[attorney name redacted], Esq. (CSBN //////////#)
//////////////
//////////////
//////////////
//////////////
//////////////

Attorneys for Defendants the DIXON FURNITURE, INC,
NANCY DIXON, and MATT DIXON
Note: all names have been changed.

SUPERIOR COURT OF CALIFORNIA
COUNTY OF LOS ANGELES

TOM BROWN, Plaintiff, vs. DIXON FURNITURE., LTD; NANCY DIXON; MATT DIXON; and DOES 1 through 100, Inclusive Defendants	Case Number: [redacted] Action Filed: [redacted] Trial Date: _____ **DEFENDANTS NANCY DIXON AND MATT DIXON'S REPLY TO PLAINTIFF'S OPPOSITION TO THEIR MOTION FOR SUMMARY JUDGMENT, OR ALTERNATIVELY, FOR SUMMARY ADJUDICATION; MEMORANDUM OF POINTS AND AUTHORITIES** Filed concurrently with Separate Statement; Second Declarations of Attorney [redacted] and Matt Dixon; Declaration of Mark Emerson; Request for Judicial Notice. Hearing date: [redacted] Hearing time: [redacted] Judge [redacted]

Defendants Nancy Dixon (hereinafter "**NANCY**") and Matt Dixon (hereinafter "**MATT**" and collectively with NANCY "**MOVING DEFENDANTS**") hereby submit this Reply and accompanying Memorandum of Points and Authorities to the Plaintiff Tom Brown's (hereinafter "**BROWN**") Opposition (hereinafter the "**OPPOSITION** ") to their Motion for Summary Judgment, or Alternatively, for Summary Adjudication (hereinafter the

"**MOTION**"). Defendant DIXON FURNITURE., Ltd (hereinafter the "CORPORATION") is not included in the MOVING DEFENDANTS.

Concurrently with the MOTION, MOVING DEFENDANTS filed a Statement of Undisputed Material Facts (hereinafter "**SS**", as it is all also called in the MOTION).

Concurrently herewith, MOVING DEFENDANTS have filed a single lengthy document containing three separate statements (hereinafter, respectively, "**SS2**," "**SS3**" and "**SS4**"), and that document is entitled Defendants Nancy Dixon and Matt Dixon's Replies to Plaintiff's Response to Their Separate Statement of Undisputed Material Facts (SS2); Their Separate Statement of Newly Discovered Undisputed Material Facts (SS3); Their Replies to Plaintiff's Separate Statement of Material Facts (SS4).

SS2 contains the original 80 Items from the original SS, numbered 1 through 80, together with Plaintiff's responses thereto and MOVING DEFENDANTS replies to Plaintiff's responses.

Extremely significant new evidence has been discovered since the MOTION was filed back in May 2008. That new evidence is set forth in SS3, where the numbering is continued from SS2 with Items 81 through 107.

With the OPPOSITION, Plaintiff submitted 132 new Items in another separate statement, which are numbered 1 through 132. SS4 contains the MOVING DEFENDANTS replies thereto, in Items numbered 1 through 132.

References herein to the Items in the various separate statements are made by inserting a hyphen between the separate statement designation and the item number, e.g. SS2-28, SS3-86, etc.

MOVING DEFENDANTS have also filed concurrently herewith a Second Declaration of Attorney [redacted] (hereinafter "**ATTY DECL-2**"), a Second Declaration of Matt Dixon, a Declaration of Mark Emerson, and a Request for Judicial Notice.

/ / / /

/ / / /

/ / / /

/ / / /

/ / / /

Dated: _____

[attorney name redacted]

_____

[attorney name redacted], Attorneys for Defendants DIXON FURNITURE, INC, NANCY DIXON, and MATT DIXON.

Memorandum of Points and Authorities

1. New Evidence of Fraud by Plaintiff Shatters His Bad-Faith, Frivolous Complaint and Compels GRANTING the MOTION.

The entirety of this action rests on an **allegation** by BROWN and by opposing counsel that BROWN'S asthma condition and the various breathing problems, injuries and disabilities he has suffered in connection therewith were **caused** by dust, cat hair and fowl feces in the working environment at a furniture factory and warehouse operated by the CORPORATION (hereinafter the "**UNDERLYING ALLEGATION**").

New evidence discovered *after* the MOTION was filed *conclusively proves* that the UNDERLYING ALLEGATION is not only *false*, but has been *fraudulently* alleged.

