

5           29.    California law imposes an implied covenant of good faith and fair  
6 dealing, that no party to the agreement will take any action which would deprive or  
7 jeopardize the rights or benefits of the other party under the agreement.

8           30.    Zucchella breached the duty of good faith and fair dealing by engaging in  
9 all of the wrongful conduct described herein.

10          31.    As a proximate result of the aforementioned wrongful conduct, as herein  
11 alleged, Olympusat has suffered general damages of at least \$10,000, along with  
12 special, consequential and incidental damages according to proof.

### 13                                   **THIRD COUNTERCLAIM**

#### 14                                   **Unfair Competition**

#### 15                                   **(BY OLYMPUSAT AGAINST ZUCHELLA)**

16          32.    Defendants reallege and incorporate herein by reference each and every  
17 paragraph of the general allegations, paragraphs 1 through 31 hereinabove set forth, as  
18 though set forth in this cause of action.

19          33.    Zucchella's conduct in demanding and receiving kickbacks constitutes an  
20 unfair, deceptive and fraudulent business practice that violates California Business  
21 and Professions Code, Section 17200, *et seq.*

22          34.    Olympusat is entitled to an order under Business and Professions Code  
23 section 17203, requiring Zucchella to restore to Olympusat any money or property  
24 that may have been acquired by means of her unfair competition.

25          35.    As a proximate result of the aforementioned wrongful conduct, as herein  
26 alleged, Olympusat seeks restitution in the amount of not less than \$10,000 and any  
27 other sums according to proof.

**FOURTH COUNTERCLAIM**

**Fraud, Constructive Fraud and Intentional Misrepresentation**

**(BY OLYMPUSAT AGAINST ZUCHELLA)**

36. Defendants reallege and incorporate herein by reference each and every paragraph of the general allegations, paragraphs 1 through 35 hereinabove set forth, as though set forth in this cause of action.

37. Because Zucchella was acting as an employee of Olympusat for all of the licensing deals she entered into, she owed fiduciary duties to Olympusat related to these transactions, including a duty to bargain for suitable content at the lowest possible license fee and refrain from any act, omission or concealment that would result in damage to Olympusat.

38. Despite the existence of these fiduciary duties, Zucchella actively concealed the existence of her November 2017 received from Mr. Nunez and the agreement between her and Mr. Nunez, to receive kickbacks, referral fees, or other compensation for referring him (and possibly other) content producers to Olympusat. Zucchella's conduct was intentional, and was designed to prevent Olympusat from discovering the existence of the kickbacks, referral fees or other compensation.

39. On or about May 23, 2018, Zucchella intentionally and fraudulently submitted expense reimbursement receipts to Olympusat for the alleged purchase of a computer in an amount to which she was not entitled to be reimbursed.

40. Among other things, Zucchella intentionally and fraudulently bartered kickbacks (such as the November 2017 kickback received from Mr. Nunez), with the intention of improperly increasing the license fees paid by Olympusat, and with the intention of thereby causing economic injury to Olympusat. Olympusat therefore requests that punitive damages be imposed upon Zucchella in an amount sufficient to punish and/or make an example of her.

1           41. As a proximate result of the aforementioned wrongful conduct, as herein  
2 alleged, Olympusat has suffered general damages in the amount of at least \$10,000,  
3 along with special, consequential and incidental damages according to proof.

#### 4                                   **FIFTH COUNTERCLAIM**

##### 5                                   **Violation of Section 3344 of the California Civil Code**

##### 6                                   **(BY OLYMPUSAT AND MOHLER AGAINST ZUCCHELLA)**

7           42. Defendants reallege and incorporate herein by reference each and every  
8 paragraph of the general allegations, paragraphs 1 through 41 hereinabove set forth, as  
9 though set forth in this cause of action.

10          43. Zucchella used the name and identify of Olympusat's employee (Arturo  
11 Chavez) and Mohler's name and identity for her commercial benefit.

12          44. Olympusat and Mohler did not consent to the use of these names by  
13 Zucchella. Neither Arturo Chavez or Mohler is or was ever an employee of PBF.

