

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

Filed concurrently with Reply to Plaintiff’s Opposition to  
Their Motion for Summary Judgment, or Alternatively,  
for Summary Adjudication; 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”) previously filed

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2 with their Motion for Summary Judgment, or Alternatively, for Summary Adjudication  
3 (hereinafter the “**MOTION**”) a STATEMENT OF UNDISPUTED MATERIAL FACTS  
4 (hereinafter “**SS**”, as it is all also called in the MOTION). They now submit the following  
5 three additional separate statements, all contained herein:  
6

7 SEPARATE STATEMENT IN REPLY TO PLAINTIFF’S RESPONSE TO  
8 DEFENDANTS’ SEPARATE STATEMENT OF UNDISPUTED  
9 MATERIAL FACTS (hereinafter “**SS2**”), items 1-80;

10 SEPARATE STATEMENT OF RECENTLY DISCOVERED UNDISPUTED  
11 MATERIAL FACTS (hereinafter “**SS3**”) in which the numbering  
12 continues sequentially from SS2 with items 81-107;

13 SEPARATE STATEMENT IN REPLY TO PLAINTIFF’S SEPARATE  
14 STATEMENT OF MATERIAL FACTS (hereinafter “**SS4**”), in which  
15 the numbering corresponds to Plaintiff’s numbering 1-132;

16 in support of their Reply to Plaintiff Tom Adams’s (hereinafter “**ADAMS**”) Opposition to  
17 the MOTION.

18 There are two Declarations of Attorney Laurie Butler. The first was filed with the  
19 MOTION (hereinafter “**ATTY DECL**”). The second (hereinafter “**ATTY DECL-2**”) is  
20 filed concurrently herewith.

21 The prior ATTY DECL set forth the following exhibits:

22 Exhibit 1: The CORPORATION’S Articles of Incorporation (hereinafter  
23 “**ARTICLES**”).

24 Exhibit 2: The CORPORATION’S Bylaws (hereinafter “**BYLAWS**”).  
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3 Exhibit 3: Printout from Secretary of State's web site showing the  
4 CORPORATION has an "active" status (hereinafter "**SOS**  
5 **PRINTOUT**").

6 Exhibit 4: Stock certificate for the CORPORATION'S only outstanding  
7 shares of stock (hereinafter "**STOCK CERTIFICATE**").

8 Exhibit 5: All the minutes of the CORPORATION'S shareholder and board of  
9 director's meetings (hereinafter "**MINUTES**").

10 Exhibit 6: Pertinent pages from the CORPORATION'S Agreement of Sale  
11 and Purchase of Assets (hereinafter "**SALE AGMT**").

12 Exhibit 7: The Bill of Sale executed by the CORPORATION (hereinafter  
13 "**BILL OF SALE**").

14 Exhibit 8: Pertinent pages of the Deposition of Nancy Dixon (hereinafter  
15 "**NANCY DEPO**");

16 Exhibit 9: Pertinent pages of the Deposition of Matt Dixon (hereinafter  
17 "**MATT DEPO**");

18 Exhibit 10: Pertinent pages of the Deposition of Linda Mason (hereinafter  
19 "**MASON DEPO**");

20 Exhibit 11: Pertinent pages of the Form Interrogatories Set One propounded  
21 on ADAMS (hereinafter "**FORM ROGGS**").

22 Exhibit 12: Pertinent pages of ADAMS'S Responses to Form Interrogatories  
23 Set One (hereinafter "**FI RESPONSES**").

24 Exhibit 13: Pertinent pages of the Special Interrogatories Set One propounded  
25 on ADAMS (hereinafter "**SPEC ROGGS**").  
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2 Exhibit 14: Pertinent pages of ADAMS'S Responses to Special  
3 Interrogatories Set One (hereinafter "**SI RESPONSES**").

4 Exhibit 15: Pertinent pages of the Requests for Admissions Set One  
5 propounded on ADAMS (hereinafter "**RFA**").

6 Exhibit 16: Pertinent pages of ADAMS'S Responses to Requests for  
7 Admissions Set One (hereinafter "**RFA RESPONSES**").

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9 The new ATTY DECL-2 sets forth the following exhibits:

10 Exhibit 17: Grant Deed (hereinafter the "**GRANT DEED**").

11 Exhibit 18: Property tax documents (hereinafter the "**PROPERTY TAX**  
12 **DOCUMENTS**").

13 Exhibit 19: Full transcript of the deposition of Tom Adams (hereinafter the  
14 "**ADAMS DEPO**").

15 Exhibit 20: Letter dated January 29, 2008 from ACE American Insurance (c/o  
16 ESIS) to Tom Adams (hereinafter the "**ACE LETTER**").

17 Exhibit 21: Internal Medicine Medical-Legal Report of Dr. Gary Bruner, who  
18 examined Tom Adams on April 10, 2008 (hereinafter the "**DR.**  
19 **BRUNER REPORT** ").

20 Exhibit 22: Notice of Hearing before the Workers' Compensation Appeals  
21 Board (hereinafter the "**WC TRIAL NOTICE**").

22 Exhibit 23: Handwritten note dated March 21, 2001 by Tom Adams  
23 (hereinafter the "**ADAMS HANDWRITTEN MARCH 2001**  
24 **NOTE**").

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2 Also filed concurrently herewith are the Second Declaration of Matt  
3 Dixon(hereinafter “**MATT DECL-2**”), and the Declaration of Mark Emerson (hereinafter  
4 “**EMERSON DECL**”).

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6 With his Opposition to the MOTION, Plaintiff has filed a Declaration of Evidence of  
7 David Boyd, Esq. in Support of Claimant’s Opposition to Respondents’ Motion for Summary  
8 Judgment, or Alternatively, for Summary Adjudication, to which is attached, as “Exhibit D,”  
9 the Declaration of Tom Adams (hereinafter the “**ADAMS DECL**”).

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**SEPARATE STATEMENT IN REPLY TO PLAINTIFF’S RESPONSE TO  
DEFENDANTS’ SEPARATE STATEMENT OF UNDISPUTED MATERIAL FACTS**

(“SS2”)

<u>Undisputed Material Facts, Defendants’ Supporting Evidence, Plaintiff’s Responses</u>	<u>Defendants’ Replies to Plaintiff’s Responses</u>
<p>1. NANCY and MATT are, and for more than 32 years have been, married. <u>MATT DEPO 22:10-12. NANCY DECL ¶ 3.</u> <u>MATT DECL ¶ 3.</u> <i>Plaintiff’s Response:</i> Undisputed.</p>	<p>No reply.</p>
<p>2. The CORPORATION is a California Corporation, incorporated in 1976. <u>ARTICLES. NANCY DECL ¶ 8.</u> <i>Plaintiff’s Response:</i> DISPUTED. The Corporation was a California corporation incorporated in 1976, though Matt admitted DIXON FURNITURE, Limited “[d]oes not exist anymore.” (Deposition of Matt Dixon (“Matt Dixon Depo.”), 14:9-13.) A true and correct copy of the relevant portions of the Deposition of Matt Dixon is attached to the Declaration of David Boyd (“Boyd Decl.”) as Exhibit A.</p>	<p><i>Plaintiff’s response fails to bring this undisputed material fact into dispute.</i></p> <p style="text-align: center;">Opposing counsel’s response is made in <i>extremely bad faith</i>. He signed and filed the Complaint in this matter, and caused the Clerk of the Court to issue a Summons, both of which name “DIXON FURNITURE. LTD.” (i.e the CORPORATION) as a defendant. Opposing counsel now makes the <u>preposterous claim</u> that the CORPORATION does not exist! <b>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</b></p>

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3 Indeed, Matt, in his deposition, made it  
4 quite clear the corporation no longer exists:

5 Q: Okay. Did you have part ownership  
6 interest in the corporation?

7 A: Did I or do I?

8 Q: Did you?

9 A: Yes, *I did*.

10 (Matt Dixon Depo., 13:25 - 14:4 [emphasis  
11 added].)

**dismiss the CORPORATION from this  
lawsuit forthwith.**

Furthermore, the existence or non-  
existence of a corporation is a matter of what is  
or is not recorded in the Office of the Secretary  
of State (plus any court orders pursuant to  
involuntary dissolution). It is patently not a  
matter of the deposition testimony of a witness  
(who was obviously referring to the  
corporation's furniture business no longer  
existing, rather than the corporation itself no  
longer existing). Would the testimony of a  
General Motors board member that GM no  
longer exists sweep GM out of existence?  
Certainly not! Since the CORPORATION *was*  
in existence as a California corporation, the  
Corporations Code provides the manner by  
which it can be dissolved in Chapter 18  
(Involuntary Dissolution, § 1800 et seq),  
Chapter 19 (Voluntary Dissolution, § 1900 et  
seq), and Chapter 20 (General Provisions  
Relating to Dissolution, § 2000 et seq).

**Plaintiff offers no evidence of any dissolution**

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of the CORPORATION, which means it still exists. MATT’S testimony cited in the left column does not create any dispute over this undisputed material fact. Indeed, if the CORPORATION were known by Plaintiffs to own substantial property, then opposing counsel would be arguing *just the opposite*—i.e. that MATT’S testimony cannot take the it out of existence! The existence of the CORPORATION is undisputed as a matter of law.

3. The CORPORATION has exactly one shareholder—the Dixon Family Trust of 1988 (hereinafter the “**TRUST**”).  
STOCK CERTIFICATE. ATTY DECL ¶ 7.  
NANCY DEPO 6:21-24. MATT DEPO 13:22-24. NANCY DECL ¶ 4. MATT DECL ¶ 4.  
***Plaintiff’s Response:***  
DISPUTED. Respondents’ own supporting evidence contradicts this fact:  
Q: **Did** you [Nancy] own DIXON FURNITURE, Limited?  
A: Yes, I **did**.

*Plaintiff’s response fails to bring this undisputed material fact into dispute.*  
He attempts to spin a “contradiction” from NANCY and MATT *previously* owning the CORPORATION in their individual capacities. That is true, but *so what?* This Item concerns the *present* (not past) ownership of the CORPORATION, and ever since 1997 there has been exactly one shareholder—the TRUST—which is what the Item states.  
The currently effective stock certificate is certificate number 8. See ATTY DECL Exhibit 4. Seven prior stock certificates



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3 (Deposition of Nancy Dixon (“Nancy Dixon  
4 Depo.”), 6:21-22; a true and correct copy of  
5 the relevant portions of the Deposition of  
6 Nancy Dixon is attached to Boyd Decl. as  
7 Exhibit B.)

8 Q: Okay. And who **was** the main  
9 shareholder in the corporation?

10 A: My wife and I.

11 (Matt Dixon Depo., 13:22-24.)

12 Q: Okay. **Did** you have part ownership  
13 interest in the corporation?

14 A: **Did** I or **do** I?

15 Q: **Did** you?

16 A: Yes, I **did**.

17 (Matt Dixon Depo., 13:25 - 14:4.)  
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(numbered 1 through 7) exist for the  
CORPORATION but are no longer effective,  
because, in each case, the shares were  
transferred. The history of what happened with  
certificates 1 through 7 shows that the  
ownership of the CORPORATION was  
changed several times during its 31-year  
history. At some points along the way, MATT  
and NANCY held the stock as *separate*  
*individuals*, with separate stock certificates  
made out to each of them. At other points in  
time, the stock was held by them *jointly as*  
*individuals*, either as joint tenants or tenants in  
common. The most recent stock transaction  
occurred on September 12, 1997, when all the  
shares were transferred to the TRUST. (See  
ATTY DECL-2 ¶ 11 and EMERSON DECL. ¶  
2.) The currently effective certificate number 8,  
dated September 12, 1997, is made out to  
“NANCY DIXON AND MATT DIXON,  
TRUSTEES OF THE DIXON FAMILY  
TRUST OF 1988.” Indeed, prior to 1988 the  
TRUST cannot have held any shares because it

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	did not yet exist—but the CORPORATION was incorporated in 1977. From 1977 to 1988, NANCY and MATT were shareholders <i>personally</i> .
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4. The CORPORATION has exactly two directors—NANCY and MATT.  
ATTY DECL ¶ 8. NANCY DECL ¶ 5.  
MATT DECL ¶ 5.  
***Plaintiff's Response:***  
DISPUTED. The Corporation no longer exists, and thus cannot have shareholders. Matt admitted DIXON FURNITURE, Limited “[d]oes not exist anymore.” (Matt Dixon Depo., 14:9-13.)  
Indeed, Matt, in his deposition, made it quite clear the corporation no longer exists:  
Q: Okay. Did you have part ownership interest in the corporation?  
A: Did I or do I?  
Q: Did you?  
A: Yes, *I did*.  
(Matt Dixon Depo., 13:25 - 14:4 [emphasis added].)

*Plaintiff's response fails to bring this undisputed material fact into dispute.*  
This preposterous claim by opposing counsel is made in *extremely bad faith* and rests on his preposterous, *bad-faith* attempt in SS2 Item 2 above to bring the existence of the CORPORATION into dispute. **Please see reply at SS2 Item 2 above.** Corporations Code Chapter 3 (Directors and Management, § 300 et seq) provides that every corporation has directors. The existence of both the CORPORATION and its board of directors is undisputed as a matter of law.

5. The CORPORATION has exactly two	<i>Plaintiff's response fails to bring this</i>
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3 officers—NANCY, who is both President and  
4 Chief Financial Officer, and MATT, who is  
5 both Vice-President and Secretary.

6 ATTY DECL ¶ 8. NANCY DECL ¶ 6.

7 MATT DECL ¶ 6. MATT DEPO 22:6-10.

8 ***Plaintiff's Response:***

9 DISPUTED. The Corporation no longer  
10 exists, and thus cannot have officers. Matt  
11 admitted DIXON FURNITURE, Limited  
12 “[d]oes not exist anymore.” (Matt Dixon  
13 Depo., 14:9-13.)

14 Indeed, Matt, in his deposition, made it  
15 quite clear the corporation no longer exists:

16 Q: Okay. Did you have part ownership  
17 interest in the corporation?

18 A: Did I or do I?

19 Q: Did you?

20 A: Yes, *I did*

21 (Matt Dixon Depo., 13:25 - 14:4 [emphasis  
22 added].)

23 6. The CORPORATION has an “active” status  
24 with the California Secretary of State in each  
25 year since its incorporation.