BROWN was twice employed by the CORPORATION—his first stint was from 1994 to 1999 (SS2-23), and his second stint was from 2002 to 2006 (SS2-24). He was not employed by the CORPORATION at any time during 2001. Instead, from 2000-2001 he was employed by a company called Unger Supply working in a dusty warehouse (SS3-81, SS3-84, SS3-85).

MOVING DEFENDANTS recently obtained (ATTY DECL-2 ¶¶ 5-10) a copy of a hand-written note *signed by BROWN*, to which he attached a doctor note. The note is dated March 21, 2001, at which time BROWN was employed by Unger Supply. It appears that BROWN may have presented the note to Unger Supply in an effort to get himself transferred to an office job away from the dusty warehouse. In BROWN'S own all-caps handwriting, the note states:

> **3-21-01 AFTER A CONSULTATION WITH MY PHYSICIAN ON 3-20-01, HE HAS PRESCRIBED ME MEDICATION TO HELP WITH BREATHING AND NASAL PROBLEMS DUE TO SEVERE DUST POLLUTION IN THIS WAREHOUSE. [Signed] Tom Brown**

SS3-86. The doctor note attached thereto is hand-written on a form and states:

> "**3/20/01** This is to certify that Tom Brown has been under my care for the following: (1) Ringing Ears (2) Low Back Pain (3) **Allergic Rhinitis** and is able to return to work on [date left blank]. Remarks: patient is suffering from **problems due to work exposures**. Pt [Patient] would benefit from time away from these exposures and commercial driving. [illegible doctor signature]" [Emphasis Added.]

The contents of the note are corroborated by *other* newly-discovered evidence. Specifically, on April 10, 2008 BROWN was examined by a physician, Dr. Gary Bruner, who is an expert in determining whether asthma-related problems are work-related (SS3-96, SS3-105). MOVING DEFENDANTS did not receive the physician's report until after the MOTION was filed (ATTY DECL-2 ¶¶ 5-10). Dr. Bruner's report corroborates BROWN'S hand-written note.

In the medical examination, BROWN was given extensive testing for his asthma condition, including chest x-rays, lung function testing, pulse oximetry, electrocardiogram and extensive blood tests (SS3-97). Dr. Bruner reviewed BROWN'S medical history and consulted numerous medical records from BROWN'S past—in the report, Dr. Bruner not only cites BROWN'S said hand-written note, but also numerous other items of evidence indicating that BROWN'S asthma condition *pre-dated* his employment by the CORPORATION (SS3-100). **Dr. Bruner diagnosed BROWN as suffering from "nonoccupational allergic asthma."** (SS3-101, SS3-102, SS3-103, SS3-104).

This new evidence *conclusively* establishes that BROWN'S dust-related breathing problems existed in March 2001 which was **before** he commenced employment by the CORPORATION in 2002. And yet, at a deposition on January 24, 2008, **BROWN falsely testified under oath that the first time he experienced any problems with his breathing was in March 2006** when he was employed by the CORPORATION (SS3-89). (The deposition was taken before the hand-written note was discovered.)

It is therefore beyond dispute that *BROWN is perpetrating a fraud* against the Court by filing and maintaining this outrageous action. The MOTION must therefore be GRANTED and the action dismissed in its entirety *with* prejudice.

2. Opposing Counsel Has Filed and Maintained This Action in Bad Faith and Must Therefore Be Sanctioned with the Entirety of MOVING DEFENDANTS' Costs of Suit, Including Attorney Fees.

Does opposing counsel know that BROWN is perpetrating a fraud in prosecuting this matter? Additional considerations compel a "yes" answer.

Sometime after being laid off by the CORPORATION, BROWN filed a workers' compensation claim (hereinafter the "**WC MATTER**") against the CORPORATION and its workers' compensation insurance carrier, Ace American Insurance Company (c/o ESIS—

hereinafter "**ACE**") on the basis of the identical UNDERLYING ALLEGATION, which ACE denied (SS3-87, SS3-88, SS3-95). The above-mentioned deposition of BROWN, as well as the examination by Dr. Bruner, occurred in connection with the WC MATTER, which is set for trial on [redacted], 2008 (SS3-88, SS3-89, SS3-96), the same date this Reply is due.

