

68134-6

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BRIEF

Case No. 68134-6:

Shaw Rahman Vs. The Boeing Company

Court Of Appeal. DIVISION - I

OF THE STATE OF WASHINGTON

Appellant / Plaintiff:

Shaw Rahman,

Defendants:

Kari Fogelman, Kristi Patterson, Ken Naethe, Russ Jones, Andrew Wright,
Kimberly Yeaton, Kimberly Trulson, Larry P Little, The Boeing Company.

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WAC 192-150-210: Willful or wanton disregard RCW 50.04.294 (1),(2),(3),(4),(5),(6(a) thru (e)).
WAC 192-150-210 - Willful or wanton disregard RCW 50.04.294 (1)(a) and (2).
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5 C. Wright & A. Miller. Federal Practice 1357, at 604 (1969).	Page 489

BRIEF - STATEMENT OF CASE - FACTS & PROCEDURE:

- Suspension date: Jul 31st , 2008
- Termination Date: Aug 8 th , 2008
- The case was re-filed, at the superior court, within the tolling period of Statues limitation after a DISMISSAL WITHOUT A PREJUDICE from the Federal Court of Western District of WA

Shaw Rahman, severed as a Domain project Manager at the Boeing company between the period of Feb 16 , 2008 till Aug 8, 2008 at Service and Support Domain (SnS) at Commercial Aviation Services (CAS), The Boeing Company. He was assigned as Lead Domain Project Manager and Lead Project Manager For delivering reports for Airplane Part information compliant with Instructions For Continued Airworthiness (ICA) a federal order from Federal Aviation Administrations, that the project was expected to be compliant with, for Boeing 787 Parts Information to deliver to FAA.

Shaw Rahman, a US citizen, is not a citizen of, or a national of with origin from any Terrorist Listed countries directly or indirectly in any form or Shape.

At the beginning of the employment, Shaw and his supervisor Kari Fogelman agreed on a negotiation specific Statement of Work (SOW) [Sub No: 16C ; Case 2:11-cv-01338-RSM Document 7, Page 66-79]out of ongoing projects at SnS. Shaw was acting within the negotiated statement of work and within the scope

of employment according to the scope of definition described in WAC 192-150-210(6)(e).

While working at SnS Shaw received unlawful verbal warning on 4/25/2008 in a meeting, in the morning conducted by Kari Fogelman and Kristi Patterson, the day Plaintiff states when discrimination on the record started, (Continuing well in to and until the end of the limitations period). We hold that the limitation period started on 4/25/2008.

Defendants had discriminated against Shaw in a closely related series of discriminatory acts against him commencing before Aug 8th 2008 and beyond that date continuing, in the form of falsification to WA state Economic security[Sub No: 16C:Case 2:11-cv-01338-RSM, Document 7: page 80-83], committing misconducts by falsely denying unemployment benefit, and bringing in burden of lawsuit, portraying as a high value targets in federal proceedings as discrimination, mental and psychological depression on the plaintiff, damaging earnings and scope of career progress causing instability.

As a result of defendants' discrimination, Shaw lost compensation, including salary and benefit, of a certain dollar amount, between the time he was terminated and to the present. Thus claiming back pay (before trial) is appropriate with possibility of front pay .

Thus discriminatory acts continued on and went well in to the limitation period, when defendants tried to portray plaintiff as "High value target " in federal proceedings[Sub No: 16C:Case 2:11-cv-01338-RSM, Defendant's

Motion To Dismiss, page 5 and request to Continue, Document 13: page 4 of 12
]. As a result, Discriminatory acts by Boeing defendants was not Time barred.
We Hold on, Goodman. v. Boeing Co. 1995.

The plaintiff also relies the reasoning based on “substantial evidence, which is evidence sufficient to persuade a fair minded person of the truth of declared premise” . Smith v. Shannon 1983; Ridgewater Props v. Starbuck 1982

Concept of capability: A Capability addressed in this literature, is a software deliverable functionality, in systems integration for change(s) in systems functionality.

The verbal warning indicated three agenda as Shaw stated:

1. Shaw followed SIP&T guide lines to call and let his Supervisor Kari Fogelman know from his Boeing provided cell phone (206-919-7390) that he was going to be 20 minutes late from the starting time of 8 AM because he was stuck in the Highway I-5 traffic on the way to work, while his cell phone was functioning.
2. While being a helpful resource to contribute to SnS project manager as a helping hand for Andrew Wright’s Project called capability Su 5.21, which was not Shaw’s Statement of Work , Shaw provided constructive input as of his ability to project Su 5.21’s test and Implementation Plans, initiating the deliverables of Andrew Wright and forwarding them to Andrew Wright for his input for those capability as he had been working on that particular project for nearly 2 years. The email evidence[Sub No 16C, Case 2:11-cv-

01338-RSM Document 7, Page 15,17,18,19-18] shows that the plans were provided to Boeing Management, Kari Fogelman and Kristi Patterson on the 4/25/2008.

3. Shaw was late on a different date to work because on the way to work in the morning, on highway I-5 a stone from a truck which was in front of his car came on to his car windshield and cracked while driving on an unforeseen situation. His cellphone was out of battery and he was not able to call his supervisor Kari Fogelman, at the beginning of the work hour, rather he reached work after one hour and thirty minutes late. As Shaw met his supervisor Kari Fogelman, on entering the work on the hallway of level two at the building of his work place, he mentioned this incident to his supervisor Kari Fogelman, this unexpected act of natural incident that caused his delay at work, nearly at 9:30 AM.

Thus Plaintiff didn't act in violation of WAC 192-150-210 and its subsections WAC 192-150-210 (1)(2)(3). In fact he was reasonably accommodating in following the guidelines and Washington State LAWs and we hold that Shaw was within WAC 192-150-210(6)(e).

The same day Cynthia K. Stevens (425-266-7724) called Shaw at his desk number to enquire about this when Shaw stated the situation. It was informed by Cynthia that, Kari Fogelman contacted Cynthia to ask for the delay stated earlier after even when Shaw explained the situation to Kari Fogelman just prior to that. Shaw stated this incident, in his reply to written warning memo to

Boeing HR in retaliation, provided to him from Kari Fogelman. (Sub No. 16C; EXHIBIT Sub No. 16C, Case 2:11-cv-01338-RSM , Document 7, page 14 marked as #1000R)

On 4/25/2008 Kristi Patterson witnessed the verbal warning meeting by Kari Fogelman, when Shaw clearly explained to them that Su 5.21 (explained in (2)), is not his Statement of Work (SOW- exhibit stated earlier) and he was just trying to help Andrew Wright for his overdue deliverables and he was working along with him to help him. Shaw forwarded a copy of the test and implementation plan for capability Su 5.21, to Kristi Patterson by email after the verbal warning, showing evidence that he had already provided his input to those deliverables and forwarded for more input from Andrew Wright for completion of those test plan document deliverables. Kristi Patterson un-realistically and unlawfully threaten Shaw, when Kari Fogelman instigated Kristi Patterson that Shaw has a place in Vancouver, BC, as Kristi Patterson threatened Shaw leaning towards him "MUST BE NICE!" with a bad intent to threat , and out of work related matter to instigate a hostile work relationship, in collaboration with Kari Folgeman.

Thus we hold that act of Kari Fogelman and Kristi Patterson, clearly violates RCW 50.04.294(1)(e) as Misconduct and RCW 50.04.294(1)(a) :

RCW 50.04.294(1)(e): Deliberate acts that are illegal, provoke violence or violation of laws, or violate the collective bargaining agreement. However, an employee who engages in lawful union activity may not be disqualified due to misconduct;

RCW 50.04.294(1)(a) : "Misconduct" includes, but is not limited to, the following conduct by a claimant:

(a) Willful or wanton disregard of the rights, title, and interests of the employer or a fellow employee:

Shaw completed the meeting and left the meeting room. Thus the first act of discrimination and workplace harassment started, per evidence on 4/25/2008.

Shaw worked with Andrew Wright on 4/25/2008 between 1:15pm to 2:15 pm at conference room 11-14N.3 31A2. Per [Sub No. 16C: Case 2:11-cv-01138-RSM, Document 7 Page 17] after requesting Andrew Wright to finish and add input to complete document, per email at 11:37 AM on 4/25//2008, [Sub No. 16C: Case 2:11-cv-01138-RSM, Document 7 Page 18] while Andrew Wright was still congested with Viral flu and attended office after one weeks of sick leave, earlier when he was sent back home for illness, as his Flu reoccurred for the second time, after he got back from Moscow on Business Trip from Boeing. Ken Naethe , Andrew Wright (used to report to Ken Naethe) and Russ Jones had visited Moscow on a business Trip from Boeing just before the delivery of these plans which were Andrew Wright's Statement of Work for nearly two years.

