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COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, ss.

SUPERIOR COURT
CIVIL ACTION
No. 2281CV00230

JAMES RALEIGH

vs.

LIGHTHOUSE LIFE SCIENCE PARTNERS, LLC, and another[1]

MEMORANDUM OF DECISION AND ORDER ON THE PARTIES' CROSS MOTIONS FOR PARTIAL SUMMARY JUDGMENT (PAPER #s 19 and 20)

Plaintiff, James Raleigh ("Raleigh") seeks damages for breach of contract, misclassification under G. L. c. 149, § 148B (the "Independent Contractor Statute"), and unpaid wages pursuant to G. L. c. 149, § 148 (the "Wage Act"), arising from work he performed pursuant to a contract with the defendant, Lighthouse Life Science Partners, LLC ("Lighthouse"), under which Raleigh served as an "Independent Sales Agent." Raleigh contends that Lighthouse unilaterally changed his compensation in August of 2021 in violation of the terms of the contract and also misclassified him as an independent contract, not an employee. Defendants contend that the change in compensation was permitted under the contract and that Raleigh is not an employee covered by the Wage Act because he is a (minority) shareholder of Lighthouse.

Raleigh moves for partial summary judgment on Counts I (misclassification), II (unpaid wages), and III (breach of contract) of his Amended Complaint. Defendants oppose and cross move for partial summary judgment dismissing those counts. After a hearing on May 6, 2024 in which both parties were heard and review of the pleadings, and for the reasons stated below, the

[1] Douglas Manchester.

Plaintiffs' motion is **DENIED**, and the Defendants' motion is also **DENIED**.

BACKGROUND

The following undisputed facts are drawn from the Superior Court Rule 9A(b)(5) Statement of Material Facts and exhibits of the Joint Appendix and are construed in the light most favorable to the non-moving party. See Bulwer v. Mount Auburn Hosp., 473 Mass. 672, 674 (2016).

I. Plaintiff's Undisputed Material Facts

a. Corporate Background

Prior to the start of Lighthouse's operations, Raleigh owned and operated Raleigh Sales LLC ("RSC"). Defendant Douglas Manchester ("Manchester") owned and operated Unimed-Midwest, Inc. ("Unimed").

RSC and Unimed had a business relationship. Unimed was a master distributor of disposable medical products that were primarily cleaning and disinfectant-related medical products. RSC was a distributor of Unimed's products that would sell products to customers, and Unimed would fulfill the sales order. RSC's customers were predominantly in the life sciences industry.

Lighthouse was organized in Delaware on June 7, 2017. In 2017 or 2018, Manchester and Raleigh discussed Raleigh becoming a member of, and working for, Lighthouse. On May 1, 2018, Manchester, his son Christian Manchester ("Christian"), and Raleigh entered in a Limited Liability Company Agreement of Lighthouse Life Science Partners, LLC ("LLC Agreement"). Under that LLC Agreement, Manchester was granted ownership of 70 percent of common shares, Manchester's son was granted 20 percent ownership, and Raleigh was granted 10 percent ownership.

Lighthouse's Application for Registration filed with the Secretary of the Commonwealth of Massachusetts describes the general character Lighthouse's business as, "Distributor of cleaning/disinfecting products in the vivarium market." In its interrogatory answers, Lighthouse described the nature of its business as "provid[ing] Environmental Infection Protection products and services to the Laboratory Animal Research (LAR) market[,]" which "includes universities, research organizations, hospitals and biotech companies involved in the breeding, housing and use of animals within vivariums for the purpose of scientific research and discovery."

Throughout Raleigh's tenure, Lighthouse generated revenue by selling Lighthouse products to both distributors and directly to customers. All revenue that Lighthouse generated during Raleigh's tenure was from the sale of products and shipping revenue arising from the sale of products.

b. Raleigh's work for Lighthouse

On April 23, 2018, Raleigh entered into an "Independent Sales Agent Agreement" ("2018 ISA Agreement") with Lighthouse. His base salary was $140,000 per year. The 2018 ISA Agreement also states:

- "Termination of your ISA by the Company until you reach the age of 65 will be limited to mutual agreement, breach of this Agreement or the Non-Compete & Confidentiality Agreement executed herewith or Cause as defined in the attachment hereto."
- "This is a personal services contract and you may not assign your duties hereunder to any other Person."