14          45. As a proximate result of the aforementioned wrongful conduct, as herein  
15 alleged, Olympusat and Mohler have been damaged in an amount not yet determined  
16 or ascertainable.

#### 17                                   **SIXTH COUNTERCLAIM**

##### 18                                   **Common Law Misappropriation**

##### 19                                   **(BY OLYMPUSAT AND MOHLER AGAINST ZUCCHELLA)**

20          46. Defendants reallege and incorporate herein by reference each and every  
21 paragraph of the general allegations, paragraphs 1 through 45 hereinabove set forth, as  
22 though set forth in this cause of action.

23          47. Zucchella used the name and identify of Olympusat's employee (Arturo  
24 Chavez) and Mohler's name and identity for her commercial benefit.

25          48. Olympusat and Mohler did not consent to the use of these names by  
26 Zucchella. Neither Arturo Chavez or Mohler is or was ever an employee of PBF.

1           49. As a proximate result of the aforementioned wrongful conduct, as herein  
2 alleged, Olympusat Mohler has been damaged in an amount not yet determined or  
3 ascertainable.

#### 4                                   **SEVENTH COUNTERCLAIM**

##### 5                   **Unfair Trade Practices in Violation of §501.204(1), Florida Statutes** 6                   **(BY OLYMPUSAT AGAINST ZUCHELLA)**

7           50. Defendants reallege and incorporate herein by reference each and every  
8 paragraph of the general allegations, paragraphs 1 through 49 hereinabove set forth, as  
9 though set forth in this cause of action.

10          51. Zucchella solicited, advertised, offered and provided a service and  
11 therefore were engaged in trade or commerce as defined by §501.203, Florida  
12 Statutes.

13          52. Olympusat was a consumer as defined by §501.203.

14          53. Zucchella, as an employee of Olympusat, owed a fiduciary duty to  
15 Olympusat to conduct business in Olympusat's best interests and to bargain for  
16 suitable content at the lowest possible license fee.

17          54. The kickback paid by Mr. Nunez and any additional kickback improperly  
18 increased the license fees paid by Olympusat for content acquired by Zucchella.

19          55. The kickback paid by Mr. Nunez and any additional kickback are in a  
20 violation of §838.15, Florida statutes and as such are a per se unfair trade practice.

21          56. As a direct and proximate result of the unfair trade practices, Olympusat  
22 has been damaged in the sum of not less than \$10,000.

23          57. Olympusat is entitled to recover its reasonable attorney's fees and costs  
24 pursuant to §501.2105, Florida Statutes.

**EIGHTH COUNTERCLAIM**

**Unfair Trade Practices in Violation of §772.103 and 772.104, Florida Statutes  
(BY OLYMPUSAT AGAINST ZUCCHELLA)**

58. Defendants reallege and incorporate herein by reference each and every paragraph of the general allegations, paragraphs 1 through 57 hereinabove set forth, as though set forth in this cause of action.

59. Zucchella enriched herself by way of the kickback received from Mr. Nunez and possibly others in violation of §838.15, Florida Statutes.

60. Olympusat was a consumer as defined by §501.203.

61. Florida Statute §838.15 provides that a person commits the crime of commercial bribe receiving if the person solicits, accepts, or agrees to accept a benefit with intent to violate a statutory or common-law duty to which that person is an agent of another.

62. As an employee, Zucchella was acting as an agent of Olympusat.

63. Florida statute §772.104 provides for a civil remedy for a criminal practice such as the acts committed by Zucchella.

64. Olympusat has suffered and will continue to suffer damages as a result of Zucchella's conduct.

65. Olympusat is entitled to recover damages in an amount equal to threefold of the amount of the kickback received and any additional kickback, plus its reasonable attorneys' fees and costs.

**NINTH COUNTERCLAIM**

**Breach of Fiduciary Duty**

**(BY OLYMPUSAT AGAINST ZUCCHELLA)**

66. Defendants reallege and incorporate herein by reference each and every paragraph of the general allegations, paragraphs 1 through 65 hereinabove set forth, as though set forth in this cause of action.

