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**SUPREME COURT OF THE STATE OF WASHINGTON**

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DONALD BAKER

Petitioner,

v.

STATE OF WASHINGTON DEPARTMENT  
OF EMPLOYMENT SECURITY,

Respondent.

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**ADDITIONAL EVIDENCE PER RAP 9.11**

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DONALD BAKER  
PRO SE  
16800 27<sup>th</sup> Ave. NE  
B309  
Marysville, WA98271  
(206)200-9602  
[Donaldwaynebaker38@yahoo.com](mailto:Donaldwaynebaker38@yahoo.com)

**ADDITIONAL RULES**

- RAP 9.11 (a) (1)**.....
- RAP 9.11 (a) (2)**.....
- RAP 9.11 (a) (3)**.....

**EVIDENCE**

**MAINTECH RESTRICTIVE COVENANT**

**ARGUMENT**

The employer and the Department are only sighting the employee handbook that was followed. They did not bring up the contract that was given. The contract states that either party may terminate this contract upon giving the other party five days notice that this contract and the employee’s employment by the Corporation shall terminate. Again I feel this shows the employers has terminated and denied my benefits wrongfully. I only found this contract last night and had previous forgot about it to issues with PTSD/ Anxiety. The above mentioned rules should apply to this newly discovered evidence.

**CONCLUSION**

I respectfully request the Court to consider this evidence. This evidence should even more go to the creditability of the employer testimony.

Respectfully Submitted this 22<sup>nd</sup> Day of February 2016.

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## RESTRICTIVE COVENANT

THIS AGREEMENT, made and entered into this 29<sup>TH</sup> day of NOVEMBER, 20 11, by and between MAINTTECH, an operating division of Triangle Services, Inc. hereinafter referred to as the "Corporation", and DONALD BAKER, hereinafter referred to as "Employee."

In consideration of the promises herein contained, the parties hereto mutually agree as follows:

1. **EMPLOYMENT:** The Corporation hereby employs the Employee, and the Employee hereby accepts employment upon the terms and conditions hereinafter set forth.
2. **TERM:** The terms of this Contract shall begin on the above date. Either party may terminate this Contract upon giving the other party five (5) days notice that this Contract and the Employee's employment by the Corporation shall terminate.
3. **COMPENSATION:** For all services rendered to the Corporation under this Contract, Employee shall be paid at the current rate of \$20.00.
4. **DUTIES:** Employee shall perform those duties assigned to him/her by the Corporation.
5. **DISCLOSURE OF INFORMATION:** Employee recognizes and hereby acknowledges that the list of the customers of the Corporation as it may have or may exist from time to time, and the operating procedures, products, service techniques, trade secrets or confidential information of the Corporation are valuable, special and unique assets of such Corporation's businesses. Employee will not, during the term of this Contract, and for a period of two (2) years following, disclose the list of the Corporation's customers or any part thereof, nor their operating procedures, products, service techniques, trade secrets or confidential information to any person, firm, corporation, association, or other entity for any reason or purpose whatsoever, except such of the foregoing as have become known from sources other than the Employee. In the event of any breach or threatened breach by the Employee of the provisions of this paragraph, the Corporation shall be entitled to an injunction restraining any such breach. Nothing herein shall be construed as prohibiting the Corporation from pursuing any other remedies available to the Corporation for such breach or threatened breach, including the recovery of damages from Employee.
6. **RESTRICTIVE COVENANT:** Employee agrees that during the term of this Contract and for a period of two (2) years from the date of termination thereof:
  - (a) he/she will not, directly or indirectly, for himself/herself, or as agent or employee of, or on behalf of or in or as a partner of any partnership, or as shareholder (except as a shareholder in a publicly held and listed corporation), director or officer of any corporation, engage in or participate in the operation of any business which competes, or shall compete, for the applicable business of the Corporation; and
  - (b) neither he/she, nor any person, firm or corporation, in which he/she is financially interested (except as a shareholder in a publicly held and listed corporation) or of which he/she is an owner, officer, director, partner, agent or employee, will contact, call upon or cause others to solicit, compete for, or assist or cause others to compete for, the applicable business of the Corporation.