26 SOS PRINTOUT. NANCY DECL ¶ 7.

*undisputed material fact into dispute.*

This preposterous claim by opposing  
counsel is made in *extremely bad faith* and rests  
on his preposterous, *bad-faith* attempt in SS2  
Item 2 above to bring the existence of the  
CORPORATION into dispute. **Please see  
reply at SS2 Item 2 above.** Corporations Code  
§ 312 provides that every corporation “shall  
have a chairman of the board or a president, or  
both, a secretary, a chief financial officer, and  
[may have other officers].” The existence of  
both the CORPORATION and its officers is  
undisputed as a matter of law.

*Plaintiff's response fails to bring this  
undisputed material fact into dispute.*

This preposterous claim by opposing  
counsel is made in *extremely bad faith* and rests

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3 MATT DECL ¶ 7.

4 ***Plaintiff's Response:***

5 DISPUTED. The Corporation no longer  
6 exists, and thus cannot file anything. Matt  
7 admitted DIXON FURNITURE, Limited  
8 “[d]oes not exist anymore.” (Matt Dixon  
9 Depo., 14:9-13.)

10 Indeed, Matt, in his deposition, made it  
11 quite clear the corporation no longer exists:

12 Q: Okay. Did you have part ownership  
13 interest in the corporation?

14 A: Did I or do I?

15 Q: Did you?

16 A: Yes, *I did*.

17 (Matt Dixon Depo., 13:25 - 14:4 [emphasis  
18 added].)

19 7. The CORPORATION has held shareholder  
20 meetings and board of directors meetings each  
21 year since 1976 in accordance with both its  
22 Bylaws and the law.

23 MINUTES. BYLAWS. NANCY DECL ¶ 7.

24 MATT DECL ¶ 7.

25 ***Plaintiff's Response:***

26 DISPUTED. The Corporation no

on his preposterous, *bad-faith* attempt in SS2  
Item 2 above to bring the existence of the  
CORPORATION into dispute. **Please see  
reply at SS2 Item 2 above.** Corporations Code  
§ 1502 provides that every corporation must file  
annual statements, and the Revenue and  
Taxation Code provides for the payment of  
corporation taxes, both of which are required to  
maintain an “active” status. By opposing  
counsel’s preposterous theory, the State could  
collect corporation taxes from non-existent  
corporations! The existence of both the  
CORPORATION and its “active” status is  
undisputed as a matter of law.

19 *Plaintiff's response fails to bring this*  
20 *undisputed material fact into dispute.*

21 This preposterous claim by opposing  
22 counsel is made in *extremely bad faith* and rests  
23 on his preposterous, *bad-faith* attempt in SS2  
24 Item 2 above to bring the existence of the  
25 CORPORATION into dispute. **Please see  
26 reply at SS2 Item 2 above.** Furthermore,

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3 longer exists, and thus cannot hold shareholder  
4 meetings. Matt admitted DIXON  
5 FURNITURE, Limited “[d]oes not exist  
6 anymore.” (Matt Dixon Depo., 14:9-13.)

7 Indeed, Matt, in his deposition, made it  
8 quite clear the corporation no longer exists:

9 Q: Okay. Did you have part ownership  
10 interest in the corporation?

11 A: Did I or do I?

12 Q: Did you?

13 A: Yes, *I did*.

14 (Matt Dixon Depo., 13:25 - 14:4 [emphasis  
15 added].)

16 8. The CORPORATION operated a furniture  
17 manufacturing business (hereinafter the  
18 “**FURNITURE BUSINESS**”) in Gardena,  
19 California. Over the past thirty years, the  
20 CORPORATION manufactured thousands of  
21 items of furniture and shipped them to  
22 customers all over the United States. It  
23 operated furniture showrooms in California  
24 and in Colorado.

25 MATT DEPO 15:14-17. NANCY DECL ¶ 8.

26 MATT DECL ¶ 8. MASON DECL ¶ 4.

assuming (arguendo) the absurdity that the  
CORPORATION *did* go out of existence as a  
consequence of MATT’S deposition testimony,  
it would be irrelevant here because this Item is  
referring exclusively to a time in the past that  
occurred *before the deposition!* The existence  
of the CORPORATION and its history of  
timely shareholder and board meetings are  
undisputed as a matter of law.

No reply.

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<p><b><i>Plaintiff's Response:</i></b> Undisputed.</p>	
<p>9. The real property on which the CORPORATION operated its FURNITURE BUSINESS (hereinafter the “PROPERTY”) is located at 1630 and 1640 West 132nd Street, Gardena, California 90249.</p> <p><u>MASON DEPO 13:19-24. NANCY DECL ¶ 10. MATT DECL ¶ 10. MASON DECL ¶ 5.</u></p> <p><b><i>Plaintiff's Response:</i></b> DISPUTED. The buildings owned by Matt and Nancy created 25,000 square feet of work space. Nevertheless, the vast majority of that space was leased to other businesses, and DIXON FURNITURE., Ltd., occupied approximately only 6,000 square feet of the entire space. (Deposition of Linda Mason (“Mason Depo.”), 45:8-25; a true and correct copy of the relevant portions of the Deposition of Linda Mason is attached to Boyd Decl. as Exhibit C.</p>	<p><i>Plaintiff's response fails to bring this undisputed material fact into dispute.</i></p> <p><u>This Item merely gives the address of the PROPERTY.</u> It says nothing about buildings on the property or the square footage of such buildings. Nor does it say anything about the ownership of the property. Nor does it say anything about apples or oranges.</p> <p>Opposing counsel might as well have argued that there were <i>only</i> 6,000 banana trees on the PROPERTY! The carelessness and <i>blatant bad faith</i> of opposing counsel’s response to this Item is indicative of the general quality of his arguments in opposition to the Motion for Summary Judgment.</p>
<p>10. At all relevant times, the PROPERTY has been owned by the TRUST.</p> <p><u>NANCY DEPO 10:24 to 11:1. MATT DEPO</u></p>	<p><i>Plaintiff's response fails to bring this undisputed material fact into dispute.</i></p> <p>The GRANT DEED and PROPERTY</p>

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21:24 to 22:1. NANCY DECL ¶ 11. MATT  
DECL ¶ 11.

***Plaintiff's Response:***

DISPUTED. Matt testified he still owns the land and the buildings. (Matt Dixon Depo., 14:14-17.) Linda claims Matt and Nancy own the property. (Mason Depo., 102:18-19.)

TAX DOCUMENTS clearly show that the PROPERTY is owned by the TRUST, and not by NANCY or MATT personally. NANCY or MATT are co-trustees of the TRUST, but they do not own the PROPERTY as individuals.

Furthermore, opposing counsel contradicts himself. Here he disputes that the TRUST owns the PROPERTY, but in SS2 Item 30 below *he expressly concedes that the TRUST owns the PROPERTY*: “Nancy and Matt also control the Dixon Family Trust, which currently owns the buildings at the facility.” (Plaintiff’s Response to SS2 Item 30, emphasis added to the last letter of “owns” to indicate he is using singular verb whose subject is the TRUST, rather than the plural verb “own” as would be necessary if its subject were NANCY and MATT).

Opposing counsel also concedes this in SS3 Item 95 (“Nancy and Matt also control the Dixon Family Trust, which currently owns the buildings at the facility.”)

11. “DIXON FURNITURE” is a brand name the used by the FURNITURE BUSINESS.

No reply.

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SALE AGMT p. 1 ¶ 1.2. NANCY DECL ¶ 9.

MATT DECL 9.

***Plaintiff's Response:***

Undisputed.

12. Due to the seasonal nature of the FURNITURE BUSINESS, each summer the CORPORATION augmented its regular year-round staff with temporary workers who were subsequently let go in the fall.

MASON DEPO 18:16-17. NANCY DECL ¶ 12. MATT DECL ¶ 12. MASON DECL ¶ 6.

***Plaintiff's Response:***

DISPUTED. Claimant had been through 2 or 3 prior downturns with the company, though he claims they were cyclical and did not ever result in layoffs. (Declaration of Tom Adams ("Adams Decl."), ¶ 28.) A true and correct copy of the Declaration of Tom Adams is attached to Boyd Decl. as Exhibit D.

*Plaintiff's response fails to bring this undisputed material fact into dispute.*

Opposing counsel's response does not conflict with the Item stated. If there were "2 or 3 prior downturns" that were "cyclical and did not ever result in layoffs," that does not call into dispute the fact that the FURNITURE BUSINESS was seasonal and employed temporary workers during the summer. Quite obviously, the temps worked with the understanding that it was a summer-only job. When a Christmas Tree lot opens up for business in early December and hires temp workers to sell trees, does the sudden drop off of business in late December indicate a "downturn" that results in "lay offs"? Certainly not.

13. From approximately 1998 until the present, the CORPORATION failed to make any profits.

*Plaintiff's response fails to bring this undisputed material fact into dispute.*

Whether or not there were "2 or 3 prior



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3 NANCY DEPO 16:8-9. NANCY DECL ¶ 13.  
4 MATT DECL ¶ 13. MASON DECL ¶ 7.

5 ***Plaintiff's Response:***

6 DISPUTED. Claimant had been through 2 or  
7 3 prior downturns with the company, though  
8 he claims they were cyclical and did not ever  
9 result in layoffs. (Adams Decl., ¶ 28.)

10 14. Beginning in the last quarter of 2006, the  
11 CORPORATION experienced a major  
12 downturn in its business (hereinafter the  
13 “DOWNTURN”) that greatly exceeded the  
14 usual seasonal decline in the fall.

15 MASON DEPO 25:15-22. NANCY DECL ¶  
16 14. MATT DECL ¶ 14. MASON DECL ¶ 8.

17 ***Plaintiff's Response:***

18 DISPUTED. Claimant had been through 2 or  
19 3 prior downturns with the company, though  
20 he claims they were cyclical and did not ever  
21 result in layoffs. (Adams Decl., ¶ 28.)

22 15. On December 14, 2007, the  
23 CORPORATION sold all its FURNITURE  
24 BUSINESS assets, including its machinery,  
25 equipment, inventory, accounts receivable,

downturns” that were “cyclical and did not ever  
result in layoffs” does not indicate whether or  
not the company was profitable in any  
particular year. Opposing counsel’s is trying to  
pull the wool over the court’s eyes—hoping the  
court will ignore elementary accounting  
principles.

*Plaintiff's response fails to bring this*  
*undisputed material fact into dispute.*

The existence of “2 or 3 prior  
downturns” that were “cyclical and did not ever  
result in layoffs” that does not mean the  
DOWNTURN did not occur in the last quarter  
of 2006. This is like the following absurd  
argument: (a) the stock market had several  
downturns prior to the Great Crash on Black  
Thursday, October 24, 1929, and these prior  
downturns *did not result in depressions*—  
therefore (b) the Great Crash and ensuing Great  
Depression ever happened!

*Plaintiff's response fails to bring this*  
*undisputed material fact into dispute.*

The SALE AGMT expressly states in a  
writing signed by MATT and NANCY that the

work in progress, intellectual property (including the “DIXON FURNITURE” trademark), permits, vendor list and customer list, to XYZ Manufacturing, Inc. (hereinafter “XYZ”).

ATTY DECL ¶ 9. SALE AGMT pp. 1 and 23. BILL OF SALE. MINUTES (last page, for 12/14/2007). MATT DEPO 15:7-13. NANCY DECL ¶ 15. MATT DECL ¶ 15. MASON DECL ¶ 9.

***Plaintiff’s Response:***

DISPUTED. Matt testified they sold only the machines, supplies, and inventory. (Matt Dixon Depo., 17:13-15.) Indeed, Matt specifically testified to *not* selling the client list. (Matt Dixon Depo., 15:24-25.)

Further, Nancy testified to selling the inventory, machinery, and equipment. (Nancy Dixon Depo., 16:22-25.)

16. Before the DOWNTURN, the CORPORATION had approximately 50 regular employees.  
Complaint ¶ 32. MASON DEPO 15:8-12. NANCY DECL ¶ 16. MATT DECL ¶ 16.

customer list was included in the sale, which supercedes MATT’S deposition testimony. The fact that MATT and NANCY testified that the machines, supplies, and inventory were sold does not preclude their *also* selling the customer list. Opposing counsel cites MATT’S DEPO 15:24-25 (“Q. Did you sell the client list? A. No.”). But this is contradicted in MATT’S answer to the very next question, “Q. Did you keep the client list? A. No.” (MATT’S DEPO 16:1-2). The SALE AGMT is a lengthy, detailed document and it is not surprising that MATT was confused about this detail that is immaterial here.

*Plaintiff’s response fails to bring this undisputed material fact into dispute.* The Item refers to regular employees, thereby excluding temporary employees. As established in SS2 Item 12 above, the CORPORATION hired

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3 MASON DECL ¶ 10.

4 ***Plaintiff's Response:***

5 DISPUTED. Linda claims the company  
6 actually had about 60 employees prior to the  
7 "Downturn". (Mason Depo., 15:13-14.)  
8 Linda, the company's *bookkeeper*, also  
9 testified the company had about 50 employees  
10 as of October 2006, well into the claimed  
11 Downturn and run of layoffs, which Linda  
12 claims they began in September 2006. (Mason  
13 Depo., 15:8-12, 46:12-15.)

temporary employees in the summer.

Opposing counsel cites "Mason Depo.,  
15:13-**14**" which two lines of testimony state  
"Q. And how many employees were working  
for the company in August 2006?" and does not  
include LINDA'S answer. But even if her  
answer on **line 15** is included ("Maybe 60"),  
that was in August which was during the  
*summer* and includes the temporary summer  
employees.

Opposing counsel then twists the facts  
by falsely asserting that "the claimed Downturn  
and run of layoffs.... began in September 2006."  
That is not what is claimed. SS2 Item 14 above  
expressly states, "Beginning in the last quarter  
of 2006, the CORPORATION experienced a  
major downturn in its business (hereinafter the  
"**DOWNTURN**")..." The "last quarter" begins  
in October, *not September*. Thus, it makes  
perfect sense that there were 50 employees "as  
of" the beginning of October 2006, but that  
during the month of October, the DOWNTURN  
hit and layoffs of regular employees began.

