

## A Call to Action for Arkansas Moms

By Rhea Lana Riner

Senate and House Insurance and Commerce Committees  
of the  
Arkansas Legislature

Thursday, February 20<sup>th</sup> at 1:00 PM  
Room 171 of the Arkansas State Capitol

### Included in This Packet:

1. Today's Statement from Rhea Lana Riner  
February 20, 2014
2. Consent Agreement between Rhea Lana, Inc. and Arkansas Department of Labor,  
January 19, 2012
3. Letter of Concern by Rep. Tim Griffin to Secretary Hilda Solis, U.S. Dept. of Labor,  
February 15, 2013
4. Request for Information by the Arkansas Congressional Delegation to  
Mary Beth Maxwell, Acting Deputy Administrator, U.S. Dept. of Labor  
July 18, 2013
5. Notification to Rhea Lana Consignors and Employees of Right to File Suit Against Rhea Lana's  
by Robert Darling, District Director, U.S. Dept. of Labor  
August 6, 2013
6. Notification Declaring FLSA Violations, District Director Robert Darling to Rhea Lana Riner  
August 26, 2013
7. Response by USDOL Principal Deputy Administrator Laura Fortman to Rep. Tim Griffin  
August 30, 2013
8. House Bill HR3173 - Children's Consignment Recognition Act of 2013
9. Senate Bill S1656 - Children's Consignment Recognition Act of 2013
10. Complaint for Declaratory and Injunctive Relief Filed by Cause of Action on behalf of Rhea  
Lana, Inc. and Rhea Lana Franchise Systems Against the US Department of Labor  
January 6, 2014

# EXHIBIT

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# Statement of Rhea Lana Riner Before the Senate and House Insurance and Commerce Committees

February 20, 2014

Ladies and Gentlemen,

I am so honored to be with you today. Thank you for your invitation, Senator Rapert, and thank you Members of the Committees.

I am grateful to you for taking an interest in my struggle to protect the rights of moms in Arkansas and across the nation.

In 1997, I began my small business as a young mom after my family transitioned from a corporate salary to a ministry salary. I loved cute clothes, but did not have the budget to dress my children the way I hoped. So, I invited a few friends to a small event in my living room to buy and sell children's clothing. From that small beginning of moms working together, Rhea Lana's grew.

From this humble beginning, my heart swelled for families with budget struggles trying to provide for their families. I wanted to offer them the opportunity to save money. The moms, grandmoms, and husbands who join together to host consignment events like ours create a marketplace in which their families can participate. Rhea Lana's is simply a facilitator. We help these families succeed, and we love it!

Rhea Lana's offers families the same types of real world opportunities that eBay offers its participants in the virtual world. Like Rhea Lana's, eBay offers a marketplace where buyers can find low-priced products from people looking to sell their goods. eBay also merely provides the platform for this marketplace exchange. eBay participants have not been classified as employees. Everyone understands that eBay participants are looking out for their own interests -- just like Rhea Lana's consignor-volunteers are trying to support their own families.

Please allow me to tell you how my current struggle began:

In Spring 2011, I sent an e-mail to central Arkansas families announcing an upcoming Rhea Lana's event. The e-mail mentioned that moms could volunteer at the event if they were interested in helping out. One of these e-mails went to a family member of an Arkansas Department of Labor employee that had signed-up for our mailing list. Arkansas Labor officials soon began investigating Rhea Lana's to determine if we were violating any laws by allowing volunteers to help at events. We cooperated fully, and in the end, received a favorable response from our State. After slightly tweaking our business model, we signed a Consent Agreement with Arkansas in January 2012 that allowed us to continue using consignor-volunteers. The State then audited Rhea Lana's in June of 2012 and utilized the Consent Agreement to interpret their findings.

While our experience with the Arkansas Department of Labor resulted in significant legal expense to our small company, we ultimately were very satisfied with the result. In fact, I would like to commend the Arkansas Department of Labor for applying a common sense approach to Rhea Lana's business model that allows us to continue operating and serving Arkansas families.

But then, in January of 2013, we were contacted by the U.S. Department of Labor. (The Arkansas Department of Labor and the U.S. DOL are apparently housed in the same building.) There are over 2,000 consignment events held each season nationwide, and we have never heard of any of them being investigated. Yet now, we were about to undergo our second investigation in two years!

Our initial meeting with the U.S. DOL was held in Little Rock on February 28, 2013. Staff members from Congressman Griffin and Senator Boozman's office attended, along with Denise Oxley, Counsel for the Arkansas Department of Labor. In the spirit of full cooperation, we provided DOL with the contact information of ten moms who had participated as consignor-volunteers for the DOL to "interview." These moms come from all walks of life. For example, two were teachers, one was a stay-at-home mom, two were nurses, and one was a radiologist. We thought that once the U.S. DOL spoke with these moms and recognized that they were participating on a limited basis for their own benefit, not because Rhea Lana's had some control over them, the U.S. DOL would realize they are not employees. We also shared with the U.S. DOL the Consent Agreement we had entered into with the Arkansas State Department.

Unfortunately, this did not satisfy the U.S. Department of Labor. DOL asked for all of our payroll records going back two years, submitted formal questions to us that required the assistance of lawyers to respond, and unpredictably showed up at one of our events to surreptitiously interview our moms. The moms told us that they told the DOL that we are all in this together, and that they choose to participate to help their families.

Ignoring the moms' input, in a letter responding to Congressman Griffin, the DOL cited a 1985 Supreme Court case involving cult leaders who used adults and children in horrible ways that violated the law. The DOL's target in this 1985 Supreme Court case, Tony Alamo, is a convicted child offender who exploited cult members. By relying upon this case, the DOL appears to be comparing me and my children's consignment business to a criminal who preyed upon and manipulated many families here in Arkansas.

This should come as no surprise to you, but Rhea Lana's does not abuse its volunteers! Moms love Rhea Lana's, and they are certainly NOT exploited cult members.

The DOL also told us that the participating moms should be considered employees because they volunteer at our event location. Our consignment events are like multi-family garage sales in many ways. Certainly the DOL does not expect neighbors to issue W-2's for participating in the neighborhood garage sale. Hopefully, government regulations will never come to this, but this is the same type of model under which Rhea Lana's operates.

Incredibly, the U.S. DOL even sent letters to all of our consignor-volunteers, asserting they had the right to sue us. The letter was also mailed to our past employees and implied that we may not have paid them for their labor – which we certainly did. We note that we have received ZERO complaints from our consignor-volunteers and employees. None of them took action against us -- even after DOL's prompting.

