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In The Supreme Court of WA State

BRIEF

*Of*

Shaw Rahman

V.

Boeing

Supreme Court Case No. ~~91503-2~~

COA NO. 74879-3

Petitioner/Appellant:

Pro se, Plaintiff, Shaw Rahman

Respondent:

Boeing Company, Kari Fogelman, Kristi Patterson,  
Kimberly Yeaton, Kimbrerly Trulson, Ken Neathe, Russ Jones,  
Andrew Wright, Larry Little, Steve Miller,

Respondent:

Lawrence Shapero,  
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Appellant:

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### INTRODUCTION:

The plaintiff, a US citizen, Bangladesh origin , Colored Monitory, Asian follower of Islam as principles (creed), not a Canadian Citizen (no limited Constitutional rights exist ) asserts and relies the reasoning based on case laws below, for page 1-50 of this pleadings holding on "substantial evidence, which is evidence sufficient to persuade a fair minded person of the truth of declared premise" : Ridgewater Props v. Starbuck 1982&Sunnyside Valley Irrigation Dist V Dickie, 149 Wn2d. 873,879,73 P.3d 369 (2003) (Substantial evidence is "defined as a quantum of evidence sufficient to persuade a rational fair-minded person the premise is true.).Purpose of anti-discriminatory employment laws are to reinstate discriminated victim to original status. Judge Dowling 's order on summary judgment doesn't convince the fair minded plaintiff with "reason" and "law" that justice was provided.

### PROCEDURAL HISTORY

- a. Case was refiled on 10-13-2011 at King County superior court from Judge Martinez's. Amended Order.
- b. Case was dismissed on 12-01-2011 by Judge Barnett with prejudice.
- C. Notice of appeal to court of appeal at div-1 was filed on 12-27-2012 .d.This refiled case was reversed by a panel of judges; review from court of appeal at div-1 by mandate on 05-07-13.
- e Case was dismissed by Judge Downing on 03-09-2015 with prejudice contrary to Fed Court and div-1

findings.

## REASONING & HOLDING STANDARDS IN REVIEW: LEGAL

### ISSUES- MATTERS OF LAW ERRED BY TRIAL COURT Review

(respectfully stated) is appropriate holding on *Ricketts v Bd. of Accountancy*, 11 Wn.app 113,116,43 P.3d 548 (2002). The “de novo” or “error of Law” standard of review permits the reviewing court to substitute its judgment for that of the decision maker whose decision is being reviewed” *Skamana v Columbia River Gorge Comm’n*, 144 Wn.2d.30.42.26. P.3d 241 (2001). I. Proper construction of statute, a contract or Statute under WAC 192-150-210(6)(e). II. Legal effect of a particular action. III. Application of statute to (a) un/disputed set of facts. IV.

Question of law – All elements of claim are in direct co-relation of EEOC complaint, violation of Civil Rights of 1964 or stated category in WA state law and constitutional law, for employment discrimination. Defendants admitted no pretext by Plaintiff exists. The issue are: (a) Review of all amended claims, in CP:4444-4481, 3272-3372, Court of Appeal Div -1 opening & reply brief. CP4521-4573; 4576-4603; Direct evidence exists for defendants’ malice & cover-ups, Defendants’ persuasion and production, pretext is not lawful or non-discriminatory. Malice and intent are evidenced, Specific & substantial evidence is presented (plaintiff). (b) Review of plaintiff’s response to summary judgment (CP5159-5423; 3859-5128) and sur-reply (CP5190-5219; CP5429-6112) – reversal to recover all claims against defendants’, denied unlawfully by trial court, violating US federal, WA state and US constitutional law c) Due process violation, in executing

Motion to compel to produce and discover –deposition and documents production in 14<sup>th</sup> amendment violation, Cary v Phipus holds.d)Judicial conduct. e.The issues are also stated in statement of direct review. f. Review of every single motion, response and order at trial court for due process violation & discrimination in fair justice. g. Plaintiff holds the defendants' under Ashcroft v Iqbal on anti-trust and fraud and therefore must not obtain a license to evade under Towmbly v. Bell Atlantic. See APPENDIX SECTION A, FOR LEAGL STANDARDS.

Trial court erred and abused its discretion:(1)Trial court erred in failing to recuse and continued on ruling on motions prejudicing plaintiff in discovery, see CR16 affidavit, motion to recuse, deprivation of 7,13,14<sup>th</sup> amendment. Plaintiff pleaded in a discriminatory court. (2)After several motions to Chief Judge Spearman, Plaintiff was not assigned a new judge or the case wasn't reassigned to a different judge from Judge Downing, who continued on presiding under influence, violating 28 USC section 455, 144& US v Harris. see email exhibit to Judge Spearman. Trial court erred in prejudicing plaintiff, by short cutting discovery time by Judge for which Plaintiff was not able to conduct discovery properly for all the named witnesses provided to the court or obtain transcript within discovery cut off, for plaintiff set by court order, under original case schedule (set under court rule), violating court rule, despite plaintiff 's objection) which had discovery time set till 3/31/2015. Plaintiff operated on prejudiced constraint by the court. He was not able to submit George Prater's transcript (direct evidence who testified Plaintiff very good in Java, process modeling and need complex Projects for management , see his testimony that Plaintiff is not a fearful person/ "belligerent enemy combatant"

contradicting Kim Yeaton's deposition) within or before the summary judgment response date or from deposed named deponents. (3) Trial court evaded to allow to depose Nick Zandiyeh (PM), Mark Pethe (Architect) even though their names were disclosed in witness lists, in Plaintiff's response to defendants', first set of interrogatories. Trial court prejudiced Plaintiff & violated due process, violating, *Cary v Piphus*. Witnesses qualify as qualified and their testimony, is helpful to the jury under ER 702. Trial Court abused & excluded expert witnesses *Fraser v Beutel*, 114 Wn. 2d 1025 (1990), No alternative was ruled on after plaintiff filed motion for leave to depose and therefore non-sustainable on alternative grounds exist holding on *Thomas v French*, 99 Wn 2d. 95, 104, 659 P.2d 1097 (1983). Factors involve proper non prejudicial exercising discretion. Plaintiff didn't fail to disclose witness contrary to *Henrickson v State*, 92 Wn App. 856, 865, 965 P.2d, 1126. Plaintiff didn't disclose them late as a result exclusion of witness is improper. (4) Trial court erred in reviewing factual issues with substantial evidence unfairly, violating *Smith v Shannon*, -from acceptable ranges of decision, in de novo analysis and ignored to enquire or deviated substantially from such – to evaluate, review, brief of this case, which placed plaintiff for an argument for appeal to WA Supreme court for Plaintiff's constitutional right violation, holding on 7<sup>th</sup>, 13<sup>th</sup>, 14<sup>th</sup> amendment for involuntary servitude, due process, along with WA state law and federal laws under Title VII act of 1964. Trial court erred in depriving plaintiff from jury trial, of 7<sup>th</sup> amendment. Evidentiary Ruling-Relevancy of evidence: Trial court erred in failing to sanction defense or to compel further, even after Plaintiff refiled a supporting motion in support of motion to compel, violating *MacDonanld*

*Douglas v Green*, 411; for discoverable documents, such as fraudulent suspension notice. Exclusion of material evidence(*Davy v Fred appliance*); *Joyce v State Dept. of Corrections*, 116 Wn App. 569,601,5 P.3d. 548(2003). Defendants did not meet the burden of proof. Trial court erred in compelling defendants.-an error that has harmed plaintiff in summary judgment order. Therefore plaintiff has manifested abuse of discretion holding on *Morgan V PeaceHeatheInc*, 101 Wn App 750, 774 14 P.3d 773(2000). And holds that the “desired evidence will raise a genuine issue of material fact” on *Manteufel v Safeco Ins. Co of Am .*,117 Wn App, 168,175, 68, P 3d 1093.[for additional discovery]. (5)Balancing of Probative “value of evidence against its pre-judicial effect” under ER 403: *Holz v Burlington Northern*, 58Wn App 704,708,794 p2d. 1304(1990).(6)Trial court’s order on summary judgment, evidence that the court made no finding of facts and simply dismissed the case, therefore, the reviewing court must “accept the truth of the plaintiff’s evidence and determine, whether the trial court properly applied the law” holding on *Jones Assocs V Eastside Properties.Inc*, 41 Wn App. 462,04 P.2d 681(1985) even when substantial evidence existed for each of plaintiff’s claims(earlier pleadings are repurposed with the same BR# as referenced in them within CP # designated ranges).ELEMENTS OF DEF.FRAUDOVERLOOKED BY COURT:  
Standard of proof (discrimination case no different than any other ultimate questions of fact, ”*Reeves V Sanderson Plumbing Prods Inc.*).Plaintiff also has proven the elements of fraud by clear, cogent and convincing evidence -and holds on to *Adams c Allen* , 56 Wn App. 383,393, 783 P.2d. 635(1989) to support

plaintiff's claims against defendants to withstand trial courts order on summary judgment. C. "no elements for discretion, is lodged in the trial court in such matters unless it can be held as a matter of law, that there is no evidence of reasonable inference, therefrom to sustain a verdict for the opposing party. Trial court erred.— Trial court abused its discretion to analyze associated law with each claim disregarding claims, even after court of appeal, div-1's reviewed, as a matter of law, — of WLAD, federal and constitutional (7, 13<sup>th</sup> & 14<sup>th</sup> amendment & involuntary servitude) contrary to, Brown v Dahl, 41 Wn App. 565 705. P 2d 781 (1985), Holland v Columbia Irrig, dist 75, Wn 2d 302, 304, 450, P.2d. 488 (1969) which is not any misleading legal ground, and RATHER informs the applicable law, overlooked by the trial court, Keller v City of Spokane, 146 Wn 2d 237 250, 44 P .3d 845 (2002). D. Clear, cogent and convincing evidence of "equitable estoppel", existed to withstand summary judgment. Holding on Litz v Pierce County, 44 Wn App. 674, 684 P2d. 475 (1986). The job offer was not tenure track. Trial court abused its discretion on evidentiary ruling violating summary judgment standard. E. Admission of other acts under ER404(b) is reviewed for abuse of discretion State v Bowen, 48 Wn App 187, 190, 195 738 P 2d. 316 (1987). F. Reviewing court must review evidence in the light of most favorable to the prosecution, and asks whether a rational trier of fact could have found the essential elements of the crime/claims beyond a reasonable doubt, State v Summers, 45 Wn App 761, 728 P 2d. 613 (1986) . G. Trial court erred in altering "moving party" from a "3 panel judge", for this case, reviewed by division -1, altering summary judgment standard under due process, in prejudice to deprive plaintiff maliciously,

under influence(see recusal motion for reassignment), as a matter of law, genuine “issue of fact & law existed” for trial by jury, justifying reversal, appropriately.

#### MATTERS OF REMAND:

Although Plaintiff was unable to file the original case within 300 day of statute of limitation at EEOC for title VII claims, he had asserted prevailing “hostility” at workplace [title VII claims] and nucleus of WA State Laws Against Discrimination (WLAD,RCW 49.60) in case filing]. Furthermore in Amended Order Fed. Judge Martinez acknowledges arising state claims, (on which holding of FRE 302 applies) such that in this federal discrimination case “evidence of presumption” for title VII claims violation was “controlled” with evidentiary support for “WA State Law” violation, on hand ,of judge Martinez, who erred in remanding the case to WA State Court. At Court of Appeal Div -1 , 3 panel judges’ combined order/mandateCP 3180; CP 3291-3298,[ last para, page 6] clearly evidences that Plaintiff has “evidentiary support”[“could support”, via hypothetical sets of facts] for his claims, that are consistent factual allegation in complaint. Both the orders therefore contradict Judge Downing’s summary judgment’s order in regards to “absence of evidence”. – Therefore summary judgment (CP6113-6115;6116-6117)was unlawful along with ignoring of Remand for legitimate title VII claims - - a “federal question “(WA state court has remanded in the past) -- “a clear departure” for procedural justice. Furthermore defense counsel & defendants continued, maliciously, perpetrating title VII violation, in limitations period in trial court, of, national origin, religion, discriminatory amicus, (by evidentiary support of) in witnesses’ deposition[ which contained mistreatment & perjury claims by

defendants' ,appropriately stated, in refiled / "i.e without prejudice" case] , --  
evidenced that support factual allegations, (in summary judgment pleadings). In  
CR 16 conference Plaintiff asserted in person, statements of remand regarding title  
VII claim. Judge Downing ignored this fact in his case status orders. Therefore  
federal question remained unanswered for, to reviewing , WA Supreme Court and  
US Supreme court on, matters of, title VII Claims' remand. Therefore summary  
judgment was unconstitutional, unlawful. Malicious act continued, specific and  
substantial in nature, *Stegall v Citadel Board Co holds*. *Goodman v Boeing* holds  
-- "clearly appears that the decree (order)was the result of an improvident  
"exercise" of judicial discretion". Plaintiff holds that a review is essential because  
of a "doubtful determination" , violating due process holding on to *State Firm Mut  
Auto. Ins co. v. Campbell*, 538 U.S. 408(2003).*State v Nordby& Timken-Detroit  
Axle Co.* applies appropriately.

### CONSTITUTIONAL RIGHTS VIOLATION:

Plaintiff holds that, due process of justice (14<sup>th</sup> along with, 7<sup>th</sup> amendment)and his  
constitutional rights under 13<sup>th</sup> amendment , on involuntary servitude, has been  
violated. Holding on *State v Avila-Avina*, 99 Wn App. 9 ,13,991,P.2d 720(2000).  
See Div -1 opening and reply briefs, reviewed claims of mistreatment at illegal  
suspension by the defendants. A de novo review of entire record is therefore  
appropriate because significant "great" findings resides in trail court's discovery  
that pertains to each claim, that has harmed plaintiff, "beyond reasons of a doubt",  
holding on *State v Lougin*, 50 Wn App. 376,382,749 P.2d.173(1998)arising

constitutional errors in Judge Downing's order that deprived Plaintiff from justice manifesting judicial error, even with the existing evidentiary error in reading his decision, holding on *State v Reid*, 74 Wn App. 281, 289, 872 P.2d 1135 (1994).

Direct review is appropriately under WA Supreme RAP CR. 4.2(a)(2)(5) [28 USC section 154, 455] for discrimination in procedural justice [Reeves v. General Foods, 682 F.2d 515 (5th Cir. 1982), (which cites to and relies on Belton, Burdens of Pleading and Proof in Discrimination Cases. Towards a Theory of Procedural Justice, 34 VAND. L. REV. 1205, 1222 (1981).)] & judicial conduct.

Plaintiff holds that throughout the discovery he has been "suppressed" in discovery processes, in prejudice and the hearing took place under suppressive prejudicial manner, See CR 16 affidavit of plaintiff, motion of reassignment to Judge Spearman, after CR16 conference for recusal when judge operated under influence and the court was discriminatory racially. See judicial conduct law in CR 16 affidavit of plaintiff. Therefore plaintiff holds that a pattern of suppression carried on in discovery to reach hearing, a de novo review therefore is appropriate under *State v Hill*, 123 Wn. 2d 641, 870 P.2d 313 (1994). Plaintiff was deprived of his testimony (constitutional rights) against the defendants that violated Sum. Judgment standard. Plaintiff constitutional rights & claims were denied. Cary

V. Piphusholds. Plaintiff appeals against injustice and inefficiency of trial court for direct review. In Div-1's review judge Dwyer J. refused to publish mandated order, which plaintiff retaliated as violation of first amendment. Cognizable claims of constitutional law violation exists. Plaintiff holds onto *Hertley V. State*. Trial court erred constitutionally in denying constitutional claims, along with recognizing

criminal contempt by defendants and the attorneys. Justice was denied. Orwick v City Of Seattle holds. Judge acted in contrary to mandate of claims identified by a 3 panel judges, prejudicing Plaintiff. JUDICIAL CONDUCT- Judge Downing abused discretion and Discriminated Plaintiff, from Constitutional due process, by: After and on CR 16 conference [when Judge imputed liability, as Plaintiff exercised his due diligence for recusal [Galadamez V potter], judge deprived Plaintiff, and favored Defendants, against initial court set calendar of discovery, end date, from 3/31/2015 to end of January 2015 (sent on 9<sup>th</sup> Jan 2015), which prejudiced the Plaintiff to depose and subjected sudden financial crunch, to depose primary defendant, Kari Fogelman, Larry Little properly. After the initial deposition for deponents on 29<sup>th</sup> Jan 2015 had already been scheduled and informed deponents via serving on 9<sup>th</sup> Jan, 2015, Defense attorney announced availability of the named Kari Fogelman, Larry Little, on 14 Jan 2015, prejudicing Plaintiff to make any financial arrangement to depose them on the 29<sup>th</sup> or 30<sup>th</sup>, Jan 2015. Defense attorney excuses that on Plaintiff, when Jan 29<sup>th</sup> deposition schedules spots, had been made to depose Kim Yeaton, after that with tactic, Defense attorney announced availability of Kari Fogelman and Larry Little. see email Exhibits attached. (1) Judge shifted and favored the defendants, by depriving Plaintiff from, due process by allowing defendants', control discovery. Plaintiff could not depose Mark Pethe, Nick Zandiyeh (national origin of Iran), or Steve Rsuzutuk (security manager). Nick Zandiyeh was a PM who was present in almost every ICA meeting to testify progress of the project. He was also the (CPI/SPI) scheduler for of all the SnS domains projects. After Judge Downing's second order Plaintiff filed motion

to allow to depose these witnesses, judge had shifted the control of discovery, on a mutual agreement rather than based on plaintiff's right to discovery and depose under due process(14<sup>th</sup> Amendment).(2) Judge Tactically allowed defendants to shift deposition of Plaintiff "after summary judgment", & violated summary judgment standard and to use Plaintiff's deposition as direct evidence, in summary judgment response, along with Nick Zandiyeh or Steve Ruszutuk. Transcript of George Prater to use as direct evidence. Plaintiff requested dates within 3/31/2015 to take deposition of the remainder witnesses, within 3/31/2015. Defense objected with "contempt", taking advantage of the bias order that prejudiced Plaintiff from proper discovery & due process. Plaintiff holds on to Cary v Phipps. Plaintiff was discriminated from consultation due process(14<sup>th</sup> Amendment). (1) In support of motion to compel for production of discovery of documents explicitly, and motion to allow deposition of deponents, judge excused and remained as if he doesn't understand "what relief Plaintiff" is requesting. see judges 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> case status order. Judge did not respond to the motions, till even in summary judgment order. Judge committed "actual bias", in all of the above discovery related to due processes.(2) Subsequent to and prior to CR16 Plaintiff, brought to the attention of the court of Criminal contempt by the Defendants and their attorney of falsification of Plaintiff's civil record, fraud & cover up of evidence of discovery. Plaintiff reasserts criminal contempt [Kolstad v. American Dental Association, 119 S.Ct. 2118(1999)][intentional discrimination] by defendants, representing attorneys and firm (Gordon v US) engaged intentionally and for production of fraudulent

cover up and pretext, EEOC v Boeing holds , Goodman v Boeing applies approximately. (1) Judge Downing in CR 16 remained continued to fail to act against criminal contempt that it would not be an issue with him which had been brought attention of Judge Spearman. Both judge failed to act according to 28 USC Section 455,154. Actual bias continued.(2) Defense influenced, the Judge from his previously known relationship clearly visible from disclosure of judge's bailiff, about on going cases presided by him ( see email exhibit) with influence of Judge Lasnik(W Dist. WA, cv13-0410) and Judge Peachman(W Dist. Wa, cv13-0219) who he was friends with to carry on a pattern of process to exclude material evidence[Davy v Fred Appliance]& due process[14<sup>th</sup> Amendment], using Judge Lasnik and Pechman's case references, to instigate and provoke against Plaintiff Knowing his protected status[Muslim follower of religion Islam], which was brought to attention in CR 16 conference, to the judge, when Plaintiff exercised his due diligence to recuse the judge for "appearance of bias" holding US v. Harris , 28 USC section 455. 154, in discrimination. Plaintiff specifically verbally opposed, holding, TexSw Med Ctr V Nassar 570 (verbal opposing), Allison V. City of Seattle. Judge Violated judicial conduct, in a case of race, national origin and retaliation under title VII of 1964.[color religions(creed)]. Judge Discriminated Plaintiff from due process. Evidentiary support exists, that are specific& substantial. Discrimination continued, Stegall v Citadel Board Co, Galadamez V potter,415 F.3d 1015,1025(9<sup>th</sup>circuit,2005),Goodman v Boeing,holds.