Andrew Wright and Ken Naethe was transitioning to be a SnS domain's client from their previous role while they held the domain responsibility for this capability Su 5.21, when Andrew Wright had been working on the Capability Su 5.21 for two years before Shaw started working at SnS Domain.

WHY IS THIS VERBAL WARNIGN UNETHICAL AND UNLAWFUL

The verbal warning is unlawful and unethical because (1) Shaw complied with SIP&T Guideline (2) Su 5.21 was not Shaw's SOW and Shaw was trying to help Andrew Wright as a good work fellowship to mobilize the Capability from stalemate, since it was close to project delivery timeline. (3) is an unforeseen situation, an occurrence that is an act of nature or unexpected. Thus does not have a legal justification to penalize a person.

A combination of (1), (2), and (3) of page 1,above makes the Verbal warning and witnessing to deliberately threaten and willingly to instigate a work environment in collaboration to create a hostility, and a record of such verbal warning, disregarding plaintiff's right, makes it an Un-LAWful act under statues RCW 50.04.294(1)(e); RCW 50.04.294(1)(a) .

Thus (we hold) the starting of discriminatory act by Boeing and Defendants is dated appropriately from 4/25/2008, supported with evidence and confirmation with emails, delivered to Andrew Wright, calendar from Andrew Wright, showing the occurrence of meeting when he participated.

OCCURRENCE OF SICKNESS – Cell Phone Call Logs From Boeing Provided Cell Phone Will Hold That / Substantiate The Proof That SIP&T Guideline Was Followed.- “No Previous Record Of Behavioral Violation” Is Found From The HR Record On The Memo Shown On THE WRITTEN WARNING.

PROCEDURAL HISTORY (Exhibit Sub No. 16C and reference pages):

- a. Initial case was filed , per EEOC determined last day to file legal action in a State's superior court , July 6th, 2011 which was amended with a pracepe on Oct 05, 2011, to waive title VII clause and served with first defendants on the 14th Sept , 2011 and all defendants were properly served by Sept 21, 2011 with WA state's claims.

The amended file was never transmitted or provided from the superior court to the federal court of Western District Of WA, from the clerk's office of Superior Court , King county.
- b. The case was filed in the Federal District Court of western district of WA by defendants, using Shaw's the then California address even when Shaw filed the case with his present WA address, to defuse the case But Hon Judge Martinez had found that the case had established merit on the grounds of discrimination and granted a dismissal without prejudice.
- c. As a result of missing piece of amended case which had Title VII waived, filed in the Superior court, the Hon. Judge Martinez was not able to grant a remand per Judge's Amended Order.
- d. The case was re-filed on Oct 13, 2011 reflecting only WA state's claims and Hypothetical claim under WA state's LAWs against discrimination presided by Hon Judge Barnett.
- e. The case was Dismissed WITH Prejudice, on Nov 28th 2011, WITHOUT AN ORDER DESCRIBING WHY a CR 12(b)(6) was granted that did not

convince the Plaintiff with sufficient reasons for Judge Barnett, to grant a CR 12(b)(6).

- f. An appeal was filed by the plaintiff, in the Division One of Court Of Appeal, on Dec 28th 2011, for a Judicial Case Review by a Panel of Judges to determine the reasoning of a CR 12(b)(6), by Judge Barnett that Plaintiff believes was not Lawful and also the fact that Judge Barnett overlooked statement of claims, accompanied with evidence, that are even reasonably identified on the ground of Holding WA state's Revised Codes , that pertain to origin from the same nucleus of RCW 49.60, besides other RCWs. We hold on to Smith v. Shannon 1983; Ridgewater Props v. Starbuck 1982 "to persuade a fair minded person of the truth of declared premise."

ARGUMENT (with references to pages of records, RAP

10.3(a))

ANALYSIS OF EXHIBIT -CORRECTIVE ACTION MEMO & RESPONSE

4/25/2008 was possibly the date when Shaw contracted and gradually developed Flu in him, coming in close working contact, with flu from Andrew Wright, in his congested still in flu recovery health.

Earlier before Shaw started work at SnS Domain, Shaw came to know there was an outbreak of flu at workplace at the SnS Domain from a conversation of Andrew Wright and Dan Rempe L .(Change Management Project Manager at SnS) which was not disclosed to him earlier by Kari Fogelman. We hold that work safety RCW 50.22.050(2)(b)(viii) has been violated as stated below:

Worksite safety — RCW 50.22.050 (2)(b)(viii).

At the time of hire, you can reasonably expect that your worksite complies with applicable federal and state health and safety regulations. If, after beginning work or accepting the job offer, you become aware of a safety issue that was not previously disclosed by your employer, the department will consider the safety of the worksite to have deteriorated.

Shaw suffered from flu from starting 4/28/2008 when Shaw was unable to go to work and called in sick, thru a fellow colleague Norris Harper, to relay the message of his sickness, to Kat Fournier (who acted Kari Fogelman's back up, who held the role of Domain Finance Manager), who used to email everyone at the domain who was available at work, as he happened to memorized Norris Harper's phone number while Shaw was taking domain responsibility over, from him. Although, at night Shaw updated project report with remote VPN access for 4/29/2008 Tuesday PMO report Deck, as he felt better. He was sick on 4/29/2008 and called Kat Fournier directly, taking her phone number from Norris Harper as Shaw realized from Norris Harper that Norris Harper, forgot to let Kat Fournier know of his sickness the day before, on 4/28/2008. Shaw attended office flu-ish the rest of the week, taking over-the-counter flu medication hoping to cure, which lasted a bit longer.

At that day of returning to work, Shaw came to know from a conversation from Andrew Wright and Dan Rempe L , that there was a flu outbreak a the domain just prior to his start at SnS, that was not disclosed to Shaw by Kari Fogelman. Thus our holding of violation by Boeing per RCW 50.22.050 (2)(b)(viii). Based on factual matters gathered from workplace, the outbreak information concealed by the employer Boeing from plaintiff.

On 5/19/2008 around noon, PER email EXHIBIT[Sub No, 16C:Case 2:11-cv-01338-RSM, Document 7, Page 16]exactly at 1:19 pm to Kat Fournier as Kari Fogelman was out of office, Shaw confirmed that he was not feeling well and is thinking of taking the rest of the day off. Between 5/19/2008 - 5/23/2008 Shaw was sick with second cycle of flu attack when he took Cyproxin, a pen cilium for flu medication, a strong anti biotic.

Shaw Realized that his VPN access was also taken away by Kari Fogelman.

5/20/2008 – 5/23/2008 Shaw called Trina Goering (capturing her call from his cellphone)from Shaw's Boeing provided cell phone, every day, complying SIP&T guideline and left message while he was severely suffering from flu. Per Trina Goering' s advice from an afternoon call on 5/23/2008, while bedridden, Shaw called Kari Fogelman on 5/23 who was away in San Diego, on a business Trip and left message of illness and inability to attend office. Kari Fogelman did not answer the call or called back.

5/26/2008 Shaw Called his manager Kari Fogelman close to beginning of the work day and left message at her cell phone number thinking that she might be back from San Diego. Kari Fogelman acknowledged 5/26 was a holiday when he spoke with her at the beginning of the work hour. Thus we hold that Shaw held WA laws WAC 192-150-055, as described below, to try out all alternatives to convey his employer and supervisor and her backup of his illness caused from viral flu contamination gathered from workplace flu exposure:

WAC 192-150-055

Leaving work because of illness or disability — General rules and definitions — RCW 50.20.050 (1)(b)(ii) and (2)(b)(ii).

General rule. To establish good cause for leaving work voluntarily because of your illness or disability or the illness, disability, or death of a member of your immediate family, you must demonstrate that:

- (a) You left work primarily because of such illness, disability, or death; and
- (b) The illness, disability, or death made it necessary for you to leave work; and
- (c) You first exhausted all reasonable alternatives prior to leaving work, including:
 - (i) Notifying your employer of the reason(s) for the absence as provided in WAC 192-150-060;

Approximate call records are shown in Exhibit 16C, Case 2:11-cv-01338-RSM, Document 7, Page 35 and a request to provide those from Shaw's Boeing owned Cell phone in page 34.

Shaw was also not able to perform any work , for which his performance might have been affected while he was sick, during this time. We hold that reasonable efforts and all alternatives have been followed to inform the employer:

(3) **Exception.** You may be excused from failure to exhaust reasonable alternatives prior to leaving work as required by subsection (1)(c) if you can show that doing so would have been a futile act.

4(c) "Necessary" means the conditions are of such degree or severity in relation to your particular circumstances that they would cause a reasonably prudent person acting under similar circumstances to quit work.

Shaw has sent email [provided earlier] to Kat Fournier that he was not feeling well and was sick.