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	<p>Opposing counsel then absurdly cites “Mason Depo. 46:12-15” which testimony is about the CAT and <i>totally unrelated to employee counts.</i></p>
<p>17. At the time the CORPORATION sold its FURNITURE BUSINESS to XYZ on December 14, 2007, the CORPORATION had <u>27 employees.</u></p> <p><u>SALE AGMT p. 7 ¶ 8 and also Schedule 8.1 (List of All Employees). NANCY DECL ¶ 17. MATT DECL ¶ 17. MASON DECL ¶ 11.</u></p> <p><b><i>Plaintiff’s Response:</i></b></p> <p>DISPUTED. Respondents themselves claim that they only had 40 or so regular employees in the non-summer off-season. (Mason Depo., 15:16-18.) The rest of the summer employees were hired on a temporary basis. (Mason Depo., 18:16-22.)</p> <p>Moreover, it is noteworthy that Respondents now claim they knew how many employees worked for the company in December 2007, though when Matt created a list of employees as late as January 2007 to show his attorney a record of the company, he</p>	<p><i>Plaintiff’s response fails to bring this undisputed material fact into dispute.</i> The Item refers to <u>December 2007</u>. Opposing counsel preposterously cites “Mason Depo., 15:16-18” which refers to 40 employees as of <u>May 2006</u>, which was <i>five months</i> before the DOWNTURN began in October 2006, and <i>19 months</i> before the sale to XYZ. Since the stock market was high in May 1928, does that mean it was also high in December 1929?</p> <p>Opposing counsel cites “Mason Depo., 18:16-22” which refers to the practice of hiring summer temps, but says nothing related to the employee count in December 2007.</p> <p>Opposing counsel then goes on at length (and <i>ad nauseam</i>) about MATT’S list of employees, which was as of <u>January 2007</u>— <b><i>eleven months before the sale to XYZ in December 2007.</i></b> The carelessness and <i>blatant bad faith</i> of opposing counsel’s response to this</p>

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3 left a number of current employees off the list.  
4 (Matt Dixon Depo., 42:2 - 47:15, Exhibit 1  
5 thereto.) Indeed, Matt admits he failed to  
6 include the name of Thomas (Matt Dixon  
7 Depo., 43:11-16), Linda Mason (Matt Dixon  
8 Depo., 43:11-19), and  
9 another ten people (Matt Dixon Depo., 43:25 -  
10 44:17). Further, the names of Matt (the  
11 company's vice president), Nancy (the  
12 company's president), and Natalie do not  
13 appear on the list, despite them being  
14 employees. (Matt Dixon Depo., 44:23 - 45:4;  
15 Mason Depo., 105:14-18.)

16 Matt even testified there would have  
17 been too many people to add to the list if he  
18 included all the people working for the  
19 company as of January 3, 2007, who had been  
20 with the company less than 2 years. (Matt  
21 Dixon Depo., 47:1-6.) Matt claims he may  
22 have even *hired* new employees in 2007.  
23 (Matt Dixon Depo., 47:7-13.)

24 Accordingly, as of January 3, 2007, the  
25 company employed the 26 people on the list,  
26

Item is indicative of the general quality of his  
arguments in opposition to the Motion for  
Summary Judgment.

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3 Nancy, Matt, Natalie, Thomas, Linda, and an  
4 additional 10 employees, for a total of 41  
5 *employees as of January 3, 2007, 15 more*  
6 *than appear on the list Matt created to prove*  
7 *something in this lawsuit.* (Matt Dixon Depo.,  
8 46:16-25.)

9 18. Because of the DOWNTURN, the  
10 CORPORATION ultimately lost more than  
11 46% of its regular employee staff, falling  
12 from about 50 regular employees to 27  
13 employees. The math is simple: approximately  
14 23 employees were lost (50 minus 27), and 23  
15 is 46% of 50. Most of the lost employees were  
16 laid off, but some quit.

17 MASON DEPO 15:4-5; 22:10-18. NANCY  
18 DEPO 40:5-7; 41:12-16; 41:25 to 42:7. See  
19 also the two preceding items, respectively  
20 establishing about 50 and then 27 employees.

21 NANCY DECL ¶ 18. MATT DECL ¶ 18.  
22 MASON DECL ¶ 12.

23 ***Plaintiff's Response:***

24 DISPUTED. Respondents themselves claim  
25 that they only had 40 or so regular employees  
26 in the non-summer off-season. (Mason Depo.,

*Plaintiff's response fails to bring this  
undisputed material fact into dispute.*

This Item factually rests on two  
numbers: 27 and 50. Opposing counsel restates  
his identical long-winded, futile, bad-faith  
argument from SS2 Item 17, which fails to  
bring into dispute the undisputed material fact  
that there were 27 employees in December  
2007. **Please see reply at SS2 Item 17 above.**

The number 27 is undisputed.

In SS2 Item 16 above, opposing counsel  
*concedes* that “the company had about 50  
employees as of October 2006” (Plaintiffs  
Response to SS2 Item 16). The number 50 is  
undisputed.

The rest is pure math. **It is therefore**  
**undisputed that the CORPORATION**  
**ultimately lost more than 46% of its regular**

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3 15:16-18.) The rest of the summer employees  
4 were hired on a temporary basis. (Mason  
5 Depo., 18:16-22.)

6           Moreover, it is noteworthy that  
7 Respondents now claim they knew how many  
8 employees worked for the company in  
9 December 2007, though when Matt created a  
10 list of employees as late as January 2007 to  
11 show his attorney a record of the company, he  
12 left a number of current employees off the list.  
13 (Matt Dixon Depo., 42:2 - 47:15, Exhibit 1  
14 thereto.) Indeed, Matt admits he failed to  
15 include the name of Thomas (Matt Dixon  
16 Depo., 43:11-16), Linda Mason (Matt Dixon  
17 Depo., 43:11-19), and another ten people (Matt  
18 Dixon Depo., 43:25 - 44:17). Further, the  
19 names of Matt (the company's vice president),  
20 Nancy (the company's president), and Natalie  
21 do not appear on the list, despite them being  
22 employees. (Matt Dixon Depo., 44:23 - 45:4;  
23 Mason Depo., 105:14-18.)

24           Matt even testified there would have  
25 been too many people to add to the list if he

**employee staff.**

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3 included all the people working for the  
4 company as of January 3, 2007, who had been  
5 with the company less than 2 years. (Matt  
6 Dixon Depo., 47:1-6.) Matt claims he may  
7 have even *hired* new employees in 2007.  
8 (Matt Dixon Depo., 47:7-13.)

9 Accordingly, as of January 3, 2007, the  
10 company employed the 26 people on the list,  
11 Nancy, Matt, Natalie, Thomas, Linda, and an  
12 additional 10 employees, for a total of *41*  
13 *employees as of January 3, 2007, 15 more*  
14 *than appear on the list Matt created to prove*  
15 *something in this lawsuit.* (Matt Dixon Depo.,  
16 46:16-25.)

17 19. Because of the DOWNTURN, the  
18 CORPORATION had to close its showrooms.  
19 NANCY DEPO 40:5-7. NANCY DECL ¶ 19.  
20 MATT DECL ¶ 19. MASON DECL ¶ 13.  
21 ***Plaintiff's Response:***  
22 DISPUTED. Matt and Nancy closed the  
23 showrooms so they could sell the company to  
24 their employee Myers (who himself worked in  
25 a showroom for more than 10 years). (See  
26 Mason Depo., 104:6-10.)

*Plaintiff's response fails to bring this*  
*undisputed material fact into dispute.*  
  
Opposing counsel preposterously cites  
"Mason Depo., 104:6-10" which merely states  
that Myers *worked* in one of the showrooms:  
"Q. What position did Robert Myers hold? A.  
Showroom Manager in [redacted]. Q. How  
long had he been a Showroom -- oh, for over  
ten years? A. Yes." (MASON DEPO  
104:6-10.) That does not bring into dispute the



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3 During the course of this litigation,  
4 Respondents sold the entirety of the assets of  
5 the corporation while *personally* retaining the  
6 liabilities, leaving nothing but an empty shell.  
7 (Nancy Dixon Depo. 10:4-7, 10:20-23, 16:  
8 22-25; Matt Dixon Depo., 17:4-15.)

9 Indeed, **Nancy claimed she sold the**  
10 **business for personal reasons and initially**  
11 **would not divulge the reasons.** (Nancy Dixon  
12 Depo. 11: 13-18.) Nancy then admitted she  
13 had never thought of selling the business prior  
14 to April 2007, **which was during the course**  
15 **of the instant litigation.** (Nancy Dixon Depo.  
16 17: 8-19.)

17 Further, Nancy and Matt admitted to  
18 receiving compensation and personally  
19 retaining the liabilities. (Matt Dixon Depo.,  
20 14:23 - 15:5; Nancy Dixon Depo., 12:13 -  
21 13:2.) Nevertheless, Nancy and Matt refused  
22 to testify as to what they did with the proceeds  
23 from the sale of DIXON FURNITURE., Ltd.  
24 (Nancy Dixon Depo. 12: 21-25, 13: 1-25, 14:  
25 1-25, 15: 1-25; Matt Dixon Depo., 14:23-25,  
26

undisputed material fact that the showrooms got  
closed. Nor does it establish that “Matt and  
Nancy closed the showrooms so they could sell  
the company to their employee Myers.” as  
claimed by opposing counsel. Opposing  
counsel is using monkey logic.

Opposing counsel then goes on at  
length, *and in bad faith*, discussing questions of  
personal retention of corporate liabilities, empty  
shells, the timing of the sale of the business,  
what happened to the proceeds from the sale of  
the business, etc., none of which has anything to  
do with the undisputed fact stated in this Item:  
“Because of the DOWNTURN, the  
CORPORATION had to close its showrooms.”

15:1-5.)

20. The CORPORATION sold its FURNITURE BUSINESS to XYZ because (a) the CORPORATION had not made a profit for nine years, (b) the DOWNTURN had forced the CORPORATION to lay off approximately 46% of its regular employees, and (c) the CORPORATION could no longer afford to operate the business.

NANCY DEPO 12:13-20; 16:8-9. NANCY DECL ¶ 20. MATT DECL ¶ 20. MASON DECL ¶ 14.

***Plaintiff's Response:***

DISPUTED. During the course of this litigation, Respondents sold the entirety of the assets of the corporation while *personally* retaining the liabilities, leaving nothing but an empty shell. (Nancy Dixon Depo. 10:4-7, 10:20-23, 16: 22-25; Matt Dixon Depo., 17:4-15.)

Indeed, Nancy claimed she sold the business for personal reasons and initially would not divulge the reasons. (Nancy DECL ¶ 14.

*Plaintiff's response fails to bring this undisputed material fact into dispute.* This Item states three reasons for the sale to XYZ: (a) lack of profits, (b) the DOWNTURN, and (c) inability to afford continued operations. Opposing counsel presents various arguments, but none calls any of the three reasons stated in this Item into dispute.

The fact that the CORPORATION sold its assets but not its liabilities to XYZ Merely indicates the obvious—XYZ did not wish to purchase the liabilities. The fact of the CORPORATION selling its assets, but not its liabilities, to XYZ does not call any of the three reasons stated in this Item into dispute.

The fact that NANCY refused to divulge her reasons for the sale is of no consequence. She later stated that she had never thought of selling the business until she was approached in April 2007 by Robert Johnson and Robert Myers. It is not easy to sell a business. There is no reasonable basis for a “causal” relationship between ADAMS filing this

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3 Dixon Depo. 11: 13-18.) Nancy then admitted  
4 she had never thought of selling the business  
5 prior to April 2007, **which was during the**  
6 **course of the instant litigation.** (Nancy Dixon  
7 Depo. 17: 8-19.)

8 Further, Nancy and Matt admitted to  
9 receiving compensation and personally  
10 retaining the liabilities. (Matt Dixon Depo.,  
11 14:23 - 15:5; Nancy Dixon Depo., 12:13 -  
12 13:2.) Nevertheless, Nancy and Matt refused  
13 to testify as to what they did with the proceeds  
14 from the sale of DIXON FURNITURE., Ltd.  
15 (Nancy Dixon Depo. 12: 21-25, 13: 1-25, 14:  
16 1-25, 15: 1-25; Matt Dixon Depo., 14:23-25,  
17 15:1-5.)

lawsuit and Johnson/Myers approaching MATT  
and NANCY about the purchase. The close  
proximity in timing is *sheer coincidence*, and  
opposing counsel has no evidence that it was  
not coincidence.

A *vastly* more likely scenario is that  
Johnson and Myers *saw an opportunity in the*  
*DOWNTURN* and had new ideas for  
restructuring the business, and, on that basis  
approached MATT and NANCY. That is the  
American way. Indeed, under this likely  
scenario, the coincidence of timing actually  
makes sense (but without ADAM'S filing the  
lawsuit constituting any "cause"). The cause  
was the DOWNTURN. It was the single  
driving factor that both (a) caused ADAMS to  
be laid off (which led to his filing this lawsuit),  
and (b) caused Johnson and Myers to conceive a  
new opportunity and approach MATT and  
NANCY. Hence, the coincidence of timing  
does not call any of the three reasons stated in  
this Item into dispute.

MATT'S statement that he received

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	<p>“compensation” for selling the business is both nebulous and irrelevant. Did he receive “salary” or a “bonus” in consideration for his time and effort negotiating and closing the deal with XYZ? Perhaps. But receiving salary and/or bonus does not call any of the three reasons stated in this Item into dispute. Opposing counsel did not question MATT about the <i>proceeds</i> from the sale. But if the CORPORATION distributed some or all of the proceeds of the sale to its sole shareholder, the TRUST, that does not call any of the three reasons stated in this Item into dispute. The fact that NANCY and MATT are to co-trustees of the TRUST does not call any of the three reasons stated in this Item into dispute. The fact that NANCY and MATT claimed privilege when asked where the money from the sale went does not call any of the three reasons stated in this Item into dispute.</p>
<p>21. Neither NANCY nor MATT nor the CORPORATION sought a buyer for the CORPORATION’S FURNITURE BUSINESS. Instead, they were approached in</p>	<p><i>Plaintiff’s response fails to bring this undisputed material fact into dispute.</i> This item addresses the question of who initiated the discussions that led to the sale to XYZ. The</p>

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3 April 2007 by Robert Johnson and Robert  
4 Myers, who initiated discussions for XYZ  
5 purchasing the FURNITURE BUSINESS.  
6 NANCY DEPO 16:10-18; 17:8-10. NANCY  
7 DECL ¶ 21. MATT DECL ¶ 21.