In August 2013, DOL sent us a letter citing legal provisions that "provide for the assessment of a civil money penalty for any repeated or willful violations...in an amount not to exceed \$1,100 *for each such violation.*" After being investigated for two years, when I received that letter it was my most terrifying and discouraging experience. However, we at Rhea Lana's will not be victims. We are defending ourselves against the U.S. DOL's seemingly arbitrary position.

We have two bills in Congress. House Bill HR 3173 is sponsored by our Representative Tim Griffin, and co-sponsored by all of Arkansas's Congressmen – Rep. Tom Cotton, Rep. Steve Womack and Rep. Rick Crawford, as well as Missouri Congresswoman Vicki Hartzley. Senate Bill S1656 is sponsored by both Senator Mark Pryor and Senator John Boozman. We are mobilizing moms nationwide to get Congress to understand that moms have the right to join together to help their families. If you have suggestions about how we can mobilize members of Congress outside our State, we are very open to hearing from you.

Also, on January 6, 2014, Cause of Action, an advocacy group for economic freedom, filed a legal complaint on our behalf against the Department of Labor in the U.S. District Court for the District of Columbia. Again, we believe the Fair Labor Standards Act and case law are on our side.

Members of the Committees, I understand and support our government's duty to verify the lawfulness of the actions of its citizens. This is part of living in a civilized world. However, unlike our own State of Arkansas, the Federal Government is now acting to oppose and frustrate struggling families. It is acting in this chilling manner even after fully investigating the intentions and activities of our industrious moms. I am doing all I can to protect my business and the rights of these precious women from their own government. I am grateful for a chance to speak with you, and I hope you will join me. Our children –and their moms – deserve our best.

Thank you for your time this afternoon.

# EXHIBIT

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## CONSENT AGREEMENT

This Consent Agreement is entered into as of the 19 day of January, 2012, by and between Rhea Lana's, Inc., an Arkansas corporation (the "Company"), and the Arkansas Department of Labor (the "ADL").

WHEREAS, the ADL instituted an investigation into the Company's use of unpaid labor in violation of the Minimum Wage Act of the State of Arkansas;

WHEREAS, the Company operates using a business model whereby much of the work done to run a semi-annual children's clothing consignment event is done by individuals who, without pay, set up clothes racks; "check in" the clothes brought by consignors; act as greeters; act as security (to keep their goods from walking out the door), and many other duties to assure that each sale is successful;

WHEREAS, the Company utilizes two types of unpaid workers. The first type is consignors. The second type or class is referred to herein as "volunteers;"

WHEREAS, the parties agree that the consignors are not employees of Rhea Lana's Inc. or its franchisees within the meaning of the Arkansas Minimum Wage Act, but disagree as to whether those worker referred to herein as volunteers are employees;

WHEREAS, the Company believes that the volunteers are not employees but wishes to resolve this dispute without further legal action for its own benefit and for the benefit of all franchisees of the Company within the State of Arkansas; and

WHEREAS, the Company desires to assure that all children's clothing consignment sales using the same or similar business model in the State of Arkansas will be operated under the same regulatory scheme;

NOW THEREFORE, the parties, for and in consideration of the promises, covenants, representations and warranties contained herein, intending to be legally bound, agree as follows:

1. The parties agree that "consignors" (as defined in paragraph 2 below) are not employees within the meaning of the Arkansas Minimum Wage Act.

2. "Consignors" are individuals who provide or plan to provide items for sale at a Rhea Lana event and receive a percentage of the sales price for their items and work. Consignors, for the purposes of this Consent Agreement, include the individuals listed as the consignor in the records of the Company as well as a member of the consignor's immediate family. The term consignors also includes children of consignors under 18 years of age who work under the direct supervision of and assist a parent or guardian who is a consignor in his

or her duties at a Rhea Lana event, but such children may not work independent of or a part from the parent or guardian or under the direct supervision of any other person.

3. The ADL agrees that the Company, and all children's consignment sales operating under the umbrella of the Rhea Lana franchise in the State of Arkansas, may use and permit individuals who are or will be "consignors" to work before, during and after a Rhea Lana franchise sale without compensation under the Arkansas Minimum Wage Act.

4. The parties agree that Rhea Lana events currently utilize unpaid volunteer workers who provide labor in return for the opportunity to shop a Rhea Lana event early. The Company agrees that all children's consignments sales operating under the umbrella of the Rhea Lana franchise in the State of Arkansas will cease and desist from using such volunteer workers and will utilize only consignors or workers paid in accordance with the Minimum Wage Act of the State of Arkansas.

5. The ADL agrees that so long as the Company, and any operators of a children's consignments sale under the Rhea Lana franchise in the State of Arkansas complies with the provisions of this Consent Agreement, the ADL shall not pursue any claims on behalf of volunteers for violations of the Minimum Wage Act of the State of Arkansas which arose before the date of this Consent Agreement.

6. The ADL agrees that so long as the Company, and any operators of children's consignment sales under the Rhea Lana franchise in the State of Arkansas, complies with the provisions of the Consent Agreement, the ADL shall not pursue any claims on behalf of consignors for violations of the Minimum Wage Act of the State of Arkansas which arise after the date of this Consent Agreement.

7. The ADL agrees that any individual Rhea Lana franchisee shall not be liable for any violations of this Consent Agreement by any other Rhea Lana franchisee.

8. The ADL acknowledges that there are other children's clothing consignment sales operating in the State of Arkansas that are not affiliated with the Company or the Rhea Lana franchise (the "Other Sales"). The ADL shall require the Other Sales to comply with this Consent Agreement and the Minimum Wage Act of the State of Arkansas. The ADL shall prosecute any known violations of this Consent Agreement or the Minimum Wage Act of the State of Arkansas by the operators of Other Sales.

9. In the event the ADL enters into any settlement or consent agreement with the operator of any Other Sale with terms that differ from the terms of this Consent Agreement, the ADL shall notify the Company of such settlement and the Company shall have the option of complying with the terms of this Consent Agreement or the terms applicable to the Other Sale.



10. This Consent Agreement applies to and is reach in full and final settlement of all claims by the ADL on behalf of volunteer unpaid workers or consignors under the Minimum Wage Act of the State of Arkansas arising before the date of this Consent Agreement.

11. The ADL **RELEASES, ACQUITS** and **FOREVER DISCHARGES** the Company and all other companies operating under a Rhea Lana franchise from any and all past, present or future claims, demands, debts, sums of money, accounts, damages, obligations, actions, causes of action, demands for payment, proceedings, rights, costs, expenses, compensation, suits at law or in equity, and/or all liability whatsoever of any kind or nature whatsoever, whether asserted or unasserted, whether known or unknown, whether accrued or unaccrued, and by whomever caused, solely, jointly or otherwise, including without limitation for damages, costs and expenses, in any manner or in any capacity claimed or possessed by the ADL directly or indirectly, arising out of, based upon, resulting from, relating to or regarding violations of the Minimum Wage Act of the State of Arkansas by utilizing "volunteer workers" before, during or after children's clothing consignment sales under a Rhea Lana franchise.