When Lighthouse began operating in May 2018, Christian Manchester was Lighthouse's President and reported to his father. Robert Deck ("Deck") was Lighthouse's Senior VP of Sales and reported to Christian, and anyone who had a sales role, including Raleigh, reported to Deck.

In or about February 2020, Joseph Scuccimarri ("Scuccimarri") replaced Deck as Lighthouse's Senior VP of Sales.

When Raleigh began performing services for Lighthouse, substantially all of RSC's prior customers were transitioned to become Lighthouse customers. Raleigh made sales on behalf of Lighthouse both direct to customers and indirectly to distributors. Everyone on Lighthouse's sales team, other than Raleigh, was classified by Lighthouse as an employee.

On May 1, 2018, the day that Lighthouse began operating in earnest, Manchester emailed Raleigh about Lighthouse's customer transition plan and stated:

- "Did you call your customer contacts today? This was not the plan I sent out per the email below. YOU CAN NOT TAKE ACTIONS WHICH ARE INCONSISTENT WITH MY INSTRUCTIONS."

On May 30, 2018, during the transition of RSC's customers to Lighthouse, Christian instructed Raleigh as follows:

- "You need to be very specific that Jim/Don/Greg [Raleigh] have joined the Lighthouse organization as employees and that RSC is going away and that we will transition the business without interruption to their service. It is important that you present this to customers accurately."

About three weeks later, on June 18, 2018, Christian again instructed as follows:

- "Guys — I think I have said this many times now. You need to stop referring to the deal as a merger. It was NOT a merger. You three joined as employees of Lighthouse. It is extremely important that you get this right. Stop referring to this as a merger of acquisition — please.

On or about October 1, 2018, Lighthouse placed Raleigh on a "Performance Plan." On December 5, 2018, Manchester emailed Raleigh referencing various aspects of Lighthouse's sales process and Raleigh's Performance Plan, and stated in relevant part:

- "Jim must follow this process - NO EXCEPTIONS."
- "Jim's performance plan requires "Call Reports" to be completed within 3 business days. . . NO EXCEPTIONS without Robert [Deck's] approval."
- "I have not yet seen the 'C&D Assessment and Recommendations' for either BU or Mt. Sinia (sic). I want these by start of business Monday, December 10, NO EXCEPTIONS."

On December 5, 2018, after receiving Manchester's email quoted above, Deck emailed Raleigh and stated:

> "Jim — We should have a conversation to discuss the comments that Doug has made to ensure that you are following the proper process and are including the important points in the write up reports. As we discussed, you will be providing me with which accounts you will be seeing in following week, then by no later than Monday after that week you will be providing me with a weekly report for each of the calls you made and will be following the new write up that I provided in the format that I provided. As far as the process called ' . . .Audit', remember that one of the reasons that I altered the format was to correspond directly with our Step by Step process. So as Doug indicated, there is no Audit step. It must state Either Assessment/Recommend, Documentation or Implementation step."

On December 5, 2018, after the above email exchange, Lighthouse placed Raleigh on a Revised Performance Plan.

Both Raleigh, classified by Lighthouse as an independent contractor, and the rest of Lighthouse's sales team members, classified as employees, all performed the same tasks that were part of the Lighthouse sales process.

Lighthouse terminated Raleigh's engagement on November 11, 2021 because, in part, Raleigh was "not following [Lighthouse's] instructions . . . ," and not "efficiently manag[ing] [his] time and schedule[ing] customer appointments well in advance."

c. Lighthouse Alters Raleigh's Compensation

On July 21, 2021, Scuccimarri emailed Raleigh and stated in relevant part, "Jim, as discussed, please find attached your new ISA payment and incentive plan. Please let me know a time that works for you to further discuss." Attached to Scuccimarri's email was a document titled, "Jim Raleigh — Independent Sales Agent (ISA) Payment and Incentive Plan; Effective August 1, 2021" ("2021 ISA Agreement"). The 2021 ISA Agreement lists Raleigh's base salary at $100,000. It also included the following language: "The Company reserves the right to amend, modify, suspend or terminate this ISA Payment and Incentive Plan at any time." Raleigh's 2018 ISA Agreement did not contain such language.

