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DIVISION II

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STATE OF WASHINGTON

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No. 40573-3-II

**COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON**

PHILIP GROH,

Appellant,

v.

MASON COUNTY FOREST PRODUCTS, LLC,
and PHILIP JOHNSON,

Respondents.

APPELLANT'S BRIEF

By WESLEY S. JOHNSON
Attorney at Appellant

WSBA #16930
WESLEY S. JOHNSON
600 Royal Street, Suite B
Kelso, WA 98626
Telephone: (360) 577-8700
Fax: (360) 577-8702

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A. ASSIGNMENTS OF ERROR

Assignment of Error No. 1. The trial court erred by granting the defendant's Motion for Summary Judgment.

Assignment of Error No. 2. The trial court erred by refusing to allow the plaintiff to disclose an additional witness for trial in this matter.

ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

Issues pertaining to Assignment of Error No. 1.

Issue one: Did the defendants carry their burden of establishing that there is no issue of fact on whether 1) Plaintiff was within the statutory protected age group; 2) was discharged; 3) was doing satisfactory work; and 4) was replaced by a younger person?

Issue two: Did the defendants carry their burden of establishing that there was no issue of fact relating to whether there was evidence of any inconsistency or incompatibility in the nondiscriminatory reasons given for the plaintiff's termination or whether there was other evidence that the nondiscriminatory reasons were pretextual or otherwise unworthy of belief?

Issues pertaining to Assignment of Error No. 2.

Issue one: Should the plaintiff be allowed to present a witness when disclosure was made after the deadline for disclosing

witness when there is no prejudice to the defendants and there was no intent on the part of plaintiff or his attorney to violate the discovery rules?

Issue two: If the plaintiff testified in a deposition that he was not “alleging that [he had] any emotional complaints, emotional distress due to the termination”, is he foreclosed thereby from bringing any witnesses relating to his emotional distress claim?

B. STATEMENT OF THE CASE

Mason County Forest Products is a Washington Limited Liability Company that specializes in the manufacture, production and sale of forest products, specifically lumber. Mason County Forest Products owns and operates a large log mill and a stud mill in Shelton, Washington. Long Bell Ventures, LLC d/b/a Lewis county Forest Products, LLC is Mason County Forest Products' parent company and owns 100% of Mason County Forest Products. Like Mason County Forest Products, Lewis County Forest Products, is a Washington Limited Liability Company that specializes in the manufacture, production and sale of forest products. Lewis County Forest Products owns a stud mill in Winlock, Washington. Defendant Philip Johnson is the President, Chief Operating Officer and owner of Ma-

son County Forest Products. Mr. Johnson is also the President, Chief Operating Officer of Lewis County Forest Products. (53 CP p. 120-121)

Mr. Groh began his employment with Mason County Forest Products in January 2005 as a Swing Shift Supervisor at Lewis County Forest Product's Winlock, Washington stud mill. At the time he was hired, Mr. Groh was 56 years old. (48 CP p. 138-139)

In August 2006, the Winlock lumber mill where the Plaintiff was working was shut down. At the time, Mason County Forest Products believed the shutdown was temporary. Therefore, some employees from the Winlock lumber were transferred to the Shelton lumber mill. However, the Shelton lumber mill did not have enough positions to transfer all Winlock employees. (53 CP p.121) Plaintiff was not one of the employees laid off and was, instead, offered a transfer by Defendant Mr. Johnson. (49 CP p. 156)

Instead of laying off plaintiff as part of the first wave of layoffs associated with the shutdown of the Winlock lumber mill, Defendant Phil Johnson invited Mr. Groh to transfer to the Shelton lumber mill after the Winlock lumber mill shut down. Mr. Groh agreed and began working at the Shelton lumber mill in August 2006 in the position of Swing Shift Planer Supervisor. (49 CP p. 155-156) The

lumber market continued to slow and Mason County Forest Products Mill was forced to stop running all swing shifts. Mason County Forest Products laid off the Day Shift Planer Supervisor, and Plaintiff took on that position. In November 2006, Mr. Johnson promoted Mr. Groh to Stud Mill Supervisor. (49 CP p. 143) Mr. Groh was in this position when he was laid off from Mason County Forest Products. (53 CP p. 121)

While he worked in Shelton for Mason County Forest Products, Mr. Groh's home was in St. Helens, Oregon, four hours away from the Shelton lumber mill. Mr. Johnson, believing Mr. Groh was to be employed only temporarily at the Shelton lumber mill, arranged and (Mason County Forest Products) paid for lodging for Mr. Groh at the Little Creek Casino, location in Shelton, Washington, for a period of six months. Mason County Forest Products also paid for Mr. Groh's meals and incidentals during this time period. (49 CP p. 144-146) In January 2007, it was determined that the Winlock lumber mill was to remain shutdown indefinitely and Mr. Groh was officially transferred to the Shelton lumber mill and provided a raise. (49 CP p. 156) At that point, Mr. Groh and Mr. Elmer rented an apartment in Shelton. Mason County Forest Products provided them with first month's rent and a deposit on the Shelton Apart-

ment. (49 CP p. 144) Mr. Groh, who was 60 years old at the time, was laid off on July 25, 2008. Subsequently, Daniel Poppe stepped into that position. (53 CP p. 121-122) Daniel Poppe was born December 17, 1984. (49 CP p. 170)

Plaintiff was told by Greg Duncan, at the time that he was informed of his discharge, that he was discharged because he needed a place for Daniel Poppe. Mr. Groh quotes Mr. Duncan as saying: "Well, it isn't that Phil's mad at you. Poppe's a good kid, and he needs a place for him." (55 CP p. 98)

In fact, Phil Groh was terminated on July 25, 2008 (49 CP p. 150). Daniel Poppe was listed as the stud mill supervisor from August 18 to August 24, 2008. (56 CP p. 68) In fact, in all the paperwork Plaintiff received the plaintiff is listed as supervisor until he is replaced with Mr. Poppe. See the documents attached to the declaration of Wesley Johnson. (56 CP p. 54-77)

Apparently there is a difference of opinion within the defendants' management about Phil Groh's skills. Greg Duncan was Mr. Groh's immediate supervisor. Here is what he said about Phil Groh:

"Q When you assumed the role of plant manager of this small mill, was Phil Groh already shift supervisor?

A Yes, he was.

Q Now I got it. How was Phil's shift doing when you got There?

A Good.

Q No problems?

A No.

Q At some point a decision was made to let Phil Groh go.

A Yes.

Q And who was involved in that decision?

A I'm not sure because I was on vacation.

Q Okay. So, he worked for you?

A. Yes.

Q And nobody consulted you about this?

A Not – no.

Q When did you first learn that he was going to be let go?

A When I was – it was a Wednesday, the week that I was gone.

Q And how did you find out?

A Email.

Q Did that surprise you?

A Yes, it did.

Q Why is that?

A It just surprised me that he would be one of the guys that we looked at letting go at the time.

Q And why was that?

A Because as far as I was concerned, he was doing a good job.

Q Did you ever ask about that?

A As far as –

Q Why he was let go.

A We were cutting costs.

Q Okay. Let's take this in steps here. So did you ask somebody about it?

A No.

Q And did anybody tell you why?

A Yes.

Q And who was that?

A Phil, Phil Johnson.

Q And what did he tell you?

A That we were cutting that position out, we were downsizing." (55 CP p. 103-105)

In fact, there was some confusion with Greg Duncan about what happened. Here is how his deposition continued:

"Q So, the position of shift supervisor was being cut?

- A Yeah.
- Q Did nobody fill that position afterward?
- A It was absorbed by a few different people.
- Q It was –
- A Absorbed, the responsibilities were.
- Q Is there somebody in that position today?
- A No. Myself.
- Q So, you are now supervising that shift directly?
- A Yes.” (55 CP p. 105)

Then a break was taken at the request of counsel for the defendant. (55 CP p. 105) Mr. Duncan was then asked about the changes relating to the export market. He was asked the following questions and gave the following answers:

- “Q Okay. Did this cause Phil Groh any problems any more than anybody else?
- A I wouldn't say it caused him any more troubles or any less troubles than anybody else.
- Q Are you aware of any specific instance where it caused Phil Groh any problems in his work?
- A No.” (55 CP p.106)

Then Mr. Duncan was asked some questions about Mr. Baker and he gave the following answers to the following questions:

“Q Did he fill in for Mr. Groh after he left?

A Yes.

Q In what capacity?

A He took on some of the duties that Phil Groh was doing and I guess you could say he was the supervisor at the time.

Q For how long?

A Probably three to six months.” (55 CP p. 106)

Mr. Duncan was then asked questions about Daniel Poppe. He gave the following answers to the following questions:

“Q And before Mr. Groh was terminated, what was Daniel Poppe doing?

A He was the shipping supervisor.

Q And did he fill in in Mr. Groh’s position at any point?

A Yes.

Q And when was that?

A After Dennis left up to now...” (55 CP p. 107-108)

Mr. Duncan then cited some reserve about Daniel Poppe’s abilities. He gave the following answers to the following questions:

“Q Okay. So, what’s Daniel’s title?

A I guess technically he’s the supervisor.

Q So his title is shift supervisor?

- A Yeah, I guess it would be.
- Q Do you know how much he's paid?
- A No, I don't.
- Q So when you say technically, why do you qualify it as technically?
- A Because he's doing parts of the job, but he's not in complete control of it. I still maintain the control of what goes on with the employees. I mean, he has the power to do them, but he has to go through me. I mean, he's learning more and more about it and, you know, I guess you can say I'm trying to mentor him, teach him, bring him up into the position to where one day when it fits, he will be able to take it over and I can go back to some of the other stuff that I need to do.
- Q But he doesn't have the experience that Phil Groh had?
- A No.
- Q So, how would you compare the work that he does compared to what Phil Groh was doing, what's different?
- A They're real comparable.
- Q Well, you didn't have any problem with saying that Phil Groh was the shift supervisor without any qualifications, but with Daniel Poppe you want to qualify it, so there must be some difference.
- A Well, the experience and the comfort level with me.
- Q Okay. So, you felt like with Phil Groh's experience, would it be fair to say, you didn't have to supervise him as closely?

A No, I didn't.

Q Whereas, with Daniel Poppe, he is learning and you have to supervise him more so?

A Yes." (55 CP p. 108-109)

He was then asked some questions about a letter that he sent and he gave the following answers to the following questions:

"Q So it's a letter sent to me?

A Yes.

Q And did you compose that letter?

A Yes.

Q And you signed the letter?

A Yes.

Q And you said that performance wasn't the problem?

A No, it wasn't.

Q And you said that because that's what you were told?

A No. It's what I believe.

Q Okay. Well, didn't you say that you really weren't involved in the decision of letting him go?

A No, I wasn't.

Q So, if in fact you weren't involved in the decision, you must have come to the conclusion that performance wasn't an issue. How did you come to that conclusion?

- A Well, because it was based on down sizing.
- Q Is that because of what Phil Johnson told you?
- A Yes.
- Q Did you ever wonder why him and not someone else?
- A No. yes, I did, but it was just where they started.
- Q I don't understand.
- A It's just where they started cutting.
- Q So, let's see if I understand you correctly. Would it be fair to say that when Phil Groh was cut, basically there were three people filling his position?
- A Yes.
- Q Did you ever wonder why Daniel Poppe was kept and Phil Groh was let go?
- A Yes and no.
- Q What do you mean by that?
- A I always questioned why Phil was let go, but both of them were valuable employees to me, and I don't know why the decision was made, no, I never really got an answer other than we were cutting costs." (55 CP p. 110-111)

Phil Johnson, on the other hand, is the managing partner of this business. (49 CP p. 155) As indicated by this defendant, the entire problem was Phil Groh's performance. (55 CP p. 114) . The following questions and answers were made:

“Q Did you ever discuss this with Greg Duncan?

A You know, I really don't remember whether I did or not.

Q So, Greg Duncan, was he not Phil's immediate supervisor?

A Mm-hmm (witness nods head affirmatively).

Q Yes?

A Yes, sir.” (55 CP p. 114)

He was then asked:

“Q Okay. So, if he was having some problems – actually, let me strike that. Let me ask a different question. Did you ever have discussions with Mr. Groh about this problem that you perceived about –

A I really didn't, still don't interact with our shift managers.

Q Whose job would that be?

A Would be their direct supervisor.

Q So did you ever speak to Greg Duncan about this problem?

A Well, you just asked me and still I don't remember.

Q Okay.

A I don't remember having a conversation. I can't say for certain I didn't, but I don't remember having it.” (55 CP p. 114-115)

I then asked Mr. Johnson the following questions to which he gave the following answers:

“Q Would you be surprised to find out that Greg Duncan said he never even perceived that there was a problem?

A No, because I told you I don’t really remember talking to him about it.

Q Okay. So, did your perception that he was struggling with the export business enter into the reason that you laid Phil Groh off?

A That was the reason.

Q Okay. Did you ever tell anybody that?

A I don’t remember.” (55 CP p. 115-116)

Mr. Johnson went on to confirm that he did not remember ever having a discussion with Mr. Duncan or Mr. Groh about Mr. Groh’s production problems. (55 CP p. 116)

Mr. Johnson then told us what he typically would do:

“Q And, yet, you never discussed this or you don’t remember having discussed this with Greg?

A Don’t remember discussing it.

Q Is that typical of your way of dealing with employees?

MS. WYATT: Object to form.

A Yeah.

Q It is?

A No, it isn't.

Q Okay. How is it different?

A I just didn't answer the question. Please give it to me again if you would please.

Q The question was, is that typical of how you deal with employees?

MS. WYATT: Object to form. Are you talking about the fact that he doesn't remember having the conversation?

MR. JOHNSON: No, that he wouldn't have even talked to the man or the man's supervisor without laying him off because of performance problems.

MS. WYATT: Objection, that mischaracterizes his testimony.

MR. JOHNSON: That's okay. Let's see if he can answer it.

MS. WYATT: You can answer it if you know that the question is.

A I don't remember having a conversation with Greg Duncan. My normal way of handling a problem with a supervisor is, as I stated earlier, trying to give them every opportunity to succeed, but what I can't tell you is about any conversations I had with Mr. Duncan or with Phil Groh.

Q Okay. So, let me see if I understand this correctly then. What you're saying is typically if you're having a problem with an employee, that you'll give them an opportunity to succeed, correct?

A Yes.

Q Is that what you're telling me? And would that in fact include discussing the problem with him?

A I would normally say that that would be a correct answer.

Q And also would it be fair to say that typically you would also discuss this with that employee's supervisor, direct supervisor?

A Yes.

Q And what you're saying is this particular instance, you don't remember whether you did that or not?

A I don't know. I don't remember a specific conversation that I had at that time with Phil or his supervisor.

Q So, would it be fair to say that if in fact you did not discuss this with Phil Groh or you did not discuss it with Greg Duncan, that would be unusual in your business dealings?

A Yes." (55 CP p. 116-118)

Mr. Johnson went on to deny that Mr. Poppe took Mr. Groh's position at all. He gave the following answers to the following questions:

"A The responsibilities are a bit different. I've never seen the title given to him shift supervisor. He's on our salary list as lead person in the stud mill." (55 CP p. 113)

He then went on to give the following answers to the following questions:

"Q Do you think there's any relationship between Mr. Poppe's career and Mr. Groh being let go?

A I don't believe so, no. In fact, I'm certain of that, that I am aware of.

Q When Mr. Groh was let go, what was the intention for filling that position?

A We didn't fill that position, we still haven't." (55 CP p. 113)

Finally, two weeks before Mr. Groh was terminated, he was told by Mr. Johnson that Mr. Johnson was happy with how production was going at the Mill. (55 CP p. 98-99)

Mr. Poppe is proficient in the Shelton mill's computer technology and has taken computer training courses applicable to the Shelton mills' computer programs. (48 CP p. 173) Plaintiff was not offered that opportunity. (57 CP p. 49)

Plaintiff subsequently filed a complaint alleging age discrimination. That complaint included an allegation that he suffered from emotional distress as a result of his termination. (2 CP p. 266-268)

During his deposition, the plaintiff was asked the following question: "Are you alleging that you have any emotional complaints, emotional distress due to the termination?" His answer was "no." (49 CP p. 151) The plaintiff subsequently filed a declaration from his wife, Carolyn Groh, indicating that when she found out that he had stated this at his deposition: "I was shocked to hear that he said he didn't, although I guess it is in his character because he

tends to try to hide his pain, even from himself. In fact, the months after his termination were terrible for him and for me as well. In fact, he still suffers, although it is better now that he is working. I would like to testify at his trial about he suffered as a result of what was done to him.” (29 CP p. 245-246) The plaintiff subsequently filed a Motion allowing him to disclose an additional witness for trial in order to disclose Carolyn Groh. (28 CP p. 247) That motion was denied. (47 CP p. 192-193)

The defendant’s filed a Motion for Summary Judgment. (48 CP p. 177-191) That motion was granted on March 15, 2010. (62 CP p. 13-15)

C. SUMMARY OF ARGUMENT

The defendants failed to establish that there is no issue of fact relating to where there was a nondiscriminatory reason for the plaintiff’s discharge by presenting evidence that his performance was good and that his direct supervisor and the managing partner gave contradictory reasons for his discharge.