12. In the event of clarification of the law in the future that is favorable to the business model utilized by the Company and the use of unpaid workers or volunteers, the Company may elect to operate under such law rather than this Consent Agreement.

13. This Consent Agreement shall be construed and interpreted in accordance with the laws of the State of Arkansas.

14. This Consent Agreement is intended to be as broad and as comprehensive as possible. This Consent Agreement shall be interpreted in such a manner as to be valid and enforceable and effectuate the intent of the parties.

15. The ADL acknowledges and agrees that the matters set forth in this Consent Agreement constitute the settlement and compromise of disputed claims based upon unsettled principals of law, and that this Consent Agreement is not an admission or evidence of liability by the Company regarding any claims under the Fair Labor Standards Act and the Minimum Wage Act of the State of Arkansas.

16. This Consent Agreement may be executed in counterparts which taken together shall constitute the fully executed Consent Agreement.

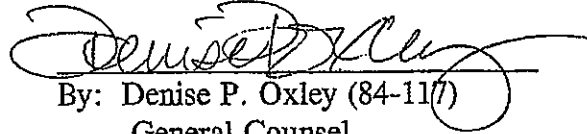
17. The individual executing this Consent Agreement on behalf of the ADL represents and warrants that he/she is empowered to so act.

[Remainder of page left blank intentionally.]

[Signature page follows]

IN WITNESS WHEREOF, the parties have executed this Consent Agreement as of the set forth above.

**THE ARKANSAS DEPARTMENT OF LABOR**



By: Denise P. Oxley (84-117)

General Counsel

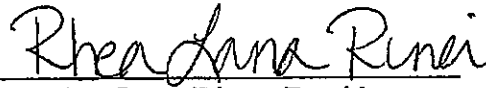
Arkansas Department of Labor

10421 West Markham Street

Little Rock, AR 72205

(501) 682-4502

**RHEA LANA'S, INC.**



By: Rhea Lana Riner, President

Rhea Lana's Inc.

P.O. Box 10222

Conway, AR 72034

(501) 336-4492

# EXHIBIT

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TIM GRIFFIN  
2ND DISTRICT, ARKANSAS  
ASSISTANT MAJORITY WHIP

1501 NORTH UNIVERSITY AVENUE  
SUITE 150  
LITTLE ROCK, AR 72207  
PHONE: (501) 324-5941  
FAX: (501) 324-6029

1232 LONGWORTH HOUSE OFFICE BUILDING  
WASHINGTON, DC 20515  
PHONE: (202) 225-2506  
FAX: (202) 225-5903

Congress of the United States  
House of Representatives  
Washington, DC 20515-0402

February 15, 2013

COMMITTEE ON ARMED SERVICES  
SUBCOMMITTEE ON READINESS  
SUBCOMMITTEE ON  
SEAPOWERS AND PROJECTION FORCES  
COMMITTEE ON THE JUDICIARY  
SUBCOMMITTEE ON CRIME,  
TERRORISM, AND HOMELAND SECURITY  
SUBCOMMITTEE ON INTELLECTUAL PROPERTY,  
COMPETITION, AND THE INTERNET  
COMMITTEE ON FOREIGN AFFAIRS  
SUBCOMMITTEE ON EUROPE AND EURASIA  
(VICE CHAIRMAN)  
SUBCOMMITTEE ON TERRORISM,  
NONPROLIFERATION, AND TRADE  
SUBCOMMITTEE ON AFRICA,  
GLOBAL HEALTH, AND HUMAN RIGHTS

The Honorable Hilda Solis  
Secretary  
U.S. Department of Labor  
200 Constitution Ave NW  
Washington, DC 20210-0001

Dear Secretary Solis:

I write to express my concerns regarding the U.S. Department of Labor's (DOL) audit of Rhea Lana's Franchise Systems, Inc. (Rhea Lana's), located in Conway, Arkansas. Rhea Lana's is a children's consignment event that franchises in over sixty locations. I am concerned that the audit is unnecessarily requesting to interview consignors who assist with the sale of items (including their own) at Rhea Lana's events, and inaccurately identifying these individuals as employees.

Rhea Lana's depends on these unpaid consignors to work the events, which provide essential low cost products for individuals and families. In January 2012, Rhea Riner, the owner of Rhea Lana's, signed a consent agreement with the Arkansas Department of Labor (ADL) regarding the ADL's investigation into the use of unpaid labor. In the consent agreement, both parties agreed that the consignors are not employees within the meaning of the Arkansas Minimum Wage Act. According to Dave and Rhea Riner, the U.S. Department of Labor (DOL) has undertaken a federal audit of Rhea Lana's and the federal auditor has requested Rhea Lana's supply the names and contact information of consignors, presumably to conduct interviews. These consignors are customers of Rhea Lana's, and there is concern that interviewing these individuals exceeds the requirements of the audit and would cause undue harm to Rhea Lana's and the consignment industry. I have enclosed a copy of Rhea Lana's consent agreement with the ADL for your review.

According to the DOL Wage and Hour Division, a federal auditor may question employees to determine if there has been a violation of the Fair Labor Standards Act (FLSA). I would appreciate your review of Rhea Lana's complaint that the federal auditor's request to speak with consignors exceeds the scope of the federal audit. Further, I request that the DOL provide me with information on how the agency has determined that consignors for Rhea Lana's be considered employees under the FLSA for the purpose of this audit.

I appreciate your consideration of my request and any assistance you can provide in resolving this issue. My office contact for this issue is Peter Comstock at [Peter.Comstock@mail.house.gov](mailto:Peter.Comstock@mail.house.gov) or (202) 226-8497. Thank you.

Sincerely,



Tim Griffin  
Member of Congress

Enclosure

# EXHIBIT

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Congress of the United States  
Washington, DC 20515

July 18, 2013

Mary Beth Maxwell  
Acting Deputy Administrator  
U.S. Department of Labor  
Wage and Hour Division  
200 Constitution Ave  
Washington, DC 20210-0001

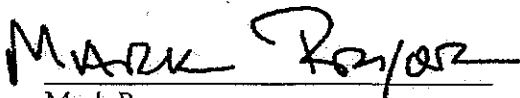
Dear Ms. Maxwell:

We write to seek information about the U.S. Department of Labor's (DOL) audit of Rhea Lana's Franchise Systems, Inc. (Rhea Lana's), located in Conway, Arkansas. Rhea Lana's is a children's consignment event whose franchises hold periodic events in more than sixty locations around the nation. At the center of the audit is the issue of whether or not the consignors at Rhea Lana's events should be considered employees under the Fair Labor Standards Act (FLSA). We urge the DOL Wage and Hour Division to further review the audit and provide our offices with additional information on DOL's decision to pursue this case under FLSA.