NON- CONSTITUTIONAL RIGHTS, WA STATE , FEDERAL LAW

Therefore Plaintiff holds that “there exists error with reasonable probability” that materially affected the outcome of the trial. *State v Templeton*, 148 Wn 2d 193,220, 59 P.3d 632 (2002); and damaged plaintiff in discrimination RCW 49.60, holding that this erroneous ruling ER 609(a) like ER404(b) rulings is subject to error analysis. And therefore review is appropriate under *State v Green*, 143 Wn 2d 923,932, 26 P.3d 236 (2001) [ER 401,403]. Therefore reversal is appropriate. *State v Banks*, 149 Wn 2d 38, 44-45,65 P.3d 1198(2003) and overwhelming evidence resides which were deliberately overlooked by trial court that leads to finding of guilt against the defendants. *State v Smith* , 148 Wn 2d 122 ,138-39,59 P.3d 74 (2002). And all factual determination are supported with substantial evidence, *Schmidt v Cornerstone Inv. Inc* ,115 Wn 2d 148,159-60,795 p.2d 1143(1990). Issue of law exists for which the standard of review to be de novo, *State v Read* , 147 Wn 2d 238,243,53 P.3d 26(202) citing *Walker* ,136 Wn 2d at 771-72.

**FACTS ARE DISPUTED:A PURE, MIXED QUESTION OF LAW:**

- i) If the facts are undisputed then the question would be “a pure issue” of law –[must be]Plaintiff presents sufficiently specific(*Stegall v Citadel Board Co*)undisputed facts ,for meaningful review, ii)Plaintiff and defendants disputes the facts ,therefore a mixed question of law or “issue of law”exists. Therefore the reviewing court can review trial court’s statements to assist in interpreting or supplement the finding holding on *LaBelle*, 107 Wn 2d,196 728 P.2d 138(1986) because substantial evidence which exists, which are also highly probable because

the standard of proof provided by the plaintiff at trial courts are “clear, cogent and convincing evidence.” *Douglas Northwest Inc v Bill O'Brien & Sons Constr., Inc* 54 Wn App. 661 678, 828 P.2d 565 (1992). *Jenkins v Snohomish County Pub. Util. Dist No 1*, 105 Wn 2d. 99, 713 p.2d 79 (1986). Plaintiff holds that this court therefore must exercise its discretion, on all statutes & application of law or for all particular sets of undisputed facts. Under *Williams v State Dept of Licensing*, 46 Wn App. 453, 731 P.2d 531 (1986) on properly constructed and applied law, de novo by plaintiff. *Welch v Southland Corp.*, 134 Wn 629, 632 952 P.2d 162 (1998), *King County Fire Prot. Dist No. 16 v Housing Auth.*, 123 Wn 2d 919, 825, 872 P.2d 526 (1994). Therefore, this reviewing court, must” independently determine” whether this finding of facts support the conclusion of law. *Am Nursery Prods., Inc v Indian Wells Orchards*, 115 Wn 2d, 217 797 p.2d, 477 (1990) And must not be bound by the trial courts labeled – finding of facts incorrectly labeled, as a conclusion of law, must be reviewed as “finding of fact” And a conclusion of law incorrectly labeled as a finding of fact will be reviewed as a conclusion of law, holding on *Willener v Sweeting* 107 Wn 2d. 388 394, 730 P.2d 45 (1986). *Woodruff v McClellan*, 95 Wn 2d 394, 622 P.2d 1268 (1980) – clear distinction exists.

#### PROXIMATE CAUSE:

All factual issues for which claim relies on are supported with sufficiency of evidence decided as a matter of law by Federal and Div-1 Court of appeal, for reasonable minds to reach conclusion “caused in fact”, (factual issues).

(i) Legal conclusion exists which is analyzed as an issue of law holding *Hertley V*

State , 103 Wn 2d 768 778-79 ,698 P.2d 77 (1985); Hertog v City of Seattle, 138 Wn 2d. 265,282-83,979 P.2d 400(1999) Citing Taggart V State , 118 Wn 2d 195,225-26 822 P.2d. 243(1992) .(ii) Therefore legal conclusion by WA Supreme court is necessary on policy issue ,resting on “mixed consideration of logic, common sense ,justice policy and precedent” Hertley V State.

### DEFENSE ATTORNEY'S CONDUCT:

Judgment obtained by fraud & influence. Defense attorneys, actively participated (personal involvement, RCW 9A.36.080) in Plaintiff's [asserts] discrimination of EEOC protected category national origin (Chen v. State & Estevez V Faculty Club Of Univ. Of Wash) and religion, knowing plaintiff's protected status, in discriminating him as Iranian descendant [portraying plaintiff flailing arms with hands when he was seated, has no knowledge of any weapon , to maliciously allege as “enemy combatant” with State Actor Boeing, to defraud and deprive,], by his name, we hold on to *Thomas V Eastman Kodak Co ., 183 F.3d 38,42,59-61 (1<sup>st</sup> Cir, 1999)*, National origin (as the subset of race) knowing Plaintiff's religion. Defense attorney used these judges and Judge Downing's previous prosecution with Judge Lasnik, for certain protected status of malicious discrimination case, to influence, protected statuses, against Plaintiff who is a Muslim to discriminate and gain favor of the court. Plaintiff asserts, therefore these were malicious tactic, determining & influencing factors (EEOC), in defendants' and defense attorneys' Discrimination collaboratively. Plaintiff holds on to Arman , 85 F.3d at 1083 , Kang v. U Lim Am., Inc 296 F.3d 810,817 (9<sup>th</sup> Circuit 2002). *kolstad v. American Dental*

Association, 119 S.Ct. intentional discrimination], Stegall v Citadel Board Co, Galadamez V potter, 415 F.3d 1015, 1025(9<sup>th</sup> circuit , 2005), Defendants and defense attorney imputed liability. Goodman v Boeing applies. Defense attorney used these/his& defendants 'protected statuses, in a racially discriminatory court & influenced the court, with reference of Judge Lasnik and Judge Pechman(see recusal motion and CR16 plaintiff's response)who the presiding judge is friends with, to influence in appearance of "actual bias"(28 USC 455,154)and evade from production of fraudulent exhibits submission, cover-ups of civil records of plaintiff,which Judge Downing stated criminal contempt's was not an issue withhim, improperly State v Cotcher, 52 Wn App. 350 , 759 P.2d 1216 (1998) applies. Trial court abused its discretion in recusal motion, abusing its discretion, holding on , State v Lougin 50 Wn App. 36,749 P.2d 173 (1998) , incorrectly ruling, under misstatements of prejudice that affected verdict , that denied plaintiff a fair trial, State v Reed , 102 Wn 2d,140,684 P.2d 699(1984). Judge downing discriminated Plaintiff from due process of 14<sup>th</sup> amendment, by favoring defense shortening original case schedule in discovery and subsequent timelines by which Plaintiff was prejudiced to complete discovery, and depose primary defendants and Larry Little(which defense objected with contempt as the judge shifted discovery control in defense favor), short cutting discovery against Plaintiff's objection and extension of time ,for deposition of stated non-party witness, even though plaintiff filed motion to depose them, to obtain information as direct evidence. Defense evaded and failed to produce material production-able evidence[MacDonnald Douglas] stated in motion to Compel supported by holding

of law and supporting motion, judge refrained from compelling defense to produce documents for production ignoring supporting motion to compel. Judge Downing committed actual bias under 28 USC section 455, 154 & deprived Plaintiff from due process of 7<sup>th</sup>, 14<sup>th</sup> amendment & violated Cary v Piphus willfully, intentionally, maliciously to defraud and deprive, unconstitutionally. As a result the summary judgment [decree] is unconstitutional & the order violated Beacon Theatres, Inc v Westover, 359 U.S. 500 (1959); Bouie v City Of Columbia, 378 U.S. 347 (1964); Cheney v. United States Dist. Court For D.C. (03-475) 542 U.S. 367 (2004) 334 F.3d 1096.; Greene v. United States, 376 U.S. 149, 153, n.5 (1964). Myers v. Bethlehem Shipbuilding Corp. 303 U.S. 41, 52, (1938); State Firm Mut Auto. Ins co. v. Campbell, 538 U.S. 408 (2003); Williams v. Lee, 358 U.S. 217, 218 (1959); – A clear departure of standard holding on Timken-Detroit Axle Co., 329 U.S. 129 (1946); Wilkerson v McCarthy, 336 U.S. 53, 55 (1949). Wilkerson v McCarthy. The standard of review by trial court is "clearly erroneous" State v Nordby 106 Wn 2d 414, 517, -18, 723 P.2d 117 (1986). Sunnyside Valley Irrigation Dist V Dickie, 149 Wn 2d. 873, 879, 73 P.3d 369 (2003). Plaintiff suffered injustice and inefficiency, at bias trial court. 14<sup>th</sup> amendment had been violated by Judge Downing (WA state official) and defendants, as a result of discrimination, for violation of constitutional rights, under 7<sup>th</sup>, 14<sup>th</sup>, 13<sup>th</sup> amendment. Therefore WA Supreme Court's direct review criteria under RAP 4.2 has been met appropriately. Reversal & direct review is appropriate, -an issue of /conclusion of law exists, State v Read, 147 Wn 2d 238 243, 53 P.3d 26 (2002) citing walker, 136 Wn 2d 2d at 771-72. Mahler V Szucs, 135 Wn 2d 398, 434-

35,957 P.2d 632, 966 P.2d 305(1998). Judge Downing abused power holding on De Beers Consol. Mines v .US 325 US 212 217(1945); in a reoccurring pattern. Therefore Gordon v New York Stock Exch ., Inc ,422 U.S 659,663 (1973). Rice v. Sioux City Mem'l Park Cemetery, 349 U.S 70,74(1995); Larry Shapero uses abusive /provoking language/mistreatment, in motion of summary judgement. Civil code are Not "boorish, obnoxious or but inappropriate Willful misconduct in violation of constitutional rights, -- as elements of Adams v Able Bldg Supply Inc, applies appropriately. Judge deliberately ignored clear and convincing evidence, created ambiguity & vagueness in his orders including summary judgment's which meets the definition of FRAUD, by the judge Downing. Reason and law exist that are malicious in nature by the judge and defendants. Requirement for Direct Review, is appropriately stated. Defendants' cover ups in violation of SOX, Violation of discovery exists, see above. Sanction to defendants and counselors is appropriate under Wash State Physicians Ins Exch&Ass'n VFisons Corp. 122 Wn 2d 299 339,858 P.2d 1054(1993)[discovery violation, evasion]. And Rivers, 145 Wn at 685. Plaintiff holds on to Mahler v Szucs, 135 Wn 2d 398, 433,-35, 957 P 2d, 632, 966, p.2d, 305(1998), for considering the above factors to deny any fee of any kind Sunnyside Valley Irrigation Dist V Dickie, 149 Wn 2d. 873,879,73 P.3d 369 (2003). Defense counsels and Riddle Williams P.S imputed liability from the date of furnishing the Court with Plaintiff's fraudulent civil case record originating from their firm itself, as stated by Larry Shapero, in his declaration [Galadamez V potter], in to leave to depose Kari Fogelman, to defame Plaintiff and continued on reoccurring till on and after summary judgement, well into the limitations period, in

malicious racial discrimination even with prior knowledge of plaintiff's other protected statuses ,national origin ,religion[Islam & in creed], color and race(minority),maliciously. Counsels, Kari Fogelman, and Larry Little did not disclose their protected status, We hold onto malice with ,(Black LAW DICTIONARY 862(5<sup>th</sup>ed 1972,see reply to defendant's Answer, page 2,3 ) , Intent and motive of discrimination persisted by defendants [the state actor],defense counsels. Court's Failure to sanction defense propagated discrimination (procedural alongside).

### OBSTRUCTION OF JUSTICE CLAIM

Plaintiff asserts obstruction of Justice Claim, by defendants, counsels and the law firm (Gordon v US) in evading and concealing or failing to produce "material" [MacDonald Douglas] "evidence"(Davy v. Fred Appliance] of elements of motion compel, influence and provoking judges who is friends with Judge Pechman and Lasnik(both judges discriminated Plaintiff in co-relate cases), in violation of due process of 14<sup>th</sup> amendment Cary v. Piphus applies.

### THREE STEP ANALYSIS

3 step analysis, ,isappropriately, applicable in WA State/ Supreme Court / Reviewing court, of this case given the elements below, are adequately met:(a)Are The reasons supported by evidence in the record(reviewed by Federal court &Div - 1 court of appeal)? The standard of review by trial court is "clearly erroneous " State v Nordby 106 Wn 2d 414, 517,-18, 723 P23 117 (1986). (b) Do the reasons justify a departure from the standard ranges? The standard of review is matter of

law Nordby, at 518 (c) Is the order clearly excessive in dismissing all claims both constitutional under WA state and federal law, after div-1 review and mandate? The standard of review is “abuse of discretion” State v. Oxborrow. Therefore these are Contrary to Myers v Boeing Co.

### ARGUMENT:

Plaintiff established, a case of, wrongful termination first (*Chen v State; Greenwood V Univ Of Puget Sound, Inc.* ), retaliation (in response to affirmative defense), Disparate treatment (*Pejic v Hughes Helicopters Inc.* (desperate treatment, Proven well with statutory model of ), based on Protected status (EEOC, *Kolstad v. American Dental Association*, 119 S.Ct. 2118 (1999) [intentional discrimination]) inclusive of national origin in replacement of plaintiff (see resp. to summary judgment page 1, holding *Thomas V Eastman Kodak Co.*, Arman, 85 F.3d at 1083 ), (see resp. to summary judgment page 13, para 2, page 14;) hostility, appropriately, holding on *Sunnyside Valley Irrigation Dist V Dickie*, 149 Wn 2d. 873, 879, 73 P.3d 369 (2003). Constructive discharge [see standards] *Jones v. Fitzgerald* 285 F.3d 705 (8th Circuit 2002) applies appropriately. Plaintiff proves “reasonably foreseeable” standards appropriately holding on *Tadlock v. Powell*, 8th Circuit, May 30, 2002. Therefore there exists sufficient “reasons” that the reviewing court failed to distinguish between “findings of fact and conclusion of law” in this case, holding on *State v Anderson*, 51 Wn App 775, 778, 755 p.2d 191 (1998) that does not convince the fair minded plaintiff that a conclusion of law thru proper justification and holding was provided, given the “occurred” or existed evidence of finding of facts, under due process of justice by trial court, is correctly labeled- in a pattern of

violation of application of statute, disregarding WA State, Federal and Constitutional rights of plaintiff. State v Law , 110 Wn App. 36 39 38 P.3d 374 (2002) , -reviewable appropriately. The construction & meaning of a statute applied in this case “ is a question of law” to be reviewed de novo; *Wash. Pub. Ports Ass’n v State Dept of Revenue*, 148 Wn 2d 37,646, 62 P.3d, 462 (2003). Similar way the “meaning of deed” or act by defendants, is an issue of law. *Martin v. City Of Seattle* 111, Wn 2d 727 765 p2d, 257 (1998), same as any undisputed facts. Plaintiff appropriately held on to his agreement under WAC 192-150-210 (6)(e), with the meaning of contract or agreement per standard of Boeing employee performance , on a question of fact holding on *Berg v Hudesman* , 115 Wn 2d 657, 668, 801 p.2d (1990). Genuine issue “of material facts exists” holding on standards for Review, for Trial. –why necessity exists under standard of review.-for reversal,(see Disputable issues). Plaintiff holds on to *Hadley v Baxendale* to recover all damages for breach in employment contract under WAC 192-150-210 6-e/42 USC , Under title VII. Plaintiff holds that the trial court improperly commented in the evidence and the comment is prejudicial, therefore issues of law exists holding on *Dybdahl* , 42 Wn App. At 489, on abuse of trial court’s discretion. Therefore judgment should be reversed only on either of the above standards for recovery of all damages under all 3 layers (WA State, Federal & Constitutional) legal violation by defendants: “No reasonable person”, Substantial evidence standard, for “Fact bound” appeal, therefore justifies merit. This case has established merit in federal and Court of appeal at Dvi-1 (CP 3180; CP 3291-3298,,CP59-62, CP186-189) earlier. Legitimate legal basis exists for trial by jury (7<sup>th</sup> amendment of the

constitution)contrary, holding on , that there are at least several genuine issues exist, and evidence exists that, “that a reasonable jury could return a verdict “for the Plaintiff. All claims be reinstated against the defendants, in reversal, on a question of law in abuse of the trial court’s discretion of dismissal of plaintiff’s claims.