It would be improper for the court to deny the plaintiff’s right to add his wife as an additional witness at trial as a result of the plaintiff’s disclosure of the witness after the discovery cutoff because the defendants will not be prejudiced by adding this addition-

al witness and the failure on the part of the plaintiff to list her as a witness was not intentional or in bad faith.

In addition, plaintiff should not be foreclosed from bringing evidence of his emotional distress because he did not deny that he was emotionally distressed-only that he was not making that allegation.

Finally, evidence contrary to deposition testimony of an opposing party can be used to raise an issue of fact when there is an explanation for the discrepancy.

D. ARGUMENT

1. SUMMARY JUDGMENT

- a. **Defendants failed to establish that there is no issue of fact relating to Plaintiff's claim for age discrimination because there is evidence that he was over forty years of age and was discharged and replaced by a younger man.**

A good description of the law on discrimination can be found in the Washington Supreme Court case of *Hill v. BCTI Income Fund*, -1, 144 Wn 2d 172, 23 P3d 440 (2001). In that case the Court starts out by telling us that:

"RCW 49.60.180(2) makes it unlawful for employers '[t]o discharge or bar any person from employment because of age, sex, marital status, race, creed, color, national origin, or the presence of any sensory, mental, or physical disability.' Because workplace dis-

crimination is 'a matter of state concern . . . [that] threatens not only the rights and proper privileges of its inhabitants but menaces the institutions and foundation of a free democratic state,' RCW 49.60.010, the Legislature has mandated that WLAD provisions 'shall be construed liberally for the accomplishment of the purposes thereof.' RCW 49.60.020. While employers deserve protection from frivolous lawsuits and from jury verdicts not reasonably supported by evidence, courts must carefully consider all allegations of unlawful discrimination, since the WLAD 'embodies a public policy of 'the highest priority.' *Xieng v. Peoples Nat'l Bank*, 120 Wn.2d 512, 521, 844 P.2d 389 (1993) (quoting *Allison v. Housing Auth.*, 118 Wn.2d 79, 86, 821 P.2d 34 (1991)).[sic]

Direct, 'smoking gun' evidence of discriminatory animus is rare, since '[t]here will seldom be 'eyewitness' testimony as to the employer's mental processes,' *United States Postal Serv. Bd. of Governors v. Aikens*, 460 U.S. 711, 716, 103 S.Ct. 1478, 75 L.Ed.2d 403 (1983), and 'employers infrequently announce their bad motives orally or in writing.' *deLisle v. FMC Corp.*, 57 Wn. App. 79, 83, 786 P.2d 839 (1990). Consequently, it would be improper to require every plaintiff to produce 'direct evidence of discriminatory intent.' *Aikens*, 460 U.S. at 714 n. 3. Courts have thus repeatedly stressed that '[c]ircumstantial, indirect and inferential evidence will suffice to discharge the plaintiff's burden.' *Sellsted v. Wash. Mut. Sav. Bank*, 69 Wn. App. 852, 860, 851 P.2d 716, *review denied*, 122 Wn.2d 1018 (1993). 'Indeed, in discrimination cases it will seldom be otherwise. . . .' *deLisle*, 57 Wn. App. at 83.[sic]

Recognizing this reality, the United States Supreme Court established an evidentiary burden-shifting protocol in *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 93 S.Ct. 1817, 36 L.Ed.2d 668 (1973), to 'compensate for the fact that direct evidence of intentional discrimination is hard to come by.' *Price Waterhouse*

v. Hopkins, 490 U.S. 228, 271, 109 S.Ct. 1775, 104 L.Ed.2d 268 (1989) (O'Connor, J., concurring). 'The shifting burdens of proof set forth in *McDonnell Douglas* are designed to assure that the 'plaintiff [has] his [or her]day in court despite the unavailability of direct evidence.' *Sellsted*, 69 Wn. App. at 864 (first alteration in original) (quoting *Chipollini v. Spencer Gifts, Inc.*, 814 F.2d 893, 898 (3d Cir.), cert. dismissed, 483 U.S. 1052 (1987) (quoting *Trans World Airlines, Inc. v. Thurston*, 469 U.S. 111, 121, 105 S.Ct. 613, 83 L.Ed.2d 523 (1985))). 144 Wn. 2nd 179-182." [sic]

The Supreme Court goes on to discuss the various standards relating to the pretext issue. The Court then adapts the following rule relating to pretext:

"...we hold that while a *McDonnell Douglas* prima facie case, plus evidence sufficient to disbelieve the employer's explanation, will *ordinarily* suffice to require determination of the true reason for the adverse employment action by a factfinder in the context of a full trial, that will not always be the case. In the words of the United States Supreme Court:

'Whether judgment as a matter of law is appropriate in any particular case will depend on a number of factors. Those include the strength of the plaintiff's prima facie case, the probative value of the proof that the employer's explanation is false, and any other evidence that supports the employer's case and that properly may be considered on a motion for judgment as a matter of law.'" *Reeves*, 530 U.S. at 148-49. P 185-186

The court goes on to note that once all of these have been met, it is up to the trier of fact to:

“...hear and evaluate the parties’ dueling explanations for the adverse action and *reasonably* determine whether the plaintiff has carried his or her *ultimate* evidentiary burden. That *ultimate* burden in cases brought under RCW 49.60.180 is to present evidence sufficient for a trier of fact to reasonably conclude that the alleged unlawfully discriminatory animus was more likely than not a substantial factor in the adverse employment action.” P 186-187

The present case is very much like the case of Sellsted v. Washington Mutual, 69 Wn. App. 852, 851 P2d. 716 (1993). The Court discusses the McDonnell elements as they relate to an age discrimination claim. The Court notes:

“To make out a prima facie case of age discrimination, an employee must show that: (1) he or she was within the statutorily protected age group; (2) was discharged; (3) was doing satisfactory work; and (4) was replaced by a younger person.” Page 858.

There is no dispute in this case that the plaintiff was discharged. There is also certainly evidence that he was replaced by a younger man. As indicated above according to the records provided by the defendants and according to Mr. Duncan told the plaintiff, he was being replaced by Daniel Poppe.

- b. The defendants failed to establish that there is no issue of fact relating to whether there was a nondiscriminatory reason for the plaintiff’s discharge because there is evidence that his performance was good and that his direct supervisor and the managing partner gave contradictory reasons for his discharge.**

In the Sellsted case, Mr. Sellsted was 57-years-old and was discharged and replaced by a younger man. He claimed that he was doing satisfactory work at the time that he was discharged and although the defendant disputed that, it was supported by evidence produced at the summary judgment hearing. We have the same facts in this case. According to the records provided by the defendants, and according to what Mr. Duncan told the plaintiff, he was being replaced by Daniel Poppe. The Court of Appeals in the Sellsted case goes on to discuss the plaintiff's burden after the defendant presents a non-discriminatory purpose:

“To meet this burden, however, an employee is not required to produce evidence beyond that already offered to establish a prima facie case. [Cites] Circumstantial, indirect and inferential evidence will suffice to discharge the plaintiff's burden.[Cites] This is because, as this Court recently noted in DeLisle ‘employers infrequently announce their bad motives orally or in writing.’***While retaining the ultimate burden of persuasion at trial, the employee's task at the summary judgment stage is limited to showing that a reasonable trier of fact could, but not necessarily would, draw the inference that age was a determining factor in the decision.[Cite] He must meet his burden of production to create an issue of fact but is not required to resolve that issue at the summary judgment stage.[Cite] For these reasons, summary judgment in favor of employers is often inappropriate in employment discrimination cases.[Cite]” Page 860.

The Court goes on to discuss some of the facts that the plaintiff presented. The Court concludes:

“In addition, the fact that there were multiple incompatible reasons given for Sellsted's termination further suggests that none of the reasons given was the real reason, and thus also raises the inference that those reasons are pretextual and unworthy of belief. At this stage, it is not for the trial court to resolve these inconsistencies but rather to recognize that they create material issues of fact as to the real reason for the discharge. [Cite]” Page 861

The Court concludes:

“...the employee's burden at this stage in the proceedings is only to produce sufficient evidence, including that adduced to support his prima facie case, to raise a genuine issue of material fact. Where, as here, the record contains ‘reasonable but competing inferences of . . . discrimination’ because the employer's reasons have been called into question both by the conflicts among the reasons themselves and by evidence rebutting their accuracy or believability, ‘it is the jury's task to choose between such inferences.’[Cite]” Page 862-863

Another case that talks about the fact that evidence that employer's explanation is false was sufficient to establish a factual issue relating to pretext is Cluff v. CMX Corp, 84 Wn.App. 634,639, 929 P2d 1136 (1997). That case also points out in a reduction in force case that we do not even have to show that he was replaced in order to show discrimination. Id. At 638. See also Godwin v Hunt-

Wesson, Inc., 150 F3d 1217, 1222 (9th Cir 1998), wherein the court

said:

“In those cases where direct evidence is unavailable, however, the plaintiff may come forward with circumstantial evidence that tends to show that the employer's proffered motives were not the actual motives because they are inconsistent or otherwise not believable.” *Id.*

There is no question in our case that the defendants are having some difficulty getting their stories straight. Mr. Duncan indicates that Mr. Groh was doing a good job and that he had no idea why Mr. Groh was let go other than what he was told by Mr. Johnson, which was that it was because of a reduction in force. He did not understand why Mr. Groh was the one that was chosen, however. At first he did not even want to say that Daniel Poppe took over for Mr. Groh. After his recess, however, apparently his memory was refreshed and he agreed that Daniel Poppe did take on that position. Mr. Duncan indicated that Mr. Poppe was certainly not as qualified as Mr. Groh and certainly is not doing as good a job.

Mr. Johnson, on the other hand, testifies that the reason for Mr. Groh's discharge was because of lack of production. He apparently did not discuss this with Mr. Duncan or even with Mr. Groh. He just laid Mr. Groh off without discussing it with anyone. This is

totally incredible. In addition, it is inconsistent, according to Mr. Johnson, with how he normally does business. Mr. Johnson then denies that Daniel Poppe has ever been given Mr. Groh's position even to this day. This is certainly inconsistent with what Mr. Duncan says and is inconsistent with the records that he has provided. There is certainly evidence that there are multiple reasons given for Mr. Groh's discharge and inconsistencies between and within both the testimony of both Mr. Duncan and Mr. Johnson. This raises a factual issue relating to the issue of pretext.

Even if we were to accept the explanation given by Mr. Duncan that this was a reduction of force it does not explain why Mr. Groh was chosen instead of Daniel Poppe. A jury could find it is because he was younger. Interestingly enough, one of the reasons that the defendant now gives was that Daniel Poppe had been given some training in computers that might be useful. This was something not mentioned by either Mr. Duncan, Mr. Groh's immediate supervisor, or Mr. Johnson, the mill supervisor, when asked about this at their depositions. This is another inconsistency. Even if was not, however, this does not help them. Mr. Groh was never offered that training. See Mr. Groh's declaration (57 CP p. 49). Why is that? A jury could find that it is because of assumptions about Mr. Groh's

age and whether he would benefit from that training the same as a younger man would.

The Court of Appeals has made it clear that ambiguity or inconsistency prevents summary judgment. In Renz v. Spokane Eye Clinic, 114 Wn App 611, 60 P 3rd 106 (2002) , the supposed nondiscriminatory reason was performance-related. The court starts out by noting:

“But, again, the burdens here are burdens of production, not burdens of persuasion. Carle v. McChord Credit Union, 65 Wn. App. 93, 98-102, 827 P.2d 1070 (1992). Appellate courts are not suited for, and therefore not in the business of, weighing and balancing competing evidence. See, e.g., No Ka Oi Corp. v. Nat'l 60 Minute Tune, Inc., 71 Wn. App. 844, 854 n. 11, 863 P.2d 79 (1993) ('[I]t is axiomatic that on a motion for summary judgment the trial court has no authority to weigh evidence or testimonial credibility, nor may we do so on appeal.'). Our job is to pass upon whether a burden of production has been met, not whether the evidence produced is persuasive. That is the jury's role, once a burden of production has been met.”

The court goes on to note that in that case a coworker rebutted the evidence of poor performance. The Court notes: “Conflicting reasons or evidence rebutting their accuracy or believability are sufficient to create competing inferences. *Id.* at 862-63. Such inconsistencies cannot be resolved at the summary judgment stage. *Id.* at 861 (citing Chipollini v. Spencer Gifts, Inc., 814 F.2d 893, 900-01

(3d Cir.) (en banc) (1987)).” Finally, the court concludes: “In sum, there is cumulative evidence to support a reasonable inference of pretext. Carle, 65 Wn. App. at 104. When there are reasonable inferences of both discriminatory and nondiscriminatory reasons for discharge, the choice is one for a jury. Id. (citing United States v. Stanley, 928 F.2d 575, 577 (2d Cir. 1991)).” Id. at 625.

2. THE COURT REFUSAL TO ALLOW AN ADDITIONAL WITNESS AT TRIAL

- a. It would be improper for the court to deny Plaintiff's right to add his wife as an additional witness at trial as a result of the plaintiff's disclosure of the witness after the discovery cutoff because the defendants will not be prejudiced by adding this additional witness and the failure on the part of the plaintiff to list her as a witness was not intentional or in bad faith.**

In the Declaration of Opposition to our Motion to Allow and Additional Witness, counsel for the defendant does not state in what way the defendants will be prejudiced that could not be remedied by allowing the extension of the discovery deadline and allowing Mrs. Groh to be deposed. The Motion was filed on October 23, 2009, and the matter was not scheduled until June of 2010, which allowed plenty of time for them to depose her. In addition, there is no evidence that the plaintiff willfully failed to disclose this witness or used this as a tactic. The only evidence is the resolve of a man

who really does not like to think about the emotional cost that this termination has brought him.

The law on this issue is well settled. The law in Washington State is as follows:

“Before the trial court can exclude a witness as a sanction for failure to comply with the discovery timetable, the court must consider, on the record, lesser sanctions. *Burnet v. Spokane Ambulance*, 131 Wn.2d 484, 494, 933 P.2d 1036 (1997). The court must find that the disobedient party’s refusal to obey a discovery order was willful or deliberate and that it substantially prejudiced the opponent’s ability to prepare for trial and indeed, the court must find the failure to comply amounted to ‘intentional nondisclosure, willful violation of the court order, or other unconscionable conduct.’” *Paloso v. Dealerships*, 198 Wn.App 65, 69-70 (2007).

None of these factors are present here and it would therefore be abuse of the trial court’s discretion to disallow this witness.

b. Plaintiff should not be foreclosed from bringing evidence of his emotional distress because he did not deny that he was emotionally distressed-only that he was not making that allegation.

At the trial court the defendants argued below that when the plaintiff stated in his deposition that he was not making a claim for emotional distress that foreclosed any testimony relating to this issue. First of all, the plaintiff did not claim that he did not suffer emotionally from his discharge. He was asked the question: “Are you

alleging that you have any emotional complaints, emotional distress due to the termination?" Answer: "No." All that he was saying was that at that time he was not making that allegation. He did not testify that he in fact did not suffer emotionally. Our complaint clearly alleges emotional distress.

c. Evidence contrary to deposition testimony of an opposing party can be used to raise an issue of fact when there is an explanation for the discrepancy.

It is clear that deposition testimony is not a judicial admission. In the case of Whitney v. State, 24 Wn App. 836 (1979), the Court of Appeals analyzes the issue as follows:

"The extent to which a party may contradict his own testimony is discussed in E. Cleary, *McCormick on Evidence* § 266 (2d ed. 1972). Three views emerge. The first is that a party's testimony may be contradicted by other evidence under the same conditions as that of any other witness. The second is that a party's testimony may be contradicted by other evidence except when he testifies unequivocally to matters within his peculiar knowledge. The third treats the testimony as a conclusive judicial admission subject to certain exceptions. One exception relates to matters about which he may be honestly mistaken with regard to his observation or recollection. *Guenther v. Armstrong Rubber Co.*, 406 F.2d 1315 (3d Cir. 1969). Mistaken testimony arising from the swiftly moving events preceding an accident can be within the exception. *Crew v. Nelson*, 188 VA. 108, 49 S.E.2d 326 (1948).

[1] This jurisdiction appears to adhere to the second view rather than the third." Page 839

The Court in Whitney found that the plaintiff was simply mistaken and the physical evidence made that clear. The Court concludes:

“It is clear that the plaintiff mistook the lateral placement of the sweeper upon the highway. The uncontroverted physical evidence is that the sweeper was at all times proceeding to the inner lane, as was she. This evidence must control over testimony to the contrary.”

The Court goes on to address our defendants’ issue:

“Defendant urges us to treat the deposition testimony as a conclusive judicial admission. We decline to do so. In a case such as this where the claimant’s testimony is based upon observation and recollection in direct conflict with the undisputed physical evidence, the ‘concrete fact’ is the physical evidence, not the oral testimony.”