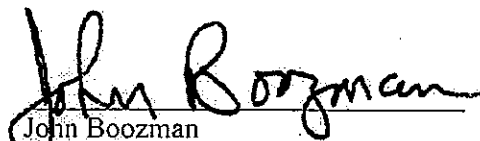
In January 2012, Rhea Riner, the owner of Rhea Lana's signed a consent agreement with the Arkansas Department of Labor (ADL) that stated that individuals who sell their items at Rhea Lana's consignment events are considered "consigners" and are not employees within the meaning of the Arkansas Minimum Wage Act. As we understand, the participation by the consigners is completely voluntary, and, if they do choose to participate, they retain 70 percent of the revenue from their sales, and Rhea Lana's retains the remaining 30 percent. At the conclusion of these events, Rhea Lana's donates unsold items to local organizations and schools.

It is our understanding that DOL has allowed for exemptions from FLSA for volunteers who receive minimal compensation for their services. We request that you provide our offices with incidents or examples of when DOL considers compensated volunteers as exempt from FLSA minimum wage requirements. We also request any directives, documentation, or communications to local DOL offices or field investigators, or any changes to or restatements of policy, relating to the enforcement or treatment of voluntary consignments or volunteer arrangements under the FLSA. Further, we request that DOL provide additional guidance to Rhea Lana's in order to facilitate their continuation of services in providing children and families with affordable and donated goods through the use of their volunteer consignors. We request that you provide this information to our offices no later than July 26, 2013. Thank you for your consideration of our request.

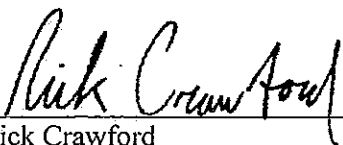
Sincerely,



Mark Pryor  
United States Senator




John Boozman  
United States Senator



Rick Crawford  
Member of Congress



Tim Griffin  
Member of Congress



Steve Womack  
Member of Congress



Tom Cotton  
Member of Congress

# EXHIBIT

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## U.S. Wage and Hour Division

Little Rock District Office, 10810 Executive Center Drive, Suite 220, Little Rock, AR 72211

August 6, 2013

Subject: Rhea Lana, Inc. d/b/a Rhea Lana's - 1677670

To Whom It May Concern:

A recent investigation of the above named firm under the Fair Labor Standards Act (FLSA) indicates that you might not have been paid as required by the law for the period 01/28/2011 to 01/27/2013. The FLSA requires employers to pay each employee covered by the Act no less than the federal minimum wage and overtime premium pay (at time and one-half the regular rate of pay) for all hours worked in excess of 40 hours in a single workweek. The law contains numerous exemptions from these basic standards.

The Wage and Hour Division contacted the firm and explained the FLSA wage requirements, but the firm did not agree to make payments to you. Under the law, the Wage and Hour Division has the authority to supervise voluntary payment of back wages but cannot itself order such payment. The Department of Labor (Department) is authorized to file lawsuits against employers and request that a court order the payment of back wages; however, after reviewing all of the circumstances in this case, it has been decided and it is not suitable for litigation by the Department. Consequently, no further action will be taken to secure payment of additional money possibly owed to you.

The fact that we will take no further action on your behalf does not affect your private right under the FLSA to bring an independent suit to recover any back wages due. The Congress, recognizing that all complaints may not be resolved or developed for litigation by the Department, has included provisions in FLSA to bring an independent suit to recover any back wages and an equal amount as liquidated damages plus attorney's fees and court costs. The Department does not encourage or discourage such suits. The decision is entirely up to you. However, keep in mind that recovery of back wages under this law is subject to a statute of limitations. Generally, this means that any part of a back wage claim which was earned more than two years before suit is filed may not be collectible.

A copy of the Handy Reference Guide to the Fair Labor Standards Act is enclosed for your information.

Sincerely,

A handwritten signature in black ink that reads "Robert A. Darling". The signature is written in a cursive style with a long, sweeping tail on the "g".

Robert A. Darling  
District Director

Link in e-mail: Handy Reference Guide

# EXHIBIT

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**U.S. Department of Labor**

Wage and Hour Division  
10180 Executive Center Drive Suite 220  
Little Rock, AR 72211  
Phone: 501-223-9114  
Fax: 501-223-8734



August 26, 2013

Rhea Lana Rhiner  
c/o Rhea Lana's  
1055 Sunflower Drive, Suite 104  
Conway, AR 72034

Subject: FLSA - Minimum Wage/Overtime Violations of Rhea Lana, Inc. dba Rhea Lana's and Rhea Lana an individual

File Number: 1677670

Dear Ms. Rhiner:

The recent investigation of your firm conducted by Investigator Haynes under the Fair Labor Standards Act (FLSA) covered the period 01/28/2011 to 01/27/2013. The investigation disclosed that your employees are subject to the requirements of the FLSA.

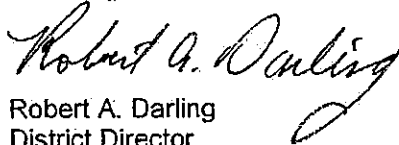
The investigation disclosed violations of FLSA section 6 resulting from the failure to pay employees at least the applicable minimum wage for all hours worked and/or FLSA section 7 resulting from the failure to pay statutory overtime pay for hours worked in excess of 40 hours per week. You agreed to pay \$6,369.74 due to 39 employees. Investigator Haynes has advised me that you have agreed to comply with the employees identified as managers and that you have agreed to pay the above-described back wages in full by 06/19/2013.

It is further my understanding that you refuse to comply with the employee group known as consignors/volunteers. Letters have been sent to the consignors/volunteers informing them of their private right under the FLSA to bring an independent suit to recover any back wages due.

We would like to direct your attention to section 16(e) of the FLSA and Regulations, Part 578. As you will note, section 16(e) provides for the assessment of a civil money penalty for any repeated or willful violations of section 6 or 7, in an amount not to exceed \$1,100 for each such violation. No penalty is being assessed as a result of this investigation. If at any time in the future your firm is found to have violated the monetary provisions of the FLSA, it will be subject to such penalties.

Copies of the FLSA, Regulation 578, and a Handy Reference Guide are enclosed for your reference. If you have any questions about the investigation or about any aspect of the FLSA, please do not hesitate to contact me or Investigator Haynes.