On July 28, 2021, Raleigh replied and emailed Scuccimarri his draft of the 2021 ISA Agreement. In Raleigh's draft of the 2021 ISA Agreement, he removed the amendment/modification language quoted above and wrote, "NEW (ISA) Payment and Incentive Plan WILL NOT BE EXECUTED UNTIL 'EARNED BONUS' IS PAID IN FULL."

After receiving an email response from Scuccimarri, on August 9, 2021, Raleigh emailed Scuccimarri with redline edits to the 2021 ISA Agreement. Raleigh's redline edits again

removed the amendment/modification language and again asserted that he would not agree to the new payment plan until his bonus was paid.

After receiving another email response from Scuccimarri, on August 11, 2021, Raleigh emailed Scuccimarri and again asserted the same position on the amendment/modification language and bonus.

On August 17, 2021, after the above exchange of emails, Scuccimarri replied to Raleigh's August 11, 2021 email and stated in relevant part, "Jim, in follow up to our discussion, attached is the final ISA payment and incentive plan . . . . The plan is final and your signature is not required."

On August 19, 2021, Raleigh replied to Scuccimarri's August 11, 2021 email and stated, "Joey — As you know, I remain eager to reach a mutually beneficial New ICP. Until that happens I will continue to work diligently under my existing contract." Scuccimarri respond to Raleigh the same day and said, "Jim, as communicated to you on July 21, 2021 and then in several others emails and several phone conversations, your new ISA payment and incentive plan went into effect on August 1, 2021."

From at least August 20, 2021, to the end of Raleigh's engagement on November 11, 2021, Lighthouse paid Raleigh based off the $100,000 annual base salary set forth in the 2021 ISA Agreement and not based off the $140,000 annual base salary set forth in the 2018 ISA Agreement.

It is undisputed that Raleigh never agreed to the changes in compensation and terms contained in the 2021 ISA Agreement. Lighthouse assets that the 2021 ISA Agreement became effective as of August 1, 2021, and that Raleigh's assent to the changes in terms was not required by the 2018 ISA Agreement.

II. Defendants' Additional Material Facts

In addition to the above facts, the Defendants ask the court to consider the following:

Raleigh was a member and minority owner (10 percent) under the LLC Agreement executed at Lighthouse's inception. As a minority member, Raleigh's permission was required for Lighthouse to amend its operating agreement, use company property for certain purposes, or to discontinue operations. As a minority member, Raleigh also shared in the company's profits.

Prior to the formation of Lighthouse, Raleigh's company RSC accumulated a debt of $730,000 to Manchester's company Unimed, which was assumed and/or forgiven by Lighthouse when the LLC Agreement was executed and RSC assigned all of its accounts receivable to Lighthouse.

Under the 2018 ISA Agreement, Raleigh agreed to work for Lighthouse as an "independent sales agent," that he would receive "starting ISA compensation" of $140,000 annually, and that he could be eligible for certain bonuses in the event that Lighthouse met certain sales thresholds during the years May 1, 2018 – April 30, 2019; May 1, 2019 – April 30, 2020; and May 1, 2020 – April 30, 2021. The 2018 ISA Agreement also stated that Lighthouse could terminate Raleigh for "Cause," which was defined broadly to include various types of poor performance or misconduct by Raleigh. The 2018 ISA Agreement is silent concerning any alteration to Raleigh's compensation after the final bonus period ending April 30, 2021. All parties agreed in communications prior to April 2021 that the 2018 ISA Agreement was silent as what Raleigh's compensation would be after April 30, 2021. In an email to Scuccimarri on January 4, 2021, Raleigh stated he "will participate" in a new compensation plan beginning in the summer of 2021. The 2021 ISA Agreement sent from Lighthouse to Raleigh reduced his annual salary to $100,000 but increased his bonus potential.

