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No. 67666-1-1

**IN THE COURT OF APPEALS, DIVISION I,  
OF THE STATE OF WASHINGTON**

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NGUYET TANG, individually,

Appellant,

vs.

STATE OF WASHINGTON DEPARTMENT OF EMPLOYMENT  
SECURITY,

Respondent.

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APPELLANT'S AMENDED REPLY BRIEF

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## I. FACTUAL REPLY

The appellant, Nguyet Tang, did testify that her employer denying her commission was a “matter of principle,” but in context, that principle was related to contesting racial discrimination. Specifically, at the administrative hearing of November 5, 2010, when Judge Anderson asked her to further explain the circumstances of her termination, Ms Tang explained “Nick Wilcox (sales manager) basically took the car deal away from me . . . And then he makes little comments the issues with me ever since I start working there, racial remarks and all that stuff. And so I talked to Mark and I told Mark before too, I would start documenting and continue to document all the racial remarks that have been going on at work.” CP 24. Perhaps Ms. Tang did not present her case perfectly, but the Court should recall that English is her second language, Vietnamese is her first. Appellant did the best she could, as a foreign born citizen appearing at the unemployment hearing without the presence or advice of legal counsel. The appellant clearly intended to convey that the principle or the “straw that broke the camel’s back” was the racial treatment and the racial disrespect in taking away her sale’s commission.

Appellant did not abandon her job; she was constructively

discharged. As appellant testified: “the car deal was related to the tolerance I couldn’t hold it there, and then I think it adds in there all together. That’s when it came- and your letter to me that was – you would process me- process my termination immediately if I wasn’t – you were expecting me to be ready and willing and able. I was not able. I was crying. My eyes were like eyes. I could not come to work. So I could not be at work if I cried and not happy, the clients would be seeing me as unhappy Emily.” CP 45. It is clear that appellant was not physically able to return to work and that her inability was related to the constellation of racial discrimination that culminated in her commission being taken away from her by the sales manager.

Appellant did describe details of how she informed the general manager Babcock of the discrimination by Nick Wilcox at the hearing, describing how “Asian people are stupid, Asian people don’t pay taxes.” CP 43. The administrative judge essentially “cut the appellant off” and told her to move on. CP 43. Judge Anderson also informed general manager Babcock to “move on” when Mr. Babcock was asking detailed questions of appellant’s racial experiences. Whether the sale or the commission was officially taken from appellant or whether the respondent considered the sale a “new transaction” is not relevant; what is relevant is that the appellant reasonably believed that she was being discriminated

against. Appellant testified “I did not voluntarily quit my job. But I felt I was treated unfairly and discriminatory[.]” CP 66. “I couldn’t hold the fact that, you know, talking about Asian people and all that all the time to me to the point I hated Asian people, I hated it. I cried.” CP 67. The harassment caused headaches and caused appellant’s diabetes to go “upside down.” CP 67-68.

Although Appellant testified that at the time of the hearing she had not officially applied in the auto finance industry, she did make several serious job inquiries that did not go anywhere. CP 20-21.

## V. ARGUMENT AND AUTHORITY

### **A. ALJ Anderson, the Commissioner and the Superior Court Erred In Finding that Ms. Tang Voluntarily Separated Without Good Cause When the Evidence Clearly Shows That She Had Good Cause to Separate Based Upon Continuing Unchecked Discrimination.**

RCW 50.20.050 provides, in pertinent part:

(a) An individual shall be disqualified from benefits beginning with the first day of the calendar week in which he or she has left work voluntarily without good cause and thereafter for seven calendar weeks and until he or she has obtained bona fide work in employment covered by this title and earned wages in that employment equal to seven times his or her weekly benefit amount.

...

(b) An individual is not disqualified from benefits under (a) of this subsection when:

...

(ix) The individual left work because of illegal activities in the individual's worksite, the individual reported such activities to the employer, and the employer failed to end such activities within a reasonable period of time;

RCW 50.20.050(2)(a).

What is clear is that the appellant was not given a fair opportunity to fully explain the discrimination that she endured by the hearing judge, Judge Anderson. Appellant was continually told to move on and even when the respondent questioned her on the acts of discrimination Judge Anderson told the respondents to “move on.” The appellant was later punished for not fully testifying about the discriminatory behavior that led to her constructive discharge, but she was instead encouraged to distance herself from such evidence and testimony. The factual findings by judge Anderson were not supported by the evidence in the record, but rather supported by a misdirection of the admissible evidence, which was intentionally limited by the Judge.

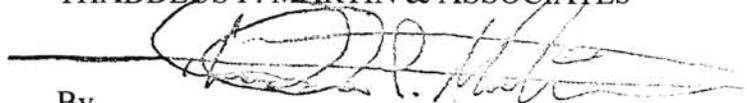
The evidence also clearly demonstrates that Ms. Tang did not “quit” her job, but was constructively discharged. The constructive discharge was based on the racial discrimination and comments, which had such an impact on Appellant’s health that she literally could not go to work, as the environment effected her diabetes and caused severe

headaches and uncontrollable crying. The “car deal” was just the “icing on the cake” or the final racial disrespect that appellant endured.

Appellant is not attempting to litigate her racial discrimination claims in this proceeding as she has already brought suit on those issues and those issues were resolved in a settlement. Appellant is simply asking this court to overturn the previous rulings to permit her to the unemployment benefits she is entitled to.

Respectfully submitted this 19<sup>th</sup> day of June, 2012.

THADDEUS P. MARTIN & ASSOCIATES

A handwritten signature in black ink, appearing to read "Thaddeus P. Martin", is written over a horizontal line.

By \_\_\_\_\_  
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