Sincerely,

  
Robert A. Darling  
District Director

# EXHIBIT

7

U.S. Department of Labor

Wage and Hour Division  
Washington, D.C. 20210



AUG 30 2013

The Honorable Tim Griffin  
U.S. House of Representatives  
Washington, D.C. 20515

Dear Congressman Griffin:

Thank you for your letter to Acting Deputy Administrator Mary Beth Maxwell regarding the U.S. Department of Labor (DOL), Wage and Hour Division's (WHD) investigation of Rhea Lana's Franchise Systems, Inc. (Rhea Lana's), located in Conway Arkansas. You ask whether or not the consignors at Rhea Lana's events should be considered employees under the Fair Labor Standards Act (FLSA) and request additional information on the WHD decision to pursue this case.

The FLSA provides that certain volunteers may receive nominal compensation for their services. Section 3(e)(4)(A) of the FLSA provides that the term "employee" does not include any individual who volunteers to perform services for a public agency which is a State, a political subdivision of a State or an interstate governmental agency if the individual receives no compensation or is paid expenses, reasonable benefits or a nominal fee to perform the services for which the individual volunteered and such services are not the same type of services which the individual is employed to perform for such public agency. Examples of volunteers for public agencies include volunteer firefighters, reserve police officers, emergency medical technicians, ambulance drivers, high school coaches, and advisors for extracurricular school activities.

Section 203(e)(5) of the FLSA provides that the term "employee" does not include individuals who volunteer their services solely for humanitarian purposes to private non-profit food banks and who receive from the food banks groceries.

WHD communicates to its offices and investigators impart, through the WHD Field Operations Handbook (FOH). The FOH provides WHD investigators and staff with interpretations of statutory and regulatory provisions, procedures for conducting investigations, and general administrative guidance. The FOH reflects policies established through changes in legislation, regulations, significant court decisions, and the decisions and opinions of the WHD Administrator. FOH section 10b03(c) addresses volunteers (copy enclosed). It states "the nature of religious, charitable, and similar nonprofit organizations, and schools is such that individuals may volunteer their services in one capacity or another, usually on a part-time basis, not as employees or in contemplation of pay for the services rendered."

The FLSA recognizes the generosity and public benefits of volunteering and allows individuals to freely volunteer in many circumstances for charitable and public purposes. The WHD has recognized that a person may volunteer time to religious, charitable, civic, humanitarian, or similar non-profit organizations. Such a person will not be considered an employee for FLSA purposes if the individual volunteers freely for public services, religious or humanitarian objectives, and without contemplation or receipt of compensation.

The FLSA defines employment very broadly for work performed for a for-profit employer covered by the FLSA. In prior opinion letters, for example, the WHD considered whether the FLSA permitted covered retailers to use members of a charitable organization to wrap Christmas presents or to count inventory in exchange for payments to the charities in lieu of paying wages directly to the workers. The WHD concluded that the protections of the FLSA applied to the members of the charitable organization. In both cases the individuals engaged in activities that were an integral part of the FLSA-covered, for-profit retailer's business. Accordingly, the company's costs of doing business and profitability were favorably enhanced by the proposed "volunteer" activity.

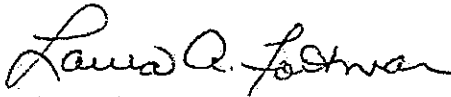
This distinction between "ordinary volunteerism" and the performance of FLSA-covered "work" by employees for commercial profit-making companies has been acknowledged by the U.S. Supreme Court. The Court has recognized that a fundamental purpose of the FLSA was to prevent covered employers from gaining an unfair competitive advantage over other employers through payment of substandard wages. The Court has also recognized that individuals may not waive their statutory entitlements under the FLSA by characterizing the activities they perform for a covered employer as "volunteer." *See Tony and Susan Alamo Foundation v. Secretary of Labor*, 471 U.S. 290, 299 (1984); *Brooklyn Savings Bank v. O'Neil*, 324 U.S. 697 (1945). In its only decision directly addressing the status of volunteers under the FLSA, the Supreme Court stated that the purposes of the FLSA "require that it be applied even to those who would decline its protections. If an exception to the Act were carved out for employees willing to testify that they performed work 'voluntarily,' employers might be able to use superior bargaining power to coerce employees to make such assertions, or to waive their protections under the Act. \* \* \* Such exceptions to coverage would affect many more people than those workers directly at issue in this case and would be likely to exert a general downward pressure on wages in competing businesses." *Alamo Foundation*, 471 U.S. at 302. *See Wage and Hour Opinion Letter FLSA2002-9*, Oct. 7, 2002 (copy enclosed).

Section 203(g) of the FLSA defines employment very broadly to include "to suffer or permit to work." In the application of the FLSA, as distinguished from a person who is engaged in a business of his or her own, is one who as a matter of economic reality follows the usual path of an employee and is dependent on the business which he or she serves. The employer-employee relationship under the FLSA is tested by "economic reality" rather than "technical concepts." It is not determined by the common law standards relating to master and servant. *See Fact Sheet #13: Employment Relationship Under the FLSA* (copy enclosed).

The WHD has a long standing policy of limiting volunteer status to those individuals performing charitable activities by for-profit organizations. The WHD determined that consignors at Rhea Lana's events who brought in items to be sold, dropped them off, and then left the premises, were not employees. However, other workers who considered themselves to be "volunteers" and any consignors who also worked at the event (operating the cash register, providing security, and assisting in the sorting and sales of goods) were found to be employees. The WHD determined that the "volunteers" and "consignor volunteers" engaged in activities that are an integral part of the Rhea Lana's FLSA-covered, for-profit business.

Thank you again for your concerns in this important area. If we may be of further assistance to you or your staff, please contact Nikki McKinney in the Office of Congressional and Intergovernmental Affairs at (202) 693-4600.

Sincerely,

A handwritten signature in cursive script that reads "Laura A. Fortman".

Laura A. Fortman  
Principal Deputy Administrator

# EXHIBIT

8



113<sup>TH</sup> CONGRESS  
1<sup>ST</sup> SESSION

# H. R. 3173

To clarify that volunteers at a children's consignment event are not employees under the Fair Labor Standards Act of 1938.

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## IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 25, 2013

Mr. GRIFFIN of Arkansas introduced the following bill; which was referred to the Committee on Education and the Workforce

---

## A BILL

To clarify that volunteers at a children's consignment event are not employees under the Fair Labor Standards Act of 1938.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the "Children's Consign-  
5 ment Event Recognition Act of 2013".