### REVIEW APPROPRIATE, JUDICIAL ORDER ERRS:

Purported absence of evidence in support of the claims. “Individual or entity include to engage in improper discrimination are often clever enough to avoid leaving behind direct evidence of their wrong doing”. Plaintiff asserts that [such evidence exists in PIP(Performance Improvement Plan), defendants’ declarations and their representatives’, court intentionally overlooked “direct “ evidence” in de novo analysis of factual allegation in testimony (of direct evidence)and admissible evidence for claims of discrimination. ie. plaintiff’s deposition against defendants, compel motions for production, reminder witness depositions. Relying on reasonable inference & evidence as to the “motive” contrary to the statement, “the court is not permitted to engage in mere speculation” ignoring the fact that court of Appeal Div-1 mandate clearly established that sufficient evidentiary support exists for Plaintiff’s factual allegations, by a 3 panel judge. Within the Fine line of inference vs. speculation –each decomposed factual allegation supported with evidence accompany- “With direct testimony” and admissible evidence – judge took resort to “vagueness and ambiguity” in his order to avoid direct and circumstantial evidence, of testimony for the factual allegation of the claims

(wrongful act by Kari Fogelman untruthfully reporting to Kimberly Yeaton of plaintiff's performance related to CAMs , evidencing that EEOC(EEOC: CP3556 ; CP3265-3269(EEOC)/CP39-58) identified claims to be true. Subsequent CAMs and suspension memos' fraudulent statements embody the same CAMs' ,in a pattern of conduct, [prorogated] untruthful sentences – a pattern of wrongful act continued. Suspension notice stated in motion to compel had not been produced even after a supporting motion was filed by Plaintiff. Court failed to act, & prejudiced plaintiff. Judge Downing refused to recuse after multiple petition to recuse and reassignment to judge Spearman. Plaintiff pleaded in a court which was procedurally bias. Rather Judge's order show tactic and misinterpretation of facts that are supported with evidence[evidentiary support violated] where both statement of claims and hypothetical claims are supported with evidence of “ motive” that over come “the same actor inference] (see sur-reply) of summary judgment), motivated with act or intent to deprive and defraud plaintiff from his constitutionally protected employment rights , Federal laws of employment discrimination ,WLAD, to deprive and defraud- untruthfully disciplining and discriminating ,him for no just casewhen plaintiff performed within his contractual obligation under WAC 192-150-210 6-e/42 USC ,Under title VII of 1964, as agreed in agreement of exhibit , JD (CP4621-4625)& AW-1(CP3867-3880). No further manifestation of any mutual contract existed. In fact compelling reasons exist that entire record is accompanied with ,clear and convincing sound, reason that adverse employment action was drawn onto the Plaintiff, outside the legal boundary WITHOUT ANY DOUBT , violating state law, federal law and

constitutionally protected right of plaintiff, proven with direct evidence and testimony of wrongful conduct of Kari Fogelman and her collaborators defendants, in each and every stated claims that are supported with evidence – evidencing discrimination at employment during “ a non-tenure track role” [or job description did not include Delmia SME role or “required Delima knowledge”CP5357-5363] which plaintiff relied on (holding on *Brinkerhoff v Campbell*, 99 Wn App. 692,697, 994 P.2d 911(2000); *Yakima County Fire Prot. Disc No 12 v Yakima* , 122 Wn 2d 371, 389,858 P.2d. 245(1993) ; *Fich v Carlson* , 84 Wn 2d 140, 142,52, P.2d. 898 (1974), *Nationwide*,120 Wn 2d. at 187,citgin *Beaver V Estate Of Harris* , 67 Wn 2d. 621,626-27,409 P.2d 143 (1965) ) for a fulltime job at Boeing company. Hon Judge fraudulently falsified the role as tenure track, favoring defendants, after 3 panel judges review at div-1; unlawfully, *Orwick v Seattle*, 103.[At-will is a hybrid Law of English common & US Congr.’s employment law ]

### COURT OVERLOOKED DEFENDATS’ FRAUD

Furthermore, Plaintiff has proven with sufficient evidence that each of 9 elements of fraud are vividly present with clear, cogent and convincing evidence, throughout reply of Sum Judgment’s Appendices[CP6118-6628]and statement of claims and hypothetical claims exits that defense and defendants knowingly were engaged, in (1) representation of an existing fact(2)materiality (3) falsity(4)the speaker’s knowledge of its falsity(5)intent of the speaker that it should be acted upon by the plaintiff(6)Plaintiff’s ignorance of its falsity(7)Plaintiff’s reliance on the truth of the representation(8)Plaintiff’s right to reply upon it (9)

damages suffered by the Plaintiff holding on *Stiley v Block*, 130 Wn. 2d 486, 505, 925 p.2d 194 (1996). Plaintiff has proven with direct testimony of Russ Jones work related to Delmia and No Dash- HEI, that these are not in his JD / AW- 1, or in WAC 192-150-210 (6)(e), and he did not fail in understanding exhibits AW-1 or JD. Employer proffered explanations, in these matters are unworthy of credence and pretext. Therefore, [mutual] mistake existed by defendants , on ground of defendants' fraud and pretext that are unworthy of credence.( for exhibit JD or AW-1 of WAC 192-150-210 (6)(e)). Plaintiff was defrauded, by defendants, intentionally discriminating him. Specific and substantial, *Stegall v Citadel Board Co* , clear, cogent and convincing. *Beaver* , 67 Wn 2d at 626. Rather defendants' Kari Fogelman, Ken Naethe, Andrew Wright, Larry Little, Kimberly Truslon , Kimberly Yeaton , Steve Miller violated the terms of the agreement, holding on *Mesa v Poole*, 127 Ga. App. 426.193, S. E. 2d. 925 (1972) injuring Plaintiff maliciously. Plaintiff holding on fairly and knowingly made" standard, didn't sign untruthful CAMs or suspension memos(CP3860-61[B000126]CP4728-4729, CP3562) or post termination memo(, holding on *Finch v Carlson* , 84, Wn 2d. 140, 142, 524, P.2d.898(1974)Plaintiff did not sign any release, contrary to *Sofio v Hughes*, 162 A.D 2d. 518,556, N.Y.S 2d. 717(1990), quoting *Pimpinello V Swift & co.* 253 N.Y 159,163, 170, N.E 530(1930), Plaintiff was free from negligence, rather the defendants were engaged in willful negligence and illegal act that are unlawful and which went well into the limitations period even after termination and illegal suspension, which started on 4/25/2008(alleged wrongful act holding on *Antonius v King County* , 13 Wn 2d 256,261-62, 103, P 3d

729 (2004). Employer was bound by the agreement of JD and AW-1 and terms & conditions. Defense and defendants were induced by Fraud, mis representation and cover up. Similar holding under *Tiegs v Boise Cascade Copr*, 83 Wn App. 411,426, 922 P.2d 115 (1996) applies when Kari Fogelman knowingly, in willful negligence didn't inform Boeing HR to contact Plaintiff properly and employer failed to act in ensuring workplace returnable safety, for plaintiff, by employer and defendants from malicious intent, or act or motive, for returnable work environment (see Kimberly Yeaton's amicus & untruthful emails to VP, in her deposition on Aug 05 2008, Sarita Devi's email on 05 Aug 2008 to escort off, "mistreatment" [changing terms and condition, employer imputed liability under *Galadamez V potter*, 415 F.3d 1015, 1025(9<sup>th</sup> circuit, 2005). *EEOC v Boeing & Goodman v Boeing* applies appropriately, or contact Plaintiff without discriminatory amicus-preserving psychological (free from discriminatory amicus, RCW 49.60 as evidenced dispute over return to work) & for physical safety & presence without threat of being arrested or be "escorted off the Boeing premise". "Discrimination – illegal and nondiscriminatory by defendants, exists, - and ultimate question of fact" *Reeves V Sanderson Plumbing Prods Inc*, persisted "after suspension". *Goodman V Boeing* holds Plaintiff holds on to his claims stated and identified in EEOC complaint that he was discriminated with a combination of EEOC category violation: Race / national origin, religion (creed) and retaliation. in a continually persisting hostile work environment at Boeing. Manifestation of judicial error is clearly evident. *Orwick v Seattle*, 103. In fact defendants were not able to produce any non-discriminatory reasons to counter, the same actor

inference , when the same actor was Engadin an collaborative untruthful act to discriminate Plaintiff at workplace, Staub v. Proctor Hosp., 131 S.Ct. 1186 (2011)applies, WHICH compelled plaintiff to take resort to employer policy and WA State law to file written complaint to HR for illegal acts at workplace by his supervisor(s) and her collaborators besides verbally opposing illegal acts of defendants. Plaintiff was retaliated against in a pattern of following untruthful act to discriminate, discipline and terminate him in violation of statutory employment rights , protected under civil rights: WLAD, federal and constitutional principles of 7<sup>th</sup>, 13<sup>th</sup>,14<sup>th</sup>amendment. Clear and convincing evidence exists, that Plaintiff's supervisor(s) was engaged in untruthful act, that is wrongfulwith "intent and motive" - that overcomes same actor inference(see Sur-reply)- as a result of discriminatory amicus in clear contradiction of Judge Downing's Sum. Jgmt.Order ,(CP6113-15,in page 1 and 2 )overcoming. Kari Fogelman was motivated by malice when she exerted influence with "motivated malice" by untruthfully reporting to other collaborating, Sr managers, other non-direct supervisors. No doubt exists, Orwick v Seattle, 103.. Workplace hostility, persisted. Application of Staub v. Proctor Hosp., 131 S.Ct. 1186 (2011); is appropriate. Employers proffered explanation throughout the pleading is unworthy of credence EEOC v. Boeing holds , proven with factual allegations, for hypothetical claims, with direct evidence that collaborative discriminatory conduct by defendants deprived plaintiff from fair employment at Boeing. Proof of malice by defendants EXISTED. Plaintiff refused and retaliated to subject him to involuntary servitude to accept these malicious untruthful act under his

constitutional rights of the 13<sup>th</sup> amendment, and against oppression, disparate treatment and hostility, that are illegal act, at work, and were continually ongoing in pattern of conduct. ---discriminating Plaintiff's when he engaged in "protected act that "was a but -for" . "a cause" - existed as a "causation" - demonstrating "a causal link" - that he retaliated " against, defendants' illegal act, that violated WA state law, federal laws of employment discrimination protected under US constitution- arising from the same nucleus - defendants' discriminated him, violating 13<sup>th</sup> amendment of the US constitution, in engaging Plaintiff to sign & accept untruthful corrective action memos and fraudulent suspension memos, by a "tactic" "to encourage " Plaintiff to accept illegal act, to consent to their untruthful conduct towards him, - a pattern of malicious act which stemmed from untruthful and illegal conduct by his supervisor(s) Kari Fogelman , and defendants. Work place hostility , in a series of acts with clear presence of motive and intent" evidenced in exhibits, in a pattern of conduct that is unlawful existed, to deprive & defraud – the causes of each category of claims of EEOC , is appropriately stated within the statutory framework of WA state, federal law and claims under the constitution with sufficiency of evidence –specific and substantial. EEOC v Boeingholds. With "reason and law" (as a matter of law) Judge Downing 's order fails to persuade a fair minded person of the truth, that Justice was provided because "meaningful direct evidence were overlooked for each factual allegation devoid of any holding of law rather Judge attributes plaintiff's pleadings of civil rights as an "exercise"(disregarding constitutional rights, "Civil Code" when the claims were reviewed by a panel of judges with

mandate at Div-1, and by a federal judge justifying merits on grounds of discrimination under prevailing statutory framework. Judge excused his obligation cleverly prejudicing Plaintiff, sufficient enough to assert on the complaints face, that is “sufficient” to “persuade a fair minded person of truth, when judge didn’t compel to produce “material” evidence for suspension notice, or allow to depose witnesses, “violating Davy v Fred Appliance, in exclusion of evidence that is material. Rather judge held on excuse of “inference” and “speculation” for clearly stated claims with sufficient legal support with evidence –direct in nature & admissible, to pursue a fair minded person that the claims are true” contrary to prevailing legal standards - Not “speculation”. There exist undisputed evidence, “Not absence of Evidence” for each claim, that does not indicate any misrepresentation, or overreaching, holding on *Brinkerhoff v Campbell, 99 Wn App. 692,697, 994 P.2d 911(2000)*. These pattern” of facts that are clearly untethered” to establish factual allegation that are clearly absent in judge’s order, established the fact that manifest injustice and error is predominant and evident WHICH deprived Plaintiff from procedure, legal & protected rights, under state, federal law & constitution- on grounds of employment discrimination stated in EEOC complaint proven with evidence and law(, as a matter of LAW) that violated the prevailing 3 levels of statutory protection of law, for equal opportunity and civil rights in employment, as a result of discrimination by defendants. Therefore - genuine issue of “material” fact exists, that underlies all 3 levels of law.*Orwick v Seattle, 103*; which contradict that the summary judgment violated standards, resulting in judicial error – in manifest injustice and inefficiency. A pattern of

judicial conduct that violated procedure and due process, which started in repeated pattern by Kari Fogelman's deposition outside case schedule in Plaintiff's unavailability[see motion to activate the case 11-2-35677 SEA], leave to depose Kari Fogelman[of "Stay", defendants' violation of 14<sup>th</sup> amendment], judge Downing 's recusal & petition to chief judge Spearman for reassignment. A review therefore, justifies merit.

### TRIAL COURT DENIED A TRIAL BY JURY:

The trial court abused its discretion, in failing to bifurcate issues-damages for allowing to try by jury. A court has authority and discretion to bifurcate issues" in furtherance of convenience to avoid prejudices" CR 42(b), It is appropriately demanded by plaintiff to have trial on separate issues, when it can be done conveniently and expeditiously. Orland v Tegland, WASHINGTON PRACTICES at 350(1992)DISPUTABLE ISSUE EXISTS The de novo standard applies, for review for any appeal on determination which took the decision of a case out of the hands of the jury, such as motion to dismiss on grounds of , for insufficiency of evidence including summary judgment or motion for judgment as a matter of law – before or after a direct verdict (Judgment notwithstanding the verdict). Ricketts v Bd. of Accountancy, 11 Wn.app 113,116,43 P.3d 548 (2002).Plaintiff throughout the pleadings, in opening brief, response to & sur-replies to summary Judgment, has proven(*Plaintiff performed holding* PERC, 116 Santore,28) that clear and convincing disputes exists, in demonstrating with specific and substantial evidence, preponderance and substantial, for each Amended claim, in Plaintiff's analysis of

Defendants' motion for summary judgment & surreply with two systems of law" case laws of English common law, tort law as defendants are indeed collaboratively engaged in wrongful act, intentionally as tort feaors and violated federal, State, and constitutional laws(7, 13, 14<sup>th</sup> Amendment) that protected Plaintiff 's work right in wrongful termination as a result of discrimination on the stated EEOC categories, Stegall v Citadel Board Co [*Specific and subnational, issue facts exists*]. And that Plaintiff asserts defendants' proffered explanation in correlation to each claims, has been proven to be unworthy or credence, EEOC v Boeing, and that defendants' discrimination continued on, well in to limitations, period of EEOC claims, on Plaintiff's protected categories, national origin, deprivation & oppression (proven with wrongful judicial conduct and actual bias, in a discriminatory court by Judge Downing contrary to fair pleadings. We hold on to Goodman v. Boeing, that defendants' discrimination is not time barred. Therefore "no reasonable jury (person) will concur with Judge Downing 's decision, which has established merit in the Federal court & Court of appeal by a 3 panel judge, at Div -1, and the case would have establish merit, even on notwithstanding verdict, if a jury trial was allowed, Judge deprived Plaintiff's 7<sup>th</sup> amendment right.

1. Each appendix (CP6118-6196) of plaintiff's response to summary judgment, proves with clear and specific evidence, that in defendants' written corrective action memos against Plaintiff's for (i) violation of SIP&T attendance or any guideline, (ii) or any delegation, of any task "by him", to whoever, whatsoever [BR239(CP353), 250(CP4519)](iii) not following managerial direction for Delmia work (which is a Delmia SME task not in Plaintiff's agreed

role or job description , under 42 USC when no further manifestation of mutual ascent existed , which were deliberately and intentionally “acted “ormotivated”to discriminate [see exhibit stating “perfect”, email regard in Delmia task refusal in written retaliation] were devised to deprive & defraud Plaintiff, in collaboration with Kim Trulson&Kari Fogelman (iv) and a pattern of reoccurring statements in suspension memo and notice existed, to illegally suspend and subsequently to terminate Plaintiff , are in clear dispute, CONTARY TO FACT of truth, provided with specific and substantial evidence(resp. of plaintiff, appendix 0-5 of sum. Judgment). Stegall v Citadel Board Co, EEOC V Boeing,& Goodman v Boeing, discrimination and discriminatory amicus , accompanied with intentional discrimination , intent and motive are “present and vivid”[ Boeing defendants and their declaration evidences, Kolstad v. American Dental Association 119 S.Ct. intentional discrimination], & in their criminal contempt. Defendants are unable “to produce” or even in any form “persuade” that their proffered explanation (excuse) has any basis of credence.