Raleigh was terminated on November 11, 2021 for Cause. Lighthouse had, prior to termination, informed Raleigh that his performance was deficient, specifically concerning his communications with potential customers. Lighthouse also cited financial difficulties as a reason the company could no longer pay for his services. At the time Raleigh was terminated, Lighthouse also laid off ten other workers.

Raleigh received Form K-1s and identified himself as a Lighthouse "Partner" in his communications. Raleigh's compensation appeared as "guaranteed payments" on his K-1 tax forms.

Defendants describe Lighthouse's corporate purpose was "to develop cleaning and disinfecting technologies and solutions for customers in the vivarium and animal laboratory industry."

DISCUSSION

I. Standard

Summary judgment is appropriate if, "viewing the evidence in the light most favorable to the nonmoving party, all material facts have been established and the moving party is entitled to a judgment as a matter of law." Niedner v. Ortho-McNeil Pharm., Inc., 90 Mass. App. Ct. 306, 308 (2016). "If the moving party establishes the absence of a triable issue, the party opposing the motion must respond and allege specific facts which would establish the existence of a genuine issue of material fact in order to defeat a motion for summary judgment." Pederson v. Time, Inc., 404 Mass. 14, 17 (1989). Bare assertions and conclusions regarding understandings, beliefs, and assumptions are "not enough to withstand a well pleaded motion for summary judgment." Key Capital Corp. v. M & S Liquidating Corp., 27 Mass. App. Ct. 721, 728 (1989). "While a judge should view the evidence with an indulgence in the [opposing party's] favor, the

opposing party cannot rest on his or her pleadings and mere assertions of disputed facts to defeat the motion for summary judgment." LaLonde v. Eissner, 405 Mass. 207, 209 (1989).

II. Applicability of the G. L. c. 149 to Raleigh's Misclassification and Wage Act claims

Defendants argue that because Raleigh was a minority shareholder and LLC member with a ten percent ownership stake in Lighthouse, he is therefore legally precluded from being an "employee" under G. L. c. 149, §§ 148 and 148B, as, to paraphrase the Defendants' brief, owners of businesses cannot simultaneously be their employees.

Defendants rely heavily on two cases in support of their contention that a minority member of an LLC cannot be considered an "employee" under the Wage Act: Den Herder v. Dir. of Div. of Unemployment Assistance, 82 Mass. App. Ct. 701 (2012), and Ryder's Case, 341 Mass. 661 (1961).

The Den Herder case found that because the party claiming unemployment benefits was a part owner and managing partner of the employing unit (a limited partnership) that laid him off, he was ineligible for employee benefits under G. L. c. 151A.[2] The plaintiff in that case also was a shareholder of an LLC that owned a seventy-eight percent interest in the limited partnership. While the claimant's membership in the LLC (a fifty percent share) was mentioned by the Appeals Court, it was his role as a partner in the limited partnership employer that the court held precluded his eligibility for unemployment benefits available only to "employees." See id. at 703-704. Further, after explaining the differences between the nature of partnerships versus

[2] Defendants argue that the definitions of "employee" employed by the unemployment assistance statute (G. L. c. 151A) and the worker's compensation statute (G. L. c. 152) are analogous to the definition provided by G. L. c. 149, under which Raleigh's claims are made. See Den Herder, 82 Mass. App. Ct. at 703 (stating that the unemployment assistance and worker's compensation statutory schemes are "analogous."). The court notes that G. L. c. 149 and the cases interpreting it provide their own definition of the terms "employer" and "employee" that govern the claims at issue.

corporations, the court went so far as to state that "a corporate shareholder may be an employee and qualify for unemployment benefits provided other conditions are met." Id. at 704. Nowhere is the Den Herder decision does the court state that a member of an LLC is precluded from also being an employee of the business as defendants represent. See id. Here, Raleigh was a minority member of the LLC, and was not a partner in any kind of partnership. The Den Herder decision is inapposite and does not address the effect of minority LLC membership in the context of a claim under G. L. c. 149. See id.