6 **SEC. 2. PURPOSE.**

7 The purpose of this Act is to ensure that individuals  
8 and families may pool their resources, time, efforts, and  
9 energies, with or without the assistance of a facilitator,  
10 to sell, purchase, and otherwise exchange children's cloth-

1 ing, toys, bedding, furniture, and related accessories, and  
2 maternity clothing and accessories without fear that they  
3 will be deemed to be employees under the Fair Labor  
4 Standards Act of 1938 (29 U.S.C. 201 et seq.).

5 **SEC. 3. AMENDMENTS TO THE FAIR LABOR STANDARDS**

6 **ACT OF 1938.**

7 Section 3(e) of the Fair Labor Standards Act of 1938  
8 (29 U.S.C. 203) is amended—

9 (1) in paragraph (1), by striking “and (4)” and  
10 inserting “, (4), (5), and (6)”; and

11 (2) by adding at the end the following:

12 “(6)(A) The term ‘employee’ does not include—

13 “(i) individuals who volunteer their serv-  
14 ices before, during, or after a children’s con-  
15 signment event with or without the assistance  
16 of a facilitator and—

17 “(I) provide not less than 15 items for sale  
18 at such children’s consignment event;

19 “(II) receive a right to shop from the  
20 facilitator at such children’s consignment event  
21 before such event is open to the general public;  
22 or

23 “(ii) the spouse, children, spouses of chil-  
24 dren, grandchildren, parents, and parents of

1 spouses of the individuals described in clause  
2 (i).

3 “(B) For purposes of this paragraph, the term  
4 ‘children’s consignment event’ means a sale or other  
5 event in which—

6 “(i) not less than 90 percent of the fair  
7 market value, in the aggregate, of the items of-  
8 fered for sale at such event are—

9 “(I) children’s or maternity items;  
10 and

11 “(II) resale items offered for sale on  
12 consignment by consignors; and

13 “(ii) such event is held in a single physical  
14 location and is open to the public for the sale  
15 of goods for 8 or fewer sale days within any 30-  
16 day period.

17 “(C) For purposes of this paragraph, the term  
18 ‘facilitator’ means a person that organizes or hosts  
19 a children’s consignment event, or otherwise actively  
20 provides an opportunity for individuals described in  
21 subparagraph (A) to volunteer at a children’s con-  
22 signment event.”.

○

# EXHIBIT

9

113<sup>TH</sup> CONGRESS  
1<sup>ST</sup> SESSION

# S. 1656

To clarify that volunteers at a children's consignment event are not employees under the Fair Labor Standards Act of 1938.

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## IN THE SENATE OF THE UNITED STATES

NOVEMBER 6, 2013

Mr. BOOZMAN (for himself and Mr. PRYOR) introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

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## A BILL

To clarify that volunteers at a children's consignment event are not employees under the Fair Labor Standards Act of 1938.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the "Children's Consign-  
5 ment Event Recognition Act of 2013".

6 **SEC. 2. PURPOSE.**

7 The purpose of this Act is to ensure that individuals  
8 and families may pool their resources, time, efforts, and  
9 energies, with or without the assistance of a facilitator,

1 to sell, purchase, and otherwise exchange children's cloth-  
2 ing, toys, bedding, furniture, and related accessories, and  
3 maternity clothing and accessories without fear that they  
4 will be deemed to be employees under the Fair Labor  
5 Standards Act of 1938 (29 U.S.C. 201 et seq.).

6 **SEC. 3. AMENDMENTS TO THE FAIR LABOR STANDARDS**

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9 (29 U.S.C. 203) is amended—

10 (1) in paragraph (1), by striking “and (4)” and  
11 inserting “, (4), (5), and (6)”; and

12 (2) by adding at the end the following:

13 “(6)(A) The term ‘employee’ does not include—

14 “(i) individuals who volunteer their serv-  
15 ices before, during, or after a children’s con-  
16 signment event with or without the assistance  
17 of a facilitator and—

18 “(I) provide not less than 15 items for  
19 sale at such children’s consignment event;

20 “(II) receive a right to shop from the  
21 facilitator at such children’s consignment  
22 event before such event is open to the gen-  
23 eral public; or

24 “(ii) the spouse, children, spouses of chil-  
25 dren, grandchildren, parents, and parents of

1 spouses of the individuals described in clause  
2 (i).

3 “(B) For purposes of this paragraph, the term  
4 ‘children’s consignment event’ means a sale or other  
5 event in which—

6 “(i) not less than 90 percent of the fair  
7 market value, in the aggregate, of the items of-  
8 fered for sale at such event are—

9 “(I) children’s or maternity items;  
10 and

11 “(II) resale items offered for sale on  
12 consignment by consignors; and

13 “(ii) such event is held in a single physical  
14 location and is open to the public for the sale  
15 of goods for 8 or fewer sale days within any 30-  
16 day period.

17 “(C) For purposes of this paragraph, the term  
18 ‘facilitator’ means a person that organizes or hosts  
19 a children’s consignment event, or otherwise actively  
20 provides an opportunity for individuals described in  
21 subparagraph (A) to volunteer at a children’s con-  
22 signment event.”.

○

# EXHIBIT

10



UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

RHEA LANA, INC.  
1055 Sunflower Drive  
Suite 104  
Conway, AR 72034

and

RHEA LANA'S FRANCHISE SYSTEMS, INC.  
1055 Sunflower Drive  
Suite 104  
Conway, AR 72034

*Plaintiffs,*

v.

U.S. DEPARTMENT OF LABOR  
200 Constitution Avenue, NW  
Washington, D.C. 20210

*Defendant.*

Case No. \_\_\_\_\_

**COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF**

This is a civil action challenging the decision of the U.S. Department of Labor ("DOL" or "Defendant") to classify "consignors/volunteers" as employees under the Fair Labor Standards Act ("FLSA").

**Parties**

1. Plaintiff Rhea Lana, Inc. ("Rhea Lana's") is an Arkansas corporation with its principal place of business in Conway, Arkansas.

2. Plaintiff Rhea Lana's Franchise Systems, Inc. ("Rhea Lana's Franchise Systems") is an Arkansas corporation with its principal place of business in Conway, Arkansas. ("Rhea Lana's" and "Rhea Lana's Franchise Systems" may be jointly referred to as "Plaintiffs".)

3. Defendant DOL is an Executive Branch department of the United States, an “agency” within the meaning of 5 U.S.C. § 701(b), and is charged with administering the FLSA. DOL’s principal office is located in Washington, D.C.