8 ***Plaintiff's Response:***

9 DISPUTED. During the course of this  
10 litigation, Respondents sold the entirety of the  
11 assets of the corporation while *personally*  
12 retaining the liabilities, leaving nothing but an  
13 empty shell. (Nancy Dixon Depo. 10:4-7,  
14 10:20-23, 16: 22-25; Matt Dixon Depo.,  
15 17:4-15.)

16 Indeed, Nancy claimed she sold the  
17 business for personal reasons and initially  
18 would not divulge the reasons. (Nancy Dixon  
19 Depo. 11: 13-18.) Nancy then admitted she  
20 had never thought of selling the  
21 business prior to April 2007, **which was**  
22 **during the course of the instant litigation.**  
23 (Nancy Dixon Depo. 17: 8-19.)

24 Further, Nancy and Matt admitted to  
25 receiving compensation and personally

arguments given do not address this question.  
Whatever MATT'S and/or NANCY'S  
motivations may have been, in their capacity as  
officers and directors of the CORPORATION,  
and as trustees of the TRUST, to execute the  
SALE AGMT, has nothing to do with who  
initiated the discussions. The undisputed fact is  
that the discussions were initiated by Robert  
Johnson and Robert Myers.

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3 retaining the liabilities. (Matt Dixon Depo.,  
4 14:23 - 15:5; Nancy Dixon Depo., 12:13 -  
5 13:2.) Nevertheless, Nancy and Matt refused  
6 to testify as to what they did with the proceeds  
7 from the sale of DIXON FURNITURE., Ltd.  
8 (Nancy Dixon Depo. 12: 21-25, 13: 1-25, 14:  
9 1-25, 15: 1-25; Matt Dixon Depo., 14:23-25,  
10 15:1-5.)

11 22. The filing of the Complaint by ADAMS  
12 was unrelated to Robert Johnson and Robert  
13 Myers initiating discussions for XYZ  
14 purchasing the FURNITURE BUSINESS.  
15 The filing of the Complaint by ADAMS was  
16 also unrelated to the CORPORATION selling  
17 its FURNITURE BUSINESS to XYZ.

18 NANCY DEPO 17:11-13. NANCY DECL ¶

19 22. MATT DECL ¶ 22.

20 ***Plaintiff's Response:***

21 DISPUTED. During the course of this  
22 litigation, Respondents sold the entirety of the  
23 assets of the corporation while *personally*  
24 retaining the liabilities, leaving nothing but an  
25 empty shell. (Nancy Dixon Depo. 10:4-7,  
26 10:20-23, 16: 22-25; Matt Dixon Depo.,

*Plaintiff's response fails to bring this  
undisputed material fact into dispute.*

This Item involves the *nonexistence* of  
two cause-and-effect relationships alleged  
elsewhere by Plaintiff. First, did Plaintiff's  
filing this lawsuit in March 2007, cause Johnson  
and Myers to initiate discussions in April 2007?  
Second, did Plaintiff's filing of this lawsuit  
cause MATT and NANCY'S decision, *in their*  
*capacity as officers and directors of the*  
*CORPORATION, and in their capacity as*  
*trustees of the TRUST, to execute the SALE*  
*AGMT. The Item states that the answer to both*  
*questions is no. Opposing counsel's arguments*  
fail to call either of the two "no" answers into  
dispute.

17:4-15.)  
Indeed, Nancy claimed she sold the business for personal reasons and initially would not divulge the reasons. (Nancy Dixon Depo. 11: 13-18.) Nancy then admitted she had never thought of selling the business prior to April 2007, which was during the course of the instant litigation.

(Nancy Dixon Depo. 17: 8-19.)

Further, Nancy and Matt admitted to receiving compensation and personally retaining the liabilities. (Matt Dixon Depo., 14:23 - 15:5; Nancy Dixon Depo., 12:13 - 13:2.) Nevertheless, Nancy and Matt refused to testify as to what they did with the proceeds from the sale of DIXON FURNITURE., Ltd. (Nancy Dixon Depo. 12: 21-25, 13: 1-25, 14: 1-25, 15: 1-25; Matt Dixon Depo., 14:23-25, 15:1-5.)

The fact that the CORPORATION sold its assets but not its liabilities to XYZ merely indicates the obvious—XYZ did not wish to purchase the liabilities. The fact of the CORPORATION selling its assets, but not its liabilities, to XYZ does not call either of the two “no” answers into dispute.

The fact that NANCY refused to divulge her reasons for the sale is of no consequence. She later stated that she had never thought of selling the business until she was approached in April 2007 by Robert Johnson and Robert Myers. **It is not easy to sell a business.** There is no reasonable basis for a “causal” relationship between ADAMS filing this lawsuit and Johnson/Myers approaching MATT and NANCY about the purchase. The close proximity in timing is *sheer coincidence*, and opposing counsel has no evidence that it was not coincidence.

A vastly more likely scenario is that Johnson and Myers saw an opportunity in the *DOWNTURN* and had new ideas for

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restructuring the business, and, on that basis approached MATT and NANCY. That is the American way. Indeed, under this likely scenario, the coincidence of timing actually makes sense (but without ADAM’S filing the lawsuit constituting any “cause”). The cause was the DOWNTURN. It was the single driving factor that both (a) caused ADAMS to be laid off (which led to his filing this lawsuit), and (b) caused Johnson and Myers to conceive a new opportunity and approach MATT and NANCY. Hence, the coincidence of timing does not call the first of the two “no” answers into dispute.

Nor does it call the second of the two “no” answers into dispute. Once discussions were initiated by Johnson and Myers, it was natural for MATT and NANCY, who were aging and tired of struggling with the DOWNTURN, to continue in those discussions. The fact that the discussions and the ultimate closure of the deal happened concurrently with this lawsuit is coincidence and nothing more.



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MATT’S statement that he received “compensation” for selling the business is both nebulous and irrelevant. Did he receive “salary” or a “bonus” in consideration for his time and effort negotiating and closing the deal with XYZ? Perhaps. But receiving salary and/or bonus does not call either of the two “no” answers into dispute. Opposing counsel did not question MATT about the *proceeds* from the sale. But if the CORPORATION distributed some or all of the proceeds of the sale to its sole shareholder, the TRUST, that does not call either of the two “no” answers into dispute. The fact that NANCY and MATT are to co-trustees of the TRUST does not call either of the two “no” answers into dispute. The fact that NANCY and MATT claimed privilege when asked where the money from the sale went does not call either of the two “no” answers into dispute.

23. ADAMS was employed by the CORPORATION from 1994 to 1999 (hereinafter the “**FIRST STINT**”).  
MATT DEPO 24:3 to 25:18. NANCY DECL.

Opposing counsel concedes this Item is UNDISPUTED, but the falsely argues that ADAMS was employed by MATT and/or NANCY, rather than (or in addition to) being

¶ 23. MATT DECL ¶ 23. MASON DECL ¶

15.

***Plaintiff's Response:***

Undisputed. However, Claimant was also employed by Nancy and Matt. Matt and Nancy controlled each and every aspect of Adams' and other employees' work performance, pay, job duties, ability to take time off, and payment of medical bills.

(Nancy Dixon Depo., 6:21 - 7:3, 10:1-7, 10:20-23, 20:24 - 21:10; Matt Dixon Depo., 13:14-23, 14:3-4, 17:7-15; Adams Decl., ¶ 2, 15, 20, 29; Mason Depo., 61:14-15, 85:3-8, 96:25 - 97:21, 98:14 - 102:17.)

Moreover, upon his termination, Respondents offered Claimant a \$5,000.00 personal check from Matt to release his claims. He refused. (Adams Decl., ¶ 29.)

24. ADAMS was again employed by the CORPORATION from 2003 to 2006 (hereinafter the "SECOND STINT"). His Federal W-2 statements for 2004, 2005 and 2006 list his employer as "DIXON FURNITURE LTD, [aka] DIXON

employed by the CORPORATION. This argument is utter absurdity as explained in depth at SS2 Item 29 below. **Please see reply at SS2 Item 29 below showing ADAMS was not employed by NANCY or MATT.**

MOVING DEFENDANTS concede the immaterial detail that the SECOND STINT began in October 2002, rather than sometime in 2003. Aside from that, opposing counsel concedes the undisputed material fact that, during the SECOND STINT, ADAMS was

FURNITURE.”  
MATT DEPO 24:3 to 25:18. NANCY DEPO 51:9-19 and Exhibit 22 thereof (W-2 Statements). Complaint ¶ 7. NANCY DECL ¶ 24. MATT DECL ¶ 24. MASON DECL ¶ 16.

***Plaintiff's Response:***

DISPUTED. Claimant actually returned in October 2002. (Adams Decl., ¶ 2-3.) Further, Linda Mason, Respondents' PMK, testified Claimant "left and then was rehired later on, and had been there at least five years at the current location or six years. That's how long they had that building there – six years. He had been there that whole time." (Mason Depo., 13:12-21.)<sup>25</sup>. ADAMS was an "at will" employee of the CORPORATION.

NANCY DEPO Exhibit 25 (Employee Handbook) p. 4 ¶ 4 and p. 29.

25. ADAMS was an "at will" employee of the CORPORATION.

NANCY DEPO Exhibit 25 (Employee Handbook) p. 4 ¶ 4 and p. 29.

***Plaintiff's Response:***

employed by the CORPORATION: "ADAMS was an 'at will' employee of the CORPORATION" (Plaintiffs Response to SS2 Item 24), and "Undisputed" (Plaintiffs Response to SS2 Item 25—ADAMS was an "at will" employee of the CORPORATION).

Here, opposing counsel not only *concedes* the undisputed material fact that ADAMS was employed by the CORPORATION, but also that ADAMS was not by employed by NANCY and/or MATT personally.

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Undisputed.	
<p>26. ADAMS was a good employee at the CORPORATION.</p> <p><u>MATT DEPO 71:3-6. MASON DEPO 38:19-20. NANCY DEPO 49:14, and Exhibit 18 thereof (Employee Performance Evaluation). NANCY DECL ¶ 25. MATT DECL ¶ 25. MASON DECL ¶ 17.</u></p> <p><b><i>Plaintiff's Response:</i></b></p> <p>Undisputed.</p>	<p>Here, opposing counsel not only <i>concedes</i> the undisputed <u>material</u> fact that ADAMS was employed <u>by the CORPORATION</u>, but also that ADAMS was <u>not</u> by employed by NANCY and/or MATT personally.</p>
<p>27. The FIRST STINT ended when ADAMS voluntarily quit his employment at the CORPORATION.</p> <p><u>MATT DEPO 24:3-10. NANCY DECL ¶ 26. MATT DECL ¶ 26.</u></p> <p><b><i>Plaintiff's Response:</i></b></p> <p>Undisputed.</p>	<p>Here, opposing counsel not only <i>concedes</i> the undisputed <u>material</u> fact that ADAMS was employed <u>by the CORPORATION</u>, but also that ADAMS was <u>not</u> by employed by NANCY and/or MATT personally.</p>

28. The SECOND STINT ended when ADAMS was laid off by the CORPORATION on November 21, 2006. MASON DEPO 58:19 to 59:13, and Exhibit 1 thereof (layoff letter). Complaint ¶¶ 17, 49 and 62. NANCY DECL ¶ 27. MATT DECL ¶ 27. MASON DECL ¶ 18.

***Plaintiff's Response:***

DISPUTED. The Second Stint ended when Claimant was Wrongfully Terminated by Nancy and Matt. Linda even admitted Claimant complained (to her personally) about the unsafe workplace on a "frequent basis," specifically two to three times each week following his July injury, not just once. (Mason Depo., 39:13 - 40:10.) These complaints specifically regarded the dust, the building making him sick, the cat, and the animals in the back. (Mason Depo., 39:20-25.) Linda then made the fatal admission that Claimant's demeanor (i.e., complaints) was causing problems in the company and was a factor in the decision to terminate. (Mason

*Plaintiff's response fails to bring this undisputed material fact into dispute.*

Opposing counsel twists LINDA'S testimony in a vain attempt to fabricate a so-called "fatal admission that Claimant's demeanor (i.e., complaints) was causing problems in the company and was a factor in the decision to terminate. (Mason Depo., 53:24 - **54:8**.)" (Plaintiff's Response to SS2 Item 28, emphasis added to final page/line number.)

There was no such "fatal admission." Indeed, if there had been one, opposing counsel would surely have quoted it. Rather than any "fatal admission," LINDA simply made a remark about ADAMS being miserable at work. Opposing counsel took the testimony out of context by stopping at **54:8** knowing full well that the next two questions conclusively show there was no "fatal admission." Indeed, LINDA says "no" three times to his question about ADAMS'S attitude playing a role in the termination decision:

"Q. Were there any other issues

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2 Depo., 53:24 - 54:8.)

3 In addition, Claimant was the only one  
4 terminated at that time. (Adams Decl., ¶ 27.)

5 Two other expeditors, and Charles Jameson, a  
6 non-disabled employee who replaced

7 Claimant, were all retained. (Nancy Dixon

8 Depo., 40: 12-21, 42: 7-25,

9 43:1-2; Mason Depo., 54:20-22.)

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11 Moreover, at the same time, Linda  
12 handed Claimant a \$5,000 personal check from  
13 Matt that could be cashed on the condition that  
14 Claimant sign a release of liability. (Adams  
15 Decl., ¶ 29.)

involved -- him being extremely unhappy,  
negative and sarcastic -- did that play any role  
in part of the decision to select him for  
termination? A. **No, it did not specifically play  
a role**, although everyone was going to be  
relieved not to have to deal with his unhappy --  
his -- he was miserable there. Q. His  
demeanor? A. Yes. [54:8--opposing counsel's  
citation ends here, but the questioning  
continues] **Q. So it didn't specifically enter  
into the equation? A. No. Q. But did it  
generally enter in to the equation for you?  
A. No. It was all about work.**" (MASON  
DEPO 53:24 to **54:14**.)

16  
17 Given that ADAMS'S complaints,  
18 attitude and demeanor played no role in the  
19 decision to lay him off, the question of whether  
20 or not he made complaints about the DUST,  
21 CAT and FOWL is *irrelevant*.