Ryder's Case, 341 Mass. 661, addressed whether a trustee of a realty trust could claim worker's compensation benefits arising from a fall he suffered when working on the roof of a property owned by the trust. The court concluded that "the claimant was not in the service of another when working for himself and another under [a] declaration of trust," and was ineligible for employee benefits under the statute. Id. at 664. The court went on to analogize the relationship of trustees of a trust to partners in a partnership in concluding that the claimant was not a "person in service of another" within the meaning of G. L. c. 152. Id. at 666.

The rule of Ryder's Case applied to exclude sole proprietors and/or partners of a partnership from claiming worker's compensation benefits until the legislature changed the statutory definition in 2002 to allow a sole proprietor "or a partnership" to elect to be covered as "employees" under a worker's compensation insurance policy. See Findlay's Case, 77 Mass. App. Ct. 108, 109 (2010), citing G. L. c. 152, s. 1(4). Thus, Ryder's Case addressed eligibility for worker's compensation benefits in a context not analogous to the present case, and its ultimate holding was legislatively overruled in 2002. See id. As with the Den Herder case, this court finds the decision of Ryder's Case lacking in guidance in deciding whether Raleigh's minority share of the LLC precludes his claims under G. L. c. 149.

Despite the above, this court recognizes the general rule, unless statutorily overruled, is that an employer may not employ himself as an employee. Contrary to Defendants' stance, which would treat LLC members the same as partners in a partnership under the Wage Act, the SJC has unequivocally stated that "LLCs should be treated the same as other corporations for Wage Act purposes." Segal v. Genitrix, LLC, 478 Mass. 551, 561 (2017), citing Cook v. Patient Edu, LLC, 465 Mass. 548, 556 (2013).

In determining who within an LLC is an "employer" subject to liability under the Wage Act, the SJC has applied a practical fact-based test in finding that managers, investors, and even board members of an LLC may qualify as an "employer" liable for Wage Act violations if they "have assumed and accepted as individuals significant management responsibilities over the corporation similar to those performed by a corporate president or treasurer, particularly in regard to the control of finances or payment of wages." Segal, 478 Mass. at 559. See also Cook, 465 Mass. at 552. The SJC has defined an "employer" under the Wage Act as a person "who 'controls, directs, and participates to a substantial degree in formulating and determining' the financial policy of a business entity[.]" Cook, 465 Mass. at 549, citing Wiedmann v. The Bradford Group, Inc., 444 Mass. 698, 711 (2005). Such a person, even if an employee of the LLC "may be a 'person having employees in his service' under G. L. c. 149, § 148, and thus may be subject to liability for violations of the Wage Act." Id.

Defendants assert that Raleigh should be treated as an "employer" under the Wage Act. They cite to his minority ownership share and limited voting rights, which included his required vote to amend the LLC's operating agreement, dissolve the corporation, or declare bankruptcy. There is little else in the record to support the claim that Raleigh controlled, directed, or participated to a substantial degree in formulating and determining the financial policy of

Lighthouse, particularly in regard to the control of finances or payment of wages. See Segal, 478 Mass. at 559; Cook, 465 Mass. at 549. There is nothing in the record showing that Raleigh had any authority over the daily operations of Lighthouse. Instead, Raleigh has produced evidence that he served Lighthouse in a sales capacity under the 2018 ISA Agreement, was supervised by Manchester and others at Lighthouse, and did not participate in the financial management of Lighthouse in any significant way. Under these circumstances, Defendants have failed to demonstrate a lack of any material dispute concerning whether Raleigh should be treated as an "employer" who is precluded from claiming protections under the Wage Act. Therefore, Defendants motion for partial summary judgment as to Counts I and II is **DENIED**.

III. 2018 ISA Agreement

Defendants next argue that Raleigh's breach of contract claim (Count III) should be dismissed because "the ISA Agreement did not, by its plain terms, prohibit Lighthouse from reducing Raleigh's base compensation in August 2021." Raleigh cross moves for summary judgment on Count III arguing that Lighthouse's unilateral change to his compensation terms was a clear breach of the 2018 ISA Agreement. After careful review of the record, this court concludes that there are material facts in dispute that preclude summary judgment on Raleigh's breach of contract claim.