2. Furthermore, each of 11 declaration (Hillary, Gerry, & (defendants' CP3557-3560, CP3553) are in clear dispute and contrary to fact, pretexted to evade liability and their assigned role or task, specific and substantial. Stegall v Citadel Board Co, EEOC V Boeing, holds we hold on to Goodman v Boeing. Rather the stated declarations proves that the defendants and witnesses(1) are collaboratively engaged in discrimination, in limitations period, Staub v. Proctor Hosp., 131 S.Ct. 1186 (2011), (are tort feasor Engaged in a wrongful act collectively), applies approximately. (3)Each element of prima facie case of

discrimination are reasserted, in protected category of national origin, race, religion, retaliation (both verbal or written : but for cause reasserted) , hostile work environment and desperate treatment on the protected status of Plaintiff , establishes relevant "causation" , existing causal link for "each" category claims and prima facie prologs, that clearly prove "dispute" exists, for which a trial by jury was appropriate. Judge violated 7<sup>th</sup> amendment & discriminated plaintiff. (3)

As the highest level of WA Court that preserve US citizen's constitutional right, Plaintiff, therefore doesn't fail to make a showing, that Defendants violated article III (Plaintiff possesses 3 elements of article III standing see appendix with case laws) and asserts anti trust against defendants', [Ashcroft v Iqbal holds] that Defendant Boeing and the named defendants & counsels, are collaboratively engaged in "an employment practice" with hostility, against EEOC protected categories, that "created" a desperate treatment for Plaintiff, and deprived his statutory right to work under WA state , federal & US constitutional law of nondiscriminatory employment practice. Therefore discriminatory animus and motivated malice," consciously" motivated defendants to discriminate plaintiff , knowing his protected status, towards illegal termination (adverse employment decision), forcefully subjecting him involuntarily, to tasks not in agreement (such as Delmia or Su 5.21, when no manifestation of mutual assent existed (Hearst Commc'ns , Inc V Seattle Times Co., 154 Wn. 2d 493,503, (2005)s ) beyond role/job description. The court will not impose obligation that the parties don't not assume for themselves holding Condon v. Condon, 177 Wn 2D 150,162(2013). (3) Plaintiff asserts claim against defense Attorney Larry

Shapero [( along with fraudulent production & wrongful act of producing civil record of plaintiff), as evidence , and his firm holding on Gordon v. US., ] that, he has racially discriminated [see , response to summary judgment, based on nation origin and religion, with intent to deprive and defraud ,RCW 9A.36.080] in wrongful act, knowing Plaintiff's protected status. Under Arman , 85 F.3d at 1083 , a conduct need not be overly racial in charter as long as harassment was because of race[national Origin or ancestry].” and meets “Two requirements for race[national Origin or ancestry].” based conduct enough to trigger potential liability of unlawful harassment”[RCW 9A.36.080](1) the conduct must be unwelcome. (2) the conduct must be sufficiently sever or pervasive to alter the terms and condition of employment in the victim's position and from perspective of a reasonable person in the victims poison(a fair minded person of the truth)” At this point the harassing conduct “offends title VII board rule[& title VII federal case laws,] of workplace inequality” under *Harris v Folsklift Sys, Inc 510 U.S 17, 22(1993)*. Galadamez V potter, 415 F.3d 1015, 1025(9<sup>th</sup> circuit , 2005) applies appropriately. Therefore Defense attorneys 'own personal involvement is present in the wrongful act, of discrimination holding on *Thomas V Eastman Kodak Co ., 183 F.3d 38,42,59-61 (1<sup>st</sup> Cir, 1999)*,. National origin(as the subset of race), therefore was a determining & influencing factor (EEOC), in defendants discrimination. Plaintiff holds on to Kang v. U Lim Am., Inc 296 F.3d 810,817 (9<sup>th</sup> Circuit 2002).& Arman , 85 F.3d at 1083.(met 2 element test above) – unwelcomed by Plaintiff. Goodman v.Boeing continues. As a result clear presence of malicious intent & motive of discrimination against Plaintiff's protected status , is proven with

specific and substantial evidence. Stegall v Citadel Board Co applies appropriately disputing “ascent “ of any kind on the stated premise, in employment discrimination by the defendants and their counsels. Assignment of Error: wherever plaintiff stated “failed act /failing act” Plaintiff referred to assert failed “to” act, failing to act.Affidavit as Praeipice: Plaintiff noted the following spelling Orientation and grammatical mistakes in Response to Summary judgment and Amended Claims of Clerk’s paper.

CORRECTION(CP4444-4481; EXHIBIT AT CP3860-5128):

CORRECTION PART-1: AMENDED CLAIMS:

NOTE: the exhibits are stated in original filing columns in relevant pages,Claims are rephrased here (below).Page 6, (o): Plaintiff asserts that there was no meeting with Ken ,Shaw and Kari Fogelman, Su 5.21 was not plaintiff’s SOW (AW-1)as exhibits email shows (from Kristi Patterson)Andrew Wright was the project Manager (PM) for that (Su 5.21 capability) ,who was responsible for P415 and P450 (deliverables) for Su 5.21 capability. (EEOC v Boeing),Page7,(t):Plaintiff asserts he was discriminated unfairly and was denied training from pertinent classes for required Delmia work, but he was given task that needed training :Delmia ,CATIA and ENOVIA. No training was provided to Plaintiff supported with Exhibits BR 000811-845(CP3951-3985).Page 9,(a8):Plaintiff asserts that he was not involved in property agreement done on company machine, it was faxed at 8:19 am for a housing need without leaving work, for work life balance. Plaintiff asserts Per exhibit BR 879 (CP4699)– of corporate security , in his action “no

substantial anomalies found”.Page 9, (a10):Plaintiff asserts defendants Kari Fogelman and Kimberly Trulson unlawfully intended to cause damage and defame Plaintiff when they were engaged in formulating unlawful complaints against Plaintiff as a result of discrimination , while they were engaged in providing falsified information in CAM to defraud, per BR 000857-868.( BR857-864=CP2453-2459;BR864-868(CP2448-2452);Page 10, (a13):Plaintiff asserts defendant Kari Fogelman (per exhibit BR 869[CP3989],email 3:08 PM from Kimberly Trulson Aug 20, 2008) discriminated Plaintiff even after plaintiff’s suspension and prior to suspension when she deprived Plaintiff from his employee rights to respond to unlawful Performance review by Kari Fogelman , Larry Little and Ken Naethe.Page 10, (a16):Plaintiff asserts defendants and Boeing investigator Sarita Blanchard Devi discriminated Plaintiff in defaming of his interaction with Lena Howard and have not produced “ numerous emails” from Lena Howard. Plaintiff asserts he had sent one email prior to meeting, to Lena Howard about job opening under her manager ( Kat Fournier) which he followed up by calling her manager, Kat Fournier, per exhibit BR855(CP4692).Page 10, (a17):Plaintiff asserts he was discriminated in initial project management for change request management, for capability Su 5.23, who’s change request was initiated by Plaintiff and from task performed for numerous project management matters which were managed by him ,including facilitating delegation from Andrew wright to Hillary, Page 10, (a18):Plaintiff asserts he was discriminated from corporate investigation, per email date of 6/24/08. From interviewing with Brian S , corporate investigator, in violation of his employee rights.[Stegall v Citadel Board

Co, Galadamez V potter, 415 F.3d 1015, 1025(9<sup>th</sup> circuit , 2005).Page 10, (a20): Plaintiff asserts he was discriminated in falsified statements by defendants, regarding participation as a project manager for domain funding meetings, in performance review by Kari Fogelman, which is contrary to fact.Page 12, para 21:Plaintiff asserts Defendant Kari Fogelman was engaged in malicious intent of discrimination of Plaintiff further, in violation of employee rights when she engaged cooperate investigation Norm Roberts with visible intent and of discrimination holding on RCW 49.60. Page 12, para 24(a):Stated Plaintiff as “employee is not working “ per BR 00066” (CP4665)or Does not appear to be working when she observes him misses deliverable” which is contrary to the fact.Page 13, para 27:Plaintiff asserts that Kari Fogelman , discriminated in Plaintiff’s performance review when she fraudulently stated by, (1) when ICA project was progressing per and GerogeBivino was only assigned to ICA IT project manager task later on, while Plaintiff still managed and conducted domain project manager role for ICA.Page 15, para 49:Plaintiff asserts , as a level 4 , Plaintiff certainly showed demonstration to lead and direct others all phases of assignmentincludinglagged behind projects of Andrew Wight to mobilize su 5.21,19,20, to engagement, close to release time , facilitating to task to junior PMs to complete those task on time releases: ex BR000888 (CP4796)and acted as (in a progressive work flow) per exhibits provided earlier:Page 16, para 53:Plaintiff asserts that defendants per exhibit BR0001036(CP4715) ,date 7/8/2008 discriminated him, when Plaintiff asserts that this (exhibit stated) documents is fraudulent , because the document date is 7/8/2008 and the statements of paragraph

7, and 8 are dated July 10 (7/10/2008) and July 11 (7/11/2008), formulated and sent on Aug 5<sup>th</sup> 2008 along with BR 001038(CP2622) (dated 7/8/2008) and plaintiff asserts that this was prepared to maneuver claims of unlawful performance review, CAM, per Defendants' counsel advice, to stupefy and "discriminate", Plaintiff of his SOW agreement at the beginning of employment. Page 18, para 61:[speculation exists]Plaintiff asserts Kari Fogelman again falsified as a result of discrimination when she states "I assumed" that Rahman must have thrown towards my seat when I was out of the room "which is fraudulent, pure speculation unsupported, conclusory.( see Ken Naethe's testimony ,Plaintiff was seated). Page 21, para 85:Plaintiff does not remember if he has numerous emails regarding job enquiry with Lena Howard, but he had spoken with her in person when she was in Everett, WA prior to suspension. Plaintiff did not see any production of number of emails between him and Lean Howard. Contrary to exhibit CP4733, AW-1(CP3798-3812).Page 21, para 90(ii): Plaintiff asserts he has stated, that Brent Skadan who was the lead developer should complete the test plan p415.

#### CORRECTION PART-2: CP3108-3139-AMENDED CLAIMS

Para2, line1:Plaintiff asserts Boeing & its defendants obstructed justice in the event.CORRECTION, SURREPLY (CP5190-5219)TO SUM. JUDGEMENT: page 2 line 4, "to help".page3 Zandiyeh; page4 line 9, pattern of condition, violating Boeing policy, line 11,[sign]; page 5 line 12, 8,9 line 14: omit [her];line 24: omit [other]; page6 line 15 who provided. Page7 line 17:commuted. Page 9 line 5 to 6:& plaintiff asserts on.Page11 line6: from SusanCarlson;line

2: Sign. CORRECTION[->](CP5159-5423,6118-6196) PLA'S: RES. TO SUM.  
JGMT. Page 2 line 20: which was according [to] this .Page 4: line 10: the same  
actor; line 11: and her non-supervisor collaborators; Page 5: line 13: Plaintiff; Page  
16: line 11: not replaced by Page 24, line 12 : agent -> against. Appendix 0  
page 2: line 12: to subject; page 7 line 13: obtain; line 23: result [of] discrimination.  
Page 9 , Line 2: FK->KF (Kari Fogelman); line 11: [Plaintiff] informed, by  
[calling] line 13: SIP&T [guideline,CP4353-43561], [disclosing]  
page 10, line 14: [structured]; page 11, line:21 [they] were fraudulent. Page 12: line  
6: EEC->EEOC. Line 20: "Specific and substantial". Page 15: line 10:  
guideline [nor]; page 8 line 12: Kari Fogelman ;-> per Kari Fogelman's email  
on 4/28/2008 and email to Cynthia Stevens. [during sick time of plaintiff] .  
Appendix 1: page 6 line 21: engaged-> engaging. Line 22: [didn't not] push  
off; page 8 line 9: reasonably -> responsibility. Line 17: 21-22 of page. Line  
18: Steve Miller. Appendix 2: page 9 : line 2: conduct [that] page 1 line 9:  
[Plaintiff] retaliated. Page 3 line 2 : to provide. Line 7: which -> who; page 5  
line: 6: FK->KF (Kari Fogelman); page 6, line 11: Andrew Wright [who]; page 7  
line 19: calling him , [for work]; page 8: line 6: Lien-> Line. Appendix 3: page 3  
line 19: [not]-> no; page 5 line 11: Plaintiff. Page 6: line 7: in-> is ; "causal  
link" [to]. Appendix 4: page 1, line 12: was engaged [ in ]; page 2 line 15: above 1-  
2.; page 4 line 10: cancelled. Line 23: [proffered]. Page 5 line 10: Plaintiff-  
>Plaintiff. line 8 Plaintiff's , Page 6 Plaintiff->Plaintiff; Appendix 5: page 2 line  
11: deferrable -> deliverable. Declaration of Shaw Rahman: page 5 line 16: Plaintiff-  
>Plaintiff; page 8 line 6, 11: initialed-> initiated. Page 9 line 15: fuel-> flue ; page

10 line 6 : help [omit a];line 12: run→ran. Page 11 line:13 “otherwise opposing”. Line 23: [breach.] , page 12 line : 16 went [to] meet. Page 13 ,line 2 : Plaintiff.page 13 line 9 [because]. Page 13 line 15 [opposing],line 18 refusing to sign. Page 15 line 13 [to contact].Page 16 line 5 [proffered];page17 line1,contact[Plaintiff].

### INVOLUNTARY SERVITUDE.

Plaintiff pleaded under all federal laws and federal case law with authority from US constitution. Any title VII covered employer is subject to action, for involuntary servitude(tone and manner by defendants as evidenced via direct exhibits of Court of Appeal Div-1 reviewed claims, holding on Runyon v. McCrary 427, US 160 (1976) and its constitutional authority of 13<sup>th</sup> amendment - Boeing a State Actor, violated fair employment practice of Constitutional, federal and WA State law. Involuntary termination /constructive discharge followed. Plaintiff asserts he was subjected and compelled to labor against his will by subjecting him to accept and was encouraged to accept fraud, compelling him to retaliate-- a “causation” existed between employers adverse Employment decisions towards him as a result of employer discrimination, appropriately claimed under 13<sup>th</sup> amendment. Plaintiff retaliated by verbally opposing and via Written complaints to Boeing management. Allison v City Of Settle, TexSw Med Ctr V Nassar 570 (verbal opposing) applies appropriately.

### SOX CLAIM

Plaintiff pleaded claims under SOX act at its nucleus(SOX 19 USC section

1513SOX section 1107, see motion to compel legal authorities), for causes of “unlawful termination”(by defendants collaboratively)which is, as unlawful termination, within limitations period of Federal authority of WA state laws of employment discrimination, not untimely, simultaneously under limitations period of title VII, as Stated earlier, and no amendment is needed for claims under the Same nucleus for federal laws. The limitations period of SOX Act as a result of wrongful termination is within the limitations Period of employment discrimination under title VII, as federal Authority of WA State Laws.Kolstad v. American Dental Association, 119 S.Ct. 2118(1999)[intentional discrimination] applies .Ashcroft v Iqbal on the grounds of anti-trust applies appropriately against defendants and representing law firm & attorneys of records must not obtain a licenseto evade holding Towmbly v. Bell Atlantic.

### BREACH OF CONTRACT

Plaintiff asserts Defendants’ breach the contract (exhibits JD &AW-1, WAC 192-150-210(6)(e)), protected under 42 USC, holding English common law, Hadley v Baxendale(consequential damages), as a result of wrongful termination and all stated EEOC category of discrimination, Workplace hostility , for which Fundamental, Repudiatory, Anticipatory breach claim against the employer, for all damages is justified. There was no further manifestation of mutual ascent existed. And the court will not impose obligation that the parties don’t not assume

for themselves holding Condon V Condon, 177 Wn 2D 150, 162-63 (2013). The only objective manifestation WHICH didn't not accompany any "unexpressed subjective intent", or such; existed only, was exhibit, AW-1's role & job description. A contract therefore, existed under Hearst Commc'ns Inc V Seattle Times Co., 154 Wn 2d 493, 503 (2005). Defendants breached the contract elements. Therefore the breach cannot be attributed to Plaintiff's performance nor court can impose such holding, Condon v Condon. Plaintiff remained in scope of employment agreement under 42 USC , WAC 192-150-210(6)(e), at all times. No "non discriminatory or lawful reason" for termination of Plaintiff, existed. Employer's proffered explanation is false, fraudulent EEOC v Boeing holds, Ashcroft v Iqbal on the grounds of anti-trust applies appropriately against defendants' license to evade holding on *Towmbly v. Bell Atlantic*. As a result, Plaintiff has proven that his claims against the defendants are well stated & Evidenced within WA state laws, their federal authorities & Constitutional statutory framework that Boeing's employment practice has created a disparate treatment, violating WA State law under title VII & its Constitutional authority (common law "bill") stemmed from the same nucleus.

### SUBSTANTIAL EVIDENCE STANDARD

Trial court failed to make a "supportable;" factual determination, -trial court abused its discretion or to hold law. Each claim accompanies direct and circumstantial evidence where" [whether ]substantial evidence supports the finding " in each and every claims and no doubt exists; *State v Jeannottle*, 13, wn 2d

847,856, 947, p 2d.1192(1997); Orwick v City Of Seattle. Statutorily (supported with law) defined. Convincing error exists in fact findings of trial court, which is clearly erroneous". Marriage of Scanlon, 109 Wn App. 167, 174-75,34 P.3d 877(2001) on specific facts in light of legal standards(ie verbal warning, CAMs , involuntary servitude in subjecting Plaintiff to sign fraudulent CAM memos and untruthful suspension memos[EEOC]), Not a routine employment discrimination or of a tenure track role, written to discipline& discriminate ,with untruthful words and sentence/contrary to fact in manner and tone of servitude, by Kari Fogelman &Kimberly Yeaton , Cynthia Stevens, Tim Sayers, Ken Naethe, Kimberly Truslon , per their testimony ,contradicting declaration, contrary, in cross comparison amongst them and in written[stated in Plaintiff's summary judgment response, ]with admissible evidentiary support.