Opposing counsel represents BROWN here. But BROWN is prosecuting *two actions* —one here, the other before the Worker's Compensation Appeals Board—against the *same* party (the CORPORATION), *with the latter action also against its workers' compensation insurance carrier, ACE*, and both actions are based on the *same* UNDERLYING ALLEGATION. It is axiomatic that, at the time the OPPOSITION was filed on [redacted], 2008, opposing counsel was well aware of the WC ACTION just ten days before its trial. And yet, opposing counsel repeatedly states in his Separate Statement that the defendants carried **no** workers' compensation insurance (SS2-30, SS2-34, SS2-35), and he argues in his memorandum of points and authorities that "a triable issue of fact exists whether DIXON FURNITURE's failure to obtain workers' compensation insurance, when they employed 50-60 employees, created undercapitalization sufficient to show unity of interest." (OPPOSITION 9:15-17).

Opposing counsel's fraudulent statement that the defendants carried no workers' compensation insurance is merely one among many *bad faith* assertions made in the OPPOSITION. Responses to 13 of the Items on the original SS were made *in bad faith*, as explained in the right-hand reply column of SS2-2, SS2-4, SS2-5, SS2-6, SS2-7, SS2-9, SS2-17, SS2-19, SS2-30, SS2-34, SS2-35, SS2-50 and SS2-53. For example, opposing counsel claims that *the CORPORATION no longer exists* (SS2-2, SS2-4, SS2-5, SS2-6, SS2-7, SS2-9). For reasons set forth in SS2-2, opposing counsel's argument in this regard is preposterous. More importantly, if the CORPORATION does not exist, then it has *no capacity to be sued*, and, as a member of the State Bar, opposing counsel has a duty to **dismiss** the CORPORATION from this lawsuit **forthwith**.

In addition to the 13 Items to which opposing counsel responded in bad faith, his Separate Statement is replete with dozens of frivolous, illogical, off-point, irrelevant arguments too numerous to cite here. Please see SS2 generally, which conclusively rebuts each and every one.

Given all these considerations, it is obvious that opposing counsel knows full well that BROWN is perpetrating a fraud by prosecuting this matter. BROWN cannot possibly afford the enormous legal bill that opposing counsel is compiling in prosecuting this matter (SS3-106). It is obvious that opposing counsel has taken this matter on a contingency fee basis and is *perpetrating a fraud* in an effort to collect fees from the innocent defendants. The Court should not tolerate such conduct by members of the State Bar. Opposing counsel must therefore be sanctioned with the entirety of MOVING DEFENDANTS' costs of suit, including attorney fees.

Item 3 of the Prayer stated in the MOTION (on p. 5 thereof) requests, "That the MOVING DEFENDANTS be awarded their costs of suit." The MOVING DEFENDANTS request that, at the time the MOTION is GRANTED, the Court order that their costs, including attorney fees, are to be paid by opposing counsel, [redacted], after a noticed hearing by MOVING DEFENDANTS on the dollar amount.

3. Opposing Counsel's Legal Arguments Are Irrelevant Because They Presume "Disputed" Facts That Are Actually UNDISPUTED.

In his responses to the 80 undisputed material facts stated in the SS (and copied in the left-hand column of SS2), opposing counsel makes various factual allegations and arguments in vain attempts to bring the those facts into "dispute." As shown in right-hand column of SS2, each and every one of these attempts fails. Additionally, opposing counsel sets forth the vary same factual allegations in SS4 in a vain attempt to attack the indisputability of the undisputed material facts in the SS—*but SS4 contains nothing more than a duplication of what is set forth in his responses shown in SS2*. As shown in right-hand column of SS4 (albeit in less detail, due to time constraints in preparing this Reply), each and every one of these attempts fails. Each and every material fact set forth in Items SS2-1 through SS2-80, and in Items SS3-81 through SS3-105, is **UNDISPUTED**.

In the OPPOSITION, opposing counsel makes numerous *legal* arguments "supported" by a massive, **2.5-inch-thick** Compendium of Authorities. But opposing counsel has failed to bring any of the undisputed material facts in the SS2 Items into "dispute" *thereby rendering his legal arguments irrelevant and impotent to overcome the arguments set forth in the MOTION*.

4. The Corporate Veil Cannot Be Pierced.

Opposing counsel argues that "Matt/Nancy Admit They Are Personally Liable For The Liabilities Of The Company" (OPPOSITION 7:23 to 8:4 and 10:28 to 11:4). MATT and NANCY'S testimony did not **make** them personally liable for the CORPORATIONS liabilities. Please see the discussion in the right-hand column of SS2:30. The fact that they indicated in response to hostile questioning that they "personally retained the liabilities," merely indicates that *they were speaking informally, without legal technicalities, as is common parlance among American small business owners*.