**Jurisdiction, Venue, and Relief**

4. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331, 5 U.S.C. §§ 701-706, and 29 U.S.C. § 201 *et seq.* DOL’s decision to classify consignors/volunteers as employees under the FLSA constitutes final agency action that is reviewable under the Administrative Procedure Act (“APA”), 5 U.S.C. § 704.

5. Venue properly lies with this Court under 28 U.S.C. § 1391(e) because DOL is an agency of the United States government with its principal office in this district.

6. Venue also properly lies with this Court because this case involves a uniform, national DOL policy of classifying volunteers at for-profit enterprises as FLSA employees.<sup>1</sup>

7. There is a dispute between the parties in this case with respect to Plaintiffs’ FLSA compliance.

8. This dispute is a justiciable “case or controversy” for which this Court may grant declaratory relief pursuant to the Declaratory Judgment Act, 28 U.S.C. §§ 2201-02, 5 U.S.C. § 702, and Fed. R. Civ. P. 57.

9. Such relief will redress the harm done by DOL to Plaintiffs.

10. This Court may grant Plaintiffs injunctive relief pursuant to 28 U.S.C. § 2202, 5 U.S.C. §§ 705-06, and Fed. R. Civ. P. 65.

11. This Court may award Plaintiffs reasonable costs and attorneys’ fees incurred in connection with this action pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412.

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<sup>1</sup> Appended as Exhibit 1 is a true and correct copy of a DOL webpage that reflects DOL’s uniform policy toward volunteers under the FLSA. *See also* <http://www.dol.gov/elaws/esa/flsa/docs/volunteers.asp>.

Facts

Plaintiffs' Business

12. Rhea Lana's is a family-owned business in Arkansas that organizes and hosts three semi-annual, short-term consignment sales for children's clothes, toys, and related items.

13. Since 2004, Rhea Lana's has offered high-quality, name-brand, and boutique children's items for a low price. Through consignment, individuals may sell used children's items at Rhea Lana's events. While Rhea Lana's events are open to the public, young stay-at-home mothers, working mothers, and retired grandmothers make up the bulk of Rhea Lana's shoppers, consignors, and volunteers.

14. In preparation for each event, Rhea Lana's leases space for the upcoming sale. The company's employees are accountable for logistical and administrative event details.

15. Consignors provide all of the items for sale at Rhea Lana's events, which last approximately one week.

16. Individuals wishing to sell clothes on consignment can register and price their items online in advance of the consignment sale. Consignors receive an individual consignor code and report that enables them to track their individual sales progress in real-time online.

17. Consignors are responsible for their items and must prepare them for sale, tag their items, bring their items to the event location, check-in and attach price labels to their items, and place their items on display racks. If a consignor's items are not sold at the event, the consignor may either retrieve the items or donate them to a charity.

18. Consistent with the consignment event industry, consignors may volunteer at Rhea Lana's events, but they are not required to do so.

19. Those consignors who choose to volunteer (consignors/volunteers) undertake general tasks such as greeting shoppers, picking up fallen price tags, reorganizing items that shoppers have handled, and assisting shoppers as they carry items to their vehicles.

20. Consignors/volunteers can volunteer for as many or as few hours as they desire and can choose their own schedules and control what activities (greeting, sorting, disassembling, etc.) they will perform.

21. If a consignor/volunteer is unable to attend, Rhea Lana's does not withhold any portion of that consignor's/volunteer's consignment proceeds.

22. Rhea Lana's allows consignors/volunteers to shop before the event opens to the general public.

23. Rhea Lana's does not interview potential consignors/volunteers.

24. Rhea Lana's does not compensate consignors/volunteers.

25. Consignors/volunteers have a vested interest in the success of Rhea Lana's events because the vast majority of them receive at least seventy percent (70%) of all proceeds from their sold items. They are therefore incentivized to volunteer to help ensure shoppers purchase their items. For instance, consignors/volunteers can favorably display their consigned items at events.

26. Consignors/volunteers also have a personal, non-monetary interest in volunteering, given that they have unique access to select products before other shoppers arrive.

27. Rhea Lana's Franchise Systems offers franchise opportunities to enterprises that operate in substantial conformity with Rhea Lana's business model. For example, each franchise is expected to operate semi-annual consignment events and consignors are allowed to volunteer during events.

## DOL's Investigation and Determination

28. In January 2013, DOL, through its Wage and Hour Division ("WHD"), initiated an investigation of Plaintiffs' employment practices for the time period January 28, 2011 to January 27, 2013. Plaintiffs fully cooperated.

29. On May 20, 2013, WHD met with Plaintiffs to discuss the results of its investigation. WHD determined consignors/volunteers to be employees under the FLSA, and thus entitled to back wages in accordance with FLSA minimum wage and overtime provisions.

30. WHD expected Plaintiffs' immediate compliance with WHD's decision.

31. On or about August 6, 2013, Arkansas WHD District Director Robert Darling ("Darling") sent letters to Plaintiffs' current and/or former employees and consignors/volunteers, informing them that they "might not have been paid as required by the law for the period of 01/28/2011 to 01/27/20136 [sic]." <sup>2</sup> The letters informed recipients of their "private right under the FLSA to bring an independent suit to recover any back wages due." <sup>3</sup>

32. On August 26, 2013, Darling sent Plaintiffs a letter summarizing DOL's decision: "The investigation disclosed violations of FLSA section 6 resulting from the failure to pay employees at least the applicable minimum wage for all hours worked and/or FLSA section 7 from the failure to pay statutory overtime pay for hours worked in excess of 40 hours per week." <sup>4</sup>

33. Darling's letter characterized consignors/volunteers as employees: "It is my understanding that you refuse to comply with the employee group known as

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<sup>2</sup> Appended as Exhibit 2 is a true and correct copy of an August 6, 2013 letter from DOL WHD to Plaintiffs' current and/or former employees and consignors/volunteers ("Ex. 2").

<sup>3</sup> See Ex. 2.

<sup>4</sup> Appended as Exhibit 3 is a true and correct copy of the August 26, 2013 letter from Robert Darling to Plaintiffs ("Ex. 3").

consignors/volunteers. Letters have been sent to the consignors/volunteers informing them of their private right under the FLSA to bring an independent suit to recover any back wages due.”<sup>5</sup>

34. Darling’s letter threatened civil money penalties if Plaintiffs refused to comply:

We would like to direct your attention to section 16(e) of the FLSA and Regulations, Part 578. *As you will note, section 16(e) provides for the assessment of a civil money penalty for any repeated or willful violations of section 6 or 7, in an amount not to exceed \$1,100 for each such violation.* No penalty is being assessed as a result of this investigation. If at any time in the future your firm is found to have violated the monetary provisions of the FLSA, it will be subject to such penalties.<sup>6</sup> (Emphasis added.)