### DEFAMATION CLAIM

Plaintiff asserts against defendants- the clear and convincing " standard:- "malicious discrimination". Plaintiff also proves , negligence wrongful act and willful discrimination by Kari Fogelman , Kimberly Yeaton, KenNaethe, Larry Little with, preponderance of the evidence and thereby have proven actual malice ,knowledge to falsify or reckless disregards of the truth or falsity by clear, and convincing evidence, Wood , 1007 Wn App. At 568; Richmond v Thompson, 130 Wn 2d 368,385-86.922 P 2d. 1343(1996) (the clear and convincing "standard of proof applies to actual malice in elements of claims appropriately. Plaintiff

challenges [CR 50,59] trial court's decision/judgment , for a review by the Supreme Court, based on the sufficiency of evidence for factual allegations.

v) Proper factor for forum non conveniens. (i) Trial courts treatment of these factors.

(ii) Arbitrability : holding on *Mount Adams Sch. Dist v Cook* , 113 Wn app. 472,477,54 p.3d. 1213(2002) –no unsupported factual findings exist that is based on untenable grounds or factual findings that are unsupported by the record, on the contrary (appeal at div-1 and mandate provided, for dismissal under CR12(b)(6)-all claims and hypothetical claims are true for relief, defendants admits no pretext by plaintiff, exists. *Postema v Pollution Control Hearings Bd.* 142 Wn 2d.68,122-23,11 P3d 726(2000). iii) Therefore this trial court's factual finding on summary judgement are entitled to no weight and the reviewing court, [standard] must (duty)review the record de novo. All facts and reasonable inferences therefore must be viewed most favorably to the party resisting the motion, even the facts are undisputed, if reasonable minds could draw different conclusions, summary judgement is improper. Holding on *Chelan. County Deputy Sheriffs; Ass'n V Chelamcounty.* & PERC 116, Santore 28.

### CONCLUSION: ORDER REVIEW

Plaintiff therefore, appeals by a panel of, non Jewish& non-India descendant, African American judges, for a de novo review of this case , because he was not only discriminated in procedure of, or due process at trial court but was oppressed , that deprived him from proper discovery , discovery in deposition and production of documents , in motion to compel” besides EEOC charges. Therefore all throughout this appeal Plaintiff has proven that, substantial evidence embodies

with reasonable inference , to assert with clear, cogent, and convincing evidence specific and substantial (Stegall v Citadel Board Co), in analysis of facts of claims ,that defendants, defrauded, misrepresented, overreaching, and obtained release, violating Summary judgment standards, in employment contrary to *Yakima County Fire Prot. Disc No 12 v Yakima* , 122 Wn 2d 371, 389,858 P.2d. 245(1993)& under the same holding, Plaintiff did not force or push off or delegate any task, proving CAMs suspension memo ,notice are fraudulent, no SIP&T or guideline was ever violated, No behavioral concern existed. Defendants pretext is FRAUD, EEOC v Boeing, unworthy of credence Miller 885 ,Milligan 110 holds. Judge erred to hold and execute law , depriving & defrauding Plaintiff by deliberately overlooking direct evidence of truth for each statement of claims, favoring defendants' counsel, which does not convince a fair minded person of the truth , with "reason and law ",that justice was provided, contrary to *Guijosa V Wal-Mart Stores*, in c 144 Wn . 2d 907,915,32 P .2d 250(2001). All claims are cognizable on holding of *Law.Orwick v City Of Seattle*,113 No doubt exists.Each Amended Claim and related BR number evidences in Clerk's Paper for entire docket, and div-1 , opening and reply briefs in correlation to (vs.) *Repose to Summary judgment*(appendix 0-5:CP5159-5423;6118-6196)&*Reply to Affirmative Defense* ,*Sur-reply*, clearly evidences, factual disputes with evidentiary support holding on, *Stegall v Citadel Board Co.* that defendants' proffered explanation with any such correlated production or even persuasion fails, *MacDonald Douglas V Green*, as unworthy credence, EEOC v Boeing. *Goodman v Boeing* applies, No non-discriminatory reason or lawful reasons exists, in defendants' pretextted proffered

explanation of collaborative discrimination. Staub v. Proctor Hosp., 131 S.Ct. 1186 (2011), defendants discriminated Plaintiff in returning and continuing to work violating RCW 49.60.030(1). Ashcroft v Iqbal (anti trust) and *Towmbly v Bell Atlantic* applies appropriately. Plaintiff has sufficiently, proven with reason, law and sufficiency of evidence, for his stated claim of EEOC complaint & appeals, for review. Plaintiff has rights to hold on to Declaration & Affidavit, Statement on Jurisdiction (1-10) for appealing to US Supreme court for any unforeseen/ wrongful determination in review for justice. Therefore, direct review justifies merit under WA Supreme Court RAP Rule 4.2(a)(1-4) & Judge Downing's order is unconstitutional. Plaintiff appeals to Hon. Court holding on *Reeves V Sanderson Plumbing Prods Inc. & Hertley V State*. with reason and law for deliberation & holds defendants on violation of stated claims & "civil code" [not boorish / Protected under Human Right's of United Nation's Charter asserting claims holding violation of UN Article 2-5,7-8,10,12, 23,25,28,29,30,22(ESD benefit CP 3814-3817 denial, Plaintiff asserts torturous claims against the defendants holding on Median v. Public Utility Dist. & RCW 4.92.110, RCW 4.16.170 ), for State Actor Boeing, WA ESD, Downing]. No insuperable bar exists (Contreras v. crown Zellerbach Corp), Plaintiff seeks Justice, see motion to transfer to US Supreme court [US Supreme Court rule 11,20 accompanies in claims of review by the US Highest court] denying jurisdiction. Plaintiff failed to obtain justice at this trial court for second time for its inefficiency and injustice under influence.

APPENDICES: Response & Sur-reply to Sum Judgment (CP 6118-6467). Court

of Appeal's Div -1 opening & reply brief, Amended Claims (CP1968-finishes CP2919 )[all designated sections of clerk's paper] Lt Col. George Prater Transcript[evidence existing "blues system " in stated email of Trina Goehring 4/28/08-4/29/08 (Plaintiff's sick time), email of plaintiff's residence updates resided in.; Entry to Canada on 3<sup>rd</sup> Aug 2008, email exhibits between Plaintiff, Judges & defense(CP1399-1493;CP1524-1528; CP 1547-1551;CP3014-3019); in Superior court. Motion to Transfer. Clerk's Paper:Post suspension Memo: CP3571, 3573, CP63-64; CAM1,2=CP65,66,reprs CP67-94&95-140;ESD =CP135-138; Refiled in Sup.CP141-479; dismiss and denial CP146-185;Motion to Remand CP 381-CP400;Fed Court motion to Deny Dismiss CP403-408;Judge Benton recusal CP1505-1515; Motion for leave CP 1543;Case: Activation CP 1500;Motion to compel: CP 1591-1601;CP 1596; CR16 Conf and response: CP 2990-2997; Case activation CP1500;Case schedule CP1322; CP 1397-1398;Affirmative defense resp / Reply to Answer:CP1081-1096; Corrective action memo (Kim. T to Steve Miller; PIP CP3863-3866;4728-4729) CP3563-3564; CIVIL REC FRAUD: CP3259; Plaintiff's Defamation claim CPCP3259 (3); Def.Fraud CP 3271; Specific Fraud admitted by Def. CP 3244(1-11); Case status Order: CP3102-3104; CP3188-3190; 3289-3290;Case status (2nd) CP3240-3241; CP3087-3088; Div-1 appeal orders- CP3182-3187; Motion of recusal and CR16: CP 3166-3175; CP3098-3101; CP3088-3101; Leave to depose Kari Fogelman CP 1540-1541;-CP3207-3232; Extension time CP 3323;Re-note and stay CP3143;Motion To Compel: CP 2926-2973; CP3077 -CP3086-in response to production CP1501-1504;Compel Kari F. to Answer questions CP1497-1498; Larry & Gina protective order response [still

Fraudulent] CP 3242- 3260; CP2923; Judge did not accept working copy by (CP3165) email From Indigent, Plaintiff CP3313; Extension CP 1588; Discovery- Subpoena Documents: CP1325-1329(for M. Pethe, Steve R.); CP1581-1585; Contact HR phone contact: CP88-91; CP exclude 3191-3198 substitute by 3333-3364; exclude CP5190-5204; & 5202-5219(Declaration of Shaw Rahman, Sur-reply filed at Supreme Court for character Clarity); affirmative defense CP4422-4433; CP5429-6112; EXIBITS in summary judgment: referenced by "JB1-9,P1-2, 23-1 thru 23-8, WH1-2, FE#1, IWA1-14, H1-17, STEVE, DCCS, DELEGATION, KF1040-1043, BR952, WBS, ETS, PBBC , KEVIN, OVER, 22-1 thru 22-41, Boeing pride, Q19 written Testimony of Kari Fogelman, M016s " are referenced in "CP rages for Plaintiff's Summary Judg. Resp. stated earlier" .Evidenced with followings: (CP4212-13 ) confirming that Andrew Wright is the PM for PBBC(su 5.21); PBBC testing , CP4214-virtual meeting for BP10.3 & Mitigation plan which Andrew Wright is responsible for Su 5.21 Test Plan, P415 were responsibility of Brent. Andrew asked development team of Su 5.21 , Brent for PBBC test CP4221 , CP4215; Andrew Wright was the PM PBBC/KBE Su 5.21: 5094-5098 & KBE which Kari Fogelman was aware of, Andrew as PM, and the need for a charge line for Brent CP4945-4946 for Test plan P415, P450; CP4262-4265; Andrew evidenced as PM for schedule access CP4265-4271; Andrew Wright as PM, Ken Naethe (owner of capability), Brent Skadan (developer) CP4951-4953, well Evidenced that Kari Fogelman was aware of (Implementation plan) , Andrew as project manager & maliciously scapegoated Plaintiff when Plaintiff was assisting to expedite the project close to deadline CP4954-4956. Kari Fogelman directed to take up CP

4274-4278 uncertified unauthenticated or no guaranteed work which is not Plaintiff's agreed SOW; Evidences CP 4921 [Andrew W. PM trying to scapegoat plaintiff, see email from Dina Siskos, clearly evidenced Andrew was the PM, Kari Fogelman was aware of the fact). Evidenced Andrew had action item before Moscow trip CP4944, and did not complete the action item CP4947-4949; for PBBC/Su 5.21 : CP4950-4952; CP4259; CP4255-4260 (Su 5.21); CP4266 Evidenced in CP4224 , even though not Plaintiff's task in agreement, Ken Naethe influences Kari Fogelman with task to assign to Plaintiff for P415,450 (CP4224). Plaintiff requests Su 5.21 Development team lead Brent who have tested the software to write the deliverable documents CP4225-4229. Plaintiff worked with Andrew Wright in arranged meeting CP4229. Plaintiff contributed (even though not Plaintiff's SOW, CP4233) to Test and Implementation Plan P415, P450 for Su 5.21: Evidenced in CP4230 , forwarded to Andrew to complete the overdue domain deliverable CP 4232. Without IPST Test software product release was not suggested by plaintiff, CP4234-4239. Cheryl Walchli was the focal for Su 5.21, 5.21, evidenced from Block point release sliding impact (CP4240-4246; 4261-4276) reported by Andrew Wright & Ken Naethe for S&S Domain when Ram Pranam looked for block point Sliding impact CP4248-4254 for PMO reporting . Plaintiff provided status report to PMO and Boeing subsidiary CDG related matters at SnS PMO. Evidenced Plaintiff requested training for Delmia or product involved, to perform task , CP4360, 4892-4899 which was denied but Delmia SLA or no Dash related work was assigned after such denial in violation of WAC 192-150 or 42 USC. Evidenced CP 5115-CP5116, Kari Fogelman falsified to HR, Cynthia Stevens regarding Plaintiff's

performance and attendance. Even when Plaintiff called his back up Norris Harper followed SIP&T guideline CP 5117-5118;CP5119-5121. During sick time Kari Fogelman disabled remote working access & halted communication with excuse and falsified to HR Maus Anthony about Plaintiff's performance with false statements regarding performance and over time; Kari Fogelman in a wrongful act falsified to Tim Sayers, her manager, contrary to fact even when Plaintiff followed SIPT& T guideline, when Cell phone call was directly made to her, CP5080-5082; CP4899-4900,CP5123-5126(Contrary to Norris Harper's testimony).Ken Naethe falsified to HR about role of "program manager" which never was discussed with Plaintiff. Ken Naethe was engaged in wrongful act with bad mouth, falsification with speculation to Boeing HR Cynthia Stevens CP5098-5104; Kari Fogelman prepared fraudulent(PIP)CP4915, after Aug 1,2008, CP4917, CP4921.

KimberlyYeaton was engaged in wrongful, malicious act, to spread fear by email disregarding Kimberly Trulson CP 5104- 5107. Kimberly Trulson's email evidenced Russ Jones was engaged in a wrongful act of defamation regarding Plaintiff's performance which Kimberly Trulson's evidences she obtained information from Russ Jones. Hillary was in mutual agreement with SNS Domain management CP 5087,5088-5089(Jeanne Holt's email CP 5083,to Ken Naethe's, per Ken Naethe's approval) for task that Andrew W. performed CP 5090-5092, which Plaintiff never had authority to or ever delegated/push off. Evidenced Kari Fogelman & Hillary in a behooving relationship CP4271,prior to plaintiff's suspension/termination, for Andrew W.'s SOW Su5.21,not Plaintiff's.

Plaintiff performed per 42USC,WAC192/CP5093,4871-4891,5114s/ShawRahman.

RULE OF LAW, STATUTES, BLACK LETTER, CASE, WA STATE LAW

FRE 302: In a Federal Court] diversity case [“discrimination”], the effect/evidence of a presumption is controlled by “state law”.

Abie State Bank v Bryan, 282 U.s 765,773 (1993)  
Adams c Allen , 56 Wn App. 383,393, 783 P.2d. 635(1989) [7]  
Am Nursery prods.,Inc v Indian Wells Orchards, 115 Wn 2d,217 797 p.2d,477 (1990)[16]  
American Fed’n of Musicians v Carroll, 391 US 99,106-07(1968),  
Ancheta v Daly , 77 Wn 2d 255, 259-60, 461 P.2d 531 (1969)  
Amendment XXII [1865]  
Antonius v King County , 13 Wn 2d 256,261-62, 103, P 3d 729 (2004).[27]  
Article VI  
Article III section 1,  
Article III at its nucleus and in more specific section 2[3]  
Arman, 85 F. 3d at 1083 [36]  
Asheroft v Iqbal  
Allison v. City Of Seattle [15]  
Barr v City of Columbia ,378 U.S 146,149(1964).  
Berg v Hudesman , 115 Wn 2d 657, 668, 801 p.2d (1990)[23]  
Beacon Theatres, Incv Westover,359 U.S 500(1959) [19]  
Beaver v. Estate Of Harris ,67Wn 2d. 621 ,626-27,409 P.2d 143 (1965)[27]  
Bering v share ,106Wn 2d 212,220,721,p.2d 918(1986).  
Brown v Dahl., 41 Wn App. 565 705. P 2d 781 (1985), [8]  
Brooke Group Ltd v Brown &Williamson Tobaccos Copr,509, US 209,230(1993)  
Brinkerhoff v. Campbell,99Wn App , 692 ,697,994 P. 2d 911 (2000) [26]  
BMW of North America ,Inc v. Gore, 517, U.S 559, 568(1996)  
Brinkerhoff v Campbell, 99 Wn App. 692,697, 994 P.2d 911(2000);[31].  
Bouie v City Of Columbia, 378 U.S 347(1964) [19]  
Cary v Piphus [11]  
Central Bank of Denver ,.N.A v First Interstate bank of Denver, 511 U.S 164 (1994)  
Chelan County Deputy Sheriffs; Ass’n v. Chelam County [46]  
Chen v State; Greenwood V Univ Of Puget Sound, Inc. [22]  
Cheney v. United States Dist. Court For D.C. (03-475) 542 U.S. 367 (2004) 334 F.3d 1096.)[19]  
Citing Taggart V State , 118 Wn 2d 195,225-26 822 P.2d. 243(1992)  
City of Memphis v Greene, 451, US ,100, 102,(1981)  
Cohen v. Beneficial Industrial Loan Corp., 337 U.S. 541 (1949).  
Contreras v. crown Zellerbach Corp 88 Wn 2d. 735, 742 , 565 P.2d 1173 (1977) [48]  
Condon v. Condon , 177 Wn 2D 150 , 162 (2013) [35,44]  
Davy v Fred appliance [14]  
De Beers Consol. Mines v .US 325 US 212 217(1945); [20]  
Douglas Northwest inc v Bill O’Brien & sons Constr., Inc 54 Wn App. 661 678, 828 P.2d 565 (1992). [16]  
Dybdahl , 42 Wn App. At 489 [23]  
EEOC v Boeing ,[28]  
Ernst Ernst v Hochfelder, 425 US ,185 (1976)-sup  
Estevez v Faculty Club of Univ of Wash 129 Wn App 774,797,120 P.3d 579 (2005)  
Exxon Co .,USA f Sofec , Inc, 517 US 830,840-41(1996);  
Farmers Ins co. V Grellis, 43 Wn. App.475 , 477, 718 P.2d. 812(1986)  
Finch v Carlson , 84, Wn 2d. 140, 142, 524, P.2d.898(1974) [27]  
Fraser v Beutel, 114 Wn. 2d 1025 (1990),