67. As VP of Programming Acquisitions, Plaintiff owned a fiduciary duty to always act in the best interest of Olympusat and to always protect the business relationship, clients, and assets of Olympusat.

68. Olympusat alleges that Plaintiff committed the numerous detrimental acts described herein with either intentional malice or with such gross negligence, as to severely impact product quality and production, thereby costing Olympusat business opportunities, clients, goodwill, and lost revenues.

69. By entering into agreements, including without limitation with Mr. Nunez, to receive kickbacks, referral fees, or other compensation for referring content producers to Olympusat, Zucchella did not act in Olympusat's best interest and caused it harm.

70. Olympusat alleges that Zucchella breached her fiduciary duty by performing her job duties with such gross negligence, or intentional malice, as to harm Olympusat and disrupt its business operations.

71. As a proximate result of the aforementioned acts committed by Plaintiff, Olympusat has been damaged in an amount according to proof at trial, and in addition to interest, penalties, expenses and costs of suit.

## TENTH COUNTERCLAIM

## Breach of Duty of Care and Loyalty

**(California Labor Code §§ 2858, 2860, and 2863)**

**(BY OLYMPUSAT AGAINST ZUCHELLA)**

72. Defendants reallege and incorporate herein by reference each and every paragraph of the general allegations, paragraphs 1 through 71 hereinabove set forth, as though set forth in this cause of action.

73. California Labor Code § 2858, requires every California employee to “...exercise a reasonable degree of skill, unless his employer has notice, before employing him, of his want of skill.” Olympusat alleges that Plaintiff did not exercise



1 a reasonable degree of skill in performing her job duties and more likely intentionally  
2 sought to harm Olympusat and disrupt its operations.

3 74. California Labor Code § 2860 provides that “Everything which an  
4 employee acquires by virtue of his employment, except the compensation which is  
5 due to him from his employer, belongs to the employer, whether acquired lawfully or  
6 unlawfully, or during or after the expiration of the term of his employment.” By  
7 accepting kickbacks and other compensation (aside from her compensation from  
8 Olympusat), Plaintiff intentionally sought to harm Olympusat and deprive it of  
9 property rightfully belonging to Olympusat.

10 75. California Labor Code § 2863, requires every California employee  
11 “...who has any business to transact on his own account, similar to that entrusted to  
12 him by his employer, shall always give the preference to the business of the  
13 employer.” During the entire time Plaintiff was employed by Olympusat, she was  
14 concurrently a managing member of her own company PBF and did not disclose this  
15 to Olympusat.

16 76. As a proximate result of the aforementioned acts committed by Plaintiff,  
17 Olympusat has been damaged in an amount according to proof at trial, and seeks a  
18 return of all wages paid to Plaintiff, in addition to interest, penalties, expenses, and  
19 costs of suit.

## 20 **PRAYER FOR RELIEF**

21  
22 WHEREFORE, Olympusat and Mohler pray for judgment against Zucchella as  
23 follows:

24 1. For compensatory damages, pre- and post-judgement interest owed, and  
25 other incidental and consequential damages in a sum to be determined at the time of  
26 trial;

2. For special damages in a sum to be determined at the time of trial
3. For punitive and exemplary damages according to proof at the time of trial;
4. For an order of restitution requiring defendants to restore to plaintiffs all sums which plaintiffs paid to defendants as a result of their unfair competition;
5. For actual damages pursuant to §501.211(2), Florida statutes
6. For monetary damages, interest, cost, attorney's fees pursuant to §501.211(2) and §501.2105, Florida statutes.
7. For an award of costs of suit, including reasonable attorneys' fees, incurred in this litigation pursuant to California Code of Civil Procedure §1021.5;
8. For prejudgment interest; and
9. For such other and further relief as the Court should deem just and proper;
10. A trial by jury is demanded.