22 ADAMS was offered \$5,000 in  
23 severance pay, which he refused to accept. It  
24 was the CORPORATION'S intention that the  
25 severance pay ease the transition and cover

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some of ADAMS’S living and medical expenses while he looked for another job.  
MATT DECL-2 ¶ 3.

29. ADAMS was never employed by NANCY or by MATT. His Federal W-2 statements for 2004, 2005 and 2006 do not list NANCY or MATT as his employer. ADAMS has no facts to support his allegations that he was employed by NANCY or MATT. (In response to a special interrogatory requesting such facts, ADAMS merely stated, “At all relevant times, defendant Nancy Dixon was owner and president of defendant DIXON FURNITURE, LTD. and Matt Dixon was a shareholder of

*Plaintiff’s response fails to bring this undisputed material fact into dispute.*  
Special Interrogatory No. 63 asks, “In the light of YOUR allegations in COMPLAINT ¶¶ 7 and 31 that YOU were employed by the ‘Defendants,’ please describe all facts establishing that YOU were employed by the DIXONS (as opposed to YOUR being employed by DIXON FURNITURE).” (SPEC ROGGS No. 63.) ADAMS’S response quoted in the left column was verified (and also signed

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3 DIXON FURNITURE.” Also, in response to a  
4 form interrogatory asking if he was an  
5 employee of anyone, ADAMS replied that he  
6 was an employee of the CORPORATION but  
7 did not indicate that he was an employee of  
8 either NANCY or MATT.)  
9 NANCY DEPO 51:9-19 and Exhibit 22  
10 thereof (W-2 Statements). SPEC ROGGS and  
11 SI RESPONSES No. 63. FORM ROGGS and  
12 FI RESPONSES No. 2.11.

13 ***Plaintiff’s Response:***

14 DISPUTED. Matt and Nancy controlled each  
15 and every aspect of Adams’ and other  
16 employees’ work performance, pay, job duties,  
17 ability to take time off, and payment of  
18 medical bills. (Nancy Dixon Depo., 6:21 - 7:3,  
19 10:1-7, 10:20-23, 20:24 - 21:10; Matt Dixon  
20 Depo., 13:14-23, 14:3-4, 17:7-15; Adams  
21 Decl., ¶ 2, 15, 20, 29; Mason Depo., 61:14-15,  
22 85:3-8, 96:25 - 97:21, 98:14 - 102:17.)

23 Moreover, upon his termination,  
24 Respondents offered Claimant a \$5,000.00  
25 personal check from Matt to release his claims.

by opposing counsel) and stated no such facts.  
The fact that NANCY and MATT were owners  
or officers or shareholders of the  
CORPORATION does not even remotely  
establish that they directly employed ADAMS  
in their individual capacities. Form  
Interrogatory No. 2.11 asks, “At the time of the  
INCIDENT were you acting as an agent or  
employee for any PERSON? If so, state: (a) the  
name.... of the PERSON.” ADAMS’S response  
was verified (and also signed by opposing  
counsel) and stated “DIXON FURNITURE.,  
LTD” without naming NANCY or MATT.  
FORM ROGGS and FI RESPONSES No. 2.11.

Quite obviously, when supervising  
ADAMS’S work, MATT and NANCY were  
acting *in their capacity as officers of the*  
*CORPORATION*, not personally as his  
employers. The fact that a personal check was  
tendered at the time of ADAMS’S layoff—*after*  
*five years of employment by the*  
*CORPORATION*—does not suddenly change  
the status of that longtime employer-employee



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He refused. (Adams Decl., ¶ 29.)

relationship, which was between the CORPORATION and ADAMS. Indeed, the “Adam Decl.” cited by opposing counsel glaringly omits any statement that ADAMS was “employed” by MATT and/or NANCY.

ADAMS was offered \$5,000 in severance pay, which he refused to accept. It was the CORPORATION’S intention that the severance pay ease the transition and cover some of ADAMS’S living and medical expenses while he looked for another job.  
MATT DECL-2 ¶ 3.

30. Neither NANCY nor MATT is personally liable for any obligation of the CORPORATION that is alleged in the Complaint. ADAMS has no facts to support his allegations that NANCY or MATT is personally liable. (In response to a special interrogatory requesting such facts, ADAMS provided the following hopelessly ungrammatical reply: **“At all times relevant, defendant Nancy Dixon was owner and president of defendant DIXON FURNITURE, LTD. and Matt Dixon was a**

*Plaintiff’s response fails to bring this undisputed material fact into dispute.*

Special Interrogatory No. 66 asks, **“Please describe all facts that would support YOUR holding the DIXONS personally liable for the obligations of DIXON FURNITURE in this action (i.e. ‘piercing the corporate veil’).”** SPEC ROGGS No. 66. ADAMS’S fatal and ungrammatical response quoted in the left column with bolding now added was verified (and also signed by opposing counsel) and stated no such facts.

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3 **shareholder for [sic] DIXON FURNITURE.**  
4 **holding [sic] defendants Nancy Dixon was**  
5 **[sic] owner and present [sic] of defendant**  
6 **DIXON FURNITURE., LTD and Matt**  
7 **Dixon liable for their actions as**  
8 **representatives of defendant DIXON**  
9 **FURNITURE.”)**

10 SPEC ROGGS and SI RESPONSES No. 66.

11 ***Plaintiff's Response:***

12 DISPUTED. From 1974 to 2007, Nancy and  
13 Matt owned and ran DIXON FURNITURE,  
14 Ltd. (Nancy Dixon Depo. 6: 21-25, 7: 1-3;  
15 Matt Dixon Depo., 13: 14-16.) Matt and  
16 Nancy are the only two shareholders, each  
17 holding one-half interest in the corporation.  
18 (Matt Dixon Depo., 13: 17-23;14: 3-4.) Nancy  
19 was the President and chief designer. (Nancy  
20 Dixon Depo., 6:25 - 7:3.)

21 Nancy and Matt sold the business to  
22 former employees in April 2007. (Nancy  
23 Dixon Depo., 9:20-25; Matt Dixon Depo., 14:5  
24 - 15:8, 20:24 - 21:5.) Nancy and Matt both  
25 testified they *personally retained the*

Opposing counsel took the depositions  
of NANCY, MATT and LINDA on February  
14, 2008, and opposing counsel did not serve  
the responses to the special interrogatories until  
April 16, 2008 which was *more than two*  
*months later*. Opposing counsel now attempts  
to “undo” the fatal damage done in ADAMS’S  
response to Special Interrogatory No. 66 by  
spinning and twisting the deposition testimony  
*rather than by serving amended responses to*  
*the special interrogatories that are verified by*  
*ADAMS.*

NANCY and MATT ran a small  
business, not a law firm. It is common parlance  
for small business owners to speak of the  
business’s assets as being “their assets,” and the  
business’s liabilities as being “their liabilities,”  
when, in fact, their lawyer has set the business  
up for them in the form of a closely held  
corporation. This scenario has been repeated  
tens-of-thousands of times across America and  
is essential to the operation and survival of  
American small business. If every small

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3 *liabilities, upon the sale of the company’s*  
4 *business assets in 2007. (Nancy Dixon Depo.*  
5 *10: 1-7, 10: 20-23; Matt Dixon Depo., 17:*  
6 *7-15.)*

7 Further, the Dixons’ conduct allows the  
8 Arbitrator to pierce the veil. During the course  
9 of this litigation, Respondents sold the entirety  
10 of the assets of the corporation while  
11 *personally* retaining the liabilities, leaving  
12 nothing but an empty shell. (Nancy Dixon  
13 Depo. 10:4-7, 10:20-23, 16: 22-25; Matt Dixon  
14 Depo., 17:4-  
15 15.)

16 Indeed, **Nancy claimed she sold the**  
17 **business for personal reasons and initially**  
18 **would not divulge the reasons.** (Nancy Dixon  
19 Depo. 11: 13-18.) Nancy then admitted she  
20 had never thought of selling the business prior  
21 to April 2007, **which was during the course**  
22 **of the instant litigation.** (Nancy Dixon Depo.  
23 17: 8-19.)

24 Also, **Nancy and Matt carried no**  
25 **workers’ compensation insurance.** Indeed,

business owner had to graduate from law school  
before incorporating, then American small  
business would collapse.

From the beginning, all liabilities of the  
CORPORATION were held by the  
CORPORATION. Opposing counsel presents  
*no evidence* that NANCY or MATT executed  
any form of “personal guarantee” for the  
CORPORATION’S liabilities. And, because  
NANCY and MATT never held those liabilities  
in the first place, opposing counsel’s assertion  
that they “retained” those liabilities is absurd.  
**They cannot “retain” what they did not**  
**already hold.**

The fact that the CORPORATION sold  
its assets but not its liabilities to XYZ is no  
evidence that the corporate veil should be  
pierced—XYZ did not wish to purchase the  
liabilities. The fact of the CORPORATION  
selling its assets, but not its liabilities, to XYZ  
does not trigger a “transfer” of the corporate  
liabilities from the CORPORATION to  
NANCY and MATT personally.

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3 Matt told Claimant the company had no  
4 insurance, and that one claim could sink them.  
5 (Adams Decl., ¶ 12.) And while they claim  
6 otherwise, neither Nancy nor Matt could recall  
7 the name of the insurance carrier. (Nancy  
8 Dixon Depo. 7: 13-14; Matt Dixon Depo., 80:  
9 10-20.) Nancy claimed Linda was responsible  
10 for obtaining worker’s compensation insurance  
11 for the company. (Nancy Dixon Depo. 7:  
12 7-12.) Linda claimed a broker may have come  
13 to speak to the company about the insurance  
14 either at the end of 2005 or beginning of 2006.  
15 (Mason Depo., 100:2-9.) Before then, Linda  
16 could not recall the company having it. (Mason  
17 Depo., 100:10-16.)

18 Additionally, Matt admitted receiving  
19 compensation for selling the business. (Matt  
20 Dixon Depo., 14: 23-25; 15: 1-5.) He also  
21 testified he currently owns the land and  
22 buildings. (Matt Dixon Depo., 14: 14-17.)  
23 Nancy and Matt also control the Dixon Family  
24 Trust, which currently owns the buildings at  
25 the facility. (Nancy Dixon Depo. 10: 24-25;

Indeed, the CORPORATION did not  
sell *all* its assets to XYZ—specifically, it kept  
its books and records, and those books and  
records did not suddenly become the personal  
assets of NANCY and MATT upon the sale of  
other assets to XYZ.

Opposing counsel states that “Matt and  
Nancy are the only two shareholders” which is  
false—see **reply in SS2 Item 3 above**.

Opposing counsel preposterously and in  
*extremely bad faith* spins irrelevant deposition  
testimony to assert that “Nancy and Matt  
carried no workers’ compensation insurance.”  
While it is true that NANCY and MATT did not  
*personally* carry workers’ compensation  
insurance, opposing counsel knows very well  
that, not only did the CORPORATION carry  
workers’ compensation insurance, but his client  
ADAMS filed a workers’ compensation claim  
against it, testified at a deposition in that matter,  
and trial before the Workers Compensation  
Appeals Board is scheduled for [redacted],  
2008! See SS3 Items 87 and 88.

11: 1-3.)  
Nancy and Matt refused to testify as to what they did with the money from the sale, claiming such information to be privileged. (Nancy Dixon Depo. 12: 21-25, 13: 1-25, 14: 1-25, 15: 1-25; Matt Dixon Depo., 14:23-25, 15:1-5.)

Nancy admittedly personally paid Claimant's work injury medical bills by her *personal* credit card. (Nancy Dixon Depo. 20: 24-25; 21: 1-10.)

Finally, upon Claimants termination, Respondents offered Claimant a personal check from Matt for \$5,000.00 to sign a release of all claims. (Adams Decl., ¶ 29.)

MATT'S statement that he received "compensation" for selling the business is nebulous. Did he receive "salary" or a "bonus" in consideration for his time and effort negotiating and closing the deal with XYZ? Perhaps. But opposing counsel did not question MATT about the *proceeds* from the sale.

It is commonplace Americas to have family trusts which hold real estate and other assets for estate planning purposes. Millions of Americans have their homes and other property owned by a trust, and yet it is common parlance for them to speak of such property as "their property" even though it is, in legal reality, "the trust's property." MATT'S testimony that he currently owns the land and building is, quite obviously, referring to the TRUST owning the land and buildings. Indeed opposing counsel *concedes* that "the Dixon Family Trust... currently owns the buildings at the facility." (Plaintiff's Response to SS2 Item 30.)

Invoking lawful privilege against testifying as to what the CORPORATION did

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with the proceeds from the sale to XYZ is no evidence to support piercing the corporate veil.

NANCY’S testimony indicates that she felt compassion for ADAMS but reasonably believed his asthma was *not work-related*—and she was correct (See SS3 Items 101-104).

Since she cared about him as a human being, there was nothing improper about her using personal funds to help him out. Her doing so is no evidence to support piercing the corporate veil.

ADAMS was offered \$5,000 in severance pay, which he refused to accept. It was the CORPORATION’S intention that the severance pay ease the transition and cover some of ADAMS’S living and medical expenses while he looked for another job.

MATT DECL-2 ¶ 3.

31. In July 2006 an incident occurred on the PROPERTY wherein ADAMS complained that he was having difficulty breathing (hereinafter the “**BREATHING INCIDENT**”). The CORPORATION sent him to its clinic and the doctor diagnosed that

MOVING DEFENDANTS concede the immaterial detail that the BREATHING INCIDENT occurred on May 30 or 31, 2006, rather than in July 2006. MOVING DEFENDANTS additionally concede that a second breathing incident occurred on or about

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3 symptoms of a longstanding asthma condition  
4 had just surfaced.

5 MASON DEPO 40:19 to 41:1; 41:15-20;  
6 60:7-11. NANCY DECL ¶ 28. MATT DECL  
7 ¶ 28. MASON DECL ¶ 19.

8 ***Plaintiff's Response:***

9 DISPUTED. In May 2006, Claimant suffered  
10 an asthma attack at work. (Adams Decl., ¶ 4.)  
11 He told Linda, Nancy, and Matt of the attack,  
12 and they had one of the employees take him to  
13 a clinic. (Adams Decl., ¶ 5.) Then, for  
14 approximately two weeks, Claimant struggled  
15 at work to continue to perform his duties, but  
16 he suffered further attacks. (Adams Decl., ¶  
17 8.)