To prevail on his breach of contract claim, Raleigh must establish that "there was an agreement between the parties; the agreement was supported by consideration; [Raleigh] was ready, willing, and able to perform . . . [his] part of the contract; [Lighthouse] committed a breach of the contract; and [Raleigh] suffered harm as a result." Bulwer v. Mount Auburn Hosp., 473 Mass. 672, 690 (2016).

It is well-understood that there must be an agreement between the parties on the material terms of a contract, and the parties must have a present intention to be bound by that agreement. See McCarthy v. Tobin, 429 Mass. 84, 87 (1999). It is not required that all terms of the agreement be precisely specified, and the presence of undefined or unspecified terms will not necessarily preclude the formation of a binding contract. See Situation Mgt. Sys., Inc. v. Malouf, Inc., 430 Mass. 875, 878 (2000); Lafayette Place Assocs. v. Boston Redevelopment Auth., 427 Mass. 509, 517–518 & n. 9 (1998), cert. denied, 525 U.S. 1177 (1999). Here, the parties do not dispute that the 2018 ISA Agreement was intended to be a binding agreement concerning Raleigh's work for Lighthouse as an "independent sales agent." The dispute revolves around interpretation of the compensation provisions of that agreement.

The familiar tenets of contract interpretation are that the object of a court is to construe the contract as a whole, in a reasonable and practical way, consistent with its language, background, and purpose. Bailey v. Astra Tech, Inc., 84 Mass App. Ct. 590, 594 (2013). The court must interpret the words in a contract according to their plain meaning. Id. In addition, the court must put itself in the place of the parties to the instrument and give its words their plain and ordinary meaning in the light of the circumstances and in view of the subject matter. Id.

Massachusetts courts have long held that in interpreting a contract, all parts of an agreement should be considered and construed in a manner which gives meaning to each portion. The court considers the contractual terms and its exhibits in a reasonable and practical manner to determine it makes sense to be read as an integrated document. See 13MCI WorldCom Communications, Inc., v. Department of Telecomm & Energy, 442 Mass. 103, 113 (2004).

The 2018 ISA Agreement contains two passages that, when considered together, evidence an imperfect agreement concerning Raleigh's compensation under the contract. The

first sets Raleigh's starting compensation at $140,000 per year and lays out a bonus schedule for Raleigh if he met certain sales goals through April 30, 2021. In the next paragraph of the letter agreement, it states that "[t]ermination of your [contract] by [Lighthouse] until you reach the age of 65 will be limited to mutual agreement, breach of this Agreement or the Non-compete & Confidentiality Agreement . . . or Cause as defined in the attachment hereto." Termination for "Cause" was limited to eight specified situations, including, in relevant part, (1) a good faith determination by the Company that it faced significant financial risk if the engagement continued, or (2) Raleigh's refusal to obey any lawful direction from his manager that is consistent with his duties under the Agreement.

The contract is silent as to what Raleigh's bonus compensation was to be after April 30, 2021, and contains no language at all concerning alterations to his starting salary, except one sentence stating Raleigh could be eligible for a $10,000 increase to his base salary effective May 1, 2019, if he achieved $45,000 or more his bonus payout by that date.

It appears from the lack of specificity in the Agreement that there may have been an intention to change Raleigh's compensation terms before April 30, 2021, but that did not happen. The contract simply does not reflect any agreement as to what was to happen to Raleigh's compensation after April 30, 2021, yet the contract clearly contemplates his continued work until age 65.

The first communication from Lighthouse purporting to set Raleigh's post-April 30, 2021, compensation terms was emailed July 21, 2021. That Agreement lowered Raleigh's salary to $100,000 per year but increased his potential bonus. The email exchanges after that make clear that Raleigh did not agree to the change in compensation. In emails dated August 17 and August 19, 2021, Raleigh's manager, Scuccimarri, made clear the company's position that the

new compensation terms were final, were effective August 1, 2021, and the company did not think Raleigh's assent to the new terms was required.