Galadamez v. Potter, 415 F. 3d 1015,1025 (9<sup>th</sup> Cir) [12,18]  
Gordon v US [22]  
Gordon v New York Stock Exch ., Inc ,422 U.S 659,663 (1973) [20]  
Goodman v Lukens Steel Co., 482 U.S 656,665(1987);-sup  
Graver Tan &Mfg .Co v Linde Air Prods. Co. 336 U.S 271,275,(1949)  
Greene v. United States, 376,U.S 149, 153, n.5(1964) [7,19]  
Greenwood v. UnivOf Puget Sound, Inc [22]  
Guijosa V Wal-Mart Stores, in c 144 Wn . 2d 907,915,32 P .2d 250(2001) [47]  
Hadley v Baxendale [23]  
Hallock v. Bonner, 387 F.3d 147 (2d Cir. 2004).  
Harris v Folsklift Sys, Inc 510 U.S 17, 22 (1993) [36]  
H. W PERRY, Jr , Decidingot Decide 246, 253-54(1991)  
Hearst Commc'snsInc v. Seattle Times Co., 154 Wn 2d, 493,503 (2005)[35]  
Henrickson v State ,92Wn App. 856,865,965 P.2d, 1126 [6]  
Hertley V State , 103 Wn 2d 768 778-79 ,698 P.2d 77 (1985); [11]  
Hertog v City of Seattle, 138 Wn 2d. 265,282-83,979 P.2d 400(1999) [17]  
Holland v Columbia Irrig, dist 75, Wn 2d 302,304, 450, P.2d. 488(1969) [8]  
Holz v Burlington Northern, 58Wn App 704,708,794 p2d. 1304(1990) [7]  
Jafar v Webb  
Jenkins v Snohomish CountyPub.Util .Dist no 1, 105 Wn 2d. 99, 713 p.2d 79 (1986)[16]  
Joyce v State Dept. of Corrections, 116 Wn App. 569,601,5 P.3d. 548(2003). [7]  
Jones Assocs V Eastside Properties Inc, 41 Wn App. 462,04 P.2d 681(1985) [7]  
Jones v. Fitzgerald 285 F.3d 705 (8<sup>th</sup> Cir 2002) [23]  
Kang v. U. Lim Am ., Inc 296 F. 3d 810,817 (9<sup>th</sup> Cir,2002) [17,36]  
Keller v.City Of Spokane ,146Wn 2d 237 250 ,44 P . 3d 845 (200) [8]  
king county Fire Prot. Dist No. 16 v Housing Auth., 123 Wn 2d 919,825, 872 P.2d 526  
(1994)  
King County v Wash State Boundary Review Bd. 122 Wn 2d. 648,675,860 P.2d.  
1024(1993)[16]  
Kim v Budget Rent A car Sys., Inc. 143 Wn 190,203 15 P 3d. 1283(2001)  
Kolstad v. American Dental Association, 119 S.Ct. 2118(1999)[intentional  
discrimination][13,18]  
LaBelle, 107 Wn 2d,196 728 P.2d 138(1986) [15]  
Laurins, 857 F.2d at 537  
Litz v Pierce County, 44 Wn App. 674,684 P2d.475 (1986) [8]  
MacDonald Douglas v Green ,411 [7]  
Mesa v Poole, 127 Ga. App. 426.193, S. E. 2d. 925 (1972) [27]  
Morgan V PeaceHeatheInc, 101 Wn App 750, 774 14 P.3d 773(2000) [7]  
Manteufel v Safeco Ins. Co of Am .,117 Wn App, 168,175, 68, P 3d 1093. [7]  
Martin v City Of Seattle 111, Wn 2d 727 765 p2d, 257 (1998), [24]  
Mahler V Szucs , 135 Wn 2d 398, 434-35,957 P.2d 632, 966 P.2d 305(1998).[20]  
Moreman v butcher, 126 Wn 2d. 36, 40, 891 P2d 725 (1995)  
Marriage of Scanlon, 109 Wn App. 167, 174-75,34 P.3d 877(2001) [45]  
Miller 885,  
Milligan 110  
Mount Adams Sch. Dist v Cook , 113 Wn app. 472,477,54 p.3d. 1213(2002)[46]  
Mobil Oil Corp v FPC, 417 US 283,310(1974)  
Myers v. Bethlehem Shipbuilding Corp. 303 U.S 41, 52,(1938); [19]  
Nationwide ,120Wn 2d at 187 , [26]  
Noble v Ogborn, 43 Wn App 387,390,717 P2d. 285.  
NCAA v Broad of Regents, 468,85,98 n.15(1994) ;  
Orwick v City Of Seattle [12]  
Pacesetter Real Estate, Inc v Fasules , 53 Wn. App 463,471,767 P.2d 961 (1989)  
Pimpinello V Swift & co. 253 N.Y 159,163, 170, N.E 530(1930), [28]

PERC 116 [46]  
Pejic v Hughes Helicopters Inc.(desperate treatment, Proven well with statutory model of ) [23],  
Postema v Pollution Control Hearings Bd. 142 Wn 2d.68,122-23,11 P3d 726(2000)[46]  
Reeves v. General Foods, 682 F.2d 515 (5th Cir. 1982), (which cites to and relies on Belton, Burdens of Pleading and Proof in Discrimination Cases. Towards a Theory of Procedural Justice, 34 VAND. L. REV. 1205, 1222 (1981). [28]  
Rivers, 145 Wn at 685 [20]  
Ridgewater Props v. Starbuck 1982 [1]  
Rice v. Sioux City Mem'l Park Cemetery, 349 U.S 70,74(1995) [20]  
Reicketts v Bd. of Accountancy, 11 Wn. App 113,116,43 P.3d 548 (2002) [3,32]  
Runyon v. McCrary 427, US 160 (1976) “, holding 13<sup>th</sup> amendment [42]  
Richmond v Thompson, 130 Wn 2d 368,385-86.922 P 2d. 1343(1996)[45]  
RCW 4.92110[48]  
RCW 4.16.170 [48]  
Rogers v Lodge,458 U.S 613,623(1982)  
Roche v. Evaporated Milk Assn.,, 319 U.S 21, 26(1943)  
Rooker-Feldman Doctrine  
Santore, 28 [46]  
Sanenz v Roe, 526 U.S 489, 498(1999).  
Schmidt v Cornerstone Inv. Inc ,115Wn 2d 148,159-60,795 p.2d 1143(1990) [15]  
Sing v John L. Scott, Inc 134 Wn 2d.24,30,948, P2d. 816(1997)  
Skamana v Columbia River GorgeComm'n, 144 Wn.2d.30.42.26. P.3d 241 (2001) [4]  
Sofio v Hughes, 162 A.D 2d.518,556, N.Y.S 2d. 717(1990), [28]  
SOX 19 USC section 1513  
SOX section 1107  
SOX Act, at its nucleus  
Stiley v Block, 130 Wn. 2d 486,505,925 p.2d 194 (1996).[27]  
State ex rel. Carroll v Junker, 79 Wn2d.12 , 26, 482 P2d. 775(1971)  
State v Read , 147 Wn 2d 238,243,53 P.3d 26(202) citing Walker ,136 Wn 2d at 771-72.[19]  
State v Cotcher, 52 Wn App. 350 , 759 P.2d 1216 (1998). [18]  
State v Lougin 50 Wn App. 36,749 P.2d 173 (1998) [18]  
State v Reed ,102Wn 2d,140,684 P.2d 699(1984) [18]  
State v Read , 147 Wn 2d 238 243, 53 {3d. 26 (2002) [15]  
State v Nordby 106 Wn 2d 414, 517,-18, 723 P23 117 (1986) [19,21]  
State v. Oxborrow, 106 Wn 2d 525, 532, 723, P.2d 1123 (1986) [22]  
State v Anderson , 51 Wn App 775,778, 755 p.2d 191(1998) [22]  
State v Bowen, 48 Wn App 187,190, 195 738 P 2d. 316 (1987) [8]  
State v Summers, 45 Wn App 761,728 P 2d.613(1986) [8]  
State v Avila-Avina, 99 Wn App. 9 ,13,991,P.2d 720(2000). [10]  
State v Lougin, 50 Wn App. 376,382,749 P.2d. 173(1998) [11]  
State v Reid, 74 Wn App. 281,289,872 P.2d 1135(1994) [11]  
State v Hill, 123 Wn. 2d 641,870 P.2d 313(1994) [11]  
State v Templeton, 148 Wn 2d. 193,220, 59 P.3d 632 (2002); [15]  
State v Law , 110 Wn App. 36 39 38 P.3d 374 (2002) [23]  
State v Green, 143 Wn 2d. 923,932, 26 P.3d 236 (2001) [ER 401,403][15]  
State v Banks, 149 Wn 2d 38, 44-45,65 P.3d 1198(2003)[15]  
State v Smith , 148 Wn 2d 122 ,138-39,59 P.3d 74 (2002). [15]  
State ex rel . Evergreen Freedom Found v Wash EducAss'n, 11 Wn App 586, 605 49 P.3d 894 (2002)  
State v Jeannotte, 13, wn 2d 847,856, 947, p 2d. 1192(1997); [44]  
Staub v. Proctor Hosp., 131 S. Ct. 1186 (2011) [29]  
Stegall v Citadel Board Co [10,33]  
State Firm Mut Auto. Ins Co v. Campbell, 538 U.S. 408 (2003) [19]

Sunnyside Valley Irrigation Dist V Dickie, 149 Wn 2d. 873,879,73 P.3d 369 (2003)[1]  
[Substantial evidence is "defined as a quantum of evidence sufficient to persuade a rational fair-minded person the premise is true].  
Taggart V. State , 118 Wn 2d 195 , 225-26,822 P. 2d 243(1992) [17]  
Tadlock v. Powell, May 30,2002(8<sup>th</sup>Cir) [23]  
Texas Department of Community Affairs v. Burdine, 450 U.S. 248 (1981) (1048) [sufficient basis to find discrimination] [15]  
TexSw Med Ctr v. Nassar 570 [14]  
Thorndike v Hesperian Orchards, Inc 54 Wn 2d.570 575, 343 p.2d. 183(1959)  
Timken-Detroit Axle Co., 329 U.S 129 (1946) [19]  
Thomas v French , 99 Wn 2d. 95, 104, 659 P.2d 1097(1983) [6]  
Thomas v. Eastman Kodak Co., 183 F.3d 38,42,59-61 (1<sup>st</sup> Cir,1999) [18]  
Tiegs v Boise Cascade Copr, 83 Wn App. 411,426, 922 P.2d 115 (1996) [28]  
Towmbly v Bell Atlantic  
US v. Harris [15]  
US constitution -1st<sup>th</sup> Amendment  
US constitution -7<sup>th</sup> amendment–Trial by jury  
US constitution -13<sup>th</sup> amendment – involuntary servitude.  
US constitution -14<sup>th</sup> amendment – involuntary servitude.  
Universal Camera Corp v. NLRB, 340 US 474,491(1951).  
United States v Doe, 465 U.S 605(1984);  
Wright v Georgia, 373 U.S .284 ,291(1963).  
US v. Su Gypsum , 333 U.S 364,395,68 C. Ct 525, 92 L. Ed, 746(1948);  
Walker , 136 Wn 2d 2d at 771-72.  
Ward v Love Cnty, 253 U.S 17,22-23 (1920)  
Wash State Physicians Ins Exch&Ass'n VFisons Corp. 122 Wn 2d 299 339,858 P.2d 1054(1993) [20]  
Wash. Pub. Ports Ass'n v State Dept of Revenue, 148 Wn 2d 37,646, 62 P.3d, 462 (2003)  
Welch v Southland Corp., 134 Wn 629,632 952 P.2d 162(1998), [16]  
Willener v Sweeting 107 Wn 2d. 388 394,730 P.2d 45 (1986) [17]  
Williams v State Dept of licensing, 46 Wn App. 453,731 P.2d 531 (1986)  
Williams v. Lee ,358 U.S ,217,218 (1959) [16,19]  
Wilkerson v McCarthy, 336 U.S 53, 55 (1949) [19]  
W. Hilll , LLC v City of Olympia , 115 Wn. App 444. 449, 63 P3d 160 (2003)  
Woodruff v McClellan, 95 Wn 2d 394,622 P.2d 1268 (1980) [17]  
Wood , 1007 Wn App. At 568; [45]  
Yakima County Fire Prot. Disc No 12 v Yakima , 122 Wn 2d 371, 389,858 P.2d. 245(1993),[26,47]  
28 USCA section 1251  
28 USCA-Section 2071 to 2077  
  
42 USC subchapter VI:  
  
§ 2000e. Definitions  
§ 2000e-1. Exemption  
§ 2000e-2. Unlawful employment practices  
§ 2000e-3. Other unlawful employment practices  
§ 2000e-4. Equal Employment Opportunity Commission  
§ 2000e-5. Enforcement provisions  
§ 2000e-6.Civil actions by the Attorney General  
§ 2000e-7. Effect on Statelaws  
§ 2000e-8. Investigations  
§ 2000e-9. Conduct of hearings and investigations pursuant to section 161 of title29

§ 2000e-10. Posting of notices; penalties  
§ 2000e-11. Veterans' special rights or preference  
§ 2000e-12. Regulations; conformity of regulations with administrative procedure provisions; reliance on interpretations and instructions of Commission  
§ 2000e-13. Application to personnel of Commission of sections 111 and 1114 of title 18; punishment for violation of section 1114 of title 18  
§ 2000e-14. Equal Employment Opportunity Coordinating Council; establishment; composition; duties; report to President and Congress  
§ 2000e-15. Presidential conferences; acquaintance of leadership with provisions for employment rights and obligations; plans for fair administration; membership  
§ 2000e-16. Employment by Federal Government  
§ 2000e-16a. Short title; purpose; definition  
§ 2000e-16b. Discriminatory practices prohibited  
§ 2000e-16c. Coverage of previously exempt State employees  
§ 2000e-17. Procedure for denial, withholding, termination, or suspension of Government contracts subsequent to acceptance by Government of affirmative action plan of employer; time of acceptance of plan

RCW 4.92.110

No action subject to the claim filing requirements of RCW 4.92.100 shall be commenced against the state, or against any state officer, employee, or volunteer, acting in such capacity, for damages arising out of tortious conduct until sixty calendar days have elapsed after the claim is presented to the \*risk management division. The applicable period of limitations within which an action must be commenced shall be tolled during the sixty calendar day period. For the purposes of the applicable period of limitations, an action commenced within five court days after the sixty calendar day period has elapsed is deemed to have been presented on the first day after the sixty calendar day period elapsed. [2009 c 433 § 3; 2006 c 82 § 2; 2002 c 332 § 13; 1989 c 419 § 14; 1986 c 126 § 8; 1979 c 151 § 4; 1977 ex.s. c 144 § 3; 1963 c 159 § 4.

RCW 4.16.170

Tolling of statute — Actions, when deemed commenced or not commenced.

For the purpose of tolling any statute of limitations an action shall be deemed commenced when the complaint is filed or summons is served whichever occurs first. If service has not been had on the defendant prior to the filing of the complaint, the plaintiff shall cause one or more of the defendants to be served personally, or commence service by publication within ninety days from the date of filing the complaint. If the action is commenced by service on one or more of the defendants or by publication, the plaintiff shall file the summons and complaint within ninety days from the date of service. If following service, the complaint is not so filed, or following filing, service is not so made, the action shall be deemed to not have been commenced for purposes of tolling the statute of limitations

JURISDICTIONAL (DESCRIPTION) LAWS CITED ABOVE:

28 USC section 1257(a), & "Rooker-Feldman Doctrine";

[To appeal “final judgement”(for errors of any” federal charter”) from to US supreme court on federal and constitutional question, “rendered by this highest court” in which “a decision on some federal questions “could be had” holding on 28 USC section1257(a), & “Rooker-Feldman Doctrine” and to “correct wrongs” of “constitutional dimension” to “enforce the commands of the United States Constitution” (Including supremacy clause, under Section 25 of the 1789 Act & 28 USC section1257(a), )]

Ward v Love Cnty, 253 U.S 17,22-23 (1920).

[(To such appeal “is within its province inquire whether a federal rights was denied by a state court “in substance and effect, as by putting forward nonfederal grounds of decision that were without any fair or substantial support” and that this inquiry “cannot be disregarded without neglecting or renouncing a jurisdiction conferred by law and designed to protect and maintain the supremacy of the constitution and the laws made in pursuance thereof” holding Ward v Love Cnty, 253 U.S 17,22-23 (1920). Florida v Rodriguez, 469 U.S 1,7 (1984) for supervisory authority of this highest WA Court of federal questions that pertains to defendants’ violation of plaintiff constitutional right. ]

Abie State Bank v Bryan, 282 U.s 765,773 (1993)

[ “it is incumbent upon this court when it is urged that the decision of the state court rests upon a non federal ground, to ascertain for itself, in order that constitutional guaranties may appropriately be enforced, whether the asserted nonfederal ground independently an adequately supports the judgement” holding on Abie State Bank v Bryan, 282 U.s 765,773 (1993)]

Beacon Theatres, Inc v Westover,359 U.S 500(1959);  
Bouie v City Of Columbia, 378 U.S 347(1964);  
Cheney v. United States Dist. Court For D.C. (03-475) 542 U.S. 367 (2004) 334 F.3d 1096.;  
Greene v. United States, 376,U.S 149, 153, n.5(1964). ;  
Myers v. Bethlehem Shipbuilding Corp. 303 U.S 41, 52,(1938);  
State Firm Mut Auto. Ins co. v. Campbell, 538 U.S. 408(2003);  
Williams v. Lee ,358 U.S ,217,218 (1959);

[ “Fair Reading” that Bouie v City Of Columbia, 378 U.S 347(1964) applies for US Supreme Courts oversight on question of fair reading”, Such “fair reading denial “constituted a denial of due process”. A “doubtful determination” by the trial court holding Williams v. Lee ,358 U.S ,217,218 (1959) , for determination of claims damages both punitive and actual, violating due process holding on to State Firm Mut Auto. Ins co. v. Campbell, 538 U.S. 408(2003) . “Clearly appears that the decree (order)was the result of an improvident “exercise” of judicial discretion”, holding on Myers v. Bethlehem Shipbuilding Corp. 303 U.S 41, 52,(1938); Beacon Theatres, Inc v Westover,359 U.S 500(1959) that have allow to hold a” jury trial”- depriving due process. Trial courts[court of claims] order of not allowing further administrative remedies must be denied and reversed, Greene v. United States, 376,U.S 149, 153, n.5(1964). ; Cheney v. United States Dist. Court For D.C. (03-475) 542 U.S. 367 (2004) 334 F.3d 1096.) ]

Barr v City of Columbia ,378 U.S 146,149(1964).

