

LEGAL NOTICE - BREACH OF CONTRACT AND VIOLATION OF CALIFORNIA LABOR CODE § 226.8 (INTENTIONAL MISCLASSIFICATION)

Dear Rachel and Florian,

I wanted to take a moment to express my thoughts and clear up any misunderstandings regarding the conclusion of our working relationship. My intention is not to dispute your decision but to ensure we part ways with mutual understanding and respect.

When we began this collaboration, I was excited to bring value to your brand and achieve the goals we outlined together. However, I believe there may have been some misaligned expectations that contributed to recent frustrations.

We currently have three directions we can go.

1. Court
2. Release & Waiver
3. Keep working together

Complaint Summary

1. **Regarding December's Operations**

Florian had communicated that the company (and Rachel) was taking 30 days off for the holidays (with limited availability 2nd and 3rd week of January), which I interpreted as a company-wide pause on operations – including employees and contractors (either way, this wouldn't have applied to Independent Contractors). This understanding shaped my approach to content approvals and deadlines during that period. Unfortunately, while I awaited approvals (per the established ClickUp workflow), tasks did not progress as intended. Additionally, approvals often required multiple follow-ups through Slack, which created inefficiencies and delays. Despite being informed that the company was taking a 30-day break, I returned to the office two weeks early. However, it seems no actual time off was taken, as I noticed work continued during this period, and I apparently kept receiving ongoing Slack messages throughout the supposed break – with a final UpWork message communicating the end of our work relationship.

2. **Content Calendar and Publishing**

Your system depended heavily on timely approvals, yet I regularly found myself asking multiple times for responses to questions and approvals. This applied to social posts, blogs, videos, and newsletters. Without those approvals, I was unable to proceed in good faith. It's worth noting that our contract granted me the authority to publish without approval, but I deferred to your process to respect your team's expectations. In hindsight, this dynamic created unnecessary bottlenecks. Further hindsight, I should have enforced the terms of our contract by moving forward with publishing, regardless of explicit (and consistent) daily approval delays.

"Therefore, staying within the Scope of Work, the Independent Contractor shall retain sole and absolute discretion in the manner and means for the carrying out of Independent Contractor's activities and responsibilities contained herein this Agreement."

Source: [Verdant Strategies Contractor - Joe Powers](#)

3. **Role Clarity and Workload**

My role was clearly defined as that of an independent contractor, tasked with delivering a specific number of agreed-upon deliverables each month. It was explicitly not intended to be a 24/7 on-call employee (as Florian stated he was looking for) or a personal assistant role. However, in practice, the scope of my responsibilities expanded significantly—intentionally—requiring daily involvement in unplanned tasks, responding to frequent urgent requests (there was almost always a new urgent task), and participating in lengthy conference calls where my contributions were minimal or non-existent. These expectations and demands blurred the line between independent contractor and employee, leading to recurring inefficiencies and disorganization in executing the content strategy.

When I directly asked Florian whether I was being treated as a contractor or an employee, Florian acknowledged that I was functioning more as an employee than an independent contractor. I have a video recording of this admission, and Florian consented to my recording calls on September 23, 2024, at 12:16 PM MST. This recorded evidence further underscores the inconsistency between my defined role and the practical expectations placed upon me.

4. **Publishing Autonomy**

The contract stipulated that I had the discretion to execute tasks in the time and manner I saw fit. However, in practice, the collaboration required me to use your tools, complete work according to your specified timelines, maintain mandatory availability, and participate in required meetings. These expectations often involved immediate responses, micro-management, and strict adherence to approval processes, all of which contradicted the autonomy outlined in the contract. Such conditions align more closely with the criteria for employee status, as defined

under Form SS-8 and AB-5, potentially categorizing me as an employee rather than an independent contractor.

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5. **Autonomy and Use of Company SOPs**

The Independent Contractor Contract explicitly states that I was to retain **sole and absolute discretion** in the manner and means of carrying out my work. Additionally, the contract emphasizes that any advice or directions provided by the Company were to be treated as **suggestions, not instructions**. However, in practice, I was required to follow the Company’s Standard Operating Procedures (SOPs) rather than using my own methods or processes, which significantly limited my autonomy.