DATED: October 25, 2019

LATHROP GAGE LLP

By: /s/ Laura Reathaford

Laura Reathaford

Caroline Sayers

Attorneys for Defendants and Counterclaimants  
OLYMPUSAT, INC. AND TOM MOHLER

# ***EXHIBIT A***

**DECLARATION OF JOEL NUNEZ**

I, Joel Nunez, state and declare as follows:

1. I am and have since 2006 founded and worked for DMM Films as its Executive Producer. I have personal knowledge of the statements and information contained in this declaration, which are known by me to be true and correct. If called as a witness, I could and would competently testify thereto.

2. In and around May 2017, Maria Luz Zucchella told me during a telephone call that if I (on behalf of DMM Films) wanted to work on the *Hacienda del Rey* project (a scripted series with multiple episodes), I would have to pay Ms. Zucchella \$10,000.00 per episode as a kickback to her personally. She said that if I did not pay these kickbacks to her, she would block me from working on any Olympusat projects.

3. I did not understand or believe that Olympusat required these personal payments to Ms. Zucchella nor did I immediately tell anyone at Olympusat about Ms. Zucchella's request.

4. Based on what Ms. Zucchella told me, I believed that the only way I could work with Olympusat would be to pay Ms. Zucchella the kickbacks she requested. Thus, in and around November 2017, I paid Ms. Zucchella \$10,000 for the first Pilot episode. I believed there would be approximately 13 episodes produced which meant I would be required to pay Ms. Zucchella \$130,000.00 in order to work on this project.



# ***EXHIBIT B***



560 Village Boulevard  
Suite 250  
West Palm Beach, FL 33409  
Phone (561) 684-5657  
Fax (561) 684-9690

April 1, 2014

Maria Luz Zuchella  
2331 5<sup>th</sup> street  
Santa Monica, CA, 90405

Dear Maria Luz,

On behalf of Olympusat Inc., I would like to offer you employment with us for the position outlined below. This letter sets forth the terms and conditions of your employment. The enclosed Employee Handbook is incorporated by reference. By signing this letter, you expressly agree to all the terms and conditions within the Employee Handbook unless expressly modified within this letter.

This employment letter supersedes any and all prior written or oral agreements previously existing between the parties hereto with respect to matters of any kind related to the business of Olympusat, Inc. including its affiliated companies by way of example and not limitation, Ocean Communications, Ocean New Media, or any other affiliated entity, and their officers, directors, agents, attorneys, servants, employees, shareholders, successors, assigns and affiliates

Position:

The position is VP of Programming Acquisitions which is owned by Olympusat, Inc. Your employment is based on your experience and expertise in the field. Expectations and the structure of the employment is one that we anticipate to be an asset to our team. Your status is that of an employee at-will. This means that Olympusat can terminate your employment at any time, for any reason, or no reason, with or without cause, without any advance warning or notice. At-will employment also means that you can terminate your employment at your will for any reason.

Job Responsibilities:

Your responsibilities as VP of Programming Acquisitions will include by way of example and not limitation, all aspects of Programming Acquisitions including to develop leads, negotiate the contracts, request contracts from Olympusat legal department, follow up and coordinate with licensor/ seller, legal, and back-office departments until licensing agreement is executed. Additionally, your responsibilities will include:

- As applicable, identify buyers and conduct negotiations for the sale of Spanish language movies originally produced by Olympusat and/or its affiliated companies to domestic and foreign licensees;





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- Secure rights for High Definition (“HD”) Spanish language (or in any other language as may be required) content (“Content”) or as applicable, the rights to convert SD films to HD (“Conversion”) for distribution on Olympusat affiliated networks and other third party distribution outlets through direct or sublicensing agreements, across multiple platforms useful for the distribution of video content including without limitation, all platforms for television, mobile and cellular, Broadband and Internet, IPTV, VOD, SVOD, PPV, or other such useful but undeveloped platforms.
- Identify licensors of Spanish language films suitable for distribution on Olympusat’s affiliate networks and distribution outlets willing to enter into agreements to convert their standard definition films to HD; or dubbing deals. For absence of doubt, these licensors may be those already under contract with Olympusat or an affiliated company, or new licensors; and
- *Other duties as may be assigned from time to time.*

Supervisor:

You will report to Tom Mohler, CEO of Olympusat, with regular contact with the support staff of Olympusat and related companies.