RETURNING FROM ILLNESS BACK TO WORK and CONVERSATION
WITH KARI FOGELMAN:

The sick period between 5/19- 5/24 was adjusted with Shaw's earned vacation hours by Kari Fogelman, who at her desk , herself, figured out how many hours Shaw accumulated and performed the adjustment herself , with discussion and mutual negotiation with Shaw. One (1) unpaid work day hours to accommodate

Shaw's sick period as he came to know he had exceeded one day more than he had earned. As, from her conversation Shaw found out from her, he had 2 sick days and five work day equivalent vacation hours. Shaw had exceeded 8 hours over the cumulative period of vacation hours. Which had to be mutually agreed with Kari Fogelman, by a taking a non pay day work hour. Legally cognizable under WA state's Statement for Sick Leave, below:

RCW 49.12.265

Sick leave, time off — Care of family members — Definitions.

(5) "Sick leave or other paid time off" means time allowed under the terms of an appropriate state law, collective bargaining agreement, or employer policy, as applicable, to an employee for illness, vacation, and personal holiday.

If paid time is not allowed to an employee for illness, "sick leave or other paid time off" also means time allowed under the terms of an appropriate state law, collective bargaining agreement, or employer policy, as applicable, to an employee for disability under a plan, fund, program, or practice that is: (a) Not covered by the employee retirement income security act of 1974, 29 U.S.C. Sec. 1001 et seq.; and (b) not established or maintained through the purchase of insurance.

Shaw was given two written warnings by Kari Fogelman witness and signed by Kimberly Yeaton, which Shaw refused to sign as those had statements that were manipulative, false, maneuvered, unethical and unlawful. The response to the CORRECTIVE action memo was conveyed to Boeing HR with explanation as above by Exhibit Sub No.16C; document 7, page 13, 14 & 39,40.

ANALYSIS OF CORRECTIVE ACTION MEMO EXHIBIT 1000A and Its Response to Boeing HR and Management Exhibit 1000AR

Corrective action Memo Exhibit (Sub No. 16C; EXHIBIT Sub No. 16C, Case 2:11-cv-01338-RSM , Document 7, page 13,39) suffers from falsified statements

clearly proven with response to Boeing, HR, Kari Fogelman's supervisors per HR advice, via evidence nested with them showing that:

1. The delegation of responsibility took place with approval from Kari Fogelman to delegate Hilary Okren-Grilly (from email confirmation from Hillary) as Hillary needed work hours as Shaw Came to know earlier, from a conversation of Kari Fogelman and Shaw. A consent from Hillary would show that delegation had been approved earlier, that Hilary would receive the delegation per, EXHIBIT Sub No. 16C ,Case 2:11-cv-01338-RSM, Document 7, Page 41, 42,43.

an email from Hillary. The delegation took place in an official manner via a meeting of attendees. Exhibits earlier listed.

2. Kari Fogelman falsified and mis-represented facts to unlawfully and unethically cause damage to plaintiff with untrue statements put forth to agree to, for the plaintiff, via behavioral memos in the form of corrective action and written warnings., violating code of managerial and ethical conduct and committing MISCONDUCT, violating WA states LAWS of Discrimination and misconduct laws. Kimberly Yeaton by signing and approving the memo simultaneously committed similar acts.
3. The act of misconduct and falsification of facts to maneuver and misinterpret to cause deliberate damage to plaintiff is beyond the reason of a doubt.

WHY IS WRITTEN WARNING UNLAWFUL?

We hold that defendants: Kari Fogleman, Kimberly Yeaton committed misconduct causing plaintiff Shaw Rahman damage as a result of their discrimination per RCW below when they forced him to sign falsified written warnings , curved in the form of lying and false statements, which Shaw refused to sing. Kari Fogelman also included these false statements in suspension memo that was not provided to Shaw for him to sing, on suspension day.

RCW 50.04.294 Misconduct — Gross misconduct.

With respect to claims that have an effective date on or after January 4, 2004:

(1) "Misconduct" includes, but is not limited to, the following conduct by a claimant:

(a) Willful or wanton disregard of the rights, title, and interests of the employer or a fellow employee;

(d) Carelessness or negligence of such degree or recurrence to show an intentional or substantial disregard of the employer's interest.

(2) The following acts are considered misconduct because the acts signify a willful or wanton disregard of the rights, title, and interests of the employer or a fellow employee. These acts include, but are not limited to:

(c) Dishonesty related to employment, including but not limited to deliberate falsification of company records, theft, deliberate deception, or lying;

(e) Deliberate acts that are illegal, provoke violence or violation of laws, or violate the collective bargaining agreement. However, an employee who engages in lawful union activity may not be disqualified due to misconduct;

(f) Violation of a company rule if the rule is reasonable and if the claimant knew or should have known of the existence of the rule; or ***

(4) "Gross misconduct" means a criminal act in connection with an individual's work for which the individual has been convicted in a criminal court, or has admitted committing, or conduct connected with the individual's work that demonstrates a flagrant and wanton disregard of and for the rights, title, or interest of the employer or a fellow employee.

SUFFICIENCY OF EVIDENCE

There is enough evidence to support beyond the reason of a doubt, that both the written memos were completely based on untrue and false statements, maneuvered and curved as a result of discrimination which results in a

magnitude of violations of WA state's LAWS against discrimination and other described RCWs.

There is enough logical reasons and statements with evidence, provided to Boeing HR that the verbal warnings are not EVEN legal and violates Boeing corporate rules, SIP&T guidelines as misconduct, since it was given for no SIP&T guideline or violation of LAW – US federal or WA State LAWS. Rather Shaw Acted within the scope of his employment at Boeing.

Suspension Memo Statements were curved in to produce together a falsified memo, put forth in front of Shaw to sign:

1. With out of SOW work items that was not agreed by Shaw at the beginning of the SOW with Kari Fogelman.
2. Falsified and maneuvered statement of work delegation, captured from written warning , [EXHIBIT Sub No. 16C, Case 2:11-cv-01338-RSM , Document 7, page 13,39] which had been explained in the previous paragraph of analysis.
3. Tasks that was listed as Shaw's SOW in the suspension memo, for which Shaw requested training and training was denied by Kari Fogelman. Shaw did not have approved training, by Kari Fogelman for the tasks that was written in the suspension memo for him to accept by signing.

The suspension memo was not produced by Boeing as of yet and Shaw was told unless there is a subpoena the suspension memo will not be produced, by Kimberly Trulson on 8/20/2008, when Shaw called her after receiving the

termination memos stating that he was in Vancouver and did not receive anything at that address and was wondering, what was the behavior concern written in the memo and about reinstatement. Kimberly Trulson mentioned the decision has been confirmed about termination and will be held.

WA STATE'S ECONOMIC SECURITY APPLICATION AND FACT

ANALYSIS: In fact there is sufficient evidence that there was no workplace misconduct committed by the plaintiff of any kind. Rather the employer Boeing and defendants committed misconduct by falsely lying to WA states Economic security when they stated the definition of misconduct and its elements, which is not acceptable on any legal or ethical ground, by the plaintiff as being lied to the State of WA . Boeing and its defendants action was lawfully retaliated by the plaintiff as a matter of holding WA State's LAW and on the grounds of holding the workplace LAW, preserving appropriate Conduct and Ethics.

The termination memo and related memo were not even provided to the plaintiff at his Boeing Blue Page listed address to notify. In fact, it was informed to the plaintiff that Boeing HR will contact Shaw , Shaw will not contact Boeing or be on Boeing 's ground while Shaw is on suspension, by Boeing escorted security personnel, after forced suspension by Boeing defendants . There was no message left as defendants claim to have left. With who , where, how, unknown.

A letter that was NEVER provided to Boeing's Blue page listed address of the plaintiff, to make an appointment for an independent medical review(IMR)

simply fails to establish a cause of insubordination. There is no such information anywhere provided to the Plaintiff that an extreme behavior or behavior that is not LAWFul exists in plaintiff, for a determination of Employee Assisted Program, allowed by an independent medical reviewer (IMR) . Rather a “bias cause was shown to make appointment” to see “Boeing Medical”, influenced by internal “Boeing Management”, with NO previous “behavioral unlawful conduct” by plaintiff found visible on the written warning memos: clear and present.

The termination letter was not even properly served by regular mail or couriered to Boeing Blue page listed permanent address in Vancouver, BC , of the plaintiff, to inform the plaintiff that notice of termination or to make appointment was provided. It was NOT EVEN known to the plaintiff until 8/20/2008 as he lived at his family residence in Vancouver, BC during weekends and it was listed appropriately in Boeing HR Blue page, to accommodate an unpaid suspension time cost of living. Thus, the termination does not even meet the Standard HR policy. Furthermore, personal Email address was also provided to Boeing HR at the beginning of employment with email address.

The elements of Misconduct do not even apply in context of the plaintiff when LAWFul retaliation was held by the plaintiff to Boeing HR for repeatedly given harassing , lied & falsified memo with evidence to Boeing management and

HR to stop discrimination as a result of misconduct of various shape and form by Kari Fogleman, in the form of falsification, lie and maneuvered statements.