Requiring me to rely on your internal SOPs not only undermined the independence outlined in the contract but also aligned more closely with the control exercised over employees, as defined under California law (AB-5 via the ABC test).

How the AB-5 ABC Test Applies to Misclassification

Under California law (AB-5), a worker is presumed to be an employee unless the hiring entity can satisfy all three prongs of the ABC test.

A: Worker is Free from Control and Direction

Fails Test A: I was subject to significant control and direction, undermining independence.

Control and Oversight:

- I was required to use the company’s tools, software, and SOPs instead of my own methods.
- I was required to attend Mandatory meetings (all meetings were mandatory) and my availability contradicted the autonomy typical of independent contractors.
- Micro-management and oversight in daily tasks and timelines demonstrate control.

B: Worker Performs Work Outside the Usual Course of the Hiring Entity's Business

Fails Test B: My work was not incidental or peripheral to the company's business; it was central to their operations.

Nature of the Work:

- The company is a cannabis accounting firm, but my tasks (social media management, SEO, content creation, and marketing) are integral to the company's business operations and growth.
- Marketing and online presence are directly related to the company's core functions, particularly for client acquisition and retention.

C: Worker is Engaged in an Independently Established Trade, Occupation, or Business

Fails Test C: Although I may have an independent business (Hemp Writer), the level of control and reliance on the company diminishes my status as an independent contractor in practice.

Dependence on the Company:

- The company dictated specific workflows, including the use of their SOPs and platforms, limiting my ability to operate independently.
- Tasks and expectations (e.g., urgent responses, unplanned assignments) show dependency rather than independent operation.

The company fails all three prongs of the ABC test, supporting my claim that I was misclassified as an independent contractor. My work arrangement aligns more closely with an employee-employer relationship based on:

- The level of control exercised.
- The integral nature of my work to the business.
- The lack of independence in performing my duties.

This degree of oversight and control further demonstrates the misalignment between the terms of the Agreement and the practical working conditions, contributing to my claim of misclassification.

7. Communication Challenges

Another critical issue was the lack of consistent communication, especially considering the urgency and seriousness of the matter during holiday

communications, as it was presented.

While I made every effort to over-communicate progress and updates, there were many times when questions to team members went unanswered, and also, I would be asked for information I had already shared. This created disorganization, inefficiencies, and, at times, frustration on both sides, despite having multiple channels available for collaboration—such as phone calls, texts, and email (both my HempWriter email and the email associated with your company)—I received minimal communication during the holidays. Over the holidays, you reached out to me only once or twice on Slack, with no significant attempts made through any other established communication methods.

8. **Improper Notification of Termination**

Per the **Termination for Convenience** clause in our contract, either party may terminate the agreement with ten (10) days written notice, specifying the extent of the termination and the effective date. The clause explicitly requires termination to be communicated via email to the address specified in the contract, which in my case is **Joe@hempwriter.com**. However, I was not notified of the termination through this email address as stipulated. Instead, I was informed via UpWork chat, which does not comply with the agreed-upon contractual terms, thus breaching the contract, and requiring compensation for the breach in the amount I would have earned during the 10-day notice period.

“TERMINATION FOR CONVENIENCE

The Company or Independent Contractor may terminate performance of the Independent Contractor’s work and/or services under the Agreement pursuant to this paragraph in whole, or in part, upon ten days’ written notice. Termination shall be effected by e-mail, to the address specified below, specifying the extent to which performance of the work and/or services under this Agreement is terminated, and the date of termination.”

“The Independent Contractor shall supply all necessary equipment, materials and supplies needed to complete the agreed upon Scope of Work. The Independent Contractor shall not rely solely upon the equipment or offices of the Company for completion of the tasks and duties set forth pursuant to this Agreement. Any directions or advice provided to the Independent Contractor regarding the Scope of Work shall be considered a suggestion only and not an instruction. While Independent Contractor agrees to meet any deadlines for performance of its services, Independent Contractor shall decide on its own when and how to perform its services.”