Opposing counsel argues that the CORPORATION "Was And Continues To Be Undercapitalized" (OPPOSITION 9:1-13). This argument is preposterous. For 31 years, the CORPORATION operated a manufacturing business, employed dozens of people, and manufactured thousands of items of furniture and shipped them to customers all over the United States (SS2-8). **It consistently met payroll, paid its vendors for raw materials, paid its bills and paid its taxes**—and if it had not, *it would have gone out of business long ago*. Indeed, the CORPORATION employed BROWN for many years and paid each and every paycheck he was due—BROWN has alleged **no** cause of action for unpaid wages.

After selling the CORPORATION'S business to XYZ Manufacturing, Inc., the board of directors commenced the process of winding down operation of the CORPORATION in anticipation of dissolving it by filing appropriate paperwork with the Secretary of State (SS3-107). The OPPOSITION claims the CORPORATION is an "Empty Corporate Shell" (OPPOSITION 9:2) but cites no authority that when a corporation becomes an "empty shell" *because it in the process of winding down operations in anticipation of dissolution*, that corporation becomes vulnerable to attack on the basis of undercapitalization. No such authority exists. Such a concept is an absurdity that would make it unfeasible for shareholders to *ever* wind down a corporation due to risk of lawsuit exposure.

Opposing counsel argues that "Matt and Nancy Commingled Funds in the Sale Of the DIXON FURNITURE., Business" (OPPOSITION 9:24 to 10:12). This argument is preposterous. Please see the discussion in the right-hand column of SS3-78. If the CORPORATION distributed some or all of the proceeds of the sale to its sole shareholder,

the Dixon Family Trust (hereinafter the "**TRUST**"), that does not constitute commingling of funds.

Opposing counsel argues that "Nancy Personally paid Claimant's Work Injury Bills" (OPPOSITION 10:13-19). BROWN'S "injury" was not work-related (SS3-101, SS3-102, SS3-103, SS3-104). Please see the discussion in the right-hand column of SS2-30 and SS2-78. NANCY'S testimony about personally paying some of BROWN'S medical bills indicates that she felt compassion for him but reasonably believed his asthma was *not work-related*—and she was correct. Her doing so does not constitute commingling of funds.

Opposing counsel argues that "Nancy Sold the Business To Shield The Company Assets From This Litigation" (OPPOSITION 10:20-23). There was a coincidence in the timing of BROWN filing this litigation in March 2007 and NANCY and MATT being approached by two individuals [redacted], in April 2007 (who ultimately purchased the business in December 2007). However, the former **did NOT cause** the latter. Instead, it was a severe downturn in the company's business (SS2-14) that both (a) resulted in the layoff of BROWN, which led to his filing this action, and (b) led to the two individuals [redacted] seeing an opportunity for restructuring the business. Please see the discussion in the right-hand column of SS2-20, SS2-21 and SS2-22.

Opposing counsel argues that "Sole Ownership of all corporate stock [was or is] held by Nancy and Matt" (OPPOSITION 10:24-27). This is entirely false. At all relevant times, the TRUST owned 100% of the stock. Please see the discussion in the right-hand column of SS2-3.

Opposing counsel argues that, acting in "bad faith," MATT and NANCY "intentionally undercapitalized, commingled, and/or sold the company's assets in an effort to circumvent this lawsuit." (OPPOSITION 11:20-22). This argument is preposterous. They never "intentionally" did any such things. Indeed, as discussed above, *they never did such things at all*. Opposing counsel stretches credulity to the breaking point in attempting to impute "bad faith" onto MATT and NANCY. To find the bad faith, opposing counsel (and BROWN) should instead look into the mirror. And absent any bad faith by MATT and NANCY, the "inequitable result" prong (under Automotriz del Golfo de California S.A. De C.V. v. Resnick (1957) 47 C2d 792 @ 796) that is *required* for piercing the corporate veil ***is entirely absent***.

Each and every argument for piercing the corporate veil fails dismally. Therefore, the corporate veil cannot be pierced.