There was no opportunity provided to the Plaintiff for an Independent Medical Review(IMR) by an third party objective medical examiner for no valid behavior reason previously found . From Boeing HR record, as the memos clearly state “ No Previous behavioral violation is found”, that could EVEN at the barest cognizable sense, constitute an INSUBORDINATION OR MISCONDUCT.

Rather defendants committed willful and wanton disregard of the plaintiffs workplace rights, Human rights and WA state Laws against discriminations originating from the same “nucleus of RCW 49.60 and it s subsections” as a result of their actions described in , in a magnitude of variations.

The sick leave and negotiated earned sick & vacation hours accommodated by Kari Fogelman was falsely depicted as in-excusable absences or tardiness. Neither Shaw’s action were “Willful or Wanton disregard” contrary to WAC 192-150-210. In fact, the defendants showed dishonesty by stating untruthful statements in memos both to WA State and in written warnings substantiated with evidence.

Rather the Plaintiff acted on according to Company rules, WA states LAWs that empowers a plaintiff for legal protection according to State LAW with honesty, deliberation staying within the boundary of WA state LAW and company rules

that are reasonable while serving at Boeing, staying within the scope of his employment.

In fact there is enough evidence, beyond reason of a doubt to show Boeing defendants, Kari Fogelman with witness Kimberly Yeaton and Kristi Patterson, deliberately and willingly lied to maneuver and curved falsified statement and with actions that ended resulting in, committing discriminatory acts violating WA state's LAWS against discrimination, by harassment, scapegoating and stereotyping the plaintiff.

There is enough time provided to the Employer Boeing and it defendants under WAC 192-150-135 to STOP discrimination that violates Civil laws RCW 49.60 , its subsections, to stop illegal activities (WAC 192-150-135) , in the form of lies, falsification and maneuver, at workplace that caused damage to the plaintiff.

HIGH INTEREST TARGET DIPICTION BY DEFENDANT to POTRAY

PLAINTIFF: Even exhibits of Federal Court remand interactions, show clearly, the defendants showing the plaintiff as a High interest Target to apply Ashcrof v. Iqbal case for a person who is not even originated from a Terrorist country, taking resort to a case which only immunes high level government officials appointed by US President, for National security. None of the defendants or their representative are high-level government official that can influence an Hon. Judge appointed by President, to exercise, such case laws, to

execute and establish , an inability to state a claim, when the claims “are plausible on its face” with evidence.

It is very clear that the intent and the actions, of the defendants was to act in discrimination violating WA state Laws against discrimination in various nature unlawfully, in violation of 49.60; 49.60.030, 49.60.030(1)(a); 49.60.010; WAC 192-150-135

CONSTRUCTIVE DISCHARGE: We hold that there is substantial evidence and facts to construe that the defendants violated RCW 49.60.210 acting when Shaw responded the verbal and written warnings to Boeing HR in retaliation and opposing practice of such lied and falsely carried out methods in the form of testimony or explanation to Boeing HR. Which was reacted and responded by Boeing supervisors Larry P Little , Kari Fogelman, Ken Naethe, Kimberly Yeaton, Russ Jones in the form of illegal suspension and termination with harassment, in violation of RCW 49.60.210(1)(2)(3).

In fact, there is sufficient evidence, that Boeing deliberately made Shaw’s working condition intolerable, thus forcing the employee to retaliate under law, which lead towards unlawful suspension and illegal termination. In fact, Kari Fogelman forced, Shaw to resign which he retaliated on the day written warnings were given.

This clearly establishes the fact that the constructive discharge was a result of the defendants discrimination to Shaw , clearly showing discriminatory act by

defendants commencing on 4/25/2008 which went well into , till the end of the limitation period.

After Shaw was terminated he continually looked for work, for reasonable period of time, continuing to seek employment. As a result under the doctrine of constructive discharge, there should be no restriction of a back pay award. Thus, we believe that this interpretation of the Laws Against Discrimination (LAD) is most consistent with the principles of that act and the case authority construing the similar federal act.

PROXIMATE CASUSE: We hold that the inability on Boeing Company 's part to STOP discrimination and act of misconduct resulted in direct and proximate cause which resulted in unlawful suspension / termination.

We also hold that defendants made Shaw's work life intolerable, with repeated harassment and discriminating, intimidation and threat in numerous manners described in the brief and complaint, even forcing to resign with no valid legal reasons , violation of LAWS or company rules, when the rules were reasonable, creating an intolerable condition for constructive discharge, by force.

SUBROGATION: Loss of time in earnings, legal actions, and personal benefit as burden on plaintiff's part, as a result of discrimination by the defendants, that lead towards Shaw's unlawful termination /suspension.

BENEFIT DENIAL:Benefit denial period starting 7/27/2008 for 10 weeks while unlawful Charge of the experience rating account took place, has no legal

basis, since there is NO cognizable lawful reason, what so ever, that established a fact , that a work related misconduct had EVER occurred, that is unlawful, committed by the plaintiff. In fact the plaintiff acted in accordance to WA state's LAWs that empowers protection of civil rights and human rights to hold employment without discrimination, under the chapter 49.60.

As the Plaintiff was not able to accommodate or afford a legal counsel or knew how to appeal as a legal minded person, he was not able to appeal with the Administrative Judge at that time, for WA state's Economic security for denial of benefit. Over the years, the plaintiff learnt procedure in civil action bit by bit to carry on cause of action for unlawful acts by defendants while employed at Boeing in 2008, for unlawful suspension / termination in discrimination.

Thus Boeing and its defendant's action to falsely report to WA State's Economic security with Plaintiff's Non found misconduct related to his work at Boeing, caused denial of benefit of RCW 50.20.010 for Shaw. The plaintiff acted in accordance with the Economic security attainment policy by registering and applying for benefit while continually looking for work, but was not able to find employment.

**ASSIGNMENT OF ERROR/ISSUE PRESENTED (RAP 10.3(a)
10.4(c):**

- g. **CORRECTION:** The plaintiff acknowledges that his perception of “collective bargaining” was the fact that he meant negotiation between himself and Boeing

Supervisor while he was sick, does not stand for the same legal meaning as it stands for.

- h. The plaintiff waives the claims for 49.12.287, 49.12.270 to 49.12.295 and replaces with more appropriate claim that defines sick leave under RCW 49.12.265 and 49.60(for the claims under RCW 49.12.287 and RCW 49.12.270 thru RCW 49.12.295). Plaintiff attaches claims under RCW codes, for his hypothetical claims provided in a note, in his Trial court case, that was presented earlier in ref-file, for clarity. Referring to section “STATEMENT OF CLAIMS” of this literature.
- i. In the amended order for dismissal granting defendants motion to dismiss, by trail court filed on Dec 1 , 2011 , the following information is incorrect: Defendants filed motion to dismiss on the 3rd Nov, 2011; Plaintiff responded on the 10th Nov, 2011 within reasonable period of time. Where the hearing date was 16th Nov, 2011. Thus “Plaintiff’s opposition papers” is not untimely.
In fact, Plaintiff also responded to defendants sur-reply. Exhibits, Sub No.16A, 16B,17,18,20, 21.
- j. Plaintiff claims defendants use Influence on presiding judge illegally, to influence a judge, to act out of fair legal reasoning, brining inapplicable case, by paralleling plaintiff with “ High Value target” which immune’s high level govt. official from prosecution for, only National Security.
- k. OTHER ALLEGATIONS OF DISCRIMINATION –Kari Fogelman unnecessarily complained to Cynthia Stevenson, HR for project plan for ICA,

even when that project plan was waiting to be approved, by the business owner, Joe Myers, as the owner was out of the country, to harass Shaw.

SUSPENSION MEMO: Boeing Company has not produced suspension memo written with false and lied statement written maneuvered way.

- Asked to forcedly resign – on written warning meeting day , Kari Fogelman also forced the plaintiff to resign, stating “if you don’t sign you have to resign” which was refused by the plaintiff.
- Boeing company must produce evidence that accompany claims under statue, from claims with Provided evidence.
- Kari Fogelman repeatedly in multiple occasions, forced Shaw to perform out of SOW work that he did not agreed with her as agreement, the evidence is clear, using unprofessional languages, harassing Shaw deliberately.
- Per Ken Naethe Russ jones created hostile work environment by stating :referring to Plaintiff ” Should have been fired long time ago: based on no legal ground that pertain to plaintiff’s SOW.
- Kari Fogelman harassed Shaw at work when she deliberately called HR representative asking project plan for ICA, when Project Plan was not yet approved by Business owner or client, to unnecessarily create a harassing work environment.
- When Shaw asked Kari Fogleman to see if he entered time appropriately in time entry she deliberately mis entered time discovered by Shaw when Kat

Fournier verified thru an email to Shaw, to create a wrongful time entry, to precede thru a cause of immediate termination.