The Court in Whitney refers back to the Supreme Court case of Dahlgren v. Blomeen, 49 Wn.2d 47, 298 P.2d 479 (1956). In that case, the respondent was trying to bring in evidence contrary to his own testimony about the contents of an agreement. The Court quotes from Hill v. West End Street R. Co., 158 Mass. 458, 459, 460, 33 N.E. 582, as follows:

“...there is no sound reason why the familiar doctrine that a party may contradict, though not impeach, his own witness, should not, if the circumstances are consistent with honesty and good faith, be applied when he is himself the witness...In other words, may honestly mistake the truth, and requires juries to find

the facts by weighing all the testimony, whatever may be its source.” Page 53

The Court approved the trial court’s finding which was that:

“...the testimony of the attorney who drew the instrument more credible in the light of the surrounding circumstances and considering the background and intelligence of the respondent, concluded that the respondent was mistaken, though honest in his intention. The court was convinced that the instrument had been signed, and we cannot say as a matter of law that the evidence was unconvincing.” *Id.*

It is clear from these cases that even if this plaintiff had testified that he didn’t suffer, that testimony would not have been a judicial admission and he would be allowed to present testimony indicating that he was wrong. The defendant below quoted the case of *McCormick v. Lake Washington School District*, 99 Wn. App. 107 (1999). This case is based upon what is known as “The Marshall Rule”, which comes from the case of *Marshall v. AC&S, Inc.*, 56 Wn. App. 181, 782 P2d. 1107 (1989). First of all, neither of these cases applies here because this plaintiff is not attempting to testify contrary to his previous testimony. I do not expect that he will be testifying that as of the date of the deposition he did in fact intend to bring a claim for emotional distress. He apparently didn’t know he’d

already made that claim. He may testify at trial that he did in fact suffer emotional distress from his wrongful discharge. But that is not the issue here. We are asking that we be allowed to bring in an additional witness that will clarify his statement and indicate that he did in fact suffer. This evidence is admissible. To say that it is inadmissible misunderstands the import of Marshall and McCormick. This issue is analyzed in the case of Schonauer v. DCR Entertainment, 79 Wn. App. 808 (1995), where the Court instructs us:

“To say evidence is admissible is to say it may be considered. To say evidence is sufficient is to say, after considering it, that it is capable of raising an issue of fact for the jury. The Marshall court considered the plaintiff’s affidavit in light of the other evidence in the case, Marshall, 56 Wn. App. at 184-85, before concluding (1) that the affidavit was inconsistent with plaintiff’s earlier deposition testimony, (2) was offered without explaining the inconsistency, and thus (3) was insufficient to raise a reasonable inference supporting plaintiff’s position. The Marshall court was dealing with sufficiency, not admissibility, and its holding fails to support DCR’s present argument.” P 817-818.

This case is different than the Marshall cases. We are not relying solely on an affidavit directly contrary to previous testimony. We are attempting to offer testimony from a different witness who is intimately aware of the circumstances; maybe even more aware than the plaintiff, much like the attorney in the Dahlgren case.

A more recent case that considers this issue is State Farm v. Treciak, 117 Wn. App. 402 (2003). The court cites the Schonauer case indicating that the issue in Marshall was not admissibility, but sufficiency. It cites the case of Safeco Insurance Company v. McGrath, 63 Wn. App. 170, 817 P2d 861 (1991). In the Safeco case, the defendant was allowed to dispute previous testimony when he had an explanation for the inconsistency. In the Safeco case although the court found the explanations somewhat implausible, the court held that that is a question for the jury. Similarly, the court in Treciak notes: "Here, although Treciak's declaration differs from his earlier testimony, he provides an explanation for the contradiction. The jury should determine his statement's plausibility." P. 409

The courts in Washington have declined to find that a deposition testimony is a judicial admission. In addition, the courts have made it clear that the result of this is that the claimant can bring in testimony inconsistent with his own testimony. Third, the testimony of the plaintiff was only that he was not making the allegation, not that he did not suffer from emotional distress. Fourth, even if this plaintiff was attempting to provide his own testimony contrary to his deposition testimony, that is allowable if he has an explanation for

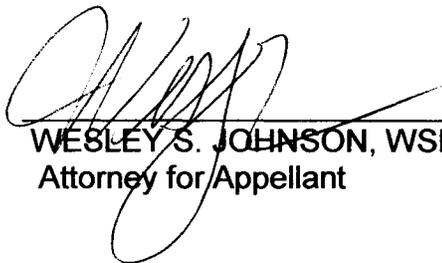
that inconsistency, even if the explanation was not plausible. There is no reason that this additional witness should not be allowed.

E. CONCLUSION

Since the plaintiff raised the issue of fact relating to whether he was replaced by a younger man, and on the issue of whether there is a nondiscriminatory reason for the discharge, the motion for summary judgment should be overturned and the matter should be reinstated and set for jury trial.

Since there is no evidence of an intentional act by the plaintiff or prejudice to the defendants, the plaintiff should be allowed to disclose an additional witness. In addition, his misinformed testimony that he was not bringing a claim for emotional distress should not foreclose him from bringing evidence consistent with the allegations of his complaint that he did in fact suffer emotional distress and therefore, he should be allowed provide an additional witness, his wife Carolyn Groh, at trial relating to that issue.

Dated this 28 day of May, 2010.


WESLEY S. JOHNSON, WSB #16930
Attorney for Appellant

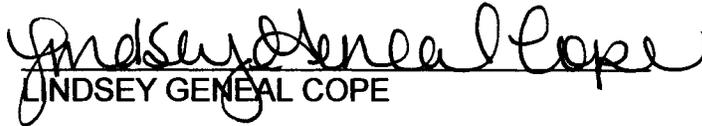
DECLARATION OF MAILING

On this day I deposited in the United States Mail a properly stamped and addressed envelope directed to:

containing a copy of the document on which this declaration appears.

I declare under penalty of perjury under the laws of the State of Washington and the United States that the foregoing is true and correct.

Executed at Kelso, Washington, on the 20th day of May, 2010.


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APPENDIX A
CLERK'S PAPER NO. 2
COMPLAINT

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SUPERIOR COURT OF WASHINGTON
FOR MASON COUNTY

PHILIP GROH,

Plaintiff,

No. 08-2-01105-8

vs.

**COMPLAINT FOR WRONGFUL
DISCHARGE**

MASON COUNTY FOREST PRODUCTS,
LLC., a Washington Limited Liability
Company,

Defendant.

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Plaintiff alleges:

I. JURISDICTION

This court has subject matter jurisdiction because the demand or the value of the property in controversy amounts to \$300.00 or more.

II. PARTIES AND VENUE

A. This court has jurisdiction over the defendant MASON COUNTY FOREST PRODUCTS, LLC, because:

1. The defendant is a business organized under the laws of the State of Washington;
2. The defendant does business within the State of Washington, Mason County;

1 3. The defendant has done the following acts from which the cause of
2
3 action described herein arises:
4

- 5 a. Transaction of business within the state;
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7 b. The commission of a tortious act within the State.
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10 4. The defendant is an employer as that term is described in RCW
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12 49.60.180 and 29 USC § 621 et. seq.
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15 B. At all times herein, the plaintiff was a resident of Columbia County, Oregon.
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19 **III. FACTS**
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21 A. Up until July 23, 2008, the plaintiff PHILIP GROH was an employee of the
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23 defendant;
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25 B. Defendant discharged plaintiff on that date because of his age.
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30 **IV. CLAIMS OR CAUSES OF ACTION**
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32 The actions of the defendant violate RCW 49.60.180, 29 USC § 206 et. seq.,
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34 and are in violation of public policy.
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39 **V. DEMAND**
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41 WHEREFORE, plaintiff prays for judgment for his lost wages in an amount to be
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43 proven at trial, interest thereon, all in an amount to be proven at trial; damages for mental
44
45 and emotional distress in an amount to be proven at trial; for punitive damages; necessary
46
47 litigation expenses under the terms of both the State and Federal Act, reasonable
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49 attorneys fees, costs and disbursements incurred herein.
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1 Plaintiff further requests that this court order the defendant to reinstate him to his
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3 previous position, to cease and desist all further discrimination against him on the basis of
4
5 his age, and for such further relief as the court deems equitable.
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8 DATED this 28th day of October, 2008.
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13 WESLEY S. JOHNSON, WSB #16930
14 Attorney for Plaintiff
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APPENDIX B
CLERK'S PAPER NO. 28
MOTION TO ALLOW AN ADDITIONAL WITNESS

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SUPERIOR COURT OF WASHINGTON
FOR MASON COUNTY

PHILIP GROH, Plaintiff, vs. MASON COUNTY FOREST PRODUCTS, LLC , a Washington Limited Liability Company, and Philip Johnson, Defendants.		No. 08-2-01105-8 <u>PLAINTIFF'S MOTION TO ALLOW AN ADDITIONAL WITNESS</u>
---	--	---

COMES NOW the plaintiff herein, by and through his attorney, Wesley S. Johnson,
and moves this Court for an order allowing him to disclose an additional witness for trial in
this matter. The trial is set for June 15, 2010.

This motion is based upon the declaration of Carolyn Groh submitted herewith.
DATED this 20th day of October, 2009.



WESLEY S. JOHNSON, WSB #16930
Attorney for Plaintiff

APPENDIX C
CLERK'S PAPER NO. 29
DECLARATION OF CAROLYN GROH

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**SUPERIOR COURT OF WASHINGTON
FOR MASON COUNTY**

PHILIP GROH,

Plaintiff,

No. 08-2-01105-8

vs.

DECLARATION OF CAROLYN GROH

MASON COUNTY FOREST PRODUCTS,
LLC, a Washington Limited Liability
Company, and Philip Johnson,

Defendants.

I am the wife of Philip Groh, the plaintiff in the above-entitled matter.

My husband recently told me that he had testified at a deposition that he did not suffer mentally from his termination from Mason County Forest Products. He asked me within the last couple of weeks if he in fact did suffer mentally. I was shocked to hear that he said that he didn't, although I guess it's in his character because he tends to try to hide his pain, even from himself. In fact, the months after his termination were terrible for him and for me as well. In fact, he still suffers, although it's better now that he is working. I would like to testify at his trial about how he suffered as a result what was done to him.

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

WESLEY S. JOHNSON
Attorney at Law
600 Royal Street – Suite B
Kelso, WA 98626
(360) 577-8700 – Fax (360) 577-8702

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Signed at Kelso, Washington. on the 16th day of October, 2009.

CAROLYN GROH

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APPENDIX D
CLERK'S PAPER NO. 47
ORDER DENYING MOTION TO ALLOW AN
ADDITIONAL WITNESS

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IN THE SUPERIOR COURT OF WASHINGTON
FOR MASON COUNTY

PHILIP GROH,)	
)	
Plaintiff,)	NO. 08-2-01105-8
)	
v.)	ORDER DENYING PLAINTIFF'S
)	MOTION TO ALLOW AN
MASON COUNTY FOREST PRODUCTS,)	ADDITIONAL WITNESS AND
LLC, a Washington Limited Liability)	DISMISSING PLAINTIFF'S
Company; Philip Johnson,)	EMOTIONAL DISTRESS CLAIM
)	WITH PREJUDICE
Defendants.)	

TAS

THIS MATTER came on for hearing upon Plaintiff's Motion to Allow an Additional Witness ("Motion");

1. Plaintiff's Motion, the Declaration of Carolyn Groh in support of the Motion; and

2. Defendants' Opposition to Plaintiff's Motion to Allow an Additional Witness, the Declaration of Jennifer K. Wyatt in support of Defendants' Opposition to Plaintiff's Motion to Allow an Additional Witness, and the respective attached exhibits; and

3. All responsive materials submitted by plaintiff, including: Defendant's Reply in Support of Plaintiff's Motion to Allow an Additional Witness, Plaintiff's Supplemental Memorandum In Support of Motion to Allow an Additional Witness and Defendant's Additional Briefing On Defendant's Motion to Allow an Additional Witness.

1 The Court has also heard and considered oral argument from the parties on the Motion
2 and deems itself fully advised of the circumstances.

3 NOW, THEREFORE, IT IS ORDERED ADJUDGED AND DECREED that:

4 Plaintiff's Motion to Allow an Additional Witness is DENIED:

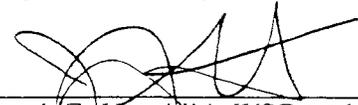
5 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Defendant's
6 request to dismiss Plaintiff's emotional distress claim is not being considered at this time but
7 may be raised on summary judgment for the Court's consideration.

8
9 DATED this 6th day of January, ~~2009~~ ²⁰¹⁰.

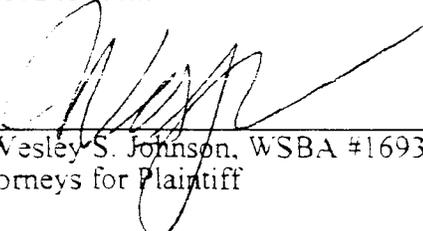
10
11 Tonia Sheldon
12 MASON COUNTY DISTRICT JUDGE

13 Presented by:

14 LANE POWELL PC

15 By 
16 Sarah E. Haushold, WSBA No. 29626
17 Jennifer K. Wyatt, WSBA No. 35156
Attorneys for Defendants

18 Agreed to form:

19
20 By 
21 Wesley S. Johnson, WSBA #16930
22 Attorneys for Plaintiff

APPENDIX E
CLERK'S PAPER NO. 48
DEFENDANT'S MOTION FOR SUMMARY
JUDGMENT

Page 38

1 Q. So, do you recall when you started at Mason
 2 County Forest Products?
 3 A. Yes.
 4 Q. What is the date, approximately?
 5 A. At Lewis County?
 6 Q. Yes, Lewis County Forest Products, I apologize.
 7 A. It was January of '05.
 8 Q. So, it's not '04, that's a -- there's a couple
 9 of places where it says '04 on the document, I just want to
 10 make sure that's not correct
 11 A. No, it was January of '05.
 12 Q. It happens a lot when the year passes over,
 13 people forget to change the date.
 14 And your starting pay was \$4,167 a month, is
 15 that correct?
 16 A. I think so.
 17 Q. Do you recall how you learned about the job at
 18 Lewis County Forest Products?
 19 A. How I learned about the job?
 20 Q. Yes.
 21 A. I was given Jim Woodfin's name by a chemical
 22 salesman, then I called and talked to Jim several times,
 23 and finally he interviewed me.
 24 Q. Did anyone else interview you besides Mr.
 25 Woodfin?

Page 39

1 A. No.
 2 Q. And you called him Jim Woodfin, is that his
 3 middle name?
 4 A. That's all I know him by. I don't know him by
 5 Richard, you know, it's always been Jim.
 6 Q. But is that Richard Woodfin, do you understand
 7 that to be the Jim Woodfin you know?
 8 A. Yes.
 9 Q. Okay. Do you know who made the decision to hire
 10 you?
 11 A. I think Jim Woodfin did.
 12 Q. Do you know if Phil Johnson was involved in that
 13 decision?
 14 A. I think Jim told him that I was -- he had me --
 15 Jim had me work with the swing shift supervisor until I
 16 felt that I could handle the job, or whether I wanted to
 17 handle the job, because he thought it was -- you know, he
 18 thought that it was a younger man's job, but he knew that I
 19 could do it if I wanted to do it.
 20 Q. Did he tell you that he thought it was a younger
 21 man's job?
 22 A. Yes, he did.
 23 Q. What specifically did he say?
 24 A. You're running most of the night.
 25 Q. Well, but what did he specifically say in terms

Page 40

1 of that he thought it was a younger man's job?
 2 A. That is what he said.
 3 Q. Okay. But he did make the decision to hire
 4 you --
 5 A. Yes.
 6 Q. -- and let you try it, correct?
 7 A. Yes.
 8 Q. Do you happen to know how old Jim Woodfin is?
 9 A. I think Jim is probably 55 maybe.
 10 Q. And how old were you at the time that you
 11 started at Mason County -- or Lewis County Forest Products?
 12 A. I think I was 56; 55, 56.
 13 Q. So, you're about the same age as Jim Woodfin?
 14 A. Yeah, I think I'm a little older than him,
 15 but --
 16 Q. Okay. Do you know how old Phil Johnson is?
 17 A. I have no idea.
 18 Q. He's over 40, correct?
 19 A. Yes.
 20 Q. And what was Jim Woodfin's position at the time
 21 when you were hired at Lewis County Forest Products?
 22 A. He was the manager.
 23 Q. The plant manager?
 24 A. Yes.
 25 Q. At what facility?

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1 A. Lewis County.
 2 Q. Where is that located?
 3 A. Winlock.
 4 Q. So, when you started, you worked at the Winlock
 5 mill, is that correct?
 6 A. Yes.
 7 Q. And how far of a drive is the Winlock mill from
 8 your home in St. Helens?
 9 A. Fifty-five minutes.
 10 Q. So, you said that he had you start working with
 11 someone else --
 12 A. Yes.
 13 Q. -- to see if you could handle the position?
 14 A. If I wanted to handle it.
 15 Q. If you wanted to handle the position?
 16 A. Yes.
 17 Q. Okay. Who did he have you work with?
 18 A. I can't remember his name.
 19 Q. Is he still there?
 20 A. Doug Ipock was his name.
 21 Q. Doug Ipock?
 22 A. Yes.
 23 Q. Is Doug Ipock still at Mason County Forest
 24 Products --
 25 A. No.