18 On or about June 13, 2006, Claimant  
19 suffered another attack and was taken to the  
20 UCLA Emergency room for treatment of the  
21 debilitating attack. (Adams Decl., ¶ 9.)

22 32. Immediately after the BREATHING  
23 INCIDENT, ADAMS went on a leave of  
24 absence from work for about six weeks  
25 (hereinafter the “PAID LEAVE”) because he  
26 was suffering from asthma.

June 10, 2006. ADAMS DECL. 25:8-14.

*Plaintiff's response fails to bring this  
undisputed material fact into dispute.*

Aside from the pointing out the  
immaterial detail of the exact date of the  
BREATHING INCIDENT (of which MOVING

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3 MATT DEPO 26:3-9. MASON DEPO  
4 40:11-17. NANCY DECL ¶ 29. MATT  
5 DECL ¶ 29. MASON DECL ¶ 20. Complaint  
6 ¶ 13.

7 ***Plaintiff's Response:***

8 DISPUTED. In May 2006, Claimant suffered  
9 an asthma attack at work. (Adams Decl., ¶ 4.)  
10 He told Linda, Nancy, and Matt of the attack,  
11 and they had one of the employees take him to  
12 a clinic. (Adams Decl., ¶ 5.) Then, for  
13 approximately two weeks, Claimant struggled  
14 at work to continue to perform his duties, but  
15 he suffered further attacks. (Adams Decl., ¶  
16 8.)

17 On or about June 13, 2006, Claimant  
18 suffered another attack and was taken to the  
19 UCLA Emergency room for treatment of the  
20 debilitating attack. (Adams Decl., ¶ 9.)

21 Following the latest asthma attack, he  
22 returned to the office and requested a 6 week  
23 medical leave of absence. (Adams Decl., ¶ 9.)

24 However, during that same meeting, Nancy  
25 and Matt instructed him to file for disability

DEFENDANTS concede there were two, not  
one, on or about May 30 and Jun 10, 2006),  
Plaintiff's response is silent on the undisputed  
material fact that ADAMS received six weeks  
of PAID LEAVE. Indeed, opposing counsel  
expressly concedes this in SS2 Item 34 below:  
“**they gave him a paid leave.**” (Plaintiff's  
Response to SS2 Item 34.)



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3 and not to file a workers' compensation claim.  
(Adams Decl., ¶ 9.)

4 33. While ADAMS was absent from work  
5 during the PAID LEAVE, the  
6 CORPORATION kept his job position open  
7 for him.  
8 MASON DEPO 41:3-4. NANCY DECL ¶ 30.  
9 MATT DECL ¶ 30. MASON DECL ¶ 21.  
10 ***Plaintiff's Response:***  
11 DISPUTED. Respondents hired a new  
12 employee to fill in for Claimant. (Nancy  
13 Dixon Depo. 44: 25; 45: 1-7.) Upon his return,  
14 Respondents told Claimant he had already  
15 been replaced. (Adams Decl., ¶ 18.) Indeed,  
16 Charles Jameson continued working and  
17 continues to work at the entity that purchased  
18 the assets of the company. (Mason Depo.,  
19 30:2-7.)

*Plaintiff's response fails to bring this  
undisputed material fact into dispute.*

In SS3 Item 23, opposing counsel  
*expressly concedes* that the job was kept open  
for ADAMS.

As the deposition testimony clearly  
indicates, Charles Jameson was hired as a  
temporary employee to do ADAMS'S much  
needed warehouse job. "A. We had hired a  
temporary person in August. Q. What was his  
name? A. Charles Jameson while Tom was  
gone. **When Tom came back, it was our  
intention to terminate [Charles], but Tom  
did not want his old job back when he came  
back and continued to not want it.** Q. Okay.

When Mr. Adams was let go in November of  
2006, did you retain Charles Jameson? A.  
Charles Jameson had been there since August of  
2006 and was still there, yes. Q. Is he still  
there? A. He's still there, yes. Q. Why not -- in  
November of 2006, why didn't you offer to Mr.  
Adams for him to take Mr. Jameson's position

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and let Mr. Jameson go? A. **Because Mr. Adams had made it clear on numerous occasions he was not interested in that position.** I asked him myself.” (MASON DEPO 29:21 to 30:13.) The job was offered back to ADAMS when he returned to work, *but he refused it because of his asthma, and demanded an office job instead.* Consequently, Charles Jameson was hired as a regular employee. The replacement occurred after and because ADAMS refused to take back the warehouse job.

34. ADAMS had no medical insurance, no money beyond his paycheck, and no relatives in the United States, and, although the CORPORATION had no obligation to do so, out of compassion for ADAMS and because he was a long-term employee, the CORPORATION paid a portion, but not all, of his medical expenses in connection with the asthma.  
MATT DEPO 82:21 to 83:5. MASON DEPO 40:19 to 41:1; 63:18-22; 67:4-9; 71:9-10; 72:1-12; 73:9-13. NANCY DEPO 20:6-16;

*Plaintiff's response fails to bring this undisputed material fact into dispute.*  
Opposing counsel preposterously and in *extremely bad faith* claims there was no workers' compensation insurance when opposing counsel knows very well that, not only was there workers' compensation insurance, but his client ADAMS filed a workers' compensation claim against it and testified at a deposition in that matter! See SS3 Items 87 and 88.  
*Opposing counsel then expressly*

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3 44:1-18. NANCY DECL ¶ 31. MATT DECL  
4 ¶ 31. MASON DECL ¶ 22.

5 ***Plaintiff's Response:***

6 **DISPUTED. Nancy and Matt did not**  
7 **maintain a workers' compensation**  
8 **insurance policy for their employees,** and  
9 instead offered to pay Claimant's medical bills.

10 In the past, Matt had told Claimant the  
11 company did not have workers' compensation  
12 insurance and that one claim could put them  
13 out of business. (Adams Decl., ¶ 12.) To that  
14 end, **they gave him a paid leave.** Also, they  
15 told him to bring them all of his medical bills  
16 and they would help pay them. (Mason  
17 72:1-12; 73:9-13. NANCY DEPO 20:6-16;

18 44:1-18. NANCY DECL ¶ 31. MATT DECL  
19 ¶ 31. MASON DECL ¶ 22. Depo., 82:6-7.)

20 The one thing they specifically told him was to  
21 file for disability and not a workers'  
22 compensation claim. (Adams Decl., ¶11.)

23 Indeed, Nancy paid some bills on her  
24 *personal* credit card. (Nancy Dixon Depo. 20:  
25 24-25; 21: 1-10.) Linda paid other bills, and

*concedes the material essence of this Item—the*  
CORPORATION paid a portion of ADAMS'S  
medical expenses: "**Indeed, some bills were**  
**actually billed in the name of the company**"  
(Plaintiff's Response to SS2 Item 34). If  
additional medical bills were paid by NANCY  
personally, that does not bring this Item into  
dispute.

Also in his response to this SS2 Item 34,  
opposing counsel expressly concedes SS2 Item  
35 below that ADAMS received his full pay  
while he was absent from work during the  
PAID LEAVE: "**they gave him a paid leave.**"  
(Plaintiff's Response to SS2 Item 34, bold  
added.)

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3 even had some that had gone company to  
4 collections transferred to the name of the  
5 company. (Mason Depo., 85:22 - 86:14.)  
6 Indeed, some bills were actually billed in the  
7 name of the company, a fact no one corrected.  
8 (Mason Depo., 86:20 - 89:9.)

9 35. Additionally, and without any obligation to  
10 do so, the CORPORATION continued to pay  
11 ADAMS his full pay while he was absent from  
12 work during the PAID LEAVE.  
13 MASON DEPO 41:6-7; 72:14-16. NANCY  
14 DECL ¶ 32. MATT DECL ¶ 32. MASON  
15 DECL ¶ 23.

16 ***Plaintiff's Response:***

17 DISPUTED. **Nancy and Matt did not**  
18 **maintain a workers' compensation**  
19 **insurance policy for their employees**, and  
20 instead offered to pay Claimant's medical bills.  
21 In the past, Matt had told Claimant the  
22 company did not have workers' compensation  
23 insurance and that one claim could put them  
24 out of business. (Adams Decl., ¶ 12.) To that  
25 end, the gave him a paid leave. Also, they told  
26 him to bring them all of his medical bills and

*Plaintiff's response fails to bring this  
undisputed material fact into dispute.*

This Item states that ADAMS received  
six weeks of PAID LEAVE. *Opposing counsel  
expressly concedes this in his response to SS2  
Item 34 above: "they gave him a paid leave."*  
(Plaintiff's Response to SS2 Item 34, bold  
added.).

Opposing counsel preposterously and in  
*extremely bad faith* claims there was no  
workers' compensation insurance when  
opposing counsel knows very well that, not only  
was there workers' compensation insurance, but  
his client ADAMS filed a workers'  
compensation claim against it and testified at a  
deposition in that matter! See SS3 Items 87 and  
88.

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3 they would help pay them. (Mason Depo.,  
4 82:6-7.) The one thing they  
5 specifically told him was to file for disability  
6 and not a workers' compensation claim.  
7 (Adams Decl., ¶11.)

8 Indeed, Nancy paid some bills on her  
9 *personal* credit card. (Nancy Dixon Depo. 20:  
10 24-25; 21: 1-10.) Linda paid other bills, and  
11 even had some that had gone company to  
12 collections transferred to the name of the  
13 company. (Mason Depo., 85:22 - 86:14.)  
14 Indeed, some bills were actually billed in the  
15 name of the company, a fact no one corrected.  
16 (Mason Depo., 86:20 - 89:9.)

17 36. Wood dust (hereinafter “**DUST**”) is a  
18 normal condition in any woodshop.  
19 MATT DEPO 31:23-24. NANCY DECL ¶ 33.  
20 MATT DECL ¶ 33. MASON DECL ¶ 24.  
21 ***Plaintiff's Response:***  
22 DISPUTED. Linda claimed the dust in the  
23 factory area was cleaned out during the  
24 summer, before Claimant first complained, and  
25 was cleaned-out again, thereafter. (Mason  
26 Depo., 47:25; 48:19 - 49:1.) Matt testified he

*Plaintiff's response fails to bring this  
undisputed material fact into dispute.*

The Item states that wood dust is a  
normal condition in any woodshop. This is  
common sense.

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3 did not have the facility cleaned of dust in  
4 2006, (Matt Dixon Depo., 33: 7-18.)  
5 Thus, while dust was part of the  
6 warehouse, Respondents failed to make the  
7 required efforts to clean it.

8 37. The FURNITURE BUSINESS operates a  
9 wood shop with heavy woodworking  
10 machinery, including table saws, band saws,  
11 lathes, miter saws, drill presses, belt sanders,  
12 brush sanders, carving machines, joiners,  
13 planers, a jigsaw and a radial arm saw, all of  
14 which generate a large volume of DUST, but  
15 most of the DUST is absorbed by a  
16 professionally installed dust collection system.  
17 SALE AGMT Schedule 1.2 Assets (Machinery  
18 and Equipment). NANCY DECL ¶ 34.  
19 MATT DECL ¶ 34. MASON DECL ¶ 25.  
20 ***Plaintiff's Response:***  
21 DISPUTED. Linda claimed the dust in the  
22 factory area was cleaned out during the  
23 summer, before Claimant first complained, and  
24 was cleaned-out again, thereafter. (Mason  
25 Depo., 47:25; 48:19 - 49:1.) Matt testified he  
26 did not have the facility cleaned of dust in

*Plaintiff's response fails to bring this  
undisputed material fact into dispute.*

This Item lists the machinery in the wood shop and states that most of the DUST is absorbed by a collection system. It says nothing about what happens to the rest of the DUST.

Opposing counsel is attempting to claim that the CORPORATION had a "duty" to provide a "100% dust free wood shop." This is an absurdity.

2006, (Matt Dixon Depo., 33: 7-18.)

Thus, while dust was part of the warehouse, Respondents failed to make the required efforts to clean it.

38. At all relevant times, the CORPORATION employed a full-time sweeper, who did sweeping, dusting and clean up all day long, five days a week, and did nothing else. MATT DEPO 32:17 to 33:2. NANCY DEPO 36:2-4. NANCY DECL ¶ 35. MATT DECL ¶ 35. MASON DECL ¶ 26.

***Plaintiff's Response:***

DISPUTED. Linda claimed the dust in the factory area was cleaned out during the summer, before Claimant first complained, and was cleaned-out again, thereafter. (Mason Depo., 47:25; 48:19 - 49:1.) Matt testified he did not have the facility cleaned of dust in

2006, (Matt Dixon Depo., 33: 7-18.)

39. One day a starved cat (hereinafter the "CAT") was discovered on the PROPERTY. Out of compassion for animals, NANCY and MATT adopted the CAT and kept it in their executive offices.

*Plaintiff's response fails to bring this undisputed material fact into dispute.*

The Item states that there was a full-time sweeper. It does not say that employee cleaned up all the dust. What is indicates is that the CORPORATION made an ongoing, good-faith effort to clean up the DUST.

Opposing counsel is attempting to claim that the CORPORATION had a "duty" to provide a "100% dust free wood shop." This is an absurdity.

*Plaintiff's response fails to bring this undisputed material fact into dispute.*

If the CAT got into the warehouse "very rarely" (MASON DEPO 46:13), that does not conflict with the Item stated. Nor does the

NANCY DEPO 60:23-25. NANCY DECL ¶ 36. MATT DECL ¶ 36. MASON DECL ¶ 27.

***Plaintiff's Response:***

DISPUTED. Linda admits that the cat was sometimes allowed into the warehouse. (Mason Depo., 46:11-13.) Indeed, the cat had the run of the three executive offices and the large space with furniture in it. (Mason Depo., 44:5-9.)

extent of the CAT'S run *within* the executive offices conflict with the stated fact. Indeed, BROWN testified that the CAT was *constrained on a chain* (see SS3 Item 93).

40. BROWN had very little contact with the CAT, because the executive offices where the CAT was kept were in a different building from where BROWN worked.

MATT DEPO 83:25 to 84:6; 84:23 to 86:16. MASON DEPO 62:6-10. NANCY DECL ¶ 37. MATT DECL ¶ 37. MASON DECL ¶ 28.