STATEMENT OF CLAIM ARE PLAUSIBLE WITH EVIDENCE ON ITS FACE: These cause of acts, described below, affected as a result of the defendants discrimination, changed the terms and condition of Shaw's employment violating WA state's LAWS against discrimination, clearly defined RCW 49.60 and subsections arising from the same nucleus, and RCWs of misconduct. The statement of claims, are supported with evidence, to be plausible on complaint's face.

The results of discrimination under the RCW 49.60 and WA Sate's RCW took place when defendant(s) of The Boeing Company acted as below.

- i. Ken Naethe discriminated Shaw as Shaw refused to sign falsified suspension memo, by stating that "Shaw will not leave the [suspension] room today with Shaw's Boeing badge and instructed Kimberly Trulson to carry on illegal suspension process which contained false and untruthful statements in suspension memo, which Shaw refused to sign in retaliation. Ken Naethe violated RCW 49.60; 49.60.210, 49.60.030 as a result of this act of discrimination.
- ii Shaw stated in the suspension meeting that the illegal acts of Kari Fogelman, in the form of providing false and untrue written warnings and instigating Boeing management against him to create hostile work environment, is clearly to jeopardize Shaw's career progress (under equal opportunity act of civil right preserved under the commission of chapter 49.60) in the company, so that Shaw never can advance career from his current position, from working under Kari

Fogelman . Shaw, at the time of suspension was under a pendent decision from an interview as a Manager at Boeing Technology Group, for Business Intelligence. Kari Fogelman acted in the form of lying and falsifying with untrue statement..

iii. Kimberly Trulson discriminated Shaw by stating that unless Shaw signs a[falsified]suspension memo, she will not provide a copy of the memo to Shaw, where Shaw has to accept untruthful written suspension memo conditions, statements and acknowledge the untruthful statements, written in suspension memo. Kimberly Trulson violated RCW 49.60 and it subsections and acted in violation of WA state's misconduct when she refused to provide the suspension memo unless she makes Shaw force, to sign, the illegal suspension memo which contained untrue statements. Violation of RCW 49.60; RCW 49.60.030 claimed by plaintiff..

iv. Ken Naethe, discriminated Shaw when Shaw stated, that the suspension scenario and this matter should be escalated to senior management for review, by stating that he has the authority from his boss, as he preemptively stated Shaw to sing the untruthful suspension memo. Kimberly Yeaton, Ken Naethe , Larry P Little , Kari Fogelman acted as a result of their discrimination when they carried on illegal suspensions meeting, by illegally suspending, towards termination of Shaw, for unlawful reasons thru untruthful statements, maneuvered and untruthfully written. Violation of RCW 49.60.;49.60.030; 50.04.294 claimed by plaintiff. .

- v. Kari Fogelman discriminated Shaw by providing untruthful written and verbal warnings when (1) the delegated tasks was in accordance to her approval and delegation was conducted in an official manner by stating the task was delegated when it was assigned to Shaw , (2) untruthfully stating the information and discriminately disciplining Shaw, when delegation of task was officially decided and carried on to do so per her approval. Violation of RCW 49.60; 49.60.030 claimed by plaintiff.
- vi. Defendants and Boeing discriminated Shaw by stating untruly and falsely, to the state of WA economic security, that Shaw had disruptive behavior, when Shaw was sick and was accommodated with his eared sick leave,(accommodated) by vacation hours, by Kari Fogelman, in mutual agreement after recovery, at her office, following SIP&T guidelines. The defendants started falsely when they stated to the WA State, that Shaw created a workplace disruption when, this sick leave, vacation hours and one negotiated sick day was negotiated with Kari Fogelman, thus depriving him from Shaw's WA State's unemployment benefit. While Shaw was sick, he acted within the scope of his employment by following the SIT&T guidelines and WA State's LAWS that support and hold sick leave. Violation of WAC 192-150-135 by defendants , claimed by plaintiff.
- vii. Boeing and defendants discriminatingly lied to the WA State's Economic security, when they stated that Shaw's disruptive behavior caused workplace interruption, when Shaw had no such instances and was always been very preoccupied and busy to manage Shaw's projects.

Kari Fogelman discriminated Shaw by assigning Shaw work which Shaw did not have any training for, and when Shaw requested for training it was denied, still those training needed tasks, which was not Shaw's SOW were put forth in the suspension memo to agree to, by signing, the falsified suspension memo. Violation of RCW 49.60 claimed by plaintiff

Boeing and defendants discriminated Shaw by blocking Shaw WA State's economic security provided unemployment benefit thru untruthful reasons stated to the WA State, causing misconduct, and resulted in discrimination under RCW 49.60 claimed by plaintiff.

- viii. Boeing provided false and untruthful statement to WA State's economic security by stating that Shaw was supposed to meet Shaw's supervisor after the suspension, when the information clearly shows he was supposed to go to Boeing medical which is not an objective third party conducted independent medical review, IMR. [Exhibit Sub No. 16C, Case 2:11-cv-01338-RSM, Document7, Page 10]No such option was provided to Shaw rather a bias process was untruly shown, in contradiction, in the WA State's retrieved information from economic security. Violation of RCW 49.60.210, 49.60 claimed by plaintiff..
- ix. Shaw was discriminated against by improperly evaluation of Shaw's SOW, in Shaw's performance review and thru wage, when Kari Fogelman made falsified statements in performance review while Shaw acted as a project manager, by ingesting domain planning activity in Shaw's SOW earlier and forcing Shaw to perform out of SOW work, by scapegoating Shaw for work which was her

responsibility, acting in discrimination. RCW 49.60 violation claimed by plaintiff.

- x. Shaw was religiously being discriminated when Larry P Little, instigated the audience at suspension meeting by calling his Muslim name “Mohammad Mohammad” to influence them with post 9/11 emotions . Immediately after that When Shaw mentioned that Shaw cannot understand why Shaw was getting this corrective action memos and being suspended when Shaw was being interviewed for manager role. Larry P Little, said “ What, Yes Yes , sing it sing it” to preemptively commanding , for Shaw to sign the illegal suspension memo. Shaw was discriminated and stereotyped for a person of different national origin, creed, and of different race. All of the attendees of the defendants are Caucasian. The suspension took place right after filing the retaliatory compliant to HR and Kari Fogelman’s supervisor. Thus, it was clearly right after retaliation that defendants unlawfully suspended and terminated Shaw, acting in discrimination. Thus, Shaw was not able to hold employment for discriminatory actions by defendants that violated the purpose of the Chapter RCW 49.60.

Shaw was discriminated from performance bonus and wage for the SOW work, restrained from career progress, by Kari Fogelman when she provided untruthful , memos, verbal warnings and illegal suspension drawn on Shaw , which caused Shaw’s salary , experience level and financial adversity, creating adverse impact leading to unemployment. These acts of discrimination changed terms and condition of employment causing damages to the plaintiff.

The complaints are in violation of laws and statutes under RCW 49.60 , the factual allegation are within the boundary for violation of RCW 49.60 and its sub sections, case laws and employer Misconduct law of Washington , WA state's Laws Against Discrimination, arising from the same nucleus of RCW 49.60.

ANALYSIS: VIOLATIONS OF STATUES OF WA STATE BY BOEING AND ITS DEFENDANTS: USING FORMULAICALLY, LEGAL PROCEDURE OF INFERENCE , RULE, ANALYSIS AND CONCLUSION (IRAC):

The corrective action memo will clearly show that:

In written corrective action memo, by Kari Fogelman and Singed by Kimberly Yeaton, it is clearly evident that, the sick leave even when complied with SIP&T guidelines, Shaw was deliberately subject to unnecessary discipline, for no valid reason. The suspension memo was still not produced which would provide evidence that suspension was subsequent step following verbal and written falsified unreasonable warnings. IT is a warning /threat and a disciplinary action for no realistic reason, thus unlawful. Kari Fogelman, Kimberly Yeaton and Kristi Patterson violated RCW 49.12.265 - EXHIBIT identified earlier.

The forced act of disciplining Shaw by Larry P Little, Kimberly Trulson, Ken Naethe & Kari Fogelman, for no valid reason further, was also a result/reaction, for the filing of complaint for untrue written memos(EXHIBIT provided earlier), which were provided to Boeing HR, Kari Fogelman's

supervisors, per HR's direction(EXHIBIT Sub No. 16C, Case 2:11-cv-01338, Document 7, page 37) in retaliation.

VIOLATION Sick Leave: LAW_ An employer shall not discharge, **threaten to discharge**, demote, **suspend, discipline**, or otherwise discriminate against an employee because the employee: Has exercised, or attempted to exercise, any right provided under lawful retaliation of an employee to Employer for Misconduct and harassment.