11 (Pages 38 to 41)

Page 42

1 Q. -- if you know?
 2 When did he leave?
 3 A. He left -- I'm going to say he left sometime in
 4 early 2006.
 5 Q. Was Greg Duncan working at Lewis County Forest
 6 Products when you started?
 7 A. No.
 8 Q. Do you know when he started?
 9 A. No.
 10 Q. Was Dan Poppe working at Lewis County Forest
 11 Products when you started?
 12 A. I'm not sure.
 13 Q. Was Wayne Burton working at Mason County Forest
 14 Products when you started --
 15 A. No.
 16 Q. -- or Lewis County?
 17 How about Debbie Simons?
 18 A. No.
 19 Q. So, what are the duties of a swing shift
 20 supervisor?
 21 A. Make sure the production got out, make sure
 22 people worked safely and didn't get hurt.
 23 Q. Was swing shift supervisor the specific position
 24 that you applied for? Let me back up.
 25 You said you heard about a job from the chemical

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1 salesman --
 2 A. No, I got Jim Woodfin's number from a chemical
 3 salesman. He told me to give him a call, there might be
 4 something.
 5 Q. And did Jim Woodfin tell you what positions were
 6 open when you called him?
 7 A. We didn't really talk about a position being
 8 open, as a matter of fact.
 9 Q. He just invited you in for an interview?
 10 A. Right.
 11 Q. Did you talk about any positions other than
 12 swing shift supervisor when you met with Jim Woodfin?
 13 A. No.
 14 Q. Okay. Who was your supervisor as the swing
 15 shift supervisor? Who was your supervisor?
 16 A. Jim Woodfin.
 17 Q. Okay. And how long did you do this sort of
 18 tandem employment with Doug Ipock?
 19 A. A couple weeks.
 20 Q. And how then did you transfer from working with
 21 Doug Ipock to taking on the position yourself?
 22 A. They didn't have a -- Doug wasn't going to be
 23 able to go to day shift until I told Jim that I was going
 24 to stay.
 25 Q. So, at some point did you tell Jim you wanted

Page 44

1 the job?
 2 A. Right.
 3 Q. Okay. At the time that you worked as a swing
 4 shift supervisor at Lewis County Forest Products, did Lewis
 5 County do any international or metric lumber?
 6 A. No.
 7 Q. I'm going to show you another Payroll Change
 8 Form dated January 11th, 2006, which will be marked as
 9 Exhibit-5.
 10 (Exhibit-5 marked.)
 11 Q. Do you recall getting a raise in January of
 12 2006?
 13 A. Yes.
 14 Q. Okay. Do you know who authorized the raise?
 15 A. Greg Duncan.
 16 Q. Do you know if Phil Johnson was involved in that
 17 at all?
 18 A. I don't have any idea.
 19 Q. What's your understanding of the reason for
 20 getting a raise in January of 2006?
 21 A. My understanding of the reason?
 22 Q. Uh-huh. Yes. Sorry.
 23 A. Well, I know what the reason was.
 24 Q. Okay, what was the reason?
 25 A. They hired -- when Doug Ipock went to Mason

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1 County, they had a lead man on day shift, they made him a
 2 supervisor and gave him 4,500 a month.
 3 Q. Okay. And so why does that mean that you get a
 4 raise?
 5 A. Because he gave me a raise because of that.
 6 Q. To make you commiserate with Doug --
 7 A. Yes.
 8 Q. -- in the same position?
 9 A. Right.
 10 MR. JOHNSON: Phil, you've got to wait for her
 11 to talk. One person at a time.
 12 THE WITNESS: Sorry.
 13 Q. Just so we're clear about the terminology here,
 14 when we talk about Lewis County Forest Products, you're
 15 talking about the Winlock mill?
 16 A. Yes.
 17 Q. Yes.
 18 And when we talk about Mason County Forest
 19 Products, we're talking about the Shelton mill, is that
 20 correct?
 21 A. Yes.
 22 Q. And I apologize, I think I've been not making
 23 that distinction clear. So, if for some reason you're not
 24 sure which I'm talking about, please let me know.
 25 A. Okay.

12 (Pages 42 to 45)

1 so Dennis was moved to the log yard and I kind of
 2 assumed some of the stuff that he was doing and did
 3 some -- took a little more responsibility there
 4 Q Okay And what is your title now?
 5 A I work for Greg Duncan. I don't know if you would call
 6 me the supervisor or his lead man, but I make sure
 7 everything runs when he's not around. If there's any
 8 problems, I take care of most of them. Greg is kind of
 9 in and out with this new export product that we cut so
 10 he's kind of in and out so he kind of relies on me to
 11 make sure things run.
 12 Q Okay So, you don't know what your official title is
 13 with the company?
 14 A It's changed so many times since I've got up there.
 15 No, I'm not sure.
 16 Q And what's your salary now?
 17 A Sixty-five.
 18 Q Still 65?
 19 A Yep.
 20 Q Since you've been there, has anybody ever talked to you
 21 about what the future would hold for you in the
 22 company?
 23 A No.
 24 Q Have you ever gotten a feeling they're grooming you for
 25 something?

1 A I'm good at what I do, I'm good at making things run,
 2 so, I know that I've been moved around a lot for that,
 3 but other than that, no.
 4 Q So nobody has ever discussed what they would like to
 5 see you at some time in the future of the company?
 6 A No. Only thing I have ever been told is that they
 7 would like me to learn these different things so that I
 8 just had that knowledge so that if they had problems
 9 somewhere, they could move me, because right now I'm
 10 not sure that I won't be moved to the next place that
 11 has a problem.
 12 Q Okay. So, you said you've had some training in
 13 computers?
 14 A Yeah, took some classes. The mill actually sent me to
 15 some classes in Sun River, Oregon for some of the stuff
 16 that we do at the mill.
 17 Q When was that?
 18 A That was in 2007.
 19 Q What position were you holding at that time?
 20 A I was the lead man.
 21 Q And how long did you go to these classes?
 22 A It was a three-day training
 23 Q Have you ever had any other training in computers?
 24 A Just from the maintenance, the computer technicians.
 25 They have taken me through a lot of the training when I

1 first got up there so that I knew all the computers and
 2 everything.
 3 Q When you first got up to where?
 4 A To Mason County.
 5 Q I see.
 6 A I've taken Excel classes when I was in school and
 7 graduated with an Excel certificate.
 8 Q Okay. Has anybody ever told you why Phil Groh was let
 9 go?
 10 A I was under the assumption that it was when all the
 11 layoffs were going on, just another one of the
 12 unfortunate layoffs.
 13 Q Has anybody ever told you why Phil Groh was let go?
 14 A No.
 15 Q So, have you ever heard any discussions about why Phil
 16 Groh was let go?
 17 A No.
 18 Q So, any knowledge you would have is just based on
 19 assumptions?
 20 A Mm-hmm (witness nods head affirmatively).
 21 Q Yes? She is writing everything down so you have to say
 22 "yes" or "no."
 23 A Yes.
 24 Q Have you ever heard anybody discussing Phil Groh's age?
 25 A No.

1 Q Have you ever expressed to anyone that you would like
 2 to have his position?
 3 A No. When I was first moved back to the sawmill, I was
 4 a little bit apprehensive of going there because my
 5 wife at the time was pregnant and it was easier for me
 6 to get away from the shipping department than it would
 7 be the sawmill, so when I was first told that I might
 8 be moving back to the sawmill, I wasn't really looking
 9 forward to it because it was so much easier for me to
 10 get away from the mill to go to these appointments with
 11 my wife. It was our first kid, so I wanted to be there
 12 for all those, so I was a little bit nervous about
 13 going back to the sawmill, but --
 14 Q You're talking about the stud mill now?
 15 A Yes, the stud mill.
 16 Q That's all I have.
 17
 18 EXAMINATION
 19 BY MS. WYATT:
 20 Q I just have a question. Since you've been back at the
 21 stud mill, have you noticed any changes in terms of
 22 production or --
 23 A Our production has gone up ten percent since I have
 24 been taking care of it. Our safety issues have gone
 25 down. Our flow has gone up ten percent with the

APPENDIX F
CLERK'S PAPER NO. 49
DECLARATION OF JENNIFER K. WYATT

Page 10

1 Q. Is that still the ownership of Mason County Forest
 2 Products?
 3 A. Well, it's Long Bell Ventures LLC.
 4 Q. Pardon?
 5 A. Long Bell Ventures is the parent company of both Mason
 6 County Forest Products and Lewis County Forest Products.
 7 Q. Are they three different LLCs?
 8 A. You know, I really don't remember how we formed it,
 9 structured it.
 10 Q. So, you think it's Long Bell Ventures LLC, something like
 11 that?
 12 A. That is the parent company of the other two.
 13 Q. Why two separate entities?
 14 A. Tax purposes. Norm Brendan is probably one of the better
 15 tax folks in the U.S. and he did the most of the structure
 16 work of the company.
 17 Q. So he told you that's the best way to do it and you said
 18 okay?
 19 A. Well, you got to remember I was not the majority owner of
 20 the company. I wasn't taking orders from any one in
 21 particular and I wasn't giving orders.
 22 Q. Okay. So, how does the stock break down between the three
 23 of you?
 24 A. Currently?
 25 Q. Yes.

Page 11

1 A. Actually, now Bill Colson is deceased.
 2 Q. Okay.
 3 A. And I do not recall exactly how the estate was broken up.
 4 I own ten percent of the company, and split between his
 5 estate trust and a few others things and Norm Brendan is
 6 the other 90 percent of the company.
 7 Q. Okay. So, everybody indicates you're the boss.
 8 A. On-the-ground boss, that's me.
 9 Q. So you're the managing partner?
 10 A. Yes, I am, managing member.
 11 Q. Okay. Managing member. So, do the other shareholders get
 12 involved in the day-to-day management at all?
 13 A. No.
 14 Q. So, when did you first meet Phil Groh?
 15 A. When he came to work at Lewis County Forest Products. I
 16 really don't remember the date.
 17 Q. And do you remember approximately?
 18 A. 2004, 2005, I really can't get much closer than that.
 19 Q. Do you know who hired him?
 20 A. My guess is it was Jim Woodfin. I know that I did some of
 21 the background work on it, but I'm guessing it would have
 22 been Jim, but it could have been Greg that hired him. I
 23 really don't remember.
 24 Q. Would you have been consulted about that?
 25 A. Mm-hmm.

Page 12

1 Q. Yes?
 2 A. Yes, sir.
 3 Q. Again, one other thing is to say yes and no
 4 A. Yes.
 5 Q. Do you remember what it was about his background that made
 6 you decide to hire him?
 7 A. His former employer, Friesen Lumber, had a facility that
 8 pretty much matched our product line to a T. The
 9 machinery was very similar, and I had, I still have him,
 10 because he's a long-term friend, that was the electrical
 11 supervisor there for many years, and I talked with him
 12 prior to hiring Phil and he told me that he had been a
 13 good man, long, steady employee.
 14 Q. When you first hired him, Phil Groh, what position did he
 15 fill?
 16 A. There again, I really can't tell you for certain, it's
 17 been long enough ago, and by that time I was not involved
 18 at Lewis County.
 19 Q. Okay. So who would have done the hiring at Lewis County?
 20 A. It would have been Jim Woodfin or Greg Duncan, I believe,
 21 could have been either one.
 22 Q. So, you remember hiring him, you remember doing a
 23 background check on him, but you don't really remember
 24 what position he filled?
 25 A. I believe he was a shift foreman, but I can't say that for

Page 13

1 sure, so I have to say no, I really don't.
 2 Q. So at some point the decision was made to bring him up to
 3 Mason County, is that correct?
 4 A. Yes, it is.
 5 Q. And do you know who made that decision?
 6 A. I believe I did.
 7 Q. And what information went into that decision?
 8 A. When we shut that plant down in September of 2006, we did
 9 not feel the plant would be down any longer than January,
 10 it would be started by no later than January 2007, and I
 11 don't believe we let any of our salaried people go at that
 12 point.
 13 Q. Everybody was brought up to Mason County?
 14 A. I believe so, yes. I better couch that answer with I'm
 15 not certain.
 16 Q. Okay. Is there a better person to ask this question of?
 17 A. Well, I think the problem you're going to run into is
 18 memory, unless someone has the time and ability to look
 19 back at payroll records. And I can't give you an opinion
 20 of what anyone else's memory may be like, all I can tell
 21 you is what mine is, and I can't tell you for certain that
 22 everyone came up. I believe that to be the truth, but I
 23 don't know.
 24 Q. Okay. So, when he was brought up to Mason County Forest
 25 Products, what position did he fill there?

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1 A. I don't know what he started as there, but he ended up as
 2 a shift supervisor in the stud mill.
 3 Q. Does it sound right that he may have started over at the
 4 planer mill, or do you remember?
 5 A. I don't remember for sure. He may have because, as I
 6 stated earlier, the people that we brought up there were
 7 moved up there with the idea they would be gone within
 8 four months.
 9 Q. Okay. So, why was the Lewis County facility shut down?
 10 A. Its inability to make a variety of different sizes of
 11 lumber and the fact that it had no dry kilns.
 12 Q. And is that an advantage that the Mason County facility
 13 had?
 14 A. Yes.
 15 Q. And which of those advantages did it have that made it
 16 more profitable?
 17 A. Well, neither one, because neither one were profitable.
 18 Q. What about the Mason County facility made it feasible for
 19 you to operate?
 20 A. We had dry kilns, we could dry lumber. That was the
 21 single largest difference. And it had the ability to make
 22 a longer product, it gave it more market versatility.
 23 Q. Okay. I'm going to hand you what's been marked as Exhibit
 24 1. Do you know what that is?
 25 A. Looks like it's a payroll change form to move Phil to

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1 swing shift supervisor.
 2 Q. Okay. Have you ever seen that document before?
 3 A. I really couldn't tell you. I don't remember. It's a
 4 standard form.
 5 Q. Standard form for your company?
 6 A. Yes, sir.
 7 Q. And I'm going to hand you what's been marked as Exhibit
 8 Number 2. Do you know what that is?
 9 A. Looks to be a form showing that Phil Groh was moved on
 10 January 9 to swing shift supervisor and I'm certain it's
 11 from the stud mill.
 12 Q. And there was a raise involved in that?
 13 A. Yes.
 14 Q. Would you have made that decision to give him a raise?
 15 A. I probably was not involved in it.
 16 Q. Okay. That's something that someone else would have the
 17 authority to do?
 18 A. Our plant managers have the authority to make changes in
 19 pay rates, yes.
 20 (Exhibit No. 4 marked for identification.)
 21 Q. I'm going to hand you what's been marked as Exhibit Number
 22 4. Do you recognize that? Do you know what that is?
 23 A. Same form as the previous, payroll change form.
 24 Q. It also shows a change in his position, correct?
 25 A. Yes, sir.

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1 Q. And what does it indicate the change was?
 2 A. Indicates the change was from swing shift supervisor to
 3 day shift.
 4 Q. And apparently a significant change in pay?
 5 A. Looks, yes, it does look like significant change in pay.
 6 Q. Was that a decision that you would have made?
 7 A. I don't know whether I was involved in it or not, to be
 8 quite honest. In other words, I don't remember.
 9 Q. Whose signature is on that document?
 10 A. Wayne Burton.
 11 Q. What was his position with the company then?
 12 A. He was I believe at that point in time stud mill manager.
 13 Q. Do you know whether this change would have been while he
 14 was still at Lewis County Forest Products or at Mason
 15 County Forest Products?
 16 A. This one in 2007?
 17 Q. Yes.
 18 A. It had to have been at Mason County because Lewis County
 19 had not operated since September of 2006.
 20 Q. Now, there was also a bonus program, was there not?
 21 A. Yes, there was.
 22 Q. How did that work?
 23 A. I don't remember the details of the program, what was in
 24 it.
 25 Q. Who would know that?

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1 A. Our HR person should be able to tell you that.
 2 Q. That would be who?
 3 A. Debbie Simons.
 4 Q. Okay. So who designed the bonus program?
 5 A. It was a collective work between myself and the bulk of
 6 our management people.
 7 Q. When you say the bulk of your management people --
 8 A. The upper management, plant managers, the upper level of
 9 our management people. It wouldn't go down to shift
 10 supervisors.
 11 Q. So upper level, who are we talking about, what names, can
 12 you use some names?
 13 A. Well, I can't tell you exactly who was there at the time
 14 that it was introduced because I don't know the exact time
 15 when it was introduced. I mean, I could give you an idea
 16 of what our upper management looked like as of that date,
 17 and, there again, I wouldn't guarantee the accuracy. I
 18 was there obviously, I believe Steve Grandorff, our
 19 resource manager, would have been there and been involved
 20 in it. Jim Woodfin probably was there and involved in it.
 21 I don't know, he may have already been gone. And our
 22 sales manager, Josh Dean.
 23 Q. So, for a time after Mr. Groh was moved up to Mason
 24 County, he indicates that he was put up at the casino up
 25 there.