Lighthouse asserts that the contract's silence on Raleigh's bonus compensation after April 30, 2021, enables it to unilaterally change Raleigh's compensation. However, that view runs counter to the well-established principle that "[u]nder Massachusetts law, generally speaking, one party cannot unilaterally change the obligations of another under contract." Sargent v. Tanaska, Inc., 914 F. Supp. 722, 727 (D. Mass. 1996) (applying Massachusetts contract law), citing New England Mut. Life Ins. Co. v. Harvey, 82 F. Supp. 702, 706 (D. Mass. 1949). "Rather, the parties must expressly or impliedly agree to a modification." Id., citing A. Leo Nash Steel Corp. v. Southern New England Steel Erection Co., Inc., 9 Mass. App. Ct. 377, 383-84 (1980). And that "[s]uch modification requires valid consideration." Id., citing Tri-City Concrete Co. v. A. L. A. Const. Co., 343 Mass. 425, 427 (1962).

Ultimately, the 2018 ISA Agreement contemplates Raleigh's continued employment after April 30, 2021, but does not set forth any procedure by which the parties would determine his post-April 2021 compensation. The parties have presented conflicting evidence about what the parties' intentions were concerning Raleigh's pay schedule after April 2021. The court rejects Lighthouse's view that it could, as a matter of law, unilaterally change Raleigh's compensation based on the contract's failure to include language prohibiting it from doing so. See Sargent, 914 F. Supp. At 727. Neither party has established that the material facts are undisputed concerning the 2018 ISA Agreement's treatment of Raleigh's compensation after April 2021. See Pederson, 404 Mass. at 17. Accordingly, Defendants motion for partial summary judgment on Count III is **DENIED**, and Plaintiff's cross motion requesting summary judgment in his favor on Count III is also **DENIED**.

IV. Raleigh's Misclassification Claim

Raleigh moves for summary judgment in his favor on Count I of his complaint for misclassification under G. L. c. 149, § 148B (the Independent Contractor Statute). Raleigh argues that Lighthouse cannot demonstrate that he was (1) "free from control and direction in the performance" of his services for Lighthouse, or that (2) the service was performed outside the usual course of the business of Lighthouse. As the statute provides that "an individual performing any service . . . to be an employee" unless one of those two above conditions are met, Raleigh argues he is entitled to prevail on his claim that Lighthouse misclassified him as an independent contractor. Defendants contend that there are disputed issue of fact surrounding the level of control Lighthouse exercised over Raleigh's work and what constitutes Lighthouse's "usual course of business."

First, the summary judgment framework for a claim of misclassification under § 148B must recognize the presumption that, if "an individual perform[s] any service" they are the employee of the person they are performing that service for. Patel v. 7-Eleven, Inc., 489 Mass. 356, 360 (2022). Because Raleigh is moving for summary judgment and Lighthouse bears the burden of proof, it is Lighthouse who "may not rest upon [] mere allegations or denials . . . but must set forth specific facts showing that there is a genuine issue for trial." Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 256 (citations omitted). To create a genuine dispute, the non-moving party must present "significant probative evidence." Id. at 249.

"Under § 148B (a), an individual who performs services shall be considered to be an employee, for purposes of G. L. c. 149 and G. L. c. 151, unless the employer satisfies its burden of proving by a preponderance of the evidence that '(1) the individual is free from control and direction in connection with the performance of the service, both under his contract for the

performance of service and in fact; and (2) the service is performed outside the usual course of the business of the employer; and (3) the individual is customarily engaged in an independently established trade, occupation, profession or business of the same nature as that involved in the service performed.'" Somers v. Converged Access, Inc., 454 Mass. 582, 589 (2009), quoting G. L. c. 149, § 148B (a). A putative employer may rebut the statutory presumption of employment by establishing by a preponderance of the evidence the three prongs of an independent contractor relationship. Weiss v. Loomis, Sayles & Co., Inc., 97 Mass. App. Ct. 1, 6 (2020). The individual is considered an "employee" if the putative employer fails to satisfy "even one statutory prong." Id. Raleigh argues summary judgment is appropriate because Lighthouse has failed to satisfy either the first or second prong of § 148B.