Larry P Little threatened saying " I should be fired" as Shaw retaliated to HR with complaints about Shaw's wrongful written memos from Kari Fogelman, after he became the new supervisor of Kari Fogelman. In this meeting Kari Fogelman read out untruthful and maneuvered falsified statements against Shaw's SOW to instigate managers. In his response to compliant(EXHIBIT provided earlier), to HR and Kari Fogelman's supervisor, Shaw clearly stated her activity of giving these untruthful memos and written warnings is a managerial misconduct. Kari Fogelman was deliberately stirring up other managers against Shaw . Shaw clearly stated that in Shaw's suspension meeting. Kari Fogelman's activity was in contraction to the corporate managerial conduct; WA State's Employer Misconduct Law and was illegal.

STATING CLAIM UNDER RCWs: Kari Fogelman , Larry P Little, Kim Yeaton, Kimberly Trulson, Ken Naethe, violated RCW 49.60 and nested statues under 49.60 discharging, threatening to discharge, suspend, discipline, or otherwise discriminate against an employee because the employee:

- (1) Has exercised, or attempted to exercise, his lawful right of retaliation.
- (2) has filed a complaint, in retaliation

The claim is plausible on its face because the evidence shows the untruthful written memos, illegal suspension memo is still not provided by Boeing.

Response to unlawful memos (Exhibit Sub No. 16C[^] provided earlier, marked as *Case # 2:11-cv-01338-RSM, Document 7* *page 13, 14*)

1000R, 1000AR) are provided by plaintiff, as retaliation to BOEING management & Employer.

Kari Fogelman also included domain planning activity in Shaw's Statement Of Work(SOW)[exhibit provided earlier] that should be done by domain managers (as the domain managers are aware of the financial information) instead of domain project managers, she was tying that task to Shaw's statement of work, for which Shaw provided consultation to Larry P Little, Kari Fogelman and Ken Naethe, that they should resolve it by integrating all capability plans to integrate to generate cost (CPI)and standard performance(SPI) indexes during an earlier meeting of performance review. The task is to be accomplished one level above & that has to take place among all domain managers at SnS, which is being overlooked preemptively and deliberately to scapegoat Shaw. Shaw was discriminated in his performance review.

This directly affected Shaw when Kari Fogelman tied Domain Manager's Domain Planning task as Shaw's SOW. Historically, lack of managerial attention failed to control system loss at SnS Domain, since there was no way to

provide CPI /SPI for the domain, in planning, for reporting to senior executives(VP).

Shaw also stated, as a consultation, that, It was only a matter of time when RISK would hit the domain and Visibility will show RISK and Trouble in the SnS domain. This was stated as a retaliatory complaint against Kari Fogelman and Larry P Little, in performance meeting, Kari Fogelman she deliberately stated untrue statements to demean , demote and discipline Shaw.

B. STATING CLAIM UNDER RCWS: Kari Fogelman preemptively and deliberately discriminated Shaw by using Shaw as a scapegoat, and by acting in discrimination when she preemptively and deliberately tied to use Shaw as a scapegoat for task that is not within Shaw's management boundary, as she showed that domain planning is a responsibility of domain project manager which should be domain managers responsibility(one level up, in fact her responsibility, provided earlier with sub no and pages in clerk's paper marked as SOW.

C. The written warning was also in violation of Shaw's earned sick leave that Shaw had to take because of workplace unhealthy contaminated environment from Viral Flu. The "1" day additional sick time was in negotiation with Kari Fogelman at her office with unpaid work day. She untruthfully, indicated that information in WA state's Economic security (EXHIBIT Sub No. 16C , Case 2:11-cv-01338-RSM, Page 80 thru 83)- unemployment benefit denial note- as a repeated absence when the sick time was utilized from Shaw's earned sick

leave and negotiated 1 non paid work day. Violation of RCW 49.12.265 by defendants claimed.

D. VIOLATION: Shaw was by force suspended, unreasonably given verbal , written warning; even the suspension memo was not produced. Shaw was told by HR representative, Kimberly Trulson, unless there is a subpoena suspension memo will NOT be given. These discriminatory statements, acts, with imperativeness of RCW of this chapter, that enables a plaintiff to pursue justice, brought in the burden of lawsuit on the plaintiff.

Shaw had been blacklisted by defendants & Kimberly Trulson in singed memos, unlawfully, by unlawful suspension and termination , when the blacklisting is evident clearly in termination memo EXHIBIT provided earlier. It violates, RCW 49.60; RCW 49.60.030,RCW 49.60.030(1)(a) ; 49.60.030(1)(f) – blacklisted (per termination memos).

STATING CLAIM UNDER RCWS: Kari Fogelman, Kimberly Yeaton deliberately discriminated Shaw from protected WA state RCW of employee rights, when they unlawfully disciplined Shaw and gave Shaw untruthful written memos (EXHIBIT identified earlier in clerk's paper-1000A). The employer was aware of it but did not take any measure to STOP discrimination described in RCW 49.12.270 and 49.60. These statements are factual claims plausible on its face since they are supported by evidence (provided earlier noted with sub no and pages in clerks paper: also marked as 1000, 1000A, Document 7, 1000R,1000AR) S: 16c, Cox #2: 11-cv-01338-RSM
page 13, 39, 14
40.

STATING CLAIM UNDER RCWS: Stating Claim from Page 30 (x), **The LAW is very clear**, Discrimination is prohibited across state of WA : based on race, religion(creed), national origin, retaliation. The defendants acted in violation of the purpose of the chapter. Violation of RCW 49.60.010. Claimed Ken Naethe Also stated, in the suspension meeting, Russ Jones told him earlier that Shaw should have been fired long time ago. For What lawful reason, Russ Jones stated that statement to Ken Naethe, has no valid legal basis, in holding Shaw's employment without being discriminated. Shaw was discriminated in violation of RCW The right to obtain and hold employment without discrimination;

E. VIOLATIONS: STATING CLAIM UNDER RCWS: The imperativeness of RCW 49.60.030(2) gives Shaw the right to pursue such civil action against defendants, in the court of LAW against discrimination.

DEFENDENTS MISCONDUCT ESTABLISHED UNDER STATE LAW

Providing Continuous and unnecessary warnings (as it is meant to be a flow of continuation as written in the written warnings in the form of harassment and discrimination), is a misconduct and act of deception, by Kari Fogelman and Kimberly Yeaton. The responses to these unlawful written warnings were within the knowledge of the Employer, as well as not providing the untruthful suspension memo which Shaw refused to sign. It is also a matter affecting Shaw and Shaw's family and significant persons in life, their well being and

interest, and it is an unfair or deceptive act in trade or commerce by Boeing Business and its defendants. Statement of Claim is Clearly Plausible on its face. (with evidence provided earlier noted with sub no and pages in clerks sub no. 16e, Case # 2:11-cv-01338-RSM, Document 7, page 13, 39, 14, 40 paper; also marked as 1000, 1000A, 1000R, 1000AR)

F. VIOLATIONS: Stating Claim under RCWs

RCW 49.60.210,
Unfair practices — Discrimination against person opposing unfair practice — Retaliation against whistleblower.

As Shaw had retaliated by providing Boeing HR and Kari Fogelman's Supervisors with response to unlawful written memos, more actions were drawn on Shaw. In response to retaliation. The Employer did not take any measure to STOP discrimination committed in violation to these RCWs. This discriminatory acts by defendants, violate the purpose of the chapter. RCW 49.60.010

The statement of claim is plausible on its face with evidence (provided earlier), subpoena-able suspension memo which has not been provided yet. Shaw was told unless there is a subpoena memo, BOEING will not provide the suspension memo.

- There was no suspension meeting notice or information provided beforehand. It was unknown to Shaw.

G. STATING CLAIM UNDER RCWS: Kari Fogelman, Kim Yeaton, Ken Naethe, Larry P Little, Kristi Patterson, Kimberly Trulson discriminated Shaw by violating RCWs 50.04.294 and 50.20.066.— Gross misconduct. - described in Employer Misconduct Law when they acted in dishonesty related to

employment, by , deliberate deception, or lying in written memos EXHIBIT 1000A(provided earlier), WHEN delegation of responsibility was in accordance to Kari Fogelman's approval and in an official manner ;

These defendants acted in collaboration to violate company rules when the rules were reasonable, that employment discrimination in the form of falsification, lying in written memos, and lying to state of Washington Economic security when,(in WA States unemployment claim response :EXHIBIT Sub no. 16C ,Case 2:11-cv-01338-RSM, Document 7, page 80-92) employer stated Shaw was supposed to meet Kari Fogelman, WHEN the actual termination memo shows(EXHIBIT 6000) ^{sub no 216c, case # 2:11-cv-01338-RSM, Document 7, page 9} Shaw was supposed to go to Boeing Medical, - "But not a Third party medical review, which was not an Independent medical Review(IMR).

