

PEOPLE OF THE STATE OF NEW YORK
OFFICE OF THE ATTORNEY GENERAL
LABOR BUREAU

IN THE MATTER OF THE INVESTIGATION
OF LETITIA JAMES, ATTORNEY GENERAL
OF THE STATE OF NEW YORK,

OF

AMERICAN SALES AND MANAGEMENT
ORGANIZATION, LLC, d/b/a EULEN AMERICA

ASSURANCE OF
DISCONTINUANCE
PURSUANT TO
EXECUTIVE LAW § 63(15)

AOD No. 21-039

ASSURANCE OF DISCONTINUANCE

In 2019, the Office of Attorney General of the State of New York (the “Attorney General”) commenced an investigation of AMERICAN SALES AND MANAGEMENT ORGANIZATION, LLC, d/b/a EULEN AMERICA, (“Eulen”) pursuant to New York Executive Law § 63(12) (the “Investigation”). The Attorney General examined whether Eulen failed to pay its employees required minimum wages and overtime wages in violation of Article 6 (regarding payment of wages) and Article 19 (Minimum Wage Act) of the New York Labor Law and the New York Codes, Rules, and Regulations (“N.Y.C.R.R.”), Title 12, Chapter II, Subchapter B, Part 142 (“Miscellaneous Wage Order”), and whether Eulen failed to pay its employees the required minimum wage as established by the Port Authority of New York and New Jersey (“Port Authority Minimum Wage”). *See* Port Authorities Law 40:68A-1 *et seq.* and Port Authority Rules for Implementation of Minimum Wage Policy for Non-Trade Labor Service Contracts – LaGuardia Airport, John F. Kennedy International Airport and Newark Liberty International Airport.

This Assurance of Discontinuance (“Assurance”) contains the Attorney General’s Findings in connection with the Investigation and the relief agreed to by the Attorney General and Eulen (collectively, the “parties”).

RELEVANT STATUTORY FRAMEWORK

1. The New York Labor Law requires that employers pay covered employees the minimum wage, and one-and-one-half times an employee's regular rate for hours worked over forty in a week. NYLL § 652; 12 N.Y.C.R.R. § 142. Where an employer requires its employees to wear a uniform, the employer must launder the employee's uniform, or ensure payment to an employee of a laundry maintenance amount in addition to the minimum wage. 12 N.Y.C.R.R. § 142-2.5.

2. The Port Authority of New York and New Jersey governs work for those at ports of entry like JFK International Airport and can set a minimum wage above what is required by the New York State law for workers. *See* Port Authorities Law 40:68A-1 *et seq.* and Port Authority Rules for Implementation of Minimum Wage Policy for Non-Trade Labor Service Contracts – LaGuardia Airport, John F. Kennedy International Airport and Newark Liberty International Airport. Eulen is an employer government by the Port Authority and is required to pay its employees the Port Authority Minimum Wage.

FINDINGS

Introduction and Background

3. Eulen is a Limited Liability Company that does business in New York at the John F. Kennedy International Airport.

Practices Related to Payment of Wages

4. The Attorney General issued a subpoena pursuant to the Investigation in November 2019. The Investigation revealed that from approximately February 21, 2014, through May 11, 2020, Eulen failed to pay its employees minimum wage and the legally-required overtime rate for

all hours worked over 40 in a workweek by failing to reimburse its workers for their uniform maintenance/laundrying.

5. During the workweek of September 14, 2015, Eulen failed to pay its workers the required Port Authority Minimum Wage.

6. Based on the foregoing, the Attorney General has concluded that Eulen engaged in persistent and repeated activity in violation of Executive Law § 63(12), the New York Labor Law and implementing regulations, including the Miscellaneous Wage Order.