***Plaintiff's Response:***

DISPUTED. Linda admits that the cat was sometimes allowed into the warehouse. (Mason Depo., 46:11-13.) Indeed, the cat had the run of the three executive offices and the large space with furniture in it. (Mason Depo., 44:5-9.) Further, they moved Claimant, upon his return, to the office part of the facility.

*Plaintiff's response fails to bring this undisputed material fact into dispute.*

The Item states that BROWN had "very little" contact with the CAT. If the CAT got into the warehouse "very rarely" (MASON DEPO 46:13), that does not conflict with the stated Item. Nor does the extent of the CAT'S run *within* a different building from where BROWN worked conflict with the stated fact. Indeed, BROWN testified that the CAT was *constrained on a chain* (see SS3 Item 93).

There were two buildings, each of which contained offices, and opposing counsel knows this. "A. there's two buildings, side by side" (MASON DEPO 13:23). "Q. Well, did



(Nancy Dixon Depo. 34: 20-25; 35: 2-5.)

anybody attempt to take the cat out of the facility...? MS. BUTLER: Objection. Vague as to the term ‘the facility.’ There were two facilities.” (MASON DEPO 43:21-25 ). “Q. Did the company take any steps to remove the cat from either of the facilities... ? MS. BUTLER: Objection, again as to the term ‘the facility.’ **MR. [redacted]: ‘Facilities.’ I made it plural this time.**” (MASON DEPO 44:23 to 45:1).

The “executive offices” were in one building (where the CAT was and the factory was not), and the “production offices” where BROWN worked as an expediter were in the other building (where the factory was and the CAT was not). Opposing counsel knows this but spins “executive offices” into “the office part of the facility” in a bad-faith attempt to claim that the CAT lived in the office area of the factory building where BROWN worked.

Indeed, LINDA testified that after BROWN returned to work, he worked in the “production office” (MASON DEPO 53:6-8),

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that when the BREATHING INCIDENT occurred he was in the “production office” (MASON DEPO 75:17-18), and that “my offices are off the factory. When he was in the production office, it was like maybe 20 feet away.” (MASON DEPO 107:5-7).

41. During the time that BROWN was out on PAID LEAVE, someone dumped four live chickens and one live duck on the PROPERTY (hereinafter the “FOWL”). Out of compassion for animals, NANCY and MATT let the FOWL remain on the PROPERTY.  
MATT DEPO 34:17 to 35:2. MASON DEPO 34:19-23. NANCY DECL ¶ 38. MATT DECL ¶ 38. MASON DECL ¶ 29. Complaint ¶ 46.  
***Plaintiff’s Response:***  
Undisputed.

No reply.

42. The FOWL were kept in the back area of the yard on the PROPERTY approximately 300 feet away from anywhere that BROWN was required to work. BROWN never ate in any “outside eating area” alleged in COMPLAINT ¶ 10 to be near the FOWL.

*Plaintiff’s response fails to bring this undisputed material fact into dispute.*  
  
Approximately one page of testimony describes the presence of the FOWL outdoors on the property, without reference to BROWN complaints about the FOWL. MASON DEPO

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3 MATT DEPO 54:14-16. MASON DEPO  
4 34:19 to 35:3; 35:19-24; 49:20 to 50:1;  
5 62:6-10. RFA and RFA RESPONSES No. 20.  
6 NANCY DECL ¶ 39. MATT DECL ¶ 39.  
7 MASON DECL ¶ 30.

8 ***Plaintiff's Response:***

9 DISPUTED. While Respondents claim the  
10 duck and chickens never entered the premises,  
11 Linda admitted Claimant complained to them  
12 about that very thing. (Mason Depo., 35:25 -  
13 36:3.)

34:19 to 35:18. Then, as he testimony  
continues, LINDA unambiguously states that  
the FOWL never went inside. (“Q. And they  
never went inside? A. No. They weren’t even  
close to the entrances to the building.”)  
MASON DEPO 35:19-21. The testimony  
continues from there, “Q. Didn’t go in the  
warehouse or anything like that? A. No. Q. And  
Tom Brown complained to you about that? A.  
Yes.” MASON DEPO 35:22 to 36:1.

The antecedent of the underlined  
pronoun “that” in opposing counsel’s question  
is ambiguous as to whether it refers to the mere  
presence of the FOWL somewhere on the  
PROPERTY as discussed in the preceding page  
of testimony, or to the FOWL being near the  
entrance of a building, or to the FOWL being  
inside the warehouse.

The pronoun ambiguity is resolved by  
the BROWN DECL., which says nothing about  
the FOWL being inside any building. Aside  
from the CAT, the only reference it makes to  
any “animals” is in ¶ 7 (“After my attack, I

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complained about the cat, dust and animals at work, stating my belief they were related.”)  
BROWN DECL. ¶ 7. Unquestionably, if BROWN and opposing counsel believe the FOWL were inside any building, or that BROWN actually ate in any “outside eating area” near the FOWL, that would have been stated in the BROWN DECL.!

43. For the entire time that the FOWL were on the PROPERTY, a maintenance employee cleaned up the feces from the FOWL every day.  
MATT DEPO 40:5-16. NANCY DECL ¶ 40.  
MATT DECL ¶ 40. MASON DECL ¶ 31.  
***Plaintiff’s Response:***  
DISPUTED. Linda claimed that the animals did not drop any feces on the floor because they congregated in an area that was dirt rather than cement. (Mason Depo., 35:13-18.)

*Plaintiff’s response fails to bring this undisputed material fact into dispute.*  
Opposing counsel resorts to monkey logic again (or, in this case, chicken logic). Linda’s claim that the feces were dropped on dirt (rather than cement) has nothing to do with whether or not a maintenance employee cleaned up the feces.

44. When the BREATHING INCIDENT occurred, BROWN was standing in the production office nowhere near the DUST or CAT, and the FOWL had not yet been dumped onto the PROPERTY.

MOVING DEFENDANTS concede the immaterial detail that the BREATHING INCIDENT occurred on May 30 or 31, 2006, rather than in July 2006. MOVING DEFENDANTS additionally concede that a

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MASON DEPO 75:17-21. MASON DECL ¶

32.

***Plaintiff's Response:***

DISPUTED. There were multiple breathing incidents, at least two of which required medical attention for Claimant. (Brown Decl., ¶¶ 4, 9.)

second breathing incident occurred on or about June 10, 2006. BROWN DECL. 25:8-14.

But opposing counsel's reply fails to reach the material essence of this item—that BROWN was nowhere near the dust or animals when the BREATHING INCIDENT occurred.

45. If BROWN felt he had been harassed or discriminated against or retaliated against at work, he was required to report it to the CORPORATION, as set forth in the Employee Handbook. BROWN was also supposed to report any other complaints to the CORPORATION.

NANCY DEPO Exhibit 25 (Employee Handbook) p. 3 ¶ 4 and p. 8 ¶ 7 to p. 9.

NANCY DECL ¶ 41. MATT DECL ¶ 41.

***Plaintiff's Response:***

Undisputed. However, Claimant did complain about the existence of the cats, dust, and other animals on an ongoing basis. Linda even admitted Claimant complained (to her personally) about the unsafe workplace on a "frequent basis," specifically two to three

*Plaintiff's response fails to bring this undisputed material fact into dispute.* This Item states that BROWN was required to report his complaints to the CORPORATION. Whether BROWN did or did not actually make such reports, and whether the CORPORATION did or did not do anything in response is irrelevant to this item.

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3 times *each week* following his July injury, not  
4 just once. (Mason Depo., 39:13 - 40:10.)  
5 These complaints specifically regarded the  
6 dust, the building making him sick, the cat,  
7 *and the animals in the back*. (Mason Depo.,  
8 39:20-25.)

9 In addition, the company failed to get  
10 rid of the animals until after Claimant's  
11 termination, despite his complaints. (Mason  
12 Depo., 50:3-12.) In fact, they only got rid of  
13 the animals after Claimant filed his complaint  
14 with the Department of Health Services.  
15 (Mason Depo., 50:9-12.)

16 46. BROWN made no complaints to anyone at  
17 the CORPORATION about any act of  
18 harassment, retaliation, discrimination,  
19 physical disability discrimination, perceived  
20 physical disability discrimination, intimidation,  
21 ostracization, name-calling, slander, insult,  
22 humiliation, revenge, and/or other abuse  
23 against him. (In response to a pair of special  
24 interrogatories asking respectively for  
25 identification and description of each internal  
26 complaint he made concerning such acts—

*Plaintiff's response fails to bring this  
undisputed material fact into dispute.*

This Item involves acts of "harassment,  
retaliation, discrimination, physical disability  
discrimination, perceived physical disability  
discrimination, intimidation, ostracization,  
name-calling, slander, insult, humiliation,  
revenge, and/or other abuse." BROWN'S  
alleged complaints about animals and dust do  
not rise to that level.

The Special Interrogatories include the

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3 defined as “ABUSE”—BROWN merely  
4 identified that he complained once to MASON  
5 about the FOWL feces, which did not amount  
6 to any of the foregoing acts of “ABUSE.”)  
7 SPEC ROGGS and SI RESPONSES Nos. 24  
8 and 25. NANCY DEPO 43:3-17. NANCY  
9 DECL ¶ 42. MATT DECL ¶ 42. MASON  
10 DECL ¶ 33.

11 ***Plaintiff’s Response:***

12 DISPUTED. Claimant did complain about the  
13 existence of the cats, dust, and other animals  
14 on an ongoing basis. Linda even admitted  
15 Claimant complained (to her personally) about  
16 the unsafe workplace on a “frequent basis,”  
17 specifically two to three times each week  
18 following his July injury, not just once.  
19 (Mason Depo., 39:13 - 40:10.) These  
20 complaints specifically regarded the dust, the  
21 building making him sick, the cat, and the  
22 animals in the back. (Mason Depo., 39:20-25.)

23 In addition, the company failed to get  
24 rid of the animals until after Claimant’s  
25 termination, despite his complaints. (Mason

following four definitions: “‘**ABUSE**’ as used  
herein shall mean any act of **harassment,**  
**retaliation, discrimination, physical disability**  
**discrimination, perceived physical disability**  
**discrimination, intimidation, ostracization,**  
**name-calling, slander, insult, humiliation,**  
**revenge, and/or other abuse** against YOU by  
any of the NAMED DEFENDANTS, or by any  
of their agents or employees, or by any  
combination of such persons, that YOU have  
alleged in the COMPLAINT or that YOU  
intend to allege in this action at any hearing or  
at trial. [¶¶] ‘**INTERNAL GRIEVANCE**’ as  
used herein shall mean any complaint made by  
YOU to the NAMED DEFENDANTS or to any  
of their agents or employees concerning any  
aspect of YOUR employment at DIXON  
FURNITURE. [¶] ‘**INTERNAL**  
**GRIEVANCE IDENTIFICATION**’ as used  
herein shall mean, with respect to any  
INTERNAL GRIEVANCE, the date of the  
INTERNAL GRIEVANCE, whether YOU  
made it in writing or orally, and name of the

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3 Depo., 50:3-12.) In fact, they only got rid of  
4 the animals after Claimant filed his complaint  
5 with the Department of Health Services.  
6 (Mason Depo., 50:9-12.)

person to whom YOU directed it. [¶]

**‘INTERNAL GRIEVANCE**

**DESCRIPTION’** as used herein shall mean,  
with respect to any INTERNAL GRIEVANCE,  
a detailed description of the matters that YOU  
complained of therein.” (SPEC ROGGS pp.  
3-4).

Special Interrogatory No. 24 asks, “**For**  
**each INTERNAL GRIEVANCE that YOU**  
**made** concerning any ABUSE, please state the  
INTERNAL GRIEVANCE  
IDENTIFICATION.” (SPEC ROGGS No. 24.)

Special Interrogatory No. 25 asks, “**For each**  
**INTERNAL GRIEVANCE identified in**  
**Special Interrogatory No. 24** (concerning  
ABUSE), please state the INTERNAL  
GRIEVANCE DESCRIPTION.” (SPEC  
ROGGS No. 25.)

BROWN gave verbatim-identical  
responses to these two interrogatories, which  
were verified and signed by opposing counsel,  
and which identified and described **only one**  
INTERNAL GRIEVANCE, ***which failed to***



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*state anything defined as “ABUSE”:* “on or about August 1, 2006 when he returned to work from medical leave, plaintiff complained to Linda Mason that the chicken and ducks deposited a large amount of fecal matter around the eating area.” (SI RESPONSES Nos. 33 and 34—verbatim-identical responses to both).

In the testimony cited by opposing counsel, it is *opposing counsel (not LINDA)* who repeatedly refers to BROWN having complained about “unsafe working conditions,” and Linda merely replies that he complained about the animals and dust. Opposing counsel manipulates LINDA into testifying about the dust and animals couched in questions phrased with words “unsafe working conditions.” It is obvious from her answers that she did not feel there was anything “unsafe” about the conditions.

Moreover, the ADAM’S DECL. says nothing about “unsafe working conditions.”

In any event, even if (arguendo) the working conditions were “unsafe” by virtue of

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	the dust and animals, that would not comprise any of the acts listed in this Item (harassment, retaliation, discrimination, etc).
<p>47. Except for one complaint made to MASON about the FOWL feces, BROWN made no other complaints to anyone at the CORPORATION about any “dust, cat hair, fecal matter, and/or other ‘unsafe’ working condition on the PROPERTY.”</p> <p><u>SPEC ROGGS and SI RESPONSES Nos. 33 and 34.</u></p> <p><b><i>Plaintiff’s Response:</i></b></p> <p>DISPUTED. Claimant did complain about the existence of the cats, dust, and other animals on an ongoing basis. Linda even admitted Claimant complained (to her personally) about the unsafe workplace on a “frequent basis,” specifically two to three times <u>each week</u> following his July injury, not just once. (Mason Depo., 39:13 - 40:10.) These complaints specifically regarded the dust, the building making him sick, the cat, <u>and the animals in the back.</u> (Mason Depo., 39:20-25.)</p> <p>In addition, the company failed to get</p>	<p><i>Plaintiff’s response fails to bring this undisputed material fact into dispute.</i></p> <p>The Special Interrogatories include the following three definitions: “<b>INTERNAL GRIEVANCE</b>’ as used herein shall mean any complaint made by YOU to the NAMED DEFENDANTS or to any of their agents or employees concerning any aspect of YOUR employment at DIXON FURNITURE. [¶]</p> <p>‘<b>INTERNAL GRIEVANCE IDENTIFICATION</b>’ as used herein shall mean, with respect to any INTERNAL GRIEVANCE, the date of the INTERNAL GRIEVANCE, whether YOU made it in writing or orally, and name of the person to whom YOU directed it. [¶] ‘<b>INTERNAL GRIEVANCE DESCRIPTION</b>’ as used herein shall mean, with respect to any INTERNAL GRIEVANCE, a detailed description of the matters that YOU complained of therein.” (SPEC ROGGS p. 4).</p>

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rid of the animals until after Claimant's termination, despite his complaints. (Mason Depo., 50:3-12.) In fact, they only got rid of the animals after Claimant filed his complaint with the Department of Health Services. (Mason Depo., 50:9-12.)