Source: [Verdant Strategies Contractor - Joe Powers](#)

This failure to adhere to the contractual process for termination further demonstrates the lack of clarity and professionalism in managing this agreement. This procedural failure contributes to the concerns about the overall handling of our agreement.

9. **Benefit Rights Waiver**

According to the contract, I explicitly waived any right to receive benefits provided by the Company to its employees, including health benefits, vacation, retirement, profit-sharing plans, sick leave, overtime pay, and any 401(k) plans.

However, despite this waiver, the Company's treatment of my role as more akin to an employee—including mandatory meetings, mandatory availability, daily involvement in tasks, and micro-management—suggests a practical contradiction. This inconsistency created confusion about whether I was operating as an independent contractor or an employee in practice, despite the agreed-upon terms.

"The Independent Contractor herein waives and foregoes any and all right to receive any benefits that may be provided by the Company to its regular employees, including, but not limited to, health benefits, vacation, retirement, profit sharing plans, sick leave, and any 401(k) plans."

Source: [Verdant Strategies Contractor - Joe Powers](#)

Damages*

1. Back pay for employee rate. (\$25,687.20) Pursuant to Intentional Misclassification, Quantum Meruit, and Unjust Enrichment.
 - a. Approximately 240 hours of total work throughout the contract.
 - b. Employee rate \$150 per hour.
 - c. Independent contractor rate \$42.97 per hour.
 - d. Owed difference of \$107.03 per hour for 240 hours.
2. 10 days of wages for improper termination. (40 hours at \$150 per hour = \$4,500).
3. Benefits entitled to employees include; paid time off, health benefits, vacation, retirement, profit-sharing plans, sick leave, and any 401(k) plans. (Amount to be determined at trial - up to \$10,000+).
4. Independent Contractor Taxes. (\$790).
5. Stress, inconvenience, lost opportunity damages, and loss of employment rights. (Amount to be determined at trial - up to \$10,000+).
6. Back pay for work performed. (40 hours at \$150 per hour = \$4,500).
7. Interest for unpaid compensation at 10% per annum (\$1,182.57).
8. Such other and further relief as the Court may deem just, reasonable, and appropriate under the circumstances.

Total estimated compensatory damages = \$36,659.77

** Damages are approximate, the total is to be determined at trial.*

Commitment To Future Professionalism

Despite these challenges, I genuinely enjoyed working with you and took pride in the work I delivered. I understand your decision to move in a different direction, but I hope this provides some context for my perspective and clears up any misunderstandings about my intentions, efforts, and approach.

I wish you and your team continued success in all your endeavors. I look forward to meeting y'all live at an event someday soon.

Should you ever wish to reconnect or require my assistance in the future, I am open to collaboration under the following conditions.

- 1. We can continue at the \$42.97 rate as an independent contractor for SEO services under the conditions detailed below.**
2. I will not participate in non-essential conference calls that are mandatory or otherwise.
3. All project communication will be managed exclusively through my project management system.
4. All correspondence will be conducted via my company email address (Joe@HempWriter.com).
5. Chat and task management platforms provided by your company such as Slack, ClickUp, or similar will not be utilized.
6. You will assign one point of contact to my team. Additional contacts will require an additional fee.
7. I will provide all the necessary tools required for project execution.
8. Communication will be limited to weekly updates (via email), summarizing completed work, and outlining plans for the upcoming week. (Will negotiate)
9. Live calls will be limited to a maximum of one per month. (Will negotiate)
10. I will act in practice as an independent contractor, not an employee.

Next Steps

In the spirit of professionalism and transparency, I am providing this letter as a formal notice of my concerns regarding the discrepancies between our agreement and the actual working conditions I experienced.

I request that you respond to this message within **30 calendar days** of its delivery to address and resolve these issues.