7. Eulen admits the Findings of the Attorney General set forth in paragraphs 4 through 6 herein.

8. The Attorney General finds the relief and agreements contained in this Assurance appropriate and in the public interest. Therefore, the Attorney General is willing to accept this Assurance pursuant to Executive Law § 63(15), in lieu of commencing a statutory proceeding for violations Executive Law § 63(12) and 12 N.Y.C.R.R. § 142, based on the conduct described above during approximately February 21, 2014, through May 11, 2020.

IT IS HEREBY UNDERSTOOD AND AGREED, by and between the parties:

RELIEF

Compliance with Wage and Hour Law and Other Laws Governing Employment Practices

9. Eulen hereby acknowledges that it understands and will comply with all applicable federal, state and local laws, including but not limited to the Fair Labor Standards Act, New York State Labor Law, the Miscellaneous Wage Order, and the Port Authority Minimum Wage. Eulen agrees and acknowledges that any violation of such laws is a violation of the Assurance, and that

the Attorney General thereafter may commence the civil action or proceeding contemplated herein, in addition to any other appropriate investigation, action, or proceeding.

Employee Contact Information

10. Eulen will deliver within thirty days of the date of execution all contact information for workers employed by the company at any point from February 21, 2014, through May 11, 2020.

Retaliation

11. Eulen agrees that it will comply with New York Labor Law § 215 and will not in any manner discriminate or retaliate against any of its employees, including but not limited to current or former employees who cooperated with or are perceived to have cooperated with the Attorney General's Investigation. Eulen agrees not to discharge, refuse to hire, or take any adverse action against any of these employees except for legitimate, non-discriminatory reasons unrelated to the Attorney General's Investigation or to any past, present or future participation in any activities involving the exercise of their legal rights under the New York State Labor Law and New York Codes, Rules, and Regulations.

Posting

12. Eulen agrees to post all notices for employees as required by law, including those setting forth employee rights with respect to wage and hour laws and the right to be free from retaliation.

Recordkeeping

13. Eulen agrees to comply with the six years recordkeeping requirements as set forth in New York Labor Law and 12 N.Y.C.R.R. Part 142.

14. Eulen further agrees to maintain for six years: (a) all documents employees must review and/or complete in order to be employed, including but not limited to required notices, employee manuals and acknowledgements of receipt thereof; (b) documents created by Eulen related to employment practices, including but not limited to payroll records, revenue and expense reports, time records, weekly schedules, records of reimbursed employee expenses, records of distributed gratuities, notices provided to employees regarding paid sick leave, records showing accrual and use of paid sick leave, tax documents, including but not limited to New York State Department of Taxation and Finance NYS-45 Quarterly Combined Withholding, Wage Reporting, and Unemployment Insurance Returns, and proof of purchase of workers' compensation and disability insurance for all employees; and (c) information records concerning employee complaints regarding pay practices, including but not limited to a complaint log and any underlying documents relating to the complaint log.

Monetary Payment

15. Eulen agrees to pay \$590,000.00 (the "Settlement Funds") in resolution of the Attorney General's investigation. This amount shall be paid directly to the Attorney General and will be used for distribution as restitution to current or former employees. The Settlement Funds must be paid no later than ten days after the execution of this agreement.

16. The payment must be in the form of a wire transfer and in accordance with wiring instructions to be provided by the Attorney General prior to the required date of payment.

17. The Attorney General has the sole discretion to determine which employees shall be eligible for restitution and damages and to determine the amount of such restitution and

damages. The Attorney General will provide Eulen with an accounting of all amounts issued to payees.

18. Eulen agrees to provide all contact information and person identification information in its possession for each employee, as well as to provide all additional reasonable cooperation necessary to locate current and former employees who may be eligible for restitution. Eulen further agrees to provide current employees any information related to the settlement and/or payment pursuant to the settlement as OAG may request.

Claims Administrator

19. Within 20 days of the execution of this AOD Eulen shall, at its own expense, retain an independent third-party administrator with expertise in evaluating claims (“Claims Administrator”) who shall be responsible for identifying and contacting eligible workers and preparing and distributing restitution payments. The Claims Administrator shall be subject to the advance approval of OAG, whose approval shall not be unreasonably withheld.