35. WHD Principal Deputy Administrator Laura Fortman (“Fortman”) explained DOL’s rationale for classifying consignors/volunteers as employees in an August 30, 2013 letter to Congressman Tim Griffin of Arkansas.<sup>7</sup> Fortman wrote:

The WHD has a long standing policy of limiting volunteer status to those individuals performing charitable activities by for-profit organizations. The WHD determined that consignor’s at Rhea Lana’s events who brought in items to be sold, dropped them off, and then left the premises were not employees. However, other workers who considered themselves to be ‘volunteers’ and any consignors who also worked at the event (operating the cash register, providing security, and assisting in the sorting and sales of goods) were found to be employees. The WHD determined that the ‘volunteers’ and ‘consignor volunteers’ engaged in activities that are an integral part of the Rhea Lana’s FLSA-covered, for-profit business.<sup>8</sup>

36. Although Fortman wrote that DOL has a long-standing policy of limiting volunteer status to those individuals performing charitable activities by “for-profit” organizations, Plaintiffs believe this was a typographical error and that Fortman actually meant “non-profit” organizations.<sup>9</sup>

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<sup>5</sup> See Ex. 3.

<sup>6</sup> See Ex. 3.

<sup>7</sup> Appended as Exhibit 4 is a true and correct copy of the August 30, 2013 letter with enclosures from Fortman to Congressman Tim Griffin (“Ex. 4”).

<sup>8</sup> Ex. 4.

<sup>9</sup> Appended as Exhibit 5 is a true and correct copy of five WHD opinion letters.

## Claim for Relief

### Arbitrary, Capricious, and Illegal DOL Action

37. Plaintiffs repeat and incorporate by reference herein the allegations contained in paragraphs one (1) through thirty-six (36).

38. DOL's actions described herein, including its wrongful determination that consignors/volunteers are employees under the FLSA, were arbitrary, capricious, and otherwise not in accordance with the law, and harmed Plaintiffs. 5 U.S.C. § 706(2)(A).

39. DOL applied the incorrect legal standard when it determined that consignors/volunteers were FLSA employees.

40. DOL wrongfully ignored the economic realities of this case and instead arbitrarily and capriciously applied a categorical ban against volunteerism on behalf of for-profit enterprises.

41. The economic realities in this case do not create an employer-employee relationship. Unlike the volunteers in *Tony & Susan Alamo Foundation v. Secretary of Labor*, 471 U.S. 290 (1985), the consignors/volunteers here are not in a position of dependence, nor do they receive wages in any form.

42. Judicial review is appropriate because legal consequences flow from DOL's decision.

43. DOL's determination in the Darling letter fixes the legal relationship between Plaintiffs and the consignors/volunteers and exposes Plaintiffs to civil money penalties under 29 U.S.C. § 216(e) and 29 C.F.R. § 578.3(a).

44. DOL's determination in the Darling letter similarly exposes Plaintiffs to substantial back wages and liquidated damages under 29 U.S.C. § 216(b).

45. Unless Plaintiffs make immediate, significant changes to their businesses, they will continue to accrue thousands of dollars in potential liability. *See Sackett v. Envtl. Prot. Agency*, 132 S. Ct. 1367, 1372 (2012). Because DOL expects immediate compliance, Plaintiffs must either incur the substantial costs of complying with DOL's determination or violate DOL's directive and risk adverse consequences, such as an enforcement proceeding for back wages, liquidated damages, and/or civil penalties. *See Abbott Labs. v. Gardner*, 387 U.S. 136, 152-53 (1967).

46. Furthermore, DOL's actions have caused and continue to cause Plaintiffs significant hardship, particularly to their business reputation and goodwill.

47. With respect to Rhea Lana's, a local news station that had historically provided gratuitous news coverage and advertising revoked its services due to DOL's investigation.

48. With respect to Rhea Lana's Franchise Systems, certain prospective franchisees have either declined to purchase franchises or have indicated that their purchase is contingent upon a successful resolution of DOL's consignor/volunteer classification. Additionally, DOL's investigation forced Rhea Lana's Franchise Systems to re-direct revenue to pay Plaintiffs' legal defense.

49. Fortman's letter, among other things, demonstrates that DOL's determination in the Darling letter marks the consummation of its decision-making process.

50. Fortman's letter, among other things, demonstrates that DOL's determination in the Darling letter is not subject to further consideration or possible modification or any other agency review.

51. Plaintiffs have exhausted all administrative remedies.



52. The harm done by DOL to Plaintiffs will be redressed by a favorable ruling in this case.

53. Such favorable ruling would preserve Plaintiffs' businesses, restore Plaintiffs' business reputation, and preserve Plaintiffs' commercial good will.

**Relief Requested**

WHEREFORE Plaintiffs request the following relief:

A. A declaration that consignors/volunteers participating under Plaintiffs' business model are not FLSA employees.

B. A temporary and preliminary injunction prohibiting DOL from initiating any investigations, audits, enforcements, or other agency proceedings against Plaintiffs based on the use of consignors/volunteers during the pendency of this litigation.

C. A permanent injunction prohibiting DOL from initiating any investigations, audits, enforcements, or other agency proceedings against Plaintiffs based on DOL's policy prohibiting volunteerism at for-profit organizations, or any similar policy that ignores the "economic realities" test.

D. If this Court determines that consignors/volunteers participating under Plaintiffs' business model are subject to the FLSA, a permanent injunction prohibiting DOL from recovering civil money penalties or liquidated damages.

E. Such attorneys' fees and costs as Plaintiffs may be entitled to under the law, including the Equal Access to Justice Act, 28 U.S.C. § 2412.

F. Such other relief as this Court deems just and proper.

Dated: January 6, 2014

Respectfully submitted,

/s/ Daniel Z. Epstein

Daniel Z. Epstein

D.C. Bar No. 1009132

Cause of Action, Inc.

1919 Pennsylvania Avenue, NW, Suite 650

Washington, D.C. 20006

Telephone: (202) 499-4232

daniel.epstein@causeofaction.org

/s/ Lorinda B. Harris

Lorinda B. Harris

D.C. Bar No. 993396

Cause of Action, Inc.

1919 Pennsylvania Avenue, NW, Suite 650

Washington, D.C. 20006

Telephone: (202) 499-4232

lorinda.harris@causeofaction.org

/s/ Reed D. Rubinstein

Reed D. Rubinstein

D.C. Bar No. 440153

Dinsmore & Shohl LLP

801 Pennsylvania Ave., NW, Suite 610

Washington, D.C. 20004

(202) 372-9120 (telephone)

(202) 372-9141 (fax)

reed.rubinstein@dinsmore.com