5 (Pages 14 to 17)

PHIL JOHNSON / By Mr. Johnson

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1 A. I can just tell you what I was told.
 2 Q. Okay, what were you told?
 3 A. That they needed somebody in the stud mill to
 4 make the thing run.
 5 Q. And who told you that?
 6 A. That's what -- that's what the manager of the
 7 planers told the crew at a meeting.
 8 Q. And who was the manager of the planers?
 9 A. I'm trying to think of his name. Doug Tingley.
 10 Q. Were you at the meeting?
 11 A. Yes.
 12 Q. Did you consider it a promotion to go from
 13 planer supervisor to stud mill supervisor?
 14 A. Did I consider it a promotion?
 15 Q. Yes.
 16 Was it a better job?
 17 A. Was it a better job?
 18 Q. To you.
 19 A. I think -- to me? I think that it was -- you
 20 know, for some people it probably would have been a better
 21 job. It wasn't the job that I wanted, but after I got it,
 22 it was a better job.
 23 Q. Okay. Why wasn't it the job you wanted?
 24 A. I wanted the job that I was doing at the time,
 25 the planer.

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1 Q. And why did you want the planer job over the
 2 stud mill job at that time?
 3 A. Because I hadn't finished my job.
 4 Q. What do you mean by you hadn't finished it?
 5 A. We hadn't gotten it to the level that it needed
 6 to be.
 7 Q. Okay. So, why do you say that others might have
 8 considered the stud mill job a better job than the planer
 9 supervisor job?
 10 A. It is a better job. To me, at that time, it
 11 wasn't, because I wasn't done -- I didn't feel like I was
 12 done with the job that I had, if that makes sense.
 13 Q. It does make sense.
 14 Why do you say it is a better job, though, to be
 15 the stud mill supervisor rather than the planer supervisor?
 16 A. Well, some people think the planer's just the
 17 butt end of things, but I never felt that way, but --
 18 Q. Okay, so it has a better reputation --
 19 A. Yes.
 20 Q. -- in the industry --
 21 A. Yes.
 22 Q. -- is that correct?
 23 A. Yes.
 24 Q. Did you have any additional pay changes when you
 25 went from planer supervisor to stud mill supervisor?

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1 A. That's when -- that's when this one came about.
 2 Q. Okay. So, when you worked as the planer
 3 supervisor at the Shelton mill, were you then still being
 4 paid at the \$54,000 a year rate?
 5 A. Yes.
 6 Q. So, your change from planer supervisor to stud
 7 mill supervisor also came with an \$11,500 salary raise?
 8 A. Yes.
 9 Q. Okay. Did you have a discussion with anyone at
 10 Mason County Forest Products about switching from planer
 11 supervisor to stud mill supervisor at that time?
 12 A. At which time?
 13 Q. When the shift happened in November of 2006?
 14 A. Did I have a discussion with anybody about it?
 15 Q. Yes.
 16 A. You mean -- no.
 17 Q. Well, someone had to tell you that you were
 18 going to be the stud mill supervisor instead of the planer
 19 supervisor, correct?
 20 A. Yes.
 21 Q. So, who told you that?
 22 A. Doug Tingley.
 23 Q. At that meeting?
 24 A. I don't know that -- that's when I -- that's
 25 when I heard his reasoning for it, yes. I don't know that

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1 anybody actually told me. I think it was just somebody
 2 said this, and you know, and I heard about it, and that's
 3 about how it went.
 4 Q. So, you heard through the grapevine you were
 5 being promoted?
 6 A. Yes, I did, yes.
 7 Q. Okay. At the time that you became the Shelton
 8 mill stud mill supervisor for the day shift, was there a
 9 swing shift?
 10 A. No.
 11 Q. Okay. And so at some point between August and
 12 November 2006, the Shelton mill also reduced from having
 13 both a swing shift and a day shift to just having the day
 14 shift, correct?
 15 A. Yes.
 16 Q. Do you have an understanding of the reason for
 17 that?
 18 A. The economy.
 19 Q. So, the Shelton mill was also having financial
 20 problems --
 21 A. Yes.
 22 Q. -- is that correct?
 23 MS. HAUSHILD: Are we doing okay? Do we need a
 24 break?
 25 MR. JOHNSON: Yeah, let's take five.

16 (Pages 58 to 61)

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1 MS. HAUSHILD: Do you want to take five?
 2 THE WITNESS: Okay.
 3 (Recess from 11:25 a.m. to 11:35 a.m.)
 4 Q. Backing up way back to the beginning when we
 5 were talking about your efforts to get a new job after
 6 Mason County Forest Products, did you, when you were
 7 talking to the headhunters about looking for a new job, did
 8 you give them a geographical area for them to search for
 9 you?
 10 A. No.
 11 Q. Did you tell them that there were any places you
 12 would not go for a job?
 13 A. No.
 14 Q. Did you look outside Washington, for example?
 15 A. Yes.
 16 Q. Did you look outside Oregon?
 17 A. Yes.
 18 Q. What's the farthest you looked for a job?
 19 A. I applied -- there was one other one that
 20 Jansen, I applied to Potlatch in Idaho.
 21 Q. Would you have had to have moved if you took the
 22 Potlatch job?
 23 A. Not any more so than what I did in Shelton.
 24 Q. Okay. So, let's go back to that in terms of
 25 this time period where you were being asked to work at the

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1 Shelton stud mill in August 2006 on forward. At what point
 2 did you -- or how did it come about that you ended up
 3 getting an apartment in Shelton?
 4 A. How did it come about?
 5 Q. Yeah, how did that come about? What made you
 6 decide to get an apartment in Shelton?
 7 A. Because I couldn't drive four hours a day.
 8 Q. So, how much of a drive was it from your home in
 9 St. Helens to the Shelton mill?
 10 A. Two hours.
 11 Q. So, it's four hours round trip, correct?
 12 A. Yes.
 13 Q. Okay. During what period of time did you
 14 actually make that drive, that four hour round trip drive?
 15 A. I drove up there on Monday mornings, and I left
 16 on Friday afternoons.
 17 Q. But when you moved from the Winlock mill to the
 18 Shelton mill in August of 2006 --
 19 A. Yes.
 20 Q. -- did you actually get an apartment?
 21 A. No, actually, they put me up at the casino.
 22 Q. What casino?
 23 A. Little -- the Little --
 24 MR. JOHNSON: Little Creek is it?
 25 A. Little Creek, yeah, yes.

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1 Q. Little Creek, okay.
 2 Who put you up there?
 3 A. Phil Johnson did.
 4 Q. And how long did you stay at the Little Creek
 5 Casino?
 6 A. Six months.
 7 Q. Six months?
 8 A. Yes.
 9 Q. Okay. And did you have -- how did that work?
 10 Did you have an actual one room there that you went to
 11 every day or --
 12 A. I had -- I got a room for the week every week.
 13 Q. Okay. So, every week you got a new room for the
 14 week?
 15 A. Yes.
 16 Q. And how many nights did you stay at the Little
 17 Creek Casino during this time period?
 18 A. Four nights a week.
 19 Q. Monday, Tuesday, Wednesday, Thursday?
 20 A. Yes.
 21 Q. And the company paid for that, correct?
 22 A. Yes.
 23 Q. Did the company also pay for meals or other
 24 incidentals during this time?
 25 A. Yes, they -- I don't know what you call it, but

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1 yes.
 2 Q. Like a per diem?
 3 A. Yes.
 4 Q. Okay. Do you remember what your per diem was
 5 during this time?
 6 A. \$29, \$39 a day, plus the room.
 7 Q. Plus the room?
 8 A. Yes.
 9 Q. So, at some point then you did get an apartment,
 10 though, after six months, correct?
 11 A. Yes.
 12 Q. So, was that your idea or Phil's idea?
 13 A. After I transferred, officially transferred
 14 there, that's where I was at. I don't think I had much
 15 choice.
 16 Q. So, why do you say officially transferred?
 17 A. Well, I was -- I wasn't officially there until
 18 this (indicating).
 19 Q. Until January of 2007?
 20 A. Yes.
 21 Q. Okay. So, did Phil tell you he wasn't going to
 22 pay for the Little Creek Casino anymore, and you needed to
 23 get an apartment, or did you decide to get an apartment?
 24 I'm just trying to figure out how that change happened.
 25 A. I think Wayne Burton and I had a discussion

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1 about it.
 2 Q. Okay. What was --
 3 A. But Phil and I never did.
 4 Q. Okay. What was your discussion with Wayne?
 5 A. That basically the reason he gave me the 65,500
 6 is because he knew how much it cost him to stay per month.
 7 Q. Did Wayne live somewhere else as well?
 8 A. Wayne lives in St. Helens.
 9 Q. With you -- not with you --
 10 A. No.
 11 Q. -- but in the same city as you, correct?
 12 A. Yes.
 13 Q. Do you know if he still lives there?
 14 A. Yes, he does.
 15 Q. So, the pay raise was partially an effort to
 16 compensate you for the long drive and the extra time it
 17 would take, is that correct?
 18 A. The pay raise was to -- I don't know what it was
 19 for. It was to help my -- for my living expenses to stay
 20 up there.
 21 Q. So, you had a discussion with Wayne about
 22 possibly getting an apartment here, is that correct?
 23 MR. JOHNSON: When you say "here," you mean
 24 Shelton?
 25 MS. HAUSHILD: I'm sorry, we are in Kelso, I

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1 forget.
 2 Q. Yes, in Shelton.
 3 A. I may have told him that I was going to get one,
 4 yes.
 5 Q. And how did it come about that you ended up
 6 getting an apartment with Robert Emler?
 7 A. How did it come about? I don't know. I was
 8 pretty close to the guy.
 9 Q. Did you ask him, or did he ask you?
 10 A. I think I asked him.
 11 Q. Okay. Where did --
 12 A. Or actually, I think I told him if he was going
 13 to stay, we could get one together.
 14 Q. Do you know where Robert's permanent residence
 15 was at the time?
 16 A. He lives in -- his -- I think his mother and
 17 father live in Kelso.
 18 Q. So, he was commuting from Kelso to Shelton?
 19 A. Yes.
 20 Q. Okay. When you switched from being at the
 21 Little Creek Casino to getting the apartment in Shelton,
 22 were you spending four nights a week there again, Monday,
 23 Tuesday, Wednesday, Thursday, at the Shelton apartment?
 24 A. Yes.
 25 Q. So, you were going back to St. Helens for the

Page 68

1 other days, correct?
 2 A. Yes.
 3 Q. Okay. And did you ever consider moving from St.
 4 Helens to somewhere closer to the Shelton mill?
 5 A. Yes.
 6 Q. Did you look for houses in the Shelton area?
 7 A. I didn't look for houses, no.
 8 Q. Did your wife look for houses in the Shelton
 9 area?
 10 A. She was in the process of selling our house
 11 when -- once I heard this through the grapevine that it was
 12 going to happen.
 13 Q. When you heard what was going to happen?
 14 A. I was going to be let go.
 15 Q. So, you were in the process of moving from St.
 16 Helens to Shelton at the time?
 17 A. No, we were in -- she was in the process of
 18 selling the house.
 19 Q. Did you have another house you were looking at
 20 purchasing at the time?
 21 A. No.
 22 Q. So, why were you selling the house at St. Helens
 23 at the time?
 24 A. She was going to find one up there.
 25 Q. So, it was up for sale at the time?

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1 A. Yes.
 2 Q. It hadn't been sold --
 3 A. No.
 4 Q. -- correct?
 5 Okay. I'm going to show you what will be marked
 6 as Exhibit-7, which is a letter to you from Wayne Burton
 7 dated March 12th, 2007.
 8 (Exhibit-7 marked.)
 9 Q. Do you recall receiving this letter from Wayne
 10 Burton?
 11 A. Yes.
 12 Q. What is your understanding of the reason for
 13 Wayne Burton sending you this letter?
 14 A. Why do I -- what is my understanding of the
 15 reason? I don't know.
 16 Q. It mentions a locating agreement; do you know
 17 what he's referring to in that letter?
 18 A. Yes.
 19 Q. What is he referring to?
 20 A. Phil Johnson -- I don't know how it came about.
 21 Phil Johnson told me he would give me the first month's
 22 rent and the deposit if I got an apartment or a different
 23 place. I don't think it started out that way. I think we
 24 were talking about the casino, and that I was thinking
 25 about getting an apartment, and he told me that he would

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1 give me first month's rent and a deposit.
 2 Q. Okay. So, this letter is dated March 12th,
 3 2007; is this then about the time that you got the
 4 apartment in Shelton?
 5 A. No, I got it before this.
 6 Q. Okay. So, did Phil give you first month's rent
 7 at that Shelton apartment and the deposit?
 8 A. Yes.
 9 Q. Do you remember how much your rent was there?
 10 A. 700, 750, somewhere in there.
 11 Q. Did you get the deposit back?
 12 A. Some of it.
 13 Q. How much did you get back?
 14 A. I'm not sure. I don't remember what it was.
 15 Q. Did you give any of that deposit back to Mason
 16 County Forest Products?
 17 A. No.
 18 Q. So, you said you had a discussion with Phil
 19 about him giving you first month's rent and the deposit,
 20 correct?
 21 A. No, I'm not saying I had a discussion about him
 22 giving it to me, he told me that he would.
 23 Q. Okay.
 24 A. Because we were -- we had a conversation about
 25 the casino, and he told me if we got an apartment, he would

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1 give me first month's rent and the deposit.
 2 Q. And that was while you were still at the Little
 3 Creek Casino --
 4 A. Yes.
 5 Q. -- correct?
 6 Okay. Was there ever a time period when you
 7 worked at the Shelton stud mill as the Shelton planer -- as
 8 the Shelton planer supervisor, where you actually did drive
 9 from Shelton -- or I'm sorry, from your home in St. Helens
 10 to Shelton other than Monday morning and then back on
 11 Friday night?
 12 A. Repeat that.
 13 Q. Okay. Maybe it's better if I say it this way:
 14 You mentioned that you started out at the Little Creek
 15 Casino, and you stayed there four night a week, Monday,
 16 Tuesday, Wednesday, Thursday --
 17 A. Yes.
 18 Q. -- when you came to the Shelton mill, and then
 19 you got an apartment and stayed at the apartment Monday,
 20 Tuesday, Wednesday, Thursday; I'm asking if there's a time
 21 when you didn't stay at the Little Creek Casino or your
 22 apartment when you were at the Shelton stud mill on Monday,
 23 Tuesday, Wednesday Thursday night, so you were driving back
 24 and forth on a daily basis, did that --
 25 A. No.

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1 Q. -- happen over?
 2 A. No.
 3 Q. Okay. Do you know if Wayne Burton still lives
 4 in St. Helens? You said yes, correct?
 5 A. As far as I know, he does.
 6 Q. As far as you know.
 7 Did you know where Greg Duncan lived at the
 8 time?
 9 A. I don't recall the name of the -- Napavine? I
 10 think he lives in Napavine.
 11 Q. How far is Napavine from Shelton, if you know?
 12 A. It's 50 miles, 60 miles.
 13 Q. How about Dan Poppe, did you know where he
 14 lived?
 15 A. No.
 16 Q. I'm going mark as Exhibit-8 a copy of the Lewis
 17 County Forest Products Employee Handbook.
 18 MS. HAUSHILD: And you should have hopefully
 19 gotten it. We tried to give you faxes and e-mails, so
 20 hopefully you got it.
 21 MR. JOHNSON: Yeah.
 22 (Exhibit-8 marked.)
 23 Q. I'm going to ask you to go ahead and look
 24 through the entire thing for a second just so you can
 25 familiarize yourself with the document.

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1 A. (Complying.)
 2 Q. Go ahead and take whatever time you want to look
 3 through it.
 4 A. (Complying.)
 5 Q. You just let me know when you're ready.
 6 A. Go ahead.
 7 Q. Okay. Have you seen this document before?
 8 A. Yeah, I believe I got a copy when I started
 9 there.
 10 Q. Okay. Did anyone go through this document with
 11 you? Did you have an orientation at all?
 12 A. No.
 13 Q. Did you read it when you received it?
 14 A. No.
 15 Q. Did you understand when you received it that if
 16 you had any questions, you could ask HR, or Phil, or
 17 somebody?
 18 A. Yes.
 19 Q. Okay. Did you have access to a copy of this
 20 while you were employed at Lewis County? Did they give you
 21 a copy to keep?
 22 A. I got a copy of this, yes.
 23 Q. Okay. Did you understand, while you were
 24 employed at Lewis County and then Mason County Forest
 25 Products, that your employment was at will?