If I do not receive a response within this timeframe, I may proceed with the following actions:

- Reporting the matter to the **Department of Labor (DOL), California Division of Labor Standards Enforcement (DLSE), California Labor & Workforce Development Agency (LWDA)**, and/or the **Internal Revenue Service (IRS)** for an evaluation of potential misclassification under **Form SS-8**, pursuant to California Law Assembly Bill No. 5 (AB-5), California Labor Code § 2699, California Labor Code § 226.8, et al.
- Filing a civil lawsuit to recover any unpaid wages, benefits, or damages stemming from the misclassification.
- Reporting any suspected willful misclassification or related violations to the appropriate authorities for a potential investigation into potential statutory violations.

I am hopeful that we can resolve this matter amicably and in a manner that is satisfactory to both parties.

To that end, I propose that we work toward a **mutual settlement agreement** that includes a **mutual release and waiver of claims**. Such an agreement would provide clarity and closure to this situation, ensuring that all disputes are fully resolved without the need for further legal action.

A mutual release and waiver would serve to protect the interests of both parties by eliminating any future claims related to the issues outlined in this correspondence. I am open to engaging in constructive dialogue to negotiate the terms of such an agreement, and I am confident that an equitable resolution can be achieved.

The Mutual Release and Waiver will include:

- A waiver of my right to pursue legal action related to any past issues stemming from our working relationship.
- A waiver of my right to disclose or publish any part of this story or associated details in public forums or media channels.
- Both parties agree to maintain the confidentiality of the settlement terms and the circumstances leading to this agreement. Neither party shall make any public or private statements, written or verbal, about the dispute, claims, or settlement, except as required by law.
- This agreement does not constitute an admission of liability, fault, or wrongdoing by either party, and both parties expressly deny any such liability or wrongdoing.
- Both parties release and forever discharge each other, their officers, agents, employees, contractors, successors, and assigns from any and all claims, demands, actions, or causes of action, whether known or unknown, arising out of or related to the working relationship.

- This release applies to any claims, known or unknown, past, present, or future, arising from or relating to the working relationship between the parties. Each party waives the right to pursue any claims of this nature after the execution of this agreement.
- Both parties acknowledge and agree that the working relationship was structured as an independent contractor arrangement. The settlement is intended to resolve disputes regarding classification without admission of liability or status.
- The recipient of the settlement payment agrees to be solely responsible for any tax liabilities, filings, or obligations associated with the settlement payment, and the payer makes no representation or warranties regarding tax implications.
- Both parties agree that the Independent Contractor will not be rehired, re-engaged, or otherwise employed in any capacity by the Company following the execution of this agreement.

I hope that we can come to a fair and prompt resolution to avoid escalation, and I look forward to your response regarding this proposal.

I remain committed to protecting my rights (and the rights of all Independent Contractors) under applicable laws and ensuring compliance with all legal obligations.

Public Disclosure Notice

Additionally, I reserve the right to share my experience publicly (that I have direct personal firsthand knowledge of), including the challenges and discrepancies encountered during our collaboration, should we fail to reach an amicable resolution.

I may publish this story through appropriate channels to shed light on these issues and raise awareness about the treatment of independent contractors. However, I sincerely hope this matter can be resolved privately and professionally to avoid such steps.

Affirmative defenses for public disclosure of my claim include my First Amendment right, truth, and pure opinion. All contractually confidential information will be omitted.

Company Tool Removal Demand

Remove my access to the following tools your company owns.

1. Figma
2. ClickUp
3. Rachel's LinkedIn
4. FreePix
5. Websites
6. Google Search Console
7. Google Analytics

8. Descript
9. Pix.io
10. Social Media: YouTube, Instagram, Facebook, company LinkedIn
11. Social media link sheet
12. Timesheet

Also, remove my image and bio from VerdantStrategies.com.

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I believe this matter can be resolved professionally and amicably. Respond within 30 calendar days to address these concerns. If no response is received, I will be compelled to take further action, including legal and administrative remedies.

Warm regards,

Joseph Powers

P.S. Ensure the preservation of all Slack messages, company emails, and other records related to my work and interactions with Verdant Strategies. Be advised that the deletion or destruction of such records could be considered spoliation of evidence and may be interpreted as an acknowledgment of the claims outlined in this notice.