VIOLATIONS:

RCW 50.04.294

Employer Misconduct LAWS RCW 50.04.294 and 50.20.066.— Gross misconduct.

(a) Dishonesty related to employment, including but not limited to deliberate falsification of company records, deliberate deception, or lying; - Violation of a company rule if the rule is reasonable and if the defendants knew or should have known of the existence of the rule;

STATING CLAIM UNDER RCWS: These written warnings with substantiations had been provided to HR and Kari Fogelman's supervisor. The Employer's supervisors deliberately disregarded them to cause more deliberate act of such which brings the act as : Severe misconduct- Under the Definition of Severe misconduct-

The evidence will show Kari Fogelman is deliberately committing, or conducting and is connected with the individual's work that demonstrates a flagrant and wanton disregard of and for the rights, title, of a fellow employee(plaintiff)

Thus Kari Fogelman, Ken Naethe, Kim Yeaton, Krisit Patterson, Larry P Little, Kimberly Trulson's act is : "Flagrant" meaning conspicuously bad or offensive behavior showing contemptuous disregard for the law, morality, or the rights of others(plaintiff). In violation of RCW 50.04.294 and 50.20.066.

(Implied 192-150-130) Worksite safety — RCW 50.22.050 (2)(b)(viii).

After Shaw started working at Sns Domain, Shaw came to know the workplace in SnS, had a flu outbreak. After Andrew Wright came back from Moscow, Shaw contracted viral flu working with him which caused Shaw to take sick leaves. Initially Shaw had a remote access, so before it was taken away by Kari Fogelman, Shaw was able to update status reports at night when Shaw felt better(exhibit mentioned in response to the written warning exhibit 1000 provided earlier ,It can be substantiated with the logs from VPN connections from Boeing IT). BUT Later on the VPN access was restricted by Kari Fogelman, Shaw relied on sick leave and calling her & her back up at the beginning of the work day. Call logged in Exhibit Sub No. 16C, Case 2:11-cv-01338-RSM, Document 7, Page 35; Boeing (Exhibit Sub No. 16C, Case 2:11-cv-01338-RSM, Document 7, Page 34) mentioned unless there is a law suit the phone records from Shaw's Boeing cell phone to Kari Fogelman, Trina Goering(Kari Fogelman's Back up) will not be provided.

BOEING AND ITS MANAGEMENT WERE AWARE OF THESE VIOLATION by defendants AND their ACTIVITIES BUT DID NOT take any action to STOP DISCRIMINATION, As a result the EMPLOYER was RESPONSIBLE FOR MORE VIOLATIONS by RCWs of Washington State. The Boeing Company and its management MUST produce the records in question to avoid obstruction of JUSTICE or be charged under such.

HOLDING: Thus our analysis and evidence show clear and compelling reasons beyond doubt that the defendants violated laws and discriminated the plaintiff willingly, and deliberately to induce damage in various ways and caused unemployment and failed to hold all described LAWS of WA state that holds employers responsible for acts , as cause, as a result of employer discrimination.

1. Defendant clearly did not hold the laws against discrimination and its subsection arising from the same nucleus.
2. We hold that the defendants committed misconduct and gross misconduct in a magnitude of variations.
3. We hold that Shaw did not violate any laws of WA state or Employee Misconduct that shows unlawful and unreasonable behavior that is outside the boundary of WA State's LAW, to deny his un-employment benefit, or cause his experience account to get charged, by the defendants.

4. We hold asserting positively that the defendants committed discrimination described in this brief that justifies a fair Trial by Jury, to resolve the issue in the court of LAW.
5. We hold that defendants deliberately and unlawfully acted with discrimination to intentionally cause damage to plaintiff and have violated WA state's Human Rights Commission enforced LAWS against discrimination, VIOLATING "HUMAN RIGHTS" AND "CIVIL LAWS " from above described RCWs and arising from pertinent associated nucleus of RCWs.
6. We hold that, as the same WA State law (WAC 192-150-055 ; and under the disability definition 192-150-055 4a(iii),4(c)), that states illness and disability under the same paragraph, they can be paralleling-ly construed to apply for relief on behalf of the plaintiff : the plaintiff's sick time discrimination matter, while Shaw was unable physically or mentally to participate in tasks under workplace flu exposure at Boeing, for which he was discriminated against sick leave and illness time earned work hours, tolerating hostile work environment, from unlawful written memos and suspension memo. (Gathered from provided written warnings by Boeing management and denial in WA State's economic benefit, by Boeing, depicting, false statements, as portrayed in WA State's economic security retrieved fact analysis section.). Plaintiff claims he has been discriminated from disability by fraudulent statements to the WA state Economic security.

Shaw got back into his responsibility per WAC 192-150-060(6) after he recuperated. (Ref: Martini V. Boeing – Sick time Disability Discrimination)

REASONING: Shaw Rahman, Pros Se Plaintiff, requests to appeal the decision of the Order of the Motion granted by the Hon. Judge Suzanne M. Barnett, on the 28th Nov, 2011 for the following reasons:

1. In EXHIBIT -1 of the Appeal at Div 1, on 27th Dec , 2011: The Hon. Judge Granted Motion to dismiss pursuant to CR 12(b)(6) by signing the “ ORDER GRANTING DEFENANTS’ MOTION TO DISMISS ”[Sub No. 22]considering ONLY three items. (1) Defendant’s motion to Dismiss (2) Plaintiffs opposition paper (3) Defendant’s reply, clearly shown in approved order from her. This clearly, is evident that Hon. Judge DID NOT take into consideration of the following motions from the plaintiff:
2. Analysis Of EXHIBIT-2 “SUR-REPLY TO RESPONSE TO MOTION TO DISMISS” (by defendants).

Besides mis-informing a Statue’s limitation that is applicable to this re-file, allowed by the Hon. Fed Judge Martinez, the defendant motion is INFACT is a MOTION, parallel to Motion to strike evidence , written strategically, when they stated” Despite an eight-page motion and three hundred pages of attachments and exhibits, Mr. Rahman has raised nothing new in this filing” to create a contrary to Fact instance, because:

- a. The Exhibits and attachments constitute the factual basis of the claims clearly defined under RCWs showing Rules , Analysis of complaints and conclusion:

how defendant's committed violations of RCWs. Each claim has the pertaining exhibits included wherever appropriate. By stating the above to the Hon Judge Barnett, the defendant's tried to create a notion of "MOTION to STRIKE evidence" put forth to the Hon Judge Barnett, unless observed and construed closely.

b. When Hon. Judge Barnett, signed the order granting CR 12(b)6), she granted the order under the influence of the statements described in 2(a) of above paragraph, of this documents, as she signed the order considering three items, described in paragraph (1) EXHIBIT-1. – It is clearly evident since Hon . Judge did not provide any separate motion in order explanation. It is also clearly evident to the plaintiff that she did not take into consideration the following from Plaintiff's :

i.) In Plaintiff's Response, to "Surreply to Response to Motion To Dismiss"(EXHIBIT -4 of the initial appeal filed on 27th Dec, 2011) which clearly stated that in the plaintiff's motion to deny defendant's motion to dismiss, additional note was attached to the docket on the 11Nov, 2011 (EXHIBIT -3 of the initial appeal filed on 27th Dec, 2011) to formulate a pattern of claims, that the court can easily identify to figure out factual claims and elements of claims, as cause of actions. There are at least several patters /or hypothetical statements of causes of action, that enables or empowers a court to recognize a valid claim of discrimination and violations of RCWs, upon which any court may deny granting a CR 12(b)(6). Unfortunately, the Hon. Judge was not able to recognize it. By signing an

order based on the paragraph 1 of this note, she DID NOT EVEN consider
RECOGNIZING AT LEAST VALID CLAIMS UPON WHICH RELIEF
CAN BE GRANTED UNDER RCWs, case laws of WA and RCW 49.60

As the filing was within the Tolling period of statutes of limitation, and allowing the plaintiff to appeal the Hon Judge's decision within a 30 day of dismissal from Superior Court, the plaintiff finds no alternative but moves to Request a Case review to the Court of Appeal at Division One, to review and identify the clearly defined statements of claims, of this civil action, to grant relief and deny CR12(b)(6). All possible hypothesis and patterns with embedded Evidence have been supplied along with statements of claims of violations, of RCWs by Defendants. It is to be noted that, the Hon. Fed. Judge Martinez identified, in his Amended order, that "RAISING the Possibility of CLAIM" with at least a Pattern "OF WRONGFUL suspension / TERMINATION", for which "relief can be granted in a state court" - Similar patters can be applied to denial of granting CR 12(b)(6) and recognition of valid claims, in a case review by the court of Appeal, all throughout the complaint in this civil action.