APPEARANCES

1
2
3
4
5 For the Plaintiff: WESLEY S. JOHNSON
6 Attorney at Law
7 600 Royal Street
8 Suite B
9 Kelso, WA 98626

10
11 For the Defendant: JENNIFER K. WYATT
12 Attorney at Law
13 LANE POWELL
14 Suite 4100
15 1420 Fifth Avenue
16 Seattle, WA 98101-2338
17
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1 BE IT REMEMBERED, that the Deposition Upon Oral
2 Examination of DANIEL J. POPPE was taken in the
3 above-entitled and numbered cause commencing at 4:00
4 p.m. in behalf of the Plaintiff on the 19th day of
5 August 2009, before Kim Otis, Certified Court Reporter
6 and Notary Public in and for the State of Washington,
7 at the law offices of Lane Powell, 111 Market Street
8 N.E., Suite 360, Olympia, Washington.

9 WHEREUPON, the following proceedings were had and
10 done and testimony taken, to wit:

11
12 DANIEL J. POPPE, having been first duly sworn on oath
13 or affirmed to tell the truth, the whole truth and
14 nothing but the truth, testified as follows:

EXAMINATION

17 BY MR. JOHNSON:

18 Q Could you state your full name, please.
19 A Daniel Joseph Poppe.
20 Q And, Mr. Poppe, what is your date of the birth?
21 A 12-17-84.
22 Q And I've got some questions I ask everybody so don't be
23 offended. Have you ever been convicted of a crime?
24 A No.
25 Q And are you taking any medications or have any health

INDEX

Examination	Page Reference
By Mr. Johnson	04
By Ms. Wyatt	17
By Mr. Johnson	18

EXHIBITS

Number	Description	Page Reference
	No Exhibits Marked	

1 problems that would interfere with your ability to
2 answer accurately questions posed to you today?
3 A No.
4 Q And where do you work?
5 A Mason County Forest Products.
6 Q And how long have you worked for Mason County Forest
7 Products?
8 A I have been with them since July of 2004.
9 Q Where do you live?
10 A I live in Chehalis.
11 Q And did you start out at Lewis County Forest Products?
12 A I started at Lewis County.
13 Q Was that in July of 2004?
14 A Yes, it was.
15 Q And when you started at Lewis County Forest Products,
16 what was your position?
17 A I was on the green chain.
18 Q And how long did you stay on the green chain?
19 A I was only there for I think about three weeks and then
20 another job in the sawmill opened.
21 Q And what did you do in the sawmill?
22 A I off bared the resale.
23 Q Pardon?
24 A Off bared the resale.
25 Q Off -

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1 you receive severance pay after you left Mason County
 2 Forest Products?
 3 A. They paid me for two months.
 4 Q. Okay. And did you get full pay for the two
 5 months?
 6 A. Yes.
 7 Q. When did you receive the severance paycheck, if
 8 you recall?
 9 A. I got paid every payday.
 10 Q. Did you -- did Mason County Forest Products also
 11 pay your COBRA premiums for some period of time?
 12 A. Yes, they did.
 13 Q. For how long?
 14 A. Six months.
 15 Q. Other than the wage loss that you discuss in
 16 your response to Interrogatory-No.-10 and the COBRA
 17 payments for two months, are there any other economic
 18 damages you believe you suffered as a result of your
 19 termination from Mason County Forest Products?
 20 A. Repeat that.
 21 Q. Well, you mention -- it asks for economic
 22 damages in this Interrogatory-No.-10, and you identify in
 23 your answer loss of wages, right?
 24 A. Right.
 25 Q. And you also identify \$704 a month for two

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1 months for COBRA premiums, correct?
 2 A. Yes.
 3 Q. Is there any other economic damages not included
 4 in this answer that you believe you lost as a result of
 5 your termination from Mason County Forest Products?
 6 MR. JOHNSON: Do you know what she means
 7 noneconomic?
 8 MS. HAUSHILD: I said economic, actually.
 9 MR. JOHNSON: Oh, okay.
 10 Q. Any out-of-pocket expenses --
 11 A. No.
 12 Q. -- that you believe you suffered?
 13 No?
 14 If you turn to the next page, page 12,
 15 Request-For-Production-No.-2 asks for copies of written,
 16 taped, or electronically recorded statements from any
 17 person you believe to have knowledge of any of the
 18 allegations in your complaint or defendant's defenses
 19 thereto; do you see that?
 20 A. Yes.
 21 Q. And your response is, "None in plaintiff's
 22 possession"?
 23 A. Yes.
 24 Q. Are you aware of any such documents that would
 25 be responsive to this that are not in your possession?

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1 A. There's no documents that I know of.
 2 Q. Okay. While you worked at Lewis County and
 3 Mason County Forest Products, did you receive any verbal
 4 discipline from anyone?
 5 A. No.
 6 Q. Did you ever receive any verbal coaching from
 7 anyone at Mason County or Lewis County?
 8 A. Verbal coaching?
 9 Q. Sure.
 10 A. No.
 11 Q. Okay. Were there any performance issues that
 12 you were made aware of while you were at Mason County or
 13 Lewis County?
 14 A. No.
 15 Q. I'm going to show you the Payroll Change Form
 16 dated July 25th, 2008, which will be marked as Exhibit-10.
 17 (Exhibit-10 marked.)
 18 Q. Have you ever seen a copy of this Payroll Change
 19 Form before?
 20 A. You gave me one.
 21 Q. Okay. Prior to the litigation, did you ever see
 22 a copy of this?
 23 A. No, they gave me one.
 24 Q. They gave you one?
 25 A. Yes.

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1 Q. Who gave you one?
 2 A. Debbie did.
 3 Q. When did Debbie give you a copy of this?
 4 A. My last day there, the 25th.
 5 Q. And we talked before the break about how you
 6 learned from both Russell and -- I forget who the other
 7 person was now --
 8 A. Troy Kalinoskines.
 9 Q. -- Troy, that your termination may be pending,
 10 and then you talked to Greg Duncan on a Tuesday and a
 11 Wednesday; did someone officially tell you that you were
 12 being terminated or laid off at some point?
 13 A. Nobody ever told me other than Friday.
 14 Do you mean officially tell me?
 15 Q. Officially, did someone sit down with you and
 16 talk to you about --
 17 A. No.
 18 Q. -- being terminated or laid off?
 19 A. No. I was running the twin saw, and Greg come
 20 and told me that Phil Johnson wanted to talk to me, and I
 21 went over there, and he stood there and says, "We're going
 22 give you two months severance and pay your insurance for
 23 six months."
 24 Q. And that was on a Friday?
 25 A. Yes.

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1 Q. Do you remember when that change occurred?
 2 A. No, I don't.
 3 Q. Okay. Are you alleging that you have any
 4 physical complaints caused by Mason County Forest Products'
 5 termination of you?
 6 A. I'm not hurt.
 7 Q. Okay. Are you alleging that you have any
 8 emotional complaints, emotional distress due to the
 9 termination?
 10 A. No.
 11 Q. And you haven't seen any therapists, is that
 12 correct?
 13 A. No.
 14 Q. Haven't seen any counselors?
 15 A. No.
 16 Q. So, you've identified a number of witnesses,
 17 both in the deposition here today and in some of the prior
 18 discovery, that you believe have knowledge of your claims.
 19 One of them is Phil Johnson. Can you tell me what your
 20 relationship -- describe the nature of your relationship
 21 with Phil Johnson.
 22 A. I worked for him.
 23 Q. So, he was your boss?
 24 A. He was my boss.
 25 Q. Were there also friends would you say?

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1 A. Well, I didn't go golfing with him.
 2 Q. You did or you did not?
 3 A. No, I didn't go golfing with him.
 4 Q. He did ask you, though, right?
 5 A. Yeah.
 6 Q. Did he ask you while you were employed as well?
 7 A. No.
 8 Q. No, just the one time afterwards?
 9 A. Yes.
 10 Q. Did you ever have any social interactions with
 11 him outside of work?
 12 A. No.
 13 Q. Would you say that you got along with Phil
 14 Johnson while you were at Mason County Forest Products?
 15 A. I must have. He kept me in that casino for six
 16 months. I got along with him. I didn't -- I've never made
 17 a habit to go into their -- you know, I just did my job.
 18 Q. So, you considered him putting you up in the
 19 casino to be a generous gesture?
 20 A. The way he talked about needing help -- I wasn't
 21 the only one that this happened to.
 22 Q. Who else did he put up in the casino?
 23 A. I don't know that he put up in the casino, he
 24 made them -- they had a per diem. All of them had per
 25 diems to go up there. I wasn't the only one that did that.

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1 Q. But, you're the only one that you know of that
 2 he put up in the casino?
 3 A. Right, because I lived farther away than anybody
 4 else.
 5 Q. Did you ever have any problems with Phil
 6 Johnson?
 7 A. No.
 8 Q. How about Greg Duncan, did you consider him to
 9 be a friend?
 10 A. I wouldn't consider him to be a friend, no.
 11 Q. Did you ever have any problems with Greg Duncan?
 12 A. No, I got along with him.
 13 Q. Okay. Did you ever have any social interactions
 14 with Greg Duncan?
 15 A. Christmas party, the company Christmas party is
 16 about it.
 17 Q. Okay. How about Wayne Burton, did you consider
 18 him to be a friend?
 19 A. No.
 20 Q. Did you have any problems with Wayne Burton?
 21 A. I don't think I've ever had problems with him,
 22 no.
 23 Q. Any social interactions with him outside of
 24 Mason County Forest Products?
 25 A. Christmas party when he was with Stimson.

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1 Q. I don't need to know about Christmas parties.
 2 A. That's it.
 3 Q. Other than Christmas parties. I consider that,
 4 as an employment attorney, I'll tell you, that's a
 5 work-related event. So, when I ask about social
 6 interactions, I don't mean Christmas parties.
 7 Debbie Simons, did you consider her a friend?
 8 A. Yes.
 9 Q. And why do you say -- before you haven't said
 10 others that you consider them to be a friend, so why did
 11 you consider Debbie to be a friend?
 12 A. I didn't have the interaction with the other
 13 people that I did with Debbie.
 14 Q. Okay. So, did you have social interaction with
 15 her outside of work?
 16 A. No.
 17 Q. What kind of interaction did you have with her
 18 that makes you consider her a friend?
 19 A. Just the conversations we had.
 20 Q. So, you had friendly conversations --
 21 A. Yes.
 22 Q. -- that were not work-related?
 23 A. Yes.
 24 Q. Okay. And so you'd never had any problems with
 25 Debbie?

APPENDIX G
CLERK'S PAPER NO. 53
DECLARATION OF KARISSA ALESKUS

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IN THE SUPERIOR COURT OF WASHINGTON
FOR MASON COUNTY

PHILIP GROH,

Plaintiff,

v.

MASON COUNTY FOREST PRODUCTS,
LLC, a Washington Limited Liability
Company; and PHILIP JOHNSON,

Defendants.

NO. 08-2-01105-8

**DECLARATION OF KARISSA
ALESKUS IN SUPPORT OF
DEFENDANTS' MOTION FOR
SUMMARY JUDGMENT**

I, Karissa Aleskus, declare as follows:

1. I am the Chief Financial Officer for Defendant Mason County Forest Products ("MCFP"). I have worked for MCFP, and/or its parent company, Long Bell Ventures, LLC, for approximately seven years.

2. I am competent to testify and submit this declaration based on personal knowledge.

3. MCFP is a Washington Limited Liability Company that specializes in the manufacture, production and sale of forest products, specifically lumber. Defendant Philip Johnson is the President, Chief Operating Officer and an owner of MCFP. MCFP owns and operates a large log mill and a stud mill in Shelton, Washington. Long Bell Ventures, LLC, d/b/a Lewis County Forest Products ("LCFP"), is MCFP's parent company and owns 100% of MCFP. Like MCFP, LCFP is a Washington Limited Liability company that also specializes

COPY

1 in the manufacture, production and sale of forest products. LCFP owns a stud mill in
2 Winlock, Washington. Mr. Johnson is also the President, Chief Operating Officer and an
3 owner of LCFP.

4 4. Beginning in 2006, the domestic lumber market and the general economy
5 began to decline. As this decline continued and worsened, MCFP was forced to restructure
6 and downsize in order to survive. In August 2006, the Winlock lumber mill was shut down.

7 5. At the time the Winlock mill shutdown, it was believed the shutdown was
8 temporary. Some employees from the Winlock mill were transferred to MCFP's Shelton mill.
9 However, there were not positions for all Winlock mill employees at the Shelton mill.

10 6. In response to the declining domestic lumber market, from approximately 2006
11 and continuing to the present day, MCFP has shifted its domestic focus to the international
12 lumber market. This market shift has required versatility from employees as it demands an
13 entirely new approach to mill work.

14 7. Despite these efforts, the Winlock mill remains shutdown and the Shelton
15 lumber mill does not run near full capacity. Starting in early 2006 the Shelton large log mill
16 began running less and less frequently and eventually shut down completely for a period of
17 six months. After that point and continuing through November 2009, the Shelton large log
18 mill was virtually closed, running only occasionally. The Shelton lumber mill has not run a
19 continual 40 hour week schedule for some time. In each of the last three years, MCFP has
20 netted losses in excess of several million dollars.

21 8. Despite its efforts to diversify into the international lumber market and
22 streamline its workforce, MCFP continued to suffer the effects of a poor economy and layoffs
23 have been largely ongoing through November 2009. Mr. Groh was the Stud Mill Supervisor
24 when he was laid off from MCFP.

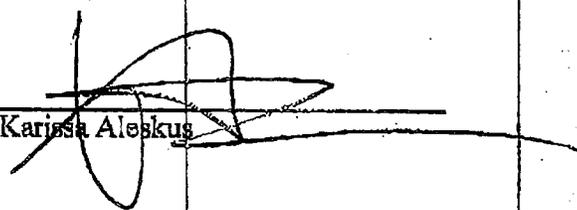
25 9. MCFP employee Daniel Poppe is currently performing most of the duties
26 performed by Mr. Groh. While Mr. Poppe initially worked alongside other MCFP employees

1 in fulfilling the responsibilities of Stud Mill Supervisor, he is the current Stud Mill Supervisor
2 at the Shelton mill. Since the former Lead in the Stud Mill resigned and was not replaced,
3 Mr. Poppe also absorbed a number of Lead functions as well. Based on his work experience,
4 Mr. Poppe is perhaps one of the most versatile employees currently employed at MCFP.
5 Mr. Poppe has performed very well in each of the positions he has held at MCFP and his
6 versatility as an employee has made him very valuable as the company has tried to navigate
7 through very difficult economic times with a significantly streamlined workforce.

8 10. Since Mr. Groh was laid off, the Winlock mill has not reopened and additional
9 layoffs occurred at the Shelton mill. The mill is likely running on as streamlined a workforce
10 as is possible and we are hopeful that no additional layoffs will be necessary. Of course,
11 future layoffs will be dictated by market demands.

12 I declare under penalty of perjury under the laws of the United States of America and
13 the State of Oregon that the foregoing statements are true and correct.

14 Executed this 24th day of January, 2010.

15
16 
17 Karissa Aleskus
18
19
20
21
22
23
24
25
26

DECLARATION OF KARISSA ALESKUS IN SUPPORT OF
DEFENDANTS' MOTION FOR SUMMARY JUDGMENT - 3

1800-116.1

LANE POWELL PC
SUITE 4100
1420 FIFTH AVENUE
SEATTLE, WA 98101
(206) 223-7000

APPENDIX H
CLERK'S PAPER NO. 55
RESPONSE TO MOTION FOR SUMMARY
JUDGMENT

1 A. No.

2 Q. So, age was not brought into these
3 conversations?

4 A. No.

5 Q. Just that Dan Poppe was out for your job, is
6 that correct?

7 A. Yes.

8 Q. So, on what day did you -- you talked to Troy,
9 and you talked to Russell; before you were actually
10 terminated, did you talk to anybody else about the
11 possibility of being laid off or terminated from Mason
12 County?

13 A. Greg Duncan came back on Tuesday, I believe, and
14 I talked to him, and he told me that he actually didn't
15 know anything about it because, you know, Phil did it while
16 he was in Hawaii, or wherever it was he went, but I talked
17 to him again Wednesday, and I told him, you know, "I don't
18 understand how Phil Johnson could be so happy two weeks
19 before that about the job I was doing and getting rid of me
20 now." And he said, "Well, it isn't that Phil's mad at you.
21 Poppe's a good kid, and he needs a place for him."

22 Q. Okay, you mentioned that Phil was so happy two
23 weeks before, Phil Johnson; what makes you say that?

24 A. I talked to him.

25 Q. What did you talk to him about two weeks before?

1 A. We talked about how well the production was in
2 the stud mill -- or how the production was in the stud
3 mill, and he told me that he was happy.

4 Q. So, when you talked to Greg Duncan on Tuesday
5 you said, after he came back from I think a Hawaiian
6 vacation --

7 A. Yeah.

8 Q. -- did he tell you and confirm that you were
9 going to be let go?

10 A. Pretty much.

11 Q. And did he -- and I heard you say that he said
12 that Phil did it while Greg was in Hawaii?

13 A. Yeah, he said Phil made the decision while he
14 was in Hawaii. I don't remember exactly what it was.

15 Q. Do you have any reason to doubt that Phil
16 Johnson is the one who made the decision?

17 A. I don't know who made the decision.

18 MR. JOHNSON: Let's go off the record a second.

19 (Discussion off the record.)