Confidentiality and Non-Competition:

As a condition of your employment with Olympusat, Inc., you expressly agree to work exclusively for Olympusat and agree to the following:

You have not entered into any agreements with any current or prior employers, companies, or others that restrict such person’s ability to perform the duties of your employment and the execution and performance of the duties of your employment will not violate any agreements or understandings to which you are a party. You further agree that you will not perform any work for any third party during your employment that would prevent the performance of your duties hereunder or in any way conflict with the interests of Olympusat.

During your employment you shall not use or disclose to any third party any confidential information about Olympusat, its employees, agents, premises, processes, customers, or the business of Olympusat. “Confidential Information” includes any information not publicly known that directly or indirectly provides Olympusat with a potential competitive advantage, or disclosure





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of which could potentially harm Olympusat including, but not limited to Proprietary Information (as defined below). "Confidential Information" does not include general industry knowledge or skills acquired by you or information that becomes publicly known through no action or inaction of you. You understand that any breach of this provision will cause irreparable harm to Olympusat.

Proprietary Information:

You understand that your employment is specifically and solely for purposes of Olympusat's "business" and as such you shall not have any right, claim or interest to any invention, process, method, data, work, design, program, manual, invention, product, technical data, specifications, sales projections and analyses, files, lists, customer lists and data, records, correspondence, contact persons, customer needs, current goods and services supplied to customers, goods and services under consideration and development for possible future sale to customers, research and development projects or sources of products and any other information pertaining to or concerning the business of Olympusat, its suppliers and customers or that is authored, invented, created or produced as a result of employment Olympusat ("Proprietary Information") and covenants not to disclose such information to any third party at any time during or after your employment without express authorization from Olympusat. You shall execute any and all documents reasonably required to vest title to such items in Olympusat.

You shall not use or disclose Confidential Information or Proprietary Information supplied to Olympusat or you except in the performance of your employment.

Upon termination of your employment, or as otherwise requested by Olympusat, you shall return to Olympusat all materials referenced above, including without limitation all Proprietary Information, office equipment, together with all copies, notes or other recordings of marketing, programming or creative elements.

No additional conflicting business:

Your employment is based on your agreement not to engage or transact any business independent of that which you are performing for Olympusat. You further agree not solicit or compete with our company in any manner and that all business opportunities will flow through our company. You further agree not to be paid any compensation from or through third parties for company related business or in areas that could be competitive or conflicting. Conduct contrary to this will be a material breach of this Agreement, which may subject you to immediate termination and such compensation will be expected to be turned over to Olympusat.



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Compensation:

In exchange for your employment, Olympusat will offer the following compensation package:

*Base Salary:* Olympusat will pay you a semi-monthly salary at a rate of \$10,000.00 (pre-tax) per month (\$120,000 annualized). Your performance will be evaluated on an annual basis on the anniversary of your hire date with increases as eligible per the company handbook.

*Severance Pay:* Olympusat agree to offer you a severance package if you are terminated for anything but cause, you will receive five (5) months of full pay *plus* for each additional year you are employed by Olympusat beyond 2014 (meaning commencing in 2015) you will receive an additional half month (2 weeks) of salary per year thereafter of severance pay. In addition to the payment of salary as set forth above, your health benefits will be maintained during the severance period.

Commissions:

- (i) Olympusat will pay you a commission of thirty percent (30%) on the net sales price of Olympusat or its affiliated companies original movies you sell to domestic and foreign licensors. For absence of doubt, commission will be paid on the share of monies from such movies sold by you that is actually received by Olympusat.
- (ii) Olympusat will pay you a commission of five percent (5%) of the gross network revenue actually received by Olympusat, or its affiliated entities, for new business directly related to your efforts. This shall be understood to include new business for Olympusat, Ocean or the OTT project.
- (iii) You may be entitled to additional commissions or a bonus as mutually agreed upon with your supervisor and pursuant to subsequent agreements between you and your supervisor.