Pro Se, Plaintiff questions the court, what was the holding of the LAW, on granting a CR12(b)(6) to the defendants: grace (as defendant stated in their sur-reply) SHALL not be a fact to consider, BUT LAW is, BECAUSE the court is allowing defendant who deliberately perpetrated violation causing damage to plaintiff. Under Court Rule: "Because a trial court's dismissal under their rule is a holding on a question of LAW".

1. Patterns (and/or hypothesis) of statement of claims in Court Of Appeal case filed on 27th Dec, 2012, EXHIBIT #3, has been furnished to the court so that “a court may consider hypothetical facts not part of the formal record.” Halvarson v. Dahl, 89 Wn 2d.673,574 P.2d 1190(1978)
2. Evidence and statements of accompanying re-filed claims EXHIBIT 1A, are furnished with clear description of LAW and RCW violations by defendants answering who, what, when , how defendants violated the LAWS AGAISNT DISCRIMINATION and RCWs.
3. IT is not acceptable to the plaintiff whether the Hon judge had NOT tried to co relate to understand the case since she acted on 1- EXHIBIT -1 of this document. It is not convincible to the plaintiff as she never issued an order in motion statement stating steps of her decision.
4. The statement of claims are Not only mere patterns and evidence but factual allegation accompanying them. “Therefore, a complaint survives a CR12(b)(6) motion if any set of facts could exist, that would justify recovery. Lawson at 448; Bawman, at 183.,” All of the statement of claims are supported by FACTUAL basis.
5. “Under the court rule for CR 12(b)(6), a plaintiff allegation(s) are presumed to be TRUE.” Lawson v State, 107 Wn 2d 444,448, 730 P. 2d 1308(1986). In this instance the claims were with supportive evidences for each claim.
6. When Hon. Judge Martinez, in fact found a pattern in his Amended Order and could recognize “arising state claim(s)” why was it not convincing enough to Hon. Judge Barnett to adhere to similar pattern throughout the complaint to deny

granting CR12(b)(6) on the grounds of LAW, when the complaint had established merit in federal court? Because under the court rule “Furthermore, our task is to determine only if there is ANY set of facts could exist, that would JUSTIFY RECOVERY. Lawson, at 448; Bawman, at 183.,” All stated RCW violations have grantable relief.

7. If the Hon. Judge has taken granted that the Initial Order on the motion at the federal court case established the fact that Shaw was unable to state a claim upon which relief is granted and applied the same pattern at the state court refilled case, she would completely be out of legal perception, since the TIME the federal judge provided his initial order on the motion, he did not have the formulaically described WA state claims provided to him [Sub No. 16C, EXHIBIT – Sub No. 16C, Case 2:11-cv-01138, Response to Reply in support of defendants’ motion to dismiss : exhibit WASLV]. They were furnished just before he amended the federal order on the motion. As the claims were all geared towards state claims, there was nothing to state for a federal claim (exceeding 300 days statues limitation), as the case was targeted towards WA state RCW violations.
8. Why was the EEOC acknowledged pattern of allegation “During my employment, Shaw was deliberately given untruthful written warnings and corrective actions memos to strategically move forward to termination” was not considered a valid pattern of claim which was substantiated with material evidence to JUSTIFY a VALID claim to deny granting CR12(b)(6)?

9. Why unlawful, false and misleading written and verbal warning and falsely written and provided memos not illegal act of severe misconduct, even when substantiated with evidence by defendant, that lead towards termination.- Why this was not considered a valid claim to deny CR12(b)(6)?
10. Why retaliation, in this continued discriminatory and harassing environment not a valid cause of action and a legal basis of statement of claim, by plaintiff, that contributes to a denial of CR12(b)(6)?
11. Why following corporate policy to retaliate in accordance with employee right/ Human Rights, to HR and management not a valid basis for a statement of claim of retaliation, which was a reaction of continued, systematic, collaborative discrimination, to take resort to LAWS AGAINST DISCRIMINATION, as a LEGAL MEANS, and can be a fact to deny CR12(b)(6).
12. Why attached RCW violation (EXHIBIT 1A of the re-filed Oct 13th, 2011, compliant at superior court, section 3.2) with evidence[included in Sub No. 16C]) described in IRAC, not sufficient to convince the judge to deny a CR12(b)(6) – she could have issued an order in motion with statements of legal reasons along, rather than only considering 3 items as she approved with signature when signing the order granting CR12(b)(6).
13. The federal court’s decision to state “unable state a claim” was based on federal rules not WA State’s RCWs and law against discrimination , that the Hon judge Barnett can simply take into consideration and follow, to grant a

CR12(b)(6) as a pattern, BECAUSE it is clearly a question of holding of WA STATE'S LAW.

14. Why preemptively demanding to sign a falsified suspension memo(which is threatened not to be provided unless a subpoena by Boeing management) in a forced suspension carried on by Boeing, not violation of LAWS against employment discrimination, that a denial of CR 12(b)(6) can be granted by the court?
15. Under court rule: in denial of CR12(b)(6), the possibility of a pattern or hypothesis that may constitute a claim, is sufficient to instruct a court, to deny granting CR 12(b)(6). What holding of LAW, rather than grace, caused the Hon. judge that the possibility of the claim does not constitute a pattern of valid statement of claims, that she granted CR12(b)(6). Plaintiff wonders whether it is the bias or prior interaction with defendant's representative in the past, that Hon Judge based her order, rather than purely on the basis of LAW.
16. The Hon Judge overlooked to provide identification of the statement of claim and pertinent pattern, if there is ANY, that did not have plausible substantiation and evidence WHEN SHE granted CR12(b)(6) on the basis of holding of LAW. The Hon judge granted CR12(b)(6) with no valid legal basis, to the defendants who committed deliberate and collaborative act of DISCRMINATION in magnitude of patterns, repeatedly and continuously, resulting discriminatory and unlawful termination of the plaintiff. There is absolutely NO LEGAL basis in GRANTING Cr12(b)(6), but influence.

Why points 1-15 were not considered as "any set of facts that exists, that would justify recovery?" Under: Lawson, at 448; Bowman, at 183.'

There is no insuperable bar to relief in ANY of the statement of claims, which could constitute "unusual case in which plaintiff includes allegations that show in the face of the complaint that there is some insuperable bar to relief" 5 C. Wright & A. Miller. Federal Practice 1357, at 604 (1969). There is no insuperable bar that a denial of granting CR12(b)(6) could not have taken place by the court. In fact, There is enough set of facts, that the plaintiff has proven, that constitutes the statement of claims are legitimate, beyond the reason of a doubt. Per Orwick v. Seattle , 103 Wn. 2n 249,254,692 P.2d 793(1984)"

Therefore, a complaint [as such should have survived] survives a CR 12(b)(6) motion if any set of facts could exist, that would justify recovery.

The court's task was to ensure such recovery instead of granting CR12(b)(6) "In many instances the bondholders have alleged multiple theories under which they could recover under a single claim. Once we have determined that recovery for a single claim is possible under one theory or set of facts , we will not address the sufficiency of the other theories"

The Notion rendered by defendants, thru "Surreply to Response to Motion To Dismiss" to influence the Hon. Judge was about the abundance of evidence and exhibits, was clearly to influence to, strike evidence to dismantle the claims, and make them bare to be plausible of the compliant face.

DISSENTING OPINION : With the arising of the above questions, which DONOT convince the plaintiff that it was LAWful to grant CR12(b)(6) by the trial court, because it does not prove with reason and evidence that trial courts dismissal, under this rule was holding on a question of LAW. Instead plaintiff finds it, with disbelief, that the Hon. Judge acted in contrary to a legal basis, that enforces denial of granting of CR12(b)(6) on a question of LAW. Thus, The plaintiff moves to court of Appeal to find a judicial case review, by a panel of judges to determine, any legal basis what so ever in granting CR12(b)(6) and moves to motion for a case review. Plaintiff seeks a Judicial Case review by a panel of Judges to seek justice in determining Statement of claim(s) for Trial court.

CONCLUSION –Relief Sought Relating To Violations Described Int The Brief By Defendants For Trial Court.

JUSTICE SOUGHT FOR TRIAL IN APPEAL(1).Benefit sought for recoverable benefit cut off by Boeing and all benefit and experience account changed for fund recovery. (2). Damage sought for actual , punitive and all recoverable damage, with legal fees pertaining the causing of action, under laws against discrimination and RCWs.



Respectfully, Pro Se Plaintiff, Shaw Rahman; Date: March 31th 2012.

Case # 68134-6

CERTIFICATE OF SERVICE

The undersigned hereby certifies on the April 4th, 2012 I caused a true and correct copy of the foregoing document to be served on Defendants) via the method indicated:

Hannah Avd
1001 Fourth Ave Plaza
Suite 4500
Seattle, WA 98104-1065

certified mail with
Return Receipt
request

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct and that this declaration was executed on the 4th April, 2012 at Seattle, Washington.

Pro Se, Plaintiff

Shaw Rahman Shaw Rahman

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