Wright v Georgia, 373 U.S .284 ,291(1963)

[The pleading includes citation of federal law, contrary to Wright v Georgia, 373 U.S . 284 ,291(1963). Enough admissible evidence exists to support each claims, to raise any question of sufficiency of evidence contrary to Barr v City of Columbia ,378 U.S 146,149(1964). ]

Gordon v New York Stock Exch ., Inc ,422 U.S 659,663 (1973)  
Rice v. Sioux City Mem'l Park Cemetery, 349 U.S 70,74(1995)  
13th amendment, title VII, 7<sup>th</sup> amendment

[Federal laws (recusal) have been violated , holding that the importance of the case is "beyond academic or episodic" holding Rice v. Sioux City Mem'l Park Cemetery, 349 U.S 70,74(1995) on a questions of federal & constitutional right (13th amendment, title VII, 7<sup>th</sup> amendment) violation, - a issue of the court deems of interest and importance not only to immediate parties to the case and is therefore worthy of further consideration. Gordon v New York Stock Exch ., Inc ,422 U.S 659,663 (1973)because of the vital importance of the question of rights and constitutional and the urging ]

BMW of North America ,Inc v. Gore, 517, U.S 559, 568(1996)  
H.W PERRY, Jr , Deciding to Decide 246, 253-54(1991)  
J.D.B v North Carolina, 131 S.Ct, 2394,2401(2011)

[Important and unsettled issues exist to prove that a conflict of decision exists to warrant further consideration holding on J.D.B v North Carolina, 131 S.Ct, 2394,2401(2011) holding that "due process" has been violated" warranting certiorari) holding that BMW of North America ,Inc v. Gore, 517, U.S 559, 568(1996) "to illuminate the character of the standard " holding Sanenz v Roe, 526 U.S 489, 498(1996). This Court must /to decide the cert worthiness under H.W PERRY, Jr , Deciding to Decide 246, 253-54(1991)

Timken-Detroit Axle Co., 329 U.S 129 (1946)  
Wilkerson v McCarthy, 336 U.S 53, 55 (1949)  
Wilkerson v McCarthy

[To Timken-Detroit Axle Co., 329 U.S 129 (1946) that trial court "refused with tactic, "to decide the constitution validity of a federal statue (due process recusal, case law of involuntary servitude)) because of the presence of non-constitutional issues that might alone have served as an adequate ground for disposition of the case" fairly. To Wilkerson v McCarthy, 336 U.S 53, 55 (1949) that "a decision not to correct, it was to let the administration of this law be governed not by the aim of the legitimation to safeguard employees but by a hostile philosophy that permeated its interpretation" (336, U.S at 69). Trial court violated procedure and philosophy of justice under Wilkerson v McCarthy.. A clear departure, from the acceptable course of judicial predesigns"]

City of Memphis v Greene, 451, US ,100, 102,(1981)  
Montana v Kennedy,366 U.S 308,309(1961)

[To this supervising court [article III] "[The Supreme Court stated that] ) the only matters of sufficient importance to merit appeal because the claims arises question on "those originating in the Constitution or statutes". 511 U.S. at 879; in a controlling question of law both federal and constitutional, to prevent grave miscarriage of justice holding on City of Memphis v Greene, 451, US ,100, 102,(1981) "because the record doesn't support that holding is lawful, for fact bound claims supported with evidence" Montana v Kennedy,366 U.S 308,309(1961) "in view of the apparent harshness of the result entailed".]

AT&T Mobility LLC v Conception, 131 S. Ct , 1740(2011))  
Graver Tan &Mfg .Co v Linde Air Prods. Co. 336 U.S 271,275,(1949)  
Exxon Co .,USA v. Sofec , Inc, 517 US 830,840-41(1996);  
Goodman v Lukens Steel Co., 482 U.S 656,665(1987);  
Mobil Oil Corp v FPC, 417 US 283,310(1974)  
NCAA v Broad of Regents, 468,85,98 n.15(1994) ;

Rogers v Lodge, 458 U.S. 613, 623 (1982)  
Universal Camera Corp v. NLRB, 340 US 474, 491 (1951).  
United States v Doe, 465 U.S. 605 (1984);

[To Graver Tan & Mfg. Co v Linde Air Prods. Co. 336 U.S. 271, 275, (1949) applies for obvious procedural violation of due process-recusal, (arbitration not properly ordered, by exclusion of exhibit, holding violation of AT&T Mobility LLC v Conception, 131 S. Ct., 1740 (2011)) for discovery for violation of rules and "as a court law" the appeal, is appropriate, holding on Exxon Co., USA v. Sofec, Inc, 517 US 830, 840-41 (1996); Goodman v Lukens Steel Co., 482 U.S. 656, 665 (1987); NCAA v Broad of Regents, 468, 85, 98 n.15 (1994); United States v Doe, 465 U.S. 605 (1984); Rogers v Lodge, 458 U.S. 613, 623 (1982). intervention of the highest Court. "in what ought to be the rare instances where the standard appears to have been misapprehended or grossly misapplied" Mobil Oil Corp v FPC, 417 US 283, 310 (1974) Universal Camera Corp v. NLRB, 340 US 474, 491 (1951).]

Brooke Group Ltd v Brown & Williamson Tobaccos Copr, 509, US 209, 230 (1993).  
[Plaintiff holds per American Fed'n of Musicians v Carroll, 391 US 99, 106-07 (1968), for reviewing sufficiency of evidence exists, on the merits of the claims, where "the issue is properly application of a legal standard and avoiding the systematic costs associated with further proceedings to justify the required expenditure of judicial resources" Brooke Group Ltd v Brown & Williamson Tobaccos Copr, 509, US 209, 230 (1993).

Central Bank of Denver, N.A v First Interstate bank of Denver, 511 U.S. 164 (1994);  
Ernst Ernst v Hochfelder, 425 US, 185 (1976)

[To reversal for the above lawful reasons, forth stated claims, for recovery, in this court, holding on Central Bank of Denver, N.A v First Interstate bank of Denver, 511 U.S. 164 (1994); Ernst Ernst v Hochfelder, 425 US, 185 (1976).

#### RCW 4.92.110

No action subject to the claim filing requirements of RCW 4.92.100 shall be commenced against the state, or against any state officer, employee, or volunteer, acting in such capacity, for damages arising out of tortious conduct until sixty calendar days have elapsed after the claim is presented to the \*risk management division. The applicable period of limitations within which an action must be commenced shall be tolled during the sixty calendar day period. For the purposes of the applicable period of limitations, an action commenced within five court days after the sixty calendar day period has elapsed is deemed to have been presented on the first day after the sixty calendar day period elapsed. [2009 c 433 § 3; 2006 c 82 § 2; 2002 c 332 § 13; 1989 c 419 § 14; 1986 c 126 § 8; 1979 c 151 § 4; 1977 ex.s. c 144 § 3; 1963 c 159 § 4.

#### RCW 4.16.170

Tolling of statute — Actions, when deemed commenced or not commenced.

For the purpose of tolling any statute of limitations an action shall be deemed commenced when the complaint is filed or summons is served whichever occurs first. If service has not been had on the defendant prior to the filing of the complaint, the plaintiff shall cause one or

more of the defendants to be served personally, or commence service by publication within ninety days from the date of filing the complaint. If the action is commenced by service on one or more of the defendants or by publication, the plaintiff shall file the summons and complaint within ninety days from the date of service. If following service, the complaint is not so filed, or following filing, service is not so made, the action shall be deemed to not have been commenced for purposes of tolling the statute of limitations

STANDARD FOR REVIEW – RULES CONTD.

Fed R CivP 56(c)

Celotex Corp v Catrett, 477 U.S 317,323 (1986)

Intel Corp v Hartford Accident & Indem Co, 952, F.2d 1551,1558 (9<sup>th</sup> Cir 1991).

[Significant & probative evidence exists [that defendants'] proffered explanation is a pretext and discrimination by employers ]

REASONING & HOLDING OF LAW- STANDARDS FOR REVIEW: LEGAL ISSUES- (LEGAL STANDARDS ON MATTERS OF LAW OVERLOOKED BY TRIAL COURT IN ERROR):

Rciketts v Bd. of Accountancy, 11 Wn.App 113,116,43 P.3d 548 (2002). [Review is appropriate holding on]

*Skamana v Columbia River Gorge Comm'n*, 144 Wn.2d.30.42.26. P.3d 241 (2001)

[The “de novo” or “error of Law” standard of review permits the reviewing court to substitute its judgement for that of the decision maker whose decision is being reviewed” Proper construction of statute a contract or Statue under title VII:

- I. Legal effect of a particular action
- II. Application of statute to an un/disputed set of facts
- III. Question of law – (All elements of claim are in direct co-relation of EEOC complaint, violation of Civil Rights of 1964 or sated category in employment discrimination.)
  - a. Direct evidence exists for defendants’ malice & cover-ups.
  - b. Due process violation, to produce and discover –deposition and documents production. Cary v Piphus, Cited, “Due process”, 14<sup>th</sup> Amendment.
  - c. Judicial conduct

[SECTION A]

- a) Farmers Ins co. V Grellis, 43 Wn. App.475 , 477, 718 P.2d. 812(1986)[ ambiguity]
- b) Pacesetter Real Estate, Inc v Fasules , 53 Wn. App 463,471,767 P.2d 961 (1989)[ applying objective standard]
- c) Noble v Ogborn, 43 Wn App 387,390,717 P2d. 285. [The Construction of a contract where the disputed evidence exists, concerning the parties intent]
- d) Sing v John L. Scott, Inc 134 wn 2d.24,30,948, P2d. 816(1997)[ If a particular acts by defendants gave rise to additional Act(title VII of 1964,SOX)/constitution or law violation]

A. THE DE NOVO STANDARD APPLIES,

[for review for any determination which takes the decision of a case out of the hands of the jury, such as motion to dismiss on grounds of legal grounds of for insufficiency of evidence

including summary judgment or motion for judgement as a matter of law – before or after a direct verdict (Judgement notwithstanding the verdict). ]

- B. Procedural Decision and Equitable Determination –abuse of discretion –(don't fall under acceptable range of possible decision. - Trial court erred and abused its discretion:
1. Factors involve proper non-prejudicial exercising discretion.

Smith v Shannon

2. 7<sup>th</sup> amendment.- Trial by jury.
3. Evidentiary Ruling-Relevancy of evidence:

MacDonanld *Douglas v Green ,411*; [Defendants, violating for discoverable documents, exclusion of evidence (Davy v Fred appliance);. ]

Joyce v State Dept. of Corrections, 116 Wn App. 569,601,5 P.3d. 548(2003)

[Defendants did not meet the burden of proof -a error that has harmed plaintiff in summary judgment order.]

Morgan V Peace HeatheInc, 101 Wn App 750, 774 14 P.3d 773(2000). [Manifested abuse of discretion]

Manteufel v Safeco Ins. Co of Am .,117 Wn App, 168,175, 68, P 3d 1093. “desired evidence will raise a genuine issue of material fact” [for additional discovery]

4. ER 403: Holz v Burlington Northern, 58Wn App 704,708,794 p2d. 1304(1990)  
*Jones Assocs V Eastside Properties.Inc, 41 Wn App. 462,04 P.2d 681(1985)*

[Balancing of Probative “value of evidence against its pre-judicial effect” - under

[The court made no finding of facts, therefore, the reviewing court must “accept the truth of the plaintiff's evidence and determine, whether the trial court properly applied the law” even when substantial evidence existed for each of plaintiffs' claim.]

State v Anderson , 51 Wn App 775,778, 755 p.2d 191(1998)

There exists sufficient “reasons” that the reviewing court failed to distinguish between “findings of fact and conclusion of law”, given the “occurred” or existed evidence of finding of facts],

State v Law , 110 Wn App. 36 39 38 P.3d 374 (2002)

Martin v City Of Seattle 111, Wn 2d 727 765 p2d, 257 (1998),

Wash. Pub. Ports Ass'n v State Dept of Revenue, 148 Wn 2d 37,646, 62 P.3d, 462 (2003)

[Federal and Constitutional rights ] The construction & meaning of a statues applied in this case “ is a question of law” to be reviewed de novo; “meaning of deed” or act , is an “ issue of law”. same as any undisputed facts.

Berg v Hudesman , 115 Wn

2d 657, 668, 801 p.2d (1990)

[On a question of fact. Genuine issue “of material facts exists” –why necessity exists under standard of review.-for reversal, ]

Dyb Dahl , 42 Wn App. At 489, - on abuse of trial court discretion

[Trial court improperly commented to evade, in evidence and the comment is prejudicial, therefore issues of law exists. ]Therefore judgment should be reversed only on either of the above standards for recovery of all damages under all 3 layers (State, Fed constitutional) legal violation by defendants.

STANDARDS - Therefore justifies merit.  
"No reasonable person",  
Substantial evidence standard.

Fact bound appeal Legitimate legal basis exists for trial by jury (7<sup>th</sup> amendment if the constitution)

[At least several genuine issues and evidence exists that, "that a reasonable jury could return a verdict "for the Plaintiff. ]

#### STANDARDS

Mobil Oil Corp v FPC, 417 US 283,310(1974) Universal Camera Corp v. NLRB, 340 US 474,491(1951)

Myers v. Bethlehem Shipbuilding Corp. 303 U.S 41, 52,(1938);

[ Trial court's decision "clearly appears that the decree (order)was the result of an improvident "exercise" of judicial discretion", - "in what ought to be the rare instances where the standard appears to have been misapprehended or grossly misapplied"].

Graver Tan &Mfg .Co v Linde Air Prods. Co. 336 U.S 271,275,(1949)

[Procedural violation of due process-recusal of judge, (arbitration not properly ordered), holding violation of AT&T Mobility LLC v Conception, 131 S. Ct , 1740(2011)) )- for discovery for violation of rules and "as a court law"

Exxon Co .,USA v Sofec , Inc, 517 US 830,840-41(1996);

Goodman v Lukens Steel Co., 482 U.S 656,665(1987);

Graver Tan &Mfg .Co v Linde Air Prods. Co. 336 U.S 271,275,(1949)

Gordon v New York Stock Exch ., Inc ,422 U.S 659,663 (1973)

NCAA v Broad of Regents, 468,85,98 n.15(1994) ;

Rice v. Sioux City Mem'l Park Cemetery, 349 U.S 70,74(1995)

United States v Doe, 465 U.S 605(1984);

[Procedural violation of due process- holding that the importance of the case is "beyond academic or episodic" holding on a questions of federal & constitutional right (13ht amendment, title VII, 7<sup>th</sup> amendment) violation, - an issue of the court deems of interest and importance not only to immediate parties to the case and is therefore worthy of further consideration. because of the vital importance of the question of rights.]

BMW of North America ,Inc v. Gore, 517, U.S 559, 568(1996)

J.D.B v North Carolina, 131 S.Ct, 2394,2401(2011)

Sanenz v Roe, 526 U.S 489, 498(1996).

[Important and unsettled issues exist to prove that a conflict of decision exists to warrant further consideration holding that "due process" has been violated" on denial of recusal warranting certiorari "to illuminate the character of the standard ]

H.W PERRY, Jr , Deciding to Decide 246, 253-54(1991)

["This Court must /to decide the cert worthiness]

#### STANDARD JUDICIAL CONDUCT:

Section 25 of the 1789 Act &  
28 USC section 1257(a)

"A judge's participation [in the trial] justifies a new trial only if the record shows actual bias or leaves an abiding impression that the jury perceived an appearance of advocacy or partiality." Laurins, 857 F.2d at 537

Trial judge which creates "a pervasive climate of partiality and unfairness." United States v. DeLuca, 692 F.2d 1277, 1282 (9th Cir. 1982).

Courts have said a trial judge must always remain fair and impartial. Kennedy v. Los Angeles Police Dep't, 901 F.2d 702, 709 (9th Cir. 1989). "He must be ever mindful of the sensitive role [the court] plays in a jury trial and avoid even the appearance of advocacy or partiality." Id. quoting United States v. Harris, 501 F.2d 1, 10 (9th Cir. 1974).

Mandamus - A (*writ of*) *mandamus* is an order from a court to an inferior government official ordering the government official to properly fulfill their official duties or correct an abuse of discretion. (See, e.g. Cheney v. United States Dist. Court For D.C. (03-475) 542 U.S. 367 (2004) 334 F.3d 1096.)

Rules on mandamus and similar orders vary by jurisdiction. In the federal courts, these orders most frequently appear when a party to a suit wants to appeal a judge's decision but is blocked by rules against interlocutory appeals. Instead of appealing directly, the party simply sues the judge, seeking a mandamus compelling the judge to correct his earlier mistake. Generally, this type of indirect appeal is only available if the party has no alternative means of seeking review.

Fundamental Breach, Repudiatory, Breach of Contract; anticipatory breach. Defendants re liable in all breaches

Exclusion clauses that prevent damage claims based on the contract are legal although they cannot operate to protect a party from fraud. Exclusions clauses must be brought to the attention of all parties and will be interpreted strictly against the author. A party can never agree to waive the right to address itself to a court of law absolutely and for all purposes for contractual redress although it can be bound to an agreement to prior arbitration or be bound to a waiver against a claim for damages. Mind you, even if a contracting party retains the right to petition a court, a court will, barring fraud, uphold a validly signed exclusion clause.