5. Opposing Counsel Concedes the First Cause of Action Must Fail.

Opposing counsel now concedes that "Respondents are indeed correct, the complaint is devoid of any allegations of sex based protected activity. (Moving Papers 19:1-3)" (OPPOSITION 12:3-4). To save face, and without citing any authority, opposing counsel then stretches credulity by arguing that MATT and NANCY "personally retained the corporate liabilities" and that this somehow comprises "disability discrimination" under FEHA. (OPPOSITION 12:5-9). *This is a legal absurdity.* Indeed, even if a far-fetched "connection" existed between liability retention and disability discrimination, the fact is that the so-called (but nonexistent) "retention of liabilities" purportedly happened after the sale, and this cannot have comprised discrimination against BROWN, because the entirety of his employment was before the sale. Therefore, the First Cause of Action must fail.

6. The Second Cause of Action Must Fail.

While opposing counsel suggests that the "Sexual Harassment" allegation in the First Cause of Action was a "clerical error" (OPPOSITION 11:28 to 12:1), *he omits any explanation whatsoever of the fact that the Second Cause of Action is alleged "Against Ella SmithCosmetics, Inc" and not against the CORPORATION, NANCY or MATT*. Absent any claim of "clerical error" in the OPPOSITION, the Second Cause of Action must stand as pleaded against Ella SmithCosmetics and *not against the MOVING DEFENDANTS*.

Furthermore, opposing counsel *concedes* the recent holding in Jones v. Lodge at Torrey Pines Partnership (2008) 42 Cal.4th 1158, but then argues at length for the dubious (and untested) proposition that the principles set forth in Jones *do not apply to the California Family Rights Act* (hereinafter "**CFRA**") (OPPOSITION 12:18 to 14:18).

Opposing counsel argues in response to SS-79 that NANCY and MATT personally employed more than 50 people (to satisfy a requirement of CFRA), but that arguments is without merit. Please see the discussion in the right-hand column of SS2-79 (and SS2-80).

Opposing counsel argues that BROWN was not offered his warehouse job back at the time of his layoff (OPPOSITION 14:19-27). This is irrelevant. It is a legal certainty that BROWN would not have accepted such an offer, which he had previously, adamantly and

repeatedly refused because of his asthma. Please see the discussion in the right-hand column of SS2-72 (see also SS2-33, SS2-63, SS2-64, SS2-65, and SS2-67).

Lastly, BROWN was not denied medical leave. Not only did BROWN take a medical leave of absence (Complaint ¶ 13), but during his absence he was paid his full pay, a portion of his medical expenses were paid, his position was held open for him, and upon return to work he was accommodated into a different position with the same pay (SS2-32, SS2-33, SS2-34, SS2-35, SS2-64). Therefore, the Second Cause of Action must fail.

7. The Third, Fourth and Fifth Causes of Action Must Fail.

Opposing counsel argues that BROWN "Threatened to Complain To DHS *During* His Employment" (OPPOSITION 15:7-15). The only "complaint" BROWN made to MATT was phrased as a vulgar question ("What are these f--king chickens doing here?"), which MATT understood to be a casual remark rather than a complaint. Please see the discussion in the right-hand column of SS**4**-51, and also SS**4**-52, SS**2**-50, SS**2**-51, SS**2**-52.

Opposing counsel argues that "Direct and Circumstantial Evidence Links Protected Activity to the Termination" (OPPOSITION 15:16 to 16:17). BROWN'S alleged "threats" to complain to DHS about the animals were not "protected activity" because they were empty threats. MATT *knew* this because *MATT had done nothing wrongful or unlawful in connection with the animals*. (Nor would it be "protected activity" if BROWN had "threatened" to report to the government that the factory was painted blue!) The emptiness of BROWN'S threat is confirmed because (a) DHS ignored BROWN'S complaints about dust and cat hair (SS2-50), and (b) DHS dropped BROWN'S complaint about the birds after speaking with MATT (SS2-51). MATT'S "nice try" remark merely pointed out to BROWN the emptiness of his "threat" (SS**4**-79). Opposing counsel twists Linda's testimony to indicate BROWN'S "demeanor and complaints played a roll in his termination" (OPPOSITION 15:26-27). She did not so testify—please see the discussion in the right-hand column of SS2-28. Opposing counsel claims "the temporal proximity between Brown's assertion of legal rights.... and his termination" establishes a "causal nexus" (OPPOSITION 16:7-11). However, the so-called "legal rights" BROWN allegedly asserted were entirely *bogus*. BROWN never complained about any "unsafe" or "unlawful" condition in the workplace—please see the discussion in the right-hand column of SS2-47 and SS2-48.

Indeed, *the factory was not even painted blue!* Absent a legitimate complaint, opposing counsel's "causal nexus" evaporates.