Start Date is mutually agreed to be the following:

Tuesday, April 1, 2014 regardless of when this offer letter is signed by each party hereto.

Location/Work Shift:

You will primarily work from your home office location in Santa Monica, CA but may be required to do some limited business travel (domestically/internationally) as required by Olympusat.





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Benefits:

Company benefits information will be emailed to you once you have signed this offer letter and returned a scanned copy back to the Director of Human Resources. Olympusat will waive the 90 day benefits waiting period and allow you to become benefits eligible on your start date. You will have the option at that time to enroll in any of the following benefits: medical, dental, vision, basic life & ADD, short term disability, long term disability, 401(k) and/or AFLAC.

PTO (paid time off):

Olympusat will agree to accrue your annual PTO to be two (2) days per month as of April 1, 2014 plus you will receive an additional six (6) days of vacation. It will begin accruing on the 1<sup>st</sup> day of the month following your date of hire, and cease accruing at the time your employment ends. To be clear you, if you receive severance pay, you will not accrue PTO during a severance period.

Additional Terms:

Olympusat will reimburse normal work related office expenses, and travel expenses and you are responsible for providing proper receipts and following any Olympusat travel and expense reimbursement policies, which shall be provided to you. Your travel for employment purposes is conditioned upon your compliance with Olympusat travel and reimbursement policies.

Prior Engagement and Release

Prior to your employment, Olympusat engaged you as a consultant under a Consulting Agreement by and between Perro Blanco Films (PBF) and Ocean New Media, LLC effective as of May 21, 2009. The parties hereto acknowledge, agree and accept that all obligations of one party to the other have been fulfilled to a satisfactory degree and there are no outstanding obligations owed by or to either party thereunder, with the following exception:

- (i) Ocean New Media, LLC Equity: Under the terms of your prior consulting agreement, referenced above, you were eligible to receive equity in Ocean New Media in the event you met certain conditions. You shall be entitled to receive this at such time as Olympusat is prepared to issue the equity. Specifically the agreement stated:

*"Ocean New Media will give Consultant an equity interest ("Equity") in Ocean New Media of up to ten percent (10%) during the Term, in accordance with the applicable equity terms in this provision, and as expressed on Exhibit A hereto attached. The Equity shall be calculated on an annual basis for each year of the term, whereby (i) the numerator shall be the total number of films actually contracted for HD conversion with Ocean New Media directly as a result of*



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*Consultant's engagement; and (ii) the denominator shall be the total number of films actually under contract for HD conversion with Ocean New Media, whether directly or indirectly as result of Consultant's engagement."*

You have indicated that as a result of your exclusive employment with Olympusat, you will be transferring ownership of Perro Blanco Films to your husband Gabriel Simon, who will operate the business as Perro Blanco for purposes of construction, contracting and real estate purposes. Furthermore, Mr. Simon has done business under Perro Blanco during the last two years. Moving forward, the company will be used for purposes of construction, contracting and real estate services only. Olympusat hereby agrees to release Perro Blanco from liability for any acts or omissions as of your hire date, April 1, 2014, and for any business related to construction, contracting and real estate in the past or moving forward. To be clear, this does not release you personally from any acts or omissions, or fraudulent activity, and applies to construction, contracting and real estate services of Perro Blanco alone. You agree, acknowledge and accept the forgoing exemption from liability excludes the release contain in the consulting agreement dated as of May 21, 2009.

Please review this letter and corresponding documents. If it is acceptable, print out two copies, sign and date both, then return both for my counter signature along with a scanned copy as previously requested herein. Olympusat looks forward to your joining our team. I can be reached at 561-249-5211 should you wish to discuss any of the elements of this letter.

By Olympusat, Inc.



Katie Belme, PHR  
Director of Human Resources

Date:

4-2-2014

By Employee:

  
Maria Luz Zucchella

Date:

4-2-2014

# ***EXHIBIT C***



Search All

Sign Up Log In



Perro Blanco Films

- Home
- Overview
- Staff
- Social Media
- Movies
- Awards
- Assets
- Award Events

## Overview

- Santa Monica, California, United States
- 1 310 779 7916

## Assets

Perro Blanco Fi...