#### LEGAL STANDARDS - NO REASONABLE PERSON

Carróll v Junker, 79 Wn2d.12 , 26, 482 P2d. 775(1971)

["No reasonable person"[Standard Test -1 & its each isolated separate analytical steps individually], would take the view adopted by the trial court, for "abuse of discretion" and a review indeed compelling, is in need by Supreme Court. State ex rel. Carróll v Junker, 79 Wn2d.12 , 26, 482 P2d. 775(1971)]

Moreman v butcher, 126 Wn 2d. 36, 40, 891 P2d 725 (1995)

[(W)here the decision or order of the trial court is a matter of discretion, it will [not] be disturbed on review, except on a clear showing of abuse of discretion, that is discretion "manifestly ""unreasonable"[step] or exercised on "untenable grounds"[step], or for

untenable reasons” outside of “acceptable choices”[step] Moreman v butcher, 126 Wn 2d. 36, 40, 891 P2d 725 (1995)]

#### SUBSTANTIAL EVIDENCE STANDARD

Thorndike v Hesperian Orchards, Inc 54 Wn 2d.570 575, 343 p.2d. 183(1959)

[“A finding of facts will not be overturned if it is supported by substantial evidence” Thorndike v Hesperian Orchards, Inc 54 Wn 2d. 570 575, 343 p.2d. 183(1959)]

Bering v share ,106Wn 2d 212,220,721,p.2d 918(1986).

King County v Wash State Boundary Review Bd. 122 Wn 2d.648,675,860 p.2d. 1024(1993);

[Substantial evidence exists “if the record contains evidence of sufficient quantity to persuade a fair minded ,rational person of the truth of the declared premise” King County v Wash State Boundary Review Bd. 122 Wn 2d. 648,675,860 p.2d. 1024(1993); Bering v share ,106 Wn 2d 212,220,721,p.2d 918(1986). ]

Ancheta v Daly , 77 Wn 2d 255, 259-60, 461 P.2d 531 (1969).

Us v. Su Gypsum , 333 U.S 364,395,68 C. Ct 525, 92 L. Ed, 746(1948);

W. Hilll , LLC v City of Olympia , 115 Wn. App 444. 449, 63 P3d 160 (2003)]

[ “when although there is evidence to support exists, the reviewing court [in de novo]on the entire evidence, is [will be ]left with the definite and firm conviction that a mistake has been committed. Ancheta v Daly , 77 Wn 2d 255, 259-60, 461 P.2d 531 (1969). Us v. Su Gypsum , 333 U.S 364,395,68 C. Ct 525, 92 L. Ed, 746(1948); W. Hilll , LLC v City of Olympia , 115 Wn. App 444. 449, 63 P3d 160 (2003)]

Thorndike v Hesperian Orchards, Inc 54 Wn 2d.at 573-74.

[No lack of sufficient supporting evidence. Factual dispute exists. Appeal act of 1893 (Laws of 1893, ch 61, section 21 at 130, c) required a retrial of factual disputes in all non jury cases [demand for jury ignored] in which the evidence was brought up,.Laws of 1893, Ch 61.Thorndike v Hesperian Orchards, Inc 54 Wn 2d.at 573-74.

State ex rel . Evergreen Freedom Found v Wash EducAss'n, 11 Wn App 586, 605 49 P.3d 894 (2002) .

[Trial court’s decision[abuse of discretion in exercising standard in summary judgement ] is therefore not only wrongful under the applicable standard but , unfair, unjust under any view of the case –(i)factual[facts meet requirement of correct standard),(ii)procedural and (iii)legal(determination of law in exercising judgement , requires de novo review) State ex rel . Evergreen Freedom Found v Wash EducAss'n, 11 Wn App 586, 605 49 P.3d 894 (2002) ].

Accord Ryan v State , 112 Wn. App 896,899-900 P.3d 175 (2002)

[Trial court’s decision is based on misapplication or no application of law and rests on untenable grounds, holding on Accord Ryan v State , 112 Wn. App 896,899-900 P.3d 175 (2002)]

STANDARDS CLAIM FOR CONSTRUCTIVE DISCHARGE:

*Jones v. Fitzgerald* 285 F.3d 705 (8th Circuit 2002). [The constructive discharge doctrine, in the case of]

[Plaintiffs Have a Constructive Discharge Claim Only if Plaintiffs Were Subjected to an Illegal Hostile Work Environment]

[A claim of constructive discharge only lies where an illegally hostile work environment left the employee with no choice but to resign].

If Plaintiffs Quit Your Job Because of One of These Scenarios, Plaintiffs May Have a Constructive Discharge Case

Or a work environment filled with racism, or extreme and overt criticisms based upon a person's age, sex, national origin, religion, etc. Besides

If Plaintiffs have to quit your job because of severe mistreatment by management and/or co-workers, Plaintiffs may be entitled to unemployment benefits even if Plaintiffs were not subjected to an illegal hostile work environment.

STANDARDS FOR CLAIMS:

- [1) Plaintiffs were the victim of sexual harassment by your supervisor or boss;
- 2) Plaintiffs were the victim of sexual harassment by a co-worker and complained to management, but it failed to take steps to fix the problem, which then continued;]
- 3) Plaintiffs were treated badly at work, and it was made clear that the mistreatment had come about because Plaintiffs were disliked because of your age, sex, race, national origin, religious beliefs, or disability;
- 3) Plaintiffs were treated badly at work, and it was made clear that the mistreatment had come about because Plaintiffs were disliked because of your age, sex, race, national origin, religious beliefs, or disability;
- 4) Plaintiffs made a reasonable complaint that Plaintiffs believed Plaintiffs were being treated badly because of your age, sex, race, etc., management responded ineffectively and the environment became even more hostile. This is known as a unlawful retaliation claim.
- 5) Plaintiffs took leave under FMLA, sought overtime to which Plaintiffs believed Plaintiffs were entitled, sought a reasonable accommodation under ADA or filed a workers' compensation claim -- and thereafter were retaliated against by your employer via mistreatment, change of duties,
- 6) Plaintiffs made a whistleblower complaint, and were thereafter subjected to a hostile work atmosphere.

“REASONABLY FORESEEABLE” STANDARD

Tadlock v. Powell, 8th Circuit, May 30, 2002

[In May 2002, the Eighth Circuit Court of Appeals in St. Louis indicated that a trial court should be willing to infer the required intent to force Plaintiffs out, by using the "reasonably foreseeable" standard: A plaintiff may satisfy this intent requirement by showing the intolerable situation created by the employer was such that the employer could reasonably foresee that the employee would quit. Quoted from Tadlock v. Powell, 8th Circuit, May 30, 2002 (PDF file - opens in new window).]

### STANDARDS - ARTICLE III STANDING

Lujan v. Defenders of Wildlife, 112 S. Ct. 2130, 2136 (1992) (Lujan).

[The legal right to initiate a lawsuit. To do so, a person must be sufficiently affected by the matter at hand, and there must be a case or controversy that can be resolved by legal action. There are three requirements for Article III standing: (1) injury in fact, which means an invasion of a legally protected interest that is (a) concrete and particularized, and (b) actual or imminent, not conjectural or hypothetical; (2) a causal relationship between the injury and the challenged conduct, which means that the injury fairly can be traced to the challenged action of the defendant, and has not resulted from the independent action of some third party not before the court; and (3) a likelihood that the injury will be redressed by a favorable decision, which means that the prospect of obtaining relief from the injury as a result of a favorable ruling is not too speculative. Lujan v. Defenders of Wildlife, 112 S. Ct. 2130, 2136 (1992) (Lujan). The party invoking federal jurisdiction bears the burden of establishing each of these elements. Id. ]

Warth v. Seldin, 422 U.S. 490, 501 (1974) (Warth).see also Warth, 422 U.S. at 501

[In deciding whether \_\_\_\_\_ has standing, a court must consider the allegations of fact contained in \_\_\_\_\_'s declaration and other affidavits in support of his assertion of standing. See Warth v. Seldin, 422 U.S. 490, 501 (1974) (Warth). see also Warth, 422 U.S. at 501 (when addressing motion to dismiss for lack of standing, both district court and court of appeals must accept as true all material allegations of the complaint and must construe the complaint in favor of the party claiming standing).]

Associated General Contractors of California v. Coalition for Economic Equity, 950 F.2d 1401, 1406 (9th Cir. 1991) (quoting United Public Workers, 330 U.S. at 89), 112 S. Ct. 1670 (1992).

Levitt, 302 U.S. 633, 634 (1937).

National Environmental Policy Act (NEPA), 42 U.S.C. S 4331, etseq

[Standing is founded "in concern about the proper--and properly limited--role of the courts in a democratic society. "Warth, 422 U.S. at 498. When an individual seeks to avail himself of the federal courts to determine the validity of a legislative action, he must show that he "is immediately in danger of sustaining a direct injury." Ex parte Levitt, 302 U.S. 633, 634 (1937). This requirement is necessary to ensure that "federal courts reserve their judicial power for `concrete legal issues, presented in actual cases, not abstractions.'" Associated General Contractors of California v. Coalition for Economic Equity, 950 F.2d 1401, 1406 (9th Cir. 1991) (quoting United Public Workers, 330 U.S. at 89), cert. denied, 112 S. Ct. 1670 (1992). National Environmental Policy Act (NEPA), 42 U.S.C. S 4331, etseq]

### SUBSTANTIAL EVIDENCE STANDARD

Mount Adams Sch. Dist v Cook , 113 Wn app. 472,477,54 p.3d. 1213(2002)  
Marriage of Scanlon, 109 Wn App. 167, 174-75,34 P.3d 877(2001)on specific facts in light of legal standards

- i) Postema v Pollution Control Hearings Bd. 142 Wn 2d.68,122-23,11 P3d 726(2000)  
Proper factor for forum non conveniens
- ii) Trial courts treatment of these factors
- iii) Arbitrability : holding on Mount Adams Sch. Dist v Cook , 113 Wn app. 472,477,54 p.3d. 1213(2002)

#### STANDARD IN DEFAMATION CLAIM

Richmond v Thompson, 130 Wn 2d 368,385-86.922 P 2d. 1343(1996)  
Wood , 1007 Wn App. At 568;

[The clear and convincing “ standard:-“malicious discrimination”.  
Wood , 1007 Wn App. At 568; Richmond v Thompson, 130 Wn 2d 368,385-86.922 P 2d. 1343(1996) (the clear and convincing “standard of proof applies to actual malice in elements of claims appropriately.

Ass’n V Chelamcounty , 109 Wn 2d, 282,745 p.2d 1(1987)  
Chelan. County Deputy Sheriffs

[Trial court’s factual finding on summary judgement are entitled to no weight and the reviewing court, [standard] must (duty)review the record de novo. All facts and reasonable inferences therefore must be viewed most favorably to the party resisting the motion, even the facts are undisputed, if reasonable minds could draw different conclusions, summary judgement is improper. Holding on Chelan. County Deputy Sheriffs; Ass’n V Chelamcounty , 109 Wn 2d, 282,745 p.2d 1(1987)]

#### STANDARDS& / DEFINITION

Involuntary Termination Without Good Cause” under the standards of the “constructive discharge” doctrine. “Adverse Employment Action” consists of a termination, or a demotion, or some other serious thing that hurts Plaintiffs’ working conditions sufficiently.

#### STANDARDS “CONSTRUCTIVE DISCHARGE”

“Constructive Discharge”:

STANDARDS: Mistreatment toward Plaintiffs occurs at work, within the power of the employer to stop. (Plaintiffs will ultimately have to prove that the mistreatment was caused by the employer’s plan to force Plaintiffs to quit, or that the employer refused to stop others from mistreating Plaintiffs because the employer wanted Plaintiffs to quit)

#### STANDARDS - MISTREATMENT CLAIM:

Mistreatment: Employment legal rights violated on managers non managers commenced a form of Retaliation against.

- o Rude or disrespectful treatment toward Plaintiffs by Plaintiffs superiors

- Unreasonable denial of the usual fair treatment given to others
- Unfair write-ups about petty things
- Bad performance reviews after a history of good performance
- Denial of promotions or raises or transfers or favorable assignments
- Unreasonable raising of the quota, or unfair criticism for failure to meet quota

STANDARDS /EVIDENCED If Plaintiffs have a Contract or Non-Compete Agreement the employer may be trying to force Plaintiffs to quit because of the effect on those agreements. The mistreatment is so bad that a reasonable person would rather quit than be subjected to it. Complain in a reasonable manner to upper management, or to human resources, or to some other designated manager at work, and give the employer a chance to stop the mistreatment before Plaintiffs quit.

- STANDARDS: The employer failed to fix the problem, and does not have a legally sufficient excuse for its failure to fix the problem.

Employers who care about preventing legal claims will take steps to try to address Plaintiffs concerns. Employers whose primary motivation is to build a defense against Plaintiffs anticipated lawsuit will make it look like they are trying to address Plaintiffs concerns, but nothing much will change as far as Plaintiffs can tell.

- STANDARDS: The mistreatment continued after Plaintiffs made a proper complaint.

The employer's goal is to get Plaintiffs to quit, without giving Plaintiffs enough evidence to win Plaintiffs case, without giving Plaintiffs enough evidence of an evil motive and a pattern showing a plan to drive Plaintiffs out. Once Plaintiffs make a complaint, the employer will probably take some steps to address the precise problem Plaintiffs complained of. But the employer might not do anything to fix the real issue: Some manager is trying to force Plaintiffs to quit.

STANDARDS: The manager will now change tactics. If he was writing Plaintiffs up unfairly for minor workplace errors, he might stop doing that for awhile. Instead, he'll write Plaintiffs up for minor tardies that no one cared about previously. Or he might just start being rude to Plaintiffs, or denying Plaintiffs requests for days off, and on and on and on - the pattern of mistreatment will continue, but the tactics will change. The employer (who knows the law because he's already talked to his lawyer) will probably be very careful not to ever do anything to Plaintiffs that is clearly a single really evil act. The most he will do is a pattern of little acts. The employer knows that Plaintiffs will have a tough time getting a judge to agree that these little things would cause a reasonable person to quit their job and choose unemployment.

#### STANDARDS

STANDARDS: the employer "intended" to drive Plaintiffs out through the mistreatment. But the court will probably allow Plaintiffs to infer the "intent" from the circumstances.

STANDARDS: evidence that the employer intended to drive Plaintiffs out. Employer intended to make Plaintiff quit?

STANDARDS: to court to "infer" the intent from the circumstances. It should be enough that Plaintiffs have proven that the employer was mistreating Plaintiffs and unreasonably failed or refused to stop.

**THE GENERAL ASSEMBLY proclaims THIS UNIVERSAL DECLARATION OF HUMAN RIGHTS**

as a common standard of achievement for all peoples and all nations, to the end that every individual and every organ of society, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance, both among the peoples of Member States themselves and among the peoples of territories under their jurisdiction.

**Article 1.**

- All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.

**Article 2.**

- Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty.

**Article 3.**

- Everyone has the right to life, liberty and security of person.

**Article 4.**

- No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms.

**Article 5.**

- No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

**Article 6.**

- Everyone has the right to recognition everywhere as a person before the law.

**Article 7.**

- All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.

**Article 8.**

- Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.

**Article 9.**

- No one shall be subjected to arbitrary arrest, detention or exile.

**Article 10.**

- Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.

**Article 11.**

- (1) Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defense.
- (2) No one shall be held guilty of any penal offence on account of any act or omission which did not constitute a penal offence, under national or international law, at the time when it was

committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the penal offence was committed.

**Article 12.**

- No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks.

**Article 13.**

- (1) Everyone has the right to freedom of movement and residence within the borders of each state.
- (2) Everyone has the right to leave any country, including his own, and to return to his country.

**Article 14.**

- (1) Everyone has the right to seek and to enjoy in other countries asylum from persecution.
- (2) This right may not be invoked in the case of prosecutions genuinely arising from non-political crimes or from acts contrary to the purposes and principles of the United Nations.

**Article 15.**

- (1) Everyone has the right to a nationality.
- (2) No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality.

**Article 16.**

- (1) Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution.
- (2) Marriage shall be entered into only with the free and full consent of the intending spouses.
- (3) The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.

**Article 17.**

- (1) Everyone has the right to own property alone as well as in association with others.
- (2) No one shall be arbitrarily deprived of his property.

**Article 18.**

- Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.

**Article 19.**

- Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

**Article 20.**

- (1) Everyone has the right to freedom of peaceful assembly and association.
- (2) No one may be compelled to belong to an association.

**Article 21.**

- (1) Everyone has the right to take part in the government of his country, directly or through freely chosen representatives.
- (2) Everyone has the right of equal access to public service in his country.
- (3) The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures.

**Article 22.**

- Everyone, as a member of society, has the right to social security and is entitled to realization, through national effort and international co-operation and in accordance with the

organization and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality.

**Article 23.**

- (1) Everyone has the right to work, to free choice of employment, to just and favorable conditions of work and to protection against unemployment.
- (2) Everyone, without any discrimination, has the right to equal pay for equal work.
- (3) Everyone who works has the right to just and favorable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection.
- (4) Everyone has the right to form and to join trade unions for the protection of his interests.

**Article 24.**

- Everyone has the right to rest and leisure, including reasonable limitation of working hours and periodic holidays with pay.

**Article 25.**

- (1) Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.
- (2) Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection.

**Article 26.**

- (1) Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit.
- (2) Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace.
- (3) Parents have a prior right to choose the kind of education that shall be given to their children.

**Article 27.**

- (1) Everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits.
- (2) Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.

**Article 28.**

- Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized.

**Article 29.**

- (1) Everyone has duties to the community in which alone the free and full development of his personality is possible.
- (2) In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.
- (3) These rights and freedoms may in no case be exercised contrary to the purposes and principles of the United Nations.

**Article 30.**

- Nothing in this Declaration may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms set forth herein.

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**Subject:** brief submitted for review shaw rahman v Boeing WA Supreme court case No 91503-2