20. Within 20 days of being retained by Eulen, the Claims Administrator shall provide to OAG a written plan reflecting the processes and procedures that the Claims Administrator will follow to contact claimants, verify contact information of claimants, communicate with and collect and maintain necessary information from claimants, and distribute payments to claimants (“Administrator’s Plan”). Upon OAG’s approval, the Administrator shall implement the processes and procedures set forth in the Administrator’s Plan.

MISCELLANEOUS

Representations and Warranties

21. The Attorney General has agreed to the terms of this Assurance based on, among other things, the representations made to the Attorney General by Eulen and its counsel and the Attorney General's own factual investigation as set forth herein. Eulen represents and warrants that neither it nor its counsel has made any material representations to the Attorney General that are inaccurate or misleading. If any material representations by Eulen or its counsel are later found to be inaccurate or misleading, this Assurance is voidable by the Attorney General in its sole discretion.

22. No representation, inducement, promise, understanding, condition, or warranty not set forth in this Assurance has been made to or relied upon by Eulen in agreeing to this Assurance.

23. Eulen represents and warrants, through the signature below, that the terms and conditions of this Assurance are duly approved, and execution of this Assurance is duly authorized.

General Principles

24. Nothing in this Agreement shall relieve Eulen of other obligations imposed by any applicable state or federal law or regulation or other applicable law.

25. Nothing contained herein shall be construed to limit the remedies available to the Attorney General in the event that Eulen violates the Assurance after the date of execution.

26. This Assurance may not be amended except by an instrument in writing signed on behalf of the parties to this Assurance.

27. In the event that any one or more of the provisions contained in this Assurance shall for any reason be held by a court of competent jurisdiction to be invalid, illegal, or unenforceable in any respect, in the sole discretion of the Attorney General, such invalidity, illegality, or unenforceability shall not affect any other provision of this Assurance.

28. Eulen acknowledges that it has entered this Assurance freely and voluntarily and upon due deliberation and with the advice of counsel.

29. This Assurance shall be governed by the laws of the State of New York without regard to any conflict of laws principles.

30. The Assurance and all its terms shall be construed as if mutually drafted with no presumption of any type against any party that may be found to have been the drafter.

31. All notices, reports, requests, and other communications to any party pursuant to this Assurance shall be in writing and shall be directed as follows:

From Eulen to the Attorney General:

New York State Office of the Attorney General, Yadira Filpo, Legal Assistant, Labor Bureau, 28 Liberty Street, Fl. 15 New York, NY 10005, or Yadira.filpo@ag.ny.gov.

From the Attorney General to Eulen:

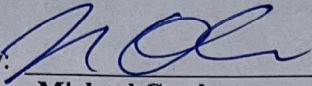
Susan Norton, Allen, Norton, & Blue, 121 Majorca Ave., Coral Gables, FL 33134, or snorton@anblaw.com.

Any changes in the person to whom communications should be specifically directed shall be made in writing in advance of the change.

32. This Assurance may be executed in counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same agreement.

IN WITNESS WHEREOF, this AOD is executed by the parties hereto as follows.

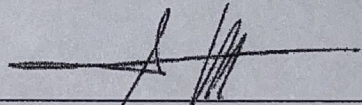
LETITIA JAMES
Attorney General of the State of New York

By: 

Michael Cowles
Assistant Attorney General
Labor Bureau
28 Liberty Street
New York, New York 10005
Phone: (212) 416-8703

Dated: ~~June~~ ^{July} 8, 2020

American Sales and Management Organization, LLC, d/b/a Eulen America

By: 

Xavier Rabell
CEO, Eulen America
7200 Corporate Center Dr #206
Miami, FL 33126

Dated: June ~~30~~ ³⁰ 2021