20 (Lunch break taken at 12:11 p.m.)

21
22
23
24
25

1 A Probably 2005, 2006, right around in there.

2 Q And your position was plant manager?

3 A Yes.

4 Q And you're talking the small log mill?

5 A Yes.

6 Q And he was a shift supervisor?

7 A Correct.

8 Q And who was involved in the decision to put him in that
9 position of shift supervisor?

10 A Probably Wayne Burton.

11 Q And what was Wayne Burton's position?

12 A At the time he was the small log manager. He was the
13 same as I was, but over that mill.

14 Q I'm confused. So what was your position then?

15 A At the time I was the plant manager of Lewis County
16 Forest Products.

17 Q I see.

18 A And in the process of shutting that plant down, I came
19 up to Mason County and I eventually assumed the role of
20 the plant manager of the small mill.

21 Q When you assumed the role of plant manager of the small
22 mill, was Phil Groh already shift supervisor?

23 A Yes, he was.

24 Q Now I got it. How was Phil's shift doing when you got
25 there?

1 A Good.

2 Q No problems?

3 A No.

4 Q At some point a decision was made to let Bill Groh go.

5 A Yes.

6 Q And who was involved in that decision?

7 A I'm not sure because I was on vacation.

8 Q Okay. So, he worked for you?

9 A Yes.

10 Q And nobody consulted you about this?

11 A Not -- no.

12 Q When did you first learn that he was going to be let
13 go?

14 A When I was -- it was a Wednesday, the week that I was
15 gone.

16 Q And how did you find out?

17 A Email.

18 Q Did that surprise you?

19 A Yes, it did.

20 Q And why is that?

21 A It just surprised me that he would be one of the guys
22 that we looked at letting go at the time.

23 Q And why was that?

24 A Because as far as I was concerned, he was doing a good
25 job.

1 Q Did you ever ask about that?

2 A As far as --

3 Q Why he was let go.

4 A We were cutting costs.

5 Q Okay. Let's take this in steps here. So did you ask
6 somebody about it?

7 A No.

8 Q And did anybody tell you why?

9 A Yes.

10 Q And who was that?

11 A Phil, Phil Johnson.

12 Q And what did he tell you?

13 A That we were cutting that position out, we were down
14 sizing.

15 Q So, the position of shift supervisor was being cut?

16 A Yeah.

17 Q Did nobody fill that position afterward?

18 A It was absorbed by a few different people.

19 Q It was --

20 A Absorbed, the responsibilities were.

21 Q Is there somebody in that position today?

22 A No. Myself.

23 Q So, you are now supervising that shift directly?

24 A Yes.

25 MS. WYATT: Can we take a break just a

1 Phil Groh any problems in his work?

2 A No.

3 Q So, let's go back to when Mr. Groh was let go. Was
4 there anybody else, salaried people, let go at the same
5 time?

6 A I don't know that it was right at the same time, but
7 we've had a few go over the course of the year, yeah.

8 Q And who would that be?

9 A Dave Ramsey.

10 Q And what did Dave Ramsey do?

11 A He was our sales manager. Trying to think of the
12 names. Jerry Eichner.

13 Q And what did he do?

14 A He was the manager of the large mill. Dale York who
15 was a shift supervisor of the large mill. We had a
16 couple planer supervisors that changed over during that
17 time, too, I don't recall.

18 Q Is there a Greg Baker?

19 A There's a Dennis Baker.

20 Q Okay. What was he doing when Mr. Groh was terminated?

21 A He was one of the shift supervisors at the large mill
22 at the time and he bounced around a little.

23 Q Did he fill in for Mr. Groh after he left?

24 A Yes.

25 Q In what capacity?

1 A He took on some of the duties that Phil Groh was doing
2 and I guess you could say he was the supervisor at the
3 time.

4 Q For how long?

5 A Probably three to six months.

6 Q What had he been doing before that?

7 A He was a shift supervisor at the large mill.

8 Q How old a man is Dennis Baker?

9 A Oh, he's in his mid 50s.

10 Q Did I ask your date of birth?

11 A 6/14/77.

12 Q And what did he do after the three to six months he
13 filled that position?

14 A We changed some things in our log yard so he went out
15 and supervised that.

16 Q Why the change?

17 A Product change, needed somebody to watch over our log
18 sorts.

19 Q And is there a Daniel Poppe?

20 A Yes, there is.

21 Q And before Mr. Groh was terminated, what was Daniel
22 Poppe doing?

23 A He was the shipping supervisor.

24 Q And did he fill in in Mr. Groh's position at any point?

25 A Yes.

1 Q And when was that?

2 A After Dennis left up to now, I mean, currently he and I
3 -- that job that Phil had changed when Phil got laid
4 off. I absorbed a lot of the day-to-day hour keeping,
5 production tracking, maintenance of the actual crew for
6 awhile. Dennis took on some of it when he came over,
7 and then as Dennis was moving out, we brought Dan up
8 into more of that position, that type of helping with
9 the day-to-day.

10 Q Okay. So, what's Daniel's title?

11 A I guess technically he's the supervisor.

12 Q So his title is shift supervisor?

13 A Yeah, I guess it would be.

14 Q Do you know how much he's paid?

15 A No, I don't.

16 Q So when you say technically, why do you qualify it as
17 technically?

18 A Because he's doing parts of the job, but he's not in
19 complete control of it. I still maintain the control
20 of what goes on with the employees. I mean, he has the
21 power to do them, but he has to go through me. I mean,
22 he's learning more and more about it and, you know, I
23 guess you can say I'm trying to mentor him, teach him,
24 bring him up into the position to where one day when it
25 fits, he will be able to take it over and I can go back

1 to some of the other stuff that I need to do.

2 Q But he doesn't have the experience that Phil Groh had?

3 A No.

4 Q So, how would you compare the work that he does
5 compared to what Phil Groh was doing, what's different?

6 A They're real comparable.

7 Q Well, you didn't have any problem with saying that Phil
8 Groh was the shift supervisor without any
9 qualifications, but with Daniel Poppe you want to
10 qualify it, so there must be some difference.

11 A Well, the experience and the comfort level with me.

12 Q Okay. So, you felt like with Phil Groh's experience,
13 would it be fair to say, you didn't have to supervise
14 him as closely?

15 A No, I didn't.

16 Q Whereas, with Daniel Poppe, he is learning and you have
17 to supervise him more so?

18 A Yes.

19 Q Any other differences that you can think of?

20 A No, I mean, they're both qualified to do the job.

21 Q Are you uncomfortable talking about this?

22 A No. I -- no.

23 (Exhibit No. 3 marked for identification.)

24 Q I'm going to hand you what's been marked as Exhibit
25 Number 3. Do you recognize that?

1 A Yes, I do.

2 Q And could you tell us what that is.

3 A That was a discharge response I'm assuming to a request
4 from you.

5 Q So it's a letter sent to me?

6 A Yes.

7 Q And did you compose that letter?

8 A Yes.

9 Q And you signed the letter?

10 A Yes.

11 Q And you said that performance wasn't the problem?

12 A No, it wasn't.

13 Q And you said that because that's what you were told?

14 A No. It's what I believe.

15 Q Okay. Well, didn't you say that you really weren't
16 involved in the decision of letting him go?

17 A No, I wasn't.

18 Q So, if in fact you weren't involved in the decision,
19 you must have come to the conclusion that performance
20 wasn't an issue. How did you come to that conclusion?

21 A Well, because it was based on down sizing.

22 Q Is that because of what Phil Johnson told you?

23 A Yes.

24 Q Did you ever wonder why him and not someone else?

25 A No. Yes, I did, but it was just where they started.

1 Q I don't understand.

2 A It's just where they started cutting.

3 Q So, let's see if I understand this correctly. Would it
4 be fair to say that when Phil Groh was cut, basically
5 there were three people filling his position?

6 A Yes.

7 Q It would be you, Dennis Baker and Daniel Poppe,
8 correct?

9 A Yes.

10 Q And then now it's basically two people filling that
11 position?

12 A Yes.

13 Q And that would be Daniel Poppe and yourself?

14 A Yes.

15 Q Did you ever wonder why Daniel Poppe was kept and Phil
16 Groh was let go?

17 A Yes and no.

18 Q What do you mean by that?

19 A I always questioned why Phil was let go, but both of
20 them were valuable employees to me, and I don't know
21 why the decision was made, no, I never really got an
22 answer other than we were cutting costs.

23 Q Did you ask that specific question? Did you overhear
24 any conversations by anyone that would lead you to an
25 answer to that question?

1 anyplace else prior to the shipping department.

2 Q. Would it be fair to say he's now the shift supervisor and
3 holding the position that Mr. Groh used to hold?

4 A. I don't feel so, no.

5 Q. How is it different?

6 A. The responsibilities are a bit different. I've never seen
7 the title given to him shift supervisor. He's on our
8 salary list as lead person in the stud mill.

9 Q. Okay. Do you know how much he's making?

10 A. I don't know, no.

11 Q. Would it surprise you if I were to tell you that three
12 days after Phil Groh got terminated, that Daniel Poppe was
13 given a raise?

14 A. Can't tell you whether it surprised me or not because I
15 don't know.

16 Q. Do you think there's any relationship between Mr. Poppe's
17 career and Mr. Groh being let go?

18 A. I don't believe so, no. In fact, I'm certain of that,
19 that I am aware of.

20 Q. When Mr. Groh was let go, what was the intention for
21 filling that position?

22 A. We didn't fill that position, we still haven't.

23 Q. Okay. Would it surprise you to find out that Greg Duncan
24 believes that that position at least is filled in part by
25 Daniel Poppe?

1 at anytime?

2 A. As we started to make a switch to export products, Phil
3 was struggling. He didn't have the skill set that was
4 really needed, didn't have the grade, size knowledge, the
5 computer skills. We hired Phil, as I mentioned, because
6 he was very good at running the green Douglas stud mill.
7 He did it very successfully at Friesen Lumber doing that.
8 As we started to change what we were doing, we've made
9 massive changes over the past year-and-a-half trying to
10 survive and it's still a struggle every day. What we do
11 now in no way, shape or form resembles what we did when
12 Phil was there.

13 Q. And how did that affect his work? You said he struggled.
14 What did you observe that indicated that to you?

15 A. The overall operating results of the plant, grade
16 recovery, that's when production was becoming an issue,
17 and that's really what I remember.

18 Q. Did you ever discuss this with Greg Duncan?

19 A. You know, I really don't remember whether I did or not.

20 Q. So, Greg Duncan, was he not Phil's immediate supervisor?

21 A. Mm-hmm (witness nods head affirmatively).

22 Q. Yes?

23 A. Yes, sir.

24 Q. Okay. So, if he was having some problems -- actually, let
25 me strike that. Let me ask a different question. Did you

1 ever have discussions with Mr. Groh about this problem
2 that you perceived about --

3 A. I really didn't, still don't interact with our shift
4 managers.

5 Q. Whose job would that be?

6 A. Would be their direct supervisor.

7 Q. So did you ever speak to Greg Duncan about this problem?

8 A. Well, you just asked me and still I don't remember.

9 Q. Okay.

10 A. I don't remember having a conversation. I can't say for
11 certain I didn't, but I don't remember having it.

12 Q. Is there any reason why if you felt like there was an
13 employee that was struggling with a certain area, that you
14 wouldn't see to it that someone talk to him about it?

15 A. My guess is, this is my guess only, Greg Duncan probably
16 did talk to me. We normally try to give our employees
17 every opportunity if they're struggling with their job to
18 succeed.

19 Q. Would you be surprised to find out that Greg Duncan said
20 he never even perceived that there was a problem?

21 A. No, because I told you I don't really remember talking to
22 him about it.

23 Q. Okay. So, did your perception that he was struggling with
24 the export business enter into the reason that you laid
25 Mr. Groh off?

1 A. That was the reason.

2 Q. Okay. Did you ever tell anybody that?

3 A. I don't remember.

4 Q. Now, see if I get this straight. So you're telling me
5 that you perceived that Mr. Groh was struggling with the
6 export market, correct?

7 A. Export product.

8 Q. And he reported to Greg Duncan, correct?

9 A. I believe so, yes.

10 Q. And, yet, you never discussed this or you don't remember
11 having discussed this with Greg?

12 A. Don't remember discussing it.

13 Q. Is that typical of your way of dealing with employees?

14 MS. WYATT: Object to form.

15 A. Yeah.

16 Q. It is?

17 A. No, it isn't.

18 Q. Okay. How is it different?

19 A. I just didn't answer the question. Please give it to me
20 again if you would, please.

21 Q. The question was, is that typical of how you deal with
22 employees?

23 MS. WYATT: Object to form. Are you talking
24 about the fact that he doesn't remember having the
25 conversation?

1 MR. JOHNSON: No, that he wouldn't have even
2 talked to the man or the man's supervisor without laying
3 him off because of performance problems.

4 MS. WYATT: Objection, that mischaracterizes his
5 testimony.

6 MR. JOHNSON: That's okay. Let's see if he can
7 answer it.

8 MS. WYATT: You can answer it if you know what
9 the question is.

10 A. I don't remember having a conversation with Greg Duncan.
11 My normal way of handling a problem with a supervisor is,
12 as I stated earlier, trying to give them every opportunity
13 to succeed, but what I can't tell you is about any
14 conversations I had with Mr. Duncan or with Phil Groh.

15 Q. Okay. So, let me see if I understand this correctly then.
16 What you're saying is typically if you're having a problem
17 with an employee, that you'll give them an opportunity to
18 succeed, correct?

19 A. Yes.

20 Q. Is that what you're telling me? And would that in fact
21 include discussing the problem with him?

22 A. I would normally say that that would be a correct answer.

23 Q. And also would it be fair to say that typically you would
24 also discuss this with that employee's supervisor, direct
25 supervisor?

1 A. Yes.

2 Q. And what you're saying in this particular instance, you
3 don't remember whether you did that or not?

4 A. I don't know. I don't remember a specific conversation
5 that I had at that time with Phil or his supervisor.

6 Q. So, would it be fair to say that if in fact you did not
7 discuss this with Phil Groh or you did not discuss it with
8 Greg Duncan, that would be unusual in your business
9 dealings?

10 A. Yes.

11 Q. After you let Phil Groh go, who took his position?

12 A. We didn't actually fill that position immediately. We
13 took a gentleman out of another one of our departments at
14 Mason County and moved him in to help.

15 Q. And who would that be?

16 A. That would have been Dennis Baker.

17 Q. Okay. And what department was Dennis Baker in?

18 A. Dennis Baker was at the large log mill.

19 Q. And why was he moved over?

20 A. The period that started really in September of 2006, I
21 believe, about that time we had about 410 employees,
22 currently we have 102, and we had lay-offs that were
23 occurring in shifts and management positions almost on a
24 monthly basis trying to control losses and find something
25 that might work.