During the term of this Contract and for a period of two (2) years from the date of termination of this Contract, Employee will not, in any business or for any purpose or any place, solicit or employ or cause others to solicit or employ, any person who on the termination date of this Contract is employed by the Corporation for ninety (90) days prior to Employee's resignation or termination of employment.

Employee agrees that the remedy at law for any breach or threatened breach of the covenants set forth in this paragraph, will be inadequate and that any breach or attempted breach would cause such immediate and permanent damage as would be irreparable and the exact amount of which would be impossible to ascertain, and, therefore, Employee agrees and consents that, in the event of any breach or threatened breach of any of said covenants by Employee, in addition to any and all other legal and equitable remedies available to them for such breach or threat, including a recovery of damages from Employee, obtain preliminary or permanent injunctive relief without the necessity of proving actual damage by reason of such breach and, to the extent permissible under the applicable statutes and rules of procedure, a temporary restraining order may be granted immediately on commencement of any such suit and without notice.

For purposes of this paragraph, the term "Applicable Business of the Corporation" means the mechanical engineering, building maintenance, aviation and janitorial service business

- (i) serviced by the Corporation on the date of termination of this Contract,
- (ii) serviced by the Corporation within the one (1) year period immediately prior to the date of termination of this Contract,
- (iii) solicited by the Corporation (either informally or by submission of a written or oral proposal) at any time within the one (1) year period immediately prior to the date of termination of this Contract.

Each and every covenant, provision, subparagraph. term and clause contained in this Contract is severable from the others and each such covenant, provision, term and clause shall be valid and effective notwithstanding invalidity or unenforceability of any other such covenant, provision, term or clause.

Employee expressly agrees that the foregoing restrictions are reasonably necessary for the protection of the interest of the Corporation, are reasonable as to duration, and are not unreasonably restrictive upon the rights of Employee.

Employee also expressly agrees that in the event the Corporation files suit for the breach or the enforcement of the covenants imposed upon Employee under this paragraph and obtains judgment, then the Corporation shall be entitled to receive from Employee a reasonable amount as and for the Corporation's attorneys' fees in such action.

- 7. **GEOGRAPHICAL SCOPE OF AGREEMENT:** This Agreement shall apply to any territory presently serviced by the MainTech, Corp. or serviced within the past one (1) year period prior to the Termination of this Agreement.
- 8. **ASSIGNMENT:** The acts and obligations of the Corporation under this Contract shall inure to the benefit of and be binding upon the successors and assigns of the Corporation.
- 9. **INVALIDITY:** If any paragraph or part of this Contract is invalid, it shall not affect the remainder of said Contract, but said remainder shall be binding and effective against all parties.
- 10. **ENTIRE AGREEMENT:** This Contract embodies the whole agreement between the parties hereto and there are no inducements, promises, terms, conditions or obligations made or entered into by the Corporation or the Employee other than contained herein. This Contract may not be changed except by a writing signed by the party against whom enforcement thereof is sought.

WITNESSED:

MAINTECH

\_\_\_\_\_

By: \_\_\_\_\_

\_\_\_\_\_

Title: \_\_\_\_\_

Employee

**CONTENTS OF THIS DOCUMENT MAY NOT BE CHANGED, ALTERED OR OMITTED WITHOUT THE EXPRESSED WRITTEN CONSENT OF THE PRESIDENT OF MAINTTECH.**

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**To:** Donald Baker  
**Cc:** Benson April (ATG); Mocerri Katie (ATG); lalseaef@atg.wa.gov  
**Subject:** RE: Additional Evidence in support of Supreme Court Review

Received on 02-22-2016

Supreme Court Clerk's Office

Please note that any pleading filed as an attachment to e-mail will be treated as the original. Therefore, if a filing is by e-mail attachment, it is not necessary to mail to the court the original of the document.

**From:** Donald Baker [mailto:donaldwaynebaker38@yahoo.com]  
**Sent:** Monday, February 22, 2016 2:46 PM  
**To:** OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>  
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**Subject:** Additional Evidence in support of Supreme Court Review