Opposing counsel argues that "Nancy/Matt Meet The Definition of Employer, and Retained the Liabilities" (OPPOSITION 16:18 to 17:5). As discussed above, NANCY and MATT did not "retain liabilities" of the CORPORATION. Nor did they "employ" anyone—please see the discussion in the right-hand column of SS2-79 (and SS-80).

Opposing counsel argues that "Legitimacy of Layoff Is Disputed, Creating a Triable Issue of Fact" (OPPOSITION 17:6 to 18:9). In the last quarter of 2006, the CORPORATION experienced an unprecedented downturn in its business (SS2-14). Opposing counsel absurdly argues that, because no prior (and far less serious) downturns resulted in layoffs, that the downturn in 2006 should not have produced any layoffs—please see the discussion in the right-hand column of SS2-14. Opposing further alleges "no other office worker was laid off" (OPPOSITION 17:24), but this is untrue—please see the discussion in the right-hand column of SS2-55. Opposing then alleges Nancy "claimed she let [two expediters] go in November 2006. (PSMF 114)" (OPPOSITION 18:6-7). However, the testimony cited at "PSMF 114" makes *no mention* of "November 2006" (see SS**4**-114).

Opposing counsel argues that Respondents' offer of severance pay showed a "Consciousness of Guilt" (OPPOSITION 18:11-16). It did not. It showed a *consciousness of compassion*—please see the discussion in the right-hand column of SS2-28. Indeed, there was nothing for them to feel "guilty" about because they had done nothing wrongful or unlawful *or even remotely harmful* to BROWN. It is BROWN (and opposing counsel) who have demonstrated a "Consciousness of Guilt" by prosecuting this action, as discussed above.

Opposing counsel argues that BROWN "Was Treated Differently Than Similarly Situated Employees" (OPPOSITION 18:17 to 19:6). This preposterous argument is based on the incorrect assumption that BROWN was the only "office worker" who was laid off and that Nancy "recanted" her testimony in this regard. BROWN was not the only office worker laid off (one was laid off in October 2006 before BROWN), and Nancy never "recanted" anything. Please see the discussion in the right-hand column of SS2-55.

After correctly stating the undisputed fact that BROWN was an exceptional employee, opposing counsel *falsely, and in bad faith*, states that "Respondents attempt[ed] to attribute performance fault [to BROWN]" (OPPOSITION 19:14). **No citation into the**

separate statement or any other evidence is given to support this blatantly untrue statement. Nothing in the record even remotely suggests that the defendants attempted to attribute any performance fault to BROWN. On the contrary, it is opposing counsel who is attempting to attribute fault to the defendants—by means of this boldfaced lie at OPPOSITION 19:14—for the purpose of establishing a "pretext" *when no pretext exists*.

Opposing counsel argues that "Respondents Have No Corroborating Documentation Of Discipline" (OPPOSITION TO 19:18-28). This argument is predicated on the boldfaced lie presented in the immediately preceding argument. There was no need for disciplining BROWN (or for keeping records of such non-existent discipline) *because fault was never attributed to his performance*. Linda telling BROWN to "lighten up his attitude" did not amount to discipline—it constituted guidance, just as telling someone to speak more softly in a small office (or more loudly in a large warehouse) constitutes guidance, not discipline.

Opposing counsel argues that "Respondents Gave False And Shifting Reasons For Claimant's Termination" (OPPOSITION TO 20:2-14). They did not. BROWN was laid off because of the downturn in the company's business. He was neither the first nor the last to be laid off. He was one among approximately 23 employees who were lost to the downturn, **resulting in a 46% reduction in the workforce** (SS2-18).

Finally Opposing counsel argues that "Defendants Failed To Fully Investigate, Evidencing Pretext" (OPPOSITION TO 20:15-22). There was nothing to investigate. BROWN'S asthma was not work-related. There had been no unlawful or wrongful conduct.

Therefore, the Third, Fourth and Fifth Causes of Action must fail.

8. Conclusion.

For the foregoing reasons, the MOTION must be GRANTED, the Complaint must be dismissed *with* prejudice, and [redacted] must be ordered to pay the Defendants' costs of suit, including attorney fees, with the dollar amount to be determined at a noticed hearing.

Dated: _____

[attorney name redacted]

_____

[attorney name redacted], Attorneys for Defendants DIXON FURNITURE, INC, NANCY DIXON, and MATT DIXON.