## Staff



Maria Luz ZUCCHELLA

Founder



Juan Bautista Zucchella

Director Acquisitions



Tom MOHLER



Arturo CHAVEZ

General Manager

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San Francisco, California 94133



# ***EXHIBIT D***

\*\*\*\*\* Duplicate Receipt \*\*\*\*\*

\*\*\*\*\* START RECEIPT \*\*\*\*\*

Welcome to Best Buy #137  
1501 N VICTORY PL  
BURBANK, CA 91502

0137 041 1084 05/23/18 11:24

RETURN

Original Tran 0109 068 1676 05/21/18

6080223	13-AE012DX	1279.99-
	HP SPECTRE X360 13-AE012DX	
	Sales Tax	121.60-
6715977	CA RECYCLE	5.00-
	CA RECYCLE TIER 1	
	Sales Tax	0.00
		-----
	Subtotal	1284.99-
	Sales Tax	121.60-
		=====
	Total	1406.59-

\*\*\*\*\*3808 Keyed USD\$ 1406.59  
REFUND MASTERCARD  
Manual

My Best Buy  
Member ID 3310247479



**PROOF OF SERVICE**

*Maria Luz Zucchella v. Olympusat, Inc.; et al.*  
 U.S.D.C. Case No. 2:19-cv-07355-DSF-PLA

STATE OF CALIFORNIA           )  
   )  
 COUNTY OF LOS ANGELES    )           ss.

I am employed by Lathrop Gage LLP in the County of Los Angeles, State of California. I am over the age of 18 and not a party to this action. My business address is: 1888 Century Park East, Suite 1000, Los Angeles, CA 90067. On October 17, 2019, I served the following document(s): **DEFENDANTS' ANSWER TO THE UNVERIFIED COMPLAINT, AFFIRMATIVE DEFENSES, AND COUNTERCLAIMS – JURY TRIAL DEMANDED** on the following party(ies):

Dan Stormer  
 Barbara Enloe Hadsell  
 Theresa Zhen  
 Tanya Sukhija-Cohen  
 HADSELL STORMER RENICK & DAI  
 LLP  
 128 N. Fair Oaks Avenue  
 Pasadena, CA 91103  
 Tel.: 626.585.9600  
 Fax: 626.577.7079  
 Email: [dstormer@hadsellstormer.com](mailto:dstormer@hadsellstormer.com)  
[bhadsell@hadsellstormer.com](mailto:bhadsell@hadsellstormer.com)  
[tzhen@hadsellstormer.com](mailto:tzhen@hadsellstormer.com)  
[tanya@hadsellstormer.com](mailto:tanya@hadsellstormer.com)

Lindsey Wagner  
 SCOTT WAGNER AND ASSOCIATES  
 3500 W. Oliver Avenue, Suite 300  
 Burbank, CA 91505  
 Tel.: 213.337.5200  
 Fax: 561.653.0020  
 Email: [LWagner@scottwagnerlaw.com](mailto:LWagner@scottwagnerlaw.com)  
 Attorneys for Plaintiff  
 MARIA LUZ ZUCHELLA

Attorneys for Plaintiff  
 MARIA LUZ ZUCHELLA

- ☐ **VIA FEDERAL EXPRESS:** I caused such documents to be collected by an agent for to be delivered to the address(es) set forth below.
- ☒ **VIA EMAIL:** By transmitting via e-mail through the CM-ECF electronic transmission service the document(s) listed above to the person(s) at the email address(es) set forth above.
- ☐ **VIA HAND DELIVERY:** I caused such document(s) to be hand delivered to the person(s) at the address(es) set forth below.
- ☒ **FEDERAL:** I declare that I am employed in the office of the member of the bar of this court at whose direction service was made.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on October 25, 2019, at Los Angeles, California.

*SdCampbell*

Sharlen D. Campbell