Concerning the first prong, whether "the individual is free from control and direction in connection with the performance of the service," the "crux of the inquiry" is "whether the plaintiff performs his work in fact with minimal instruction." Ruggerio v. American United Life Ins. Co., 137 F. Supp. 3d 104, 113 (D. Mass. 2015) (quoting "An Advisory from the Attorney General's Fair Labor Division on M.G.L. c. 149 § 148B," 2008/1). "The essence of the distinction under common law has always been the right to control the details of the performance . . . and the freedom from supervision 'not only as to the result to be accomplished but also as to the means and methods that are to be utilized in the performance of the work.'" Athol Daily News v. Bd. of Review of the Div. of Emp't & Training, 439 Mass. 171, 177 (2003). However, "the test is not so narrow as to require that a worker be entirely free from direction and control from outside forces." Id. at 178.

Here, Raleigh cites several email communications with Christian and Scuccimarri directing Raleigh concerning communications with certain clients as proof that he did not have

the requisite "freedom" from supervision in performance of his sales agent work. In arguing that Raleigh was primarily free from supervision, Lighthouse relies on the facts that Raleigh set his own hours and work location, that Lighthouse never told him which customers to visit or call, or when to call them, and that Raleigh was free to sell non-Lighthouse products on behalf of himself or another company at any time. Lighthouse characterizes the direction given to Raleigh as "administrative in nature" rather than "substantive." The parties have each identified facts in support of their respective positions on Raleigh's "freedom from supervision" that ultimately must be resolved by a factfinder. As to the first prong under the Independent Contractor statute, Lighthouse has produced "significant probative evidence" demonstrating a disputed issue of material fact. See Anderson, 477 Mass. at 249.

When examining the second prong under the statute, whether the services performed were outside the usual course of the putative employer's business, "the Supreme Judicial Court has evaluated two factors: (1) what is the usual course of business of the employer, and (2) what are the services performed by the worker. Sebego v. Boston Cab Dispatch, Inc., 471 Mass. 321, 333 (2015). "[A] purported employer's own definition of its business is indicative of the usual course of that business." Id., citing Athol Daily News, 439 Mass. at 179.

Raleigh relies on the corporate filings of Lighthouse and its interrogatory answers to demonstrate that Lighthouse's own definition of its business is as a "[d]istributor of cleaning/disinfecting products in the vivarium market" and that it "provides Environmental Infection Protection products and services to the Laboratory Animal Research (LAR) market." Raleigh also relies on the fact that 100% of Lighthouse revenue is dependent on sales of its products, and the company sold directly to wholesalers and retail clients, just as Raleigh did as a sales agent.

Lighthouse relies on the testimony of its manager and majority owner, Manchester, to state that Lighthouse's "primary" business is "bring[ing] new innovations to the marketplace [to] reduce lab animal infection" by "evolving and introducing new technologies" such as new chemical cleaning products and delivery mechanisms. Lighthouse argues that its primary business is research, development, innovation, and collaboration with wholesale distributors, and that sales, while necessary, are "ancillary" to the core function of its business. Lighthouse also notes that Raleigh's primary sales efforts were directed at direct customers (end users), while the "substantial majority" of Lighthouse's revenue was generated through arrangements with distributors.

While employers are not allowed to create "illusory distinctions in the services they provide" to circumvent the Wage Act, see Sebego, 471 Mass. at 340, that is not what the record reflects here. There is sufficient evidence to support Lighthouse's argument at summary judgment that it was primarily in the business of product development and sales to distributors, while Raleigh provided efforts to sell primarily to direct customers, which fell outside the "usual course" of Lighthouse's business. See id. at 333.

Accordingly, Lighthouse has demonstrated there are disputed material facts concerning its control of Raleigh's performance and the "usual course" of its business that defeat Plaintiff's request for summary judgment in his favor on Count I. See Pederson, 404 Mass. at 17. Accordingly, the Plaintiff's motion for summary judgment on Count I of his complaint is therefore **DENIED.**

ORDER

For the above reasons, the court hereby orders that Defendants' motion for partial summary judgment is **DENIED** and Plaintiff's cross motion for partial summary judgment is also **DENIED**.

Elizabeth A. Dunigan
Justice of the Superior Court

DATED: June 12, 2024