APPENDIX I
CLERK'S PAPER NO. 56
DECLARATION OF WESLEY S. JOHNSON

Weekly Production for Bonuses

Monday	Tuesday	Wednesday	Thursday	Friday	Saturday	Sunday
26-May	27-May	28-May	29-May	30-May	31-May	1-Jun

Phil Groh							Weekly Totals
Day Studmill		187,754	128,066		183,596		499,416
Day Studmill Hours		8.00	4.50		8.00		20.50
PRODUCTION/HOUR		23,469	28,459		22,950		14,976

Swingshift Studmill							
Swingshift Studmill Hours							
PRODUCTION/HOUR							

John Irby						
Dayshift Studmill Planer						
Planer Hours						
PRODUCTION/HOUR						

Swingshift Studmill Planer						
Planer Hours						
PRODUCTION/HOUR						

Daily Stacker Totals	187,754	#REF!	128,066	-	183,596	-
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MB

11

Weekly Production for Bonuses

	Monday 2-Jun	Tuesday 3-Jun	Wednesday 4-Jun	Thursday 5-Jun	Friday 6-Jun	Saturday 7-Jun	Sunday 8-Jun	Weekly Totals
Phil Cook								
Day Studmill		300,057	239,019	-	240,421			779,497
Day Studmill Hours		10.00	7.75		8.00			25.75
PRODUCTION/HOUR		30,006	30,841		30,053			18,180
Swingshift Studmill								
Swingshift Studmill								-
Swingshift Studmill Hours								-
PRODUCTION/HOUR								-
John Irbly								
Dayshift Studmill Planer								-
Planer Hours								-
PRODUCTION/HOUR								-
Swingshift Studmill Planer								
Swingshift Studmill Planer								-
Planer Hours								-
PRODUCTION/HOUR								-
Daily Starter Totals:	300,057	#REF!	239,019	-	240,421			

5

Week # 24

Week of 06/09-6/15, 2008

Dayshift Studmill Production

Supervisor			9-Jun	10-Jun	11-Jun	12-Jun	13-Jun	14-Jun	15-Jun
Phil Gron			Mon	Tues	Wed	Thur	Fri	Sat	Sun
Position	Employee Name	Status							
1 Board Edger	Amarza, Jose								
2 Chopsaw	Comeli, John								
3 Shovel	Dean, Lewis								
4 Utility	Domiguez, Alejandro								
5 Utility	Emier, Robert								
6 Utility	Espinosa, Francisco								
7 Clean-Up	Goodrich, Heather								
8 Sawsaw	Goodrich, Lonnie								
9 Green Chain	Graham, Matthew								
10 Stacker Helper	Hanna, William								
11 Stacker Helper	James, David								
12 Lug Loader	Jaquez, Joshua								
13 Lug Loader	Jarvis, Martin								
14 Clean-Up	Juarez, Juan								
15 Twin	Lizotte, Raymond								
16 Bin Chaser	Malone, Milton								
17 Offbearer	Miller, Anthony								
18 Offbearer	Narrance, Shawn								
19 Clean-Up	Palmason, Tana								
20 Stacker	Payan, Julian								
21 Off Bearer	Roberts, John								
22 Utility	Rocha, Ramiro								
23 Gang Edger	Ruiz Antonio								
24 Clean-Up	Schindler, Fred								
25 Clean-Up	Sigh, Amanpreet								
26 Utility	Strom John								
27 Forklift	Umphrey Lynn								
	Acc - Accident								
	T - Tardy								
	A - Absent								
	S - Safety								
	Term - Terminated								

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31

Weekly Production for Bonuses

	Monday 9-Jun	Tuesday 10-Jun	Wednesday 11-Jun	Thursday 12-Jun	Friday 13-Jun	Saturday 14-Jun	Sunday 15-Jun	Weekly Totals
Phil Groh								
Day Studmill	305,123	219,458	260,016	223,835	144,807			848,116
Day Studmill Hours	10.00	8.00	10.00	8.00	5.00			31.00
PRODUCTION/HOUR	30,512	27,432	26,002	27,979	28,961			28,177

Swingshift Studmill								-
Swingshift Studmill Hours								-
PRODUCTION/HOUR								-

John Idry								
Dayshift Studmill Planer								-
Planer Hours								-
PRODUCTION/HOUR								-

Swingshift Studmill Planer								-
Planer Hours								-
PRODUCTION/HOUR								-

Daily Stacker Totals	219,458	#REF!	260,016	223,835	144,807	-	-	
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Mason County Forest Products

Weekly Production for Bonuses

Week # 26

2

	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday	Sunday	
	23-Jun	24-Jun	25-Jun	26-Jun	27-Jun	28-Jun	29-Jun	
Phil Cook								Weekly Totals
Day Studmill	222,304	199,853	225,901	-	128,638	-	-	554,392
Day Studmill Hours	10.00	9.00	9.50	-	5.00	-	-	23.50
PRODUCTION/HOUR	22,230	22,206	23,779	-	25,728	-	-	18,789
Swingshift Studmill								-
Swingshift Studmill Hours								-
PRODUCTION/HOUR								-
John Irbly								
Dayshift Studmill Planer								-
Planer Hours								-
PRODUCTION/HOUR								-
Swingshift Studmill Planer								-
Planer Hours								-
PRODUCTION/HOUR								-
Daily Stacker Totals	199,853	#REF!	225,901	-	128,638	-	-	

Mason County Forest Products
Weekly Production for Bonuses

Week # 30

2

	Monday 21-Jul	Tuesday 22-Jul	Wednesday 23-Jul	Thursday 24-Jul	Friday 25-Jul	Saturday 26-Jul	Sunday 27-Jul	Weekly Totals
Phil Grob								
Day Studmill	261,656	26,253	249,089	282,193	247,287			804,822
Day Studmill Hours	10.00	1.00	10.00	10.00	9.00			30.00
PRODUCTION/HOUR	26,166	26,253	24,909	28,219	27,476	-		26,605
Swingshift Studmill								
Swingshift Studmill Hours								
PRODUCTION/HOUR								
John Lby								
Dayshift Studmill Planer								
Planer Hours								
PRODUCTION/HOUR								
Swingshift Studmill Planer								
Planer Hours								
PRODUCTION/HOUR								
Daily Stacker Totals	26,253	#REF!	#REF!	282,193	247,287	-	-	

(Signature)
7/29/08

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Mason County Forest Products
Weekly Production for Bonuses

Week # 31

1

	Monday 28-Jul	Tuesday 29-Jul	Wednesday 30-Jul	Thursday 31-Jul	Friday 1-Aug	Saturday 2-Aug	Sunday 3-Aug	Weekly Totals
Phil Gosh								
Day Studmill	222,859	234,677	255,511	238,817				729,005
Day Studmill Hours	10.00	10.00	10.00	10.00				30.00
PRODUCTION/HOUR	22,286	23,468	25,551	23,882				19,037
Swingshift Studmill								
Swingshift Studmill								-
Swingshift Studmill Hours								-
PRODUCTION/HOUR								-
John Eby								
Dayshift Studmill Planer								-
Planer Hours								-
PRODUCTION/HOUR								-
Swingshift Studmill Planer								
Swingshift Studmill Planer								-
Planer Hours								-
PRODUCTION/HOUR								-
Daily Stacker Totals	234,677	#REF!	#REF!	238,817				

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Mason County Forest Products

Weekly Production for Bonuses

Week # 32

2

	Monday 4-Aug	Tuesday 5-Aug	Wednesday 6-Aug	Thursday 7-Aug	Friday 8-Aug	Saturday 9-Aug	Sunday 10-Aug	Weekly Totals
Phil Grob								
Day Studmill	186,166	269,406	227,643	214,549	218,996			930,594
Day Studmill Hours	10.00	10.00	10.00	8.00	8.00			36.00
PRODUCTION/HOUR	18,617	26,941	22,764	26,819	27,375			24,503
Swingshift Studmill								
Swingshift Studmill								-
Swingshift Studmill Hours								-
PRODUCTION/HOUR								-
Dayshift Studmill Planer								
Dayshift Studmill Planer								-
Planer Hours								-
PRODUCTION/HOUR								-
Swingshift Studmill Planer								
Swingshift Studmill Planer								-
Planer Hours								-
PRODUCTION/HOUR								-
Daily Stacker Totals	269,406	#REF!	#REF!	214,549	218,996			-

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Mason County Forest Products

Weekly Production for Bonuses

Week # 33

	Monday 11-Aug	Tuesday 12-Aug	Wednesday 13-Aug	Thursday 14-Aug	Friday 15-Aug	Saturday 16-Aug	Sunday 17-Aug	Weekly Totals
Day Pops								
Day Studmill	310,008	245,922	267,020	88,257	146,682			747,881
Day Studmill Hours	9.50	10.00	9.00	3.50	10.00			32.50
PRODUCTION/HOUR	32,632	24,592	29,669	25,216	14,668			25,356
Swingshift Studmill								
Swingshift Studmill								-
Swingshift Studmill Hours								-
PRODUCTION/HOUR								-
Dayshift Studmill Planer								
Dayshift Studmill Planer								-
Planer Hours								-
PRODUCTION/HOUR								-
Swingshift Studmill Planer								
Swingshift Studmill Planer								-
Planer Hours								-
PRODUCTION/HOUR								-
Daily Stacker Totals	245,922	#REF!	#REF!	88,257	146,682	-	-	

low

Weekly Production for Bonuses

Monday	Tuesday	Wednesday	Thursday	Friday	Saturday	Sunday
18-Aug	19-Aug	20-Aug	21-Aug	22-Aug	23-Aug	24-Aug

Dan Peppe							Weekly Totals
Day Studmill	315,761	257,120	244,751	225,732	118,444		846,047
Day Studmill Hours	10.00	10.00	9.00	10.00	10.00		39.00
PRODUCTION/HOUR	31,576	25,712	27,195	22,573	11,844		23,780

Swingshift Studmill							
Swingshift Studmill Hours							
PRODUCTION/HOUR							

Dayshift Studmill Planer							
Planer Hours							
PRODUCTION/HOUR							

Swingshift Studmill Planer							
Planer Hours							
PRODUCTION/HOUR							

Daily Stacker Totals	257,120	#REF!	#REF!	225,732	118,444		
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Weekly Production for Bonuses

Monday	Tuesday	Wednesday	Thursday	Friday	Saturday	Sunday
18-Aug	19-Aug	20-Aug	21-Aug	22-Aug	23-Aug	24-Aug

Dennis Baker

							Weekly Totals
Day Sawmill		220,293	171,557				391,850
Day Sawmill Hours		10	9				19.0
PRODUCTION/HOUR		22,029	19,062				10,273

Swingshift Sawmill							
Swingshift Sawmill Hours							
PRODUCTION/HOUR							

Dayshift Sawmill Planer							
Dayshift Sawmill Planer							
PRODUCTION/HOUR							

Swingshift Sawmill Planer							
Swingshift Sawmill Planer							
PRODUCTION/HOUR							

Daily Stacker Totals	#REF!	-	#REF!	#REF!	-	-	
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Mason County Forest Products

Weekly Production for Bonuses

Week # 35

1

	Monday 25-Aug	Tuesday 26-Aug	Wednesday 27-Aug	Thursday 28-Aug	Friday 29-Aug	Saturday 30-Aug	Sunday 31-Aug	Weekly Totals
Dan Poppe								
Day Studmill	227,101	229,690	208,367	204,448				642,505
Day Studmill Hours	10.00	8.75	8.00	7.50				24.25
PRODUCTION/HOUR	22,710	26,250	26,046	27,260				20,453
Swingshift Studmill								
Swingshift Studmill Hours								
PRODUCTION/HOUR								
Dayshift Studmill Planer								
Planer Hours								
PRODUCTION/HOUR								
Swingshift Studmill Planer								
Planer Hours								
PRODUCTION/HOUR								
Daily Stacker Totals	229,690	#REF!	#REF!	204,448	-	-	-	

Mason County Forest Products - Sawmill
Weekly Production for Bonuses

Week # 55

1

Monday 25-Aug	Tuesday 26-Aug	Wednesday 27-Aug	Thursday 28-Aug	Friday 29-Aug	Saturday 30-Aug	Sunday 31-Aug
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Dennis Baker

	Monday 25-Aug	Tuesday 26-Aug	Wednesday 27-Aug	Thursday 28-Aug	Friday 29-Aug	Saturday 30-Aug	Sunday 31-Aug	Weekly Totals
Day Sawmill		238,077	167,011	169,783				574,871
Day Sawmill Hours		10	10	8				28.0
PRODUCTION/HOUR		23,808	16,701	21,223				15,433

Swingshift Sawmill								
Swingshift Sawmill Hours								
PRODUCTION/HOUR								

Dayshift Sawmill Planer								
Dayshift Sawmill Planer								
PRODUCTION/HOUR								

Swingshift Sawmill Planer								
Swingshift Sawmill Planer								
PRODUCTION/HOUR								

Daily Stacker Totals	#REF!	-	#REF!	#REF!	-	-	-	
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Dayshift Studmill Production

Supervisor										
Dan Poole										
Position	Employee Name	Status	1-Sep Mon	2-Sep Tues	3-Sep Wed	4-Sep Thur	5-Sep Fri	6-Sep Sat	7-Sep Sun	
1 Board Edge	Amanza, Jose									
2 Chopsaw	Conner, John									
3 Shovel	Dean, Lewis									
4 Utility	Dominguez, Alexander									
5 Log Loader Helper	Espinosa, Francisco									
6 Stacker Helper	Hanna, William									
7 Stacker Helper	James, David									
8 Resaw	Jarvis, Martin									
9 Offbearer	Johnson, Matt									
10 Offbearer	Osarez, Juan									
11 Twin	Elizabeth, Raymond									
12 Bin Chaser	Matone, Hilton									
13 Utility	Miller, Anthony									
14 Stacker	Payan, Julian									
15 Threeway Sort	Roberts, John									
16 Log Loader	Rocha, Ramiro									
17 Gang Edger	Ruiz, Antonio									
18 Clean-Up	Schudler, Fred									
19 Clean-Up	Sign, Amandreer									
20 Debarker	Strom, John									
21 Forklift	Umproy, Lynn									
22 Clean-Up	Uyeda, Amber									
23 Clean-Up	Packer, Matthew									
24 Clean-Up	Taylor, Star									
	Acc - Accident									
	T - Tardy									
	A - Absent									
	S - Safety									
	Term - Terminated									

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Mason County Forest Products

Weekly Production for Bonuses

Week # 36

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	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday	Sunday	
	1-Sep	2-Sep	3-Sep	4-Sep	5-Sep	6-Sep	7-Sep	Weekly Totals
Dan Poppe								
Day Studmill		190,165	97,026		236,179			523,370
Day Studmill Hours		7.50	3.25		10.00			20.75
PRODUCTION/HOUR		25,355	29,854		23,618			15,765
Swingshift Studmill								
Swingshift Studmill Hours								
PRODUCTION/HOUR								
Dayshift Studmill Planer								
Planer Hours								
PRODUCTION/HOUR								
Swingshift Studmill Planer								
Planer Hours								
PRODUCTION/HOUR								
Daily Stacker Totals	190,165	#REF!	#REF!	-	236,179	-	-	

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Weekly Production for Bonuses

	Monday 1-Sep	Tuesday 2-Sep	Wednesday 3-Sep	Thursday 4-Sep	Friday 5-Sep	Saturday 6-Sep	Sunday 7-Sep	Weekly Totals
Dennis Baker								
Day Sawmill			200,332	200,264	160,087			560,683
Day Sawmill Hours			10	10	10			30.0
PRODUCTION/HOUR			20,033	20,026	16,009			14,017
Swingshift Sawmill								
Swingshift Sawmill								
Swingshift Sawmill Hours								
PRODUCTION/HOUR								
Dayshift Sawmill Planer								
Dayshift Sawmill Planer								
Dayshift Sawmill Planer								
PRODUCTION/HOUR								
Swingshift Sawmill Planer								
Swingshift Sawmill Planer								
Swingshift Sawmill Planer								
PRODUCTION/HOUR								
Daily Stacker Totals	#REF!		#REF!	#REF!	160,087			

APPENDIX J
CLERK'S PAPER NO. 57
DECLARATION OF PHILIP GROH

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**SUPERIOR COURT OF WASHINGTON
FOR MASON COUNTY**

PHILIP GROH,

Plaintiff,

vs.

MASON COUNTY FOREST PRODUCTS, LLC., a
Washington Limited Liability Company, and
PHILIP JOHNSON,

Defendants.

No. 08-2-01105-8

**DECLARATION OF PHILIP GROH IN
RESPONSE TO DEFENDANTS' MOTION FOR
SUMMARY JUDGMENT**

I am the plaintiff in this matter and I make this Declaration in Response to the Defendant's Motion for Summary Judgment.

At no time did the defendant ever offer me any formal training for the operation of computers. The only training that I have ever received on computers was on-the-job training while actually working with the computers.

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Signed at _____, on February, _____, 2010.

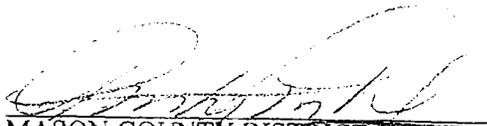
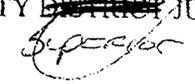
PHILIP GROH

APPENDIX K
CLERK'S PAPER NO. 62
ORDER GRANTING DEFENDANT'S MOTION FOR
SUMMARY JUDGMENT

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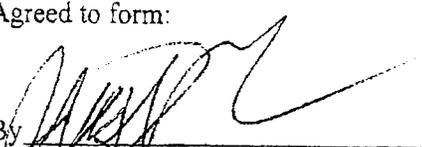
NOW, THEREFORE, IT IS ORDERED ADJUDGED AND DECREED that:
Defendants' Motion for Summary Judgment is GRANTED and Plaintiff's Complaint is
DISMISSED as a matter of law pursuant to CR 56.

DATED this 15 day of ^{month} ~~February~~, 2010.


MASON COUNTY DISTRICT JUDGE


Presented by:
LANE POWELL PC

By 
Sarah E. Hauschild, WSBA No. 29626
Jennifer K. Wyatt, WSBA No. 35156
Attorneys for Defendants

Agreed to form:
By 
Wesley S. Johnson, WSBA #16930
Attorneys for Plaintiff

ORDER GRANTING DEFENDANTS' MOTION FOR
SUMMARY JUDGMENT - 2

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CERTIFICATE OF SERVICE

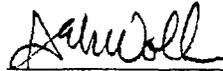
I, Debi Wollin, certify under penalty of perjury and the laws of the State of Washington: I am a citizen of the United States and a resident of King County, Washington. I am over the age of 18 years and am not a party to the within cause. My business mailing address is 1420 Fifth Avenue, Suite 4100, Seattle, Washington 98101-2338.

On the date identified below, I caused the foregoing to be served on the following parties in the manner as indicated below:

Wesley S. Johnson
Law Office of Wesley S. Johnson
600 Royal Street - Suite B
Kelso, WA 98626

- U.S. Mail
- Facsimile
- E-mail
- FedEx
- Legal Messenger

EXECUTED this 22 day of January 2010 at Seattle, Washington.



Debi Wollin