Special Interrogatory No. 33 asks, "**For each INTERNAL GRIEVANCE that YOU made** concerning any dust, cat hair, fecal matter, and/or other "unsafe" working condition on the PROPERTY, please state the INTERNAL GRIEVANCE IDENTIFICATION." (SPEC ROGGS No. 33.)

Special Interrogatory No. 34 asks, "**For each INTERNAL GRIEVANCE identified in Special Interrogatory No. 33** (concerning dust, cat hair, fecal matter, and/or other "unsafe" working condition on the PROPERTY), please state the INTERNAL GRIEVANCE DESCRIPTION." (SPEC ROGGS No. 34.)

BROWN gave verbatim-identical responses to these two interrogatories, which were verified and signed by opposing counsel, and which identified and described **only one** INTERNAL GRIEVANCE: "on or about August 1, 2006 when he returned to work from medical leave, plaintiff complained to Linda Mason that the chicken and ducks deposited a large amount of fecal matter around the eating

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area.” (SI RESPONSES Nos. 33 and 34—  
verbatim-identical responses to both).

Moreover, the ADAM’S DECL makes ***only one*** reference to any such complaint:  
“After my attack, I complained about the cat, dust and animals at work, stating my belief that they were related.” ADAM’S DECL ¶ 7.

Clearly, the ongoing “complaints” mentioned in LINDA’S deposition were merely casual conversation that did not rise to an INTERNAL GRIEVANCE—otherwise, BROWN and opposing counsel would have answered the interrogatory very differently, and they would have expressly stated in the BROWN DECL that these complaints were ongoing or frequent, or “two to three times each week.”

48. BROWN made no complaints to anyone at the CORPORATION about any unlawful conduct by the defendants. (In response to a special interrogatories asking for identification of each internal complaint he made concerning unlawful conduct, BROWN merely identified that he complained once to MASON about the

*Plaintiff’s response fails to bring this undisputed material fact into dispute.*

The Special Interrogatories include the following three definitions: “‘INTERNAL GRIEVANCE’ as used herein shall mean any complaint made by YOU to the NAMED DEFENDANTS or to any of their agents or

FOWL feces, which did not amount to unlawful conduct.)  
SPEC ROGGS and SI RESPONSES Nos. 39 and 40. NANCY DECL ¶ 43. MATT DECL ¶ 43. MASON DECL ¶ 34.

***Plaintiff's Response:***

DISPUTED. Claimant did complain about the existence of the cats, dust, and other animals on an ongoing basis. Linda even admitted Claimant complained (to her personally) about the unsafe workplace on a "frequent basis," specifically two to three times *each week* following his July injury, not just once. (Mason Depo., 39:13 - 40:10.) These complaints specifically regarded the dust, the building making him sick, the cat, *and the animals in the back.* (Mason Depo., 39:20-25.)

In addition, the company failed to get rid of the animals until after Claimant's termination, despite his complaints. (Mason Depo., 50:3-12.) In fact, they only got rid of the animals after Claimant filed his complaint with the Department of Health Services.

employees concerning any aspect of YOUR employment at DIXON FURNITURE. [¶]  
**'INTERNAL GRIEVANCE IDENTIFICATION'** as used herein shall mean, with respect to any INTERNAL GRIEVANCE, the date of the INTERNAL GRIEVANCE, whether YOU made it in writing or orally, and name of the person to whom YOU directed it. [¶] **'INTERNAL GRIEVANCE DESCRIPTION'** as used herein shall mean, with respect to any INTERNAL GRIEVANCE, a detailed description of the matters that YOU complained of therein." (SPEC ROGGS p. 4).

Special Interrogatory No. 39 asks, "**For each INTERNAL GRIEVANCE that YOU made** concerning any "unlawful conduct" by the NAMED DEFENDANTS or by any of their agents or employees, please state the INTERNAL GRIEVANCE IDENTIFICATION." (SPEC ROGGS No. 39.)  
Special Interrogatory No. 40 asks, "**For each INTERNAL GRIEVANCE identified in**

(Mason Depo., 50:9-12.)

Claimant told Respondents he was going to complain to a government agency, namely the Health Department, about the ducks and chickens in the back. (Mason Depo., 42:13 - 43:4.) Linda told this to Matt, who became upset and was personally insulted by the threat. (Mason Depo., 43:5-12.)

**Special Interrogatory No. 39** (concerning “unlawful conduct”), please state the INTERNAL GRIEVANCE DESCRIPTION.” (SPEC ROGGS No. 40.)

BROWN gave verbatim-identical responses to these two interrogatories, which were verified and signed by opposing counsel, and which *failed to describe any unlawful conduct*: “on or about August 1, 2006 when he returned to work from medical leave, plaintiff complained to Linda Mason that the chicken and ducks deposited a large amount of fecal matter around the eating area.” (SI RESPONSES Nos. 39 and 40—verbatim-identical responses to both).

Even if (arguendo) there were an “eating area” near the FOWL (which there was not), if the FOWL had defecated near there it would not comprise “unlawful conduct by the defendants” as referenced in both interrogatories and also here in this SS2 Item 48 in the left column.

Moreover, the ADAM’S DECL makes *no* reference whatsoever to any unlawful

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	conduct of the defendants, much less to his making any complaint about it.
<p>49. On or about November 21, 2006, BROWN made a complaint to the Los Angeles County Department of Health Services (hereinafter “DHS”) concerning dust, cat hair and bird fecal matter on the property.</p> <p><u>Complaint ¶¶ 47, 48.</u></p> <p><b><i>Plaintiff’s Response:</i></b></p> <p>Undisputed. However, prior to his termination, Claimant told Respondents he was going to complain to a government agency, namely the Health Department, about the ducks and chickens in the back. (Mason Depo., 42:13 - 43:4.) Linda told this to Matt, who became upset and was personally insulted by the threat. (Mason Depo., 43:5-12.)</p>	No reply.
<p>50. On November 21, 2006, DHS sent a letter (hereinafter the “DHS LETTER”) to MATT, in his capacity as trustee of the TRUST alleging (a) accumulation of animal excrement, and (b) animals (excluding cats) being within 35 feet of a food establishment.</p> <p>Notwithstanding that BROWN complained to</p>	<p><i>Plaintiff’s response fails to bring this undisputed material fact into dispute.</i></p> <p>The DHS LETTER is addressed to <b>DIXON, MATT CO TR [¶]</b> <b>DIXON FAMILY TRUST</b></p> <p>and the salutation states: <b>Dear DIXON, MATT CO TR</b></p>

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3 DHS about dust and cat hair, the DHS  
4 LETTER did not allege any violation  
5 concerning dust or cat hair.  
6 MATT DEPO Exhibit 15 (DHS LETTER).  
7 Complaint ¶ 47-48. MATT DECL ¶ 44.  
8 ***Plaintiff's Response:***  
9 DISPUTED. Matt was the admitted owner of  
10 the company. (Matt Dixon Depo., 13:22 -  
11 14:4.) Nevertheless, Matt and Nancy  
12 forwarded the letter to Claimant, but only after  
13 they had mocked him by writing "Think of  
14 something else" and "Nice try my friend Tom"  
15 on it. (See Matt Dixon Depo., Exhibits 14 &  
16 15.) Matt admitted the handwriting was his.  
17 (Matt Dixon Depo., 52: 6-7.)

(MATT DEPO Exhibit 15 p. 1). Obviously,  
"CO TR" is an abbreviation for "Co-Trustee".  
**The alleged violations are stated on  
page 2 of the DHS LETTER in items  
identified by two hand-checked boxes:**  
"ACCUMULATION OF ANIMAL  
EXCREMENT [box hand-checked] [¶] Section  
11.30.070 states that all fly breeding materials  
shall be removed from all premises as often as  
is necessary to prevent the breeding or  
harboring of flies. Section 11.16.030 states that  
animal droppings should be picked up daily and  
removed from the premises once every 7 days.  
[¶] DISTANCE OF DOMESTIC ANIMALS  
[box hand-checked] [¶] Section 11.16.090  
requires any animal, fowl or bird **other than**  
**cats**, dogs, canaries and birds of the Psittacine  
family [parrots] to be kept at least 35 feet from  
any restaurant, food establishment or dwelling  
and more then 100 feet away from any school,  
hospital or similar institution." **Additionally,**  
**at the bottom left side of page 2 of the DHS**  
**LETTER the following is typed:**



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“CHICKENS/ DUCKS LOOSE ON PROPERTY, ACCUMULATION OF ANIMAL DROPPINGS.” Clearly, the DHS LETTER did not allege any violation concerning dust or cat hair.

Perhaps opposing counsel should think of something else. Nice try. Actually it is not a nice try—opposing counsel is acting in *bad faith* by arguing that facts about the DHS LETTER are “DISPUTED” **when, from the face of the letter itself, there cannot possibly be any dispute about those facts.**

51. On or about November 20, 2006, and two days before receiving the DHS LETTER, MATT built a cage for the FOWL and confined them in it. MATT responded to the DHS LETTER by informing DHS that the FOWL had been confined to a cage, which resulted in DHS dropping BROWN’S complaint.

MATT DEPO 66:8-22; 67:6-18. MATT DECL ¶ 45.

***Plaintiff’s Response:***

DISPUTED. Prior to his termination,

*Plaintiff’s response fails to bring this undisputed material fact into dispute.*

The Item states that the cage was built before the DHS LETTER was received, and that after learning about the cage, DHS dropped BROWN’S complaint. This Item says *nothing* about BROWN *threatening* to complain to DHS. And even if the cage were built in response to BROWN’S complaints to LINDA about the FOWL (which it was not), that does not reach the undisputed material fact stated in this Item. Opposing counsel is resorting to

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3 Claimant told Respondents he was going to  
4 complain to a government agency, namely the  
5 Health Department, about the ducks and  
6 chickens in the back. (Mason Depo., 42:13 -  
7 43:4.) Linda told this to Matt, who became  
8 upset and was personally insulted by the threat.  
9 (Mason Depo., 43:5-12.)

10 In addition, Linda admits that the cage  
11 was built as a result of Claimant's complaints.  
12 (Mason Depo., 49:20 - 50:3.) Moreover, Linda  
13 admits Matt and Nancy did not get rid of the  
14 animals until after receiving the complaint and  
15 DHS letter. (Mason Depo., 49:20 - 50:12.)

16 52. Neither MATT, NANCY, the  
17 CORPORATION nor the TRUST knew about  
18 BROWN'S complaint to DHS until MATT  
19 received the DHS LETTER. The DHS  
20 LETTER is dated November 21, 2006, which  
21 is the same date on which BROWN was laid  
22 off by the CORPORATION. MATT received  
23 the DHS LETTER via mail after November  
24 21, 2006. **BROWN cannot have been laid**  
25 **off in retaliation for the DHS LETTER**  
26 **because the layoff occurred before MATT**

monkey logic again (or chicken logic).

*Plaintiff's response fails to bring this  
undisputed material fact into dispute.*

The Item states that the defendants had  
**no knowledge** that BROWN had **actually**  
**complained** to DHS until they received the  
DHS LETTER. It says *nothing* about their  
having knowledge that BROWN had  
*threatened* to complain to DHS or *planned* to  
complain to DHS *at some future time*.

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2  
3 **received the DHS LETTER.**

4 MATT DEPO 67:11-16; 73:20 to 74:3. SPEC

5 ROGGS and SI RESPONSES No. 51.

6 NANCY DECL ¶ 44. MATT DECL ¶ 46.

7 ***Plaintiff's Response:***

8 DISPUTED. Prior to his termination,  
9 Claimant threatened Respondents he was going  
10 to complain to a government agency, namely  
11 the Health Department, about the ducks and  
12 chickens in the back. (Mason Depo., 42:13 -  
13 43:4.) Linda told this to Matt, who became  
14 upset and was personally insulted by the threat.  
15 (Mason Depo., 43:5-12.)

16 Despite Respondents' claims of lack of  
17 knowledge, Linda admits that the cage was  
18 built as a result of Claimant's complaints.  
19 (Mason Depo., 49:20 - 50:3.) Moreover, Linda  
20 admits Matt and Nancy did not get rid of the  
21 animals until after receiving the complaint and  
22 DHS letter. (Mason Depo., 49:20 - 50:12.)

23 53. Beginning in September 2006, after letting  
24 go all of its temporary summer workers, the  
25 DOWNTURN forced the CORPORATION to  
26 begin laying off some of its regular year-round

*Plaintiff's response fails to bring this  
undisputed material fact into dispute. The Item  
concerns layoffs, not firings. In blatant bad  
faith, opposing counsel twists his own client's*

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staff.  
MASON DEPO 16:12-15; 18:10-24. NANCY  
DECL ¶ 45. MATT DECL ¶ 47. MASON  
DECL ¶ 35.  
***Plaintiff's Response:***  
DISPUTED. Claimant had been through 2 or  
3 prior slow downs in work, and none of them  
resulted in **terminations or layoffs**. (Brown  
Decl., ¶ 28.)

declaration: "Claimant had been through 2 or 3  
prior slow downs in work, and none of them  
resulted in **terminations or layoffs**. (Brown  
Decl., ¶ 28.)" (Plaintiff's Reply in SS2 Item  
53.) However, BROWN DECL. ¶ 28 in fact  
states, "The previous 2-3 slowdowns had not  
resulted in **firings**." (Emphasis added.)

Clearly, it is rare for a downturn in *any*  
business to result in firings—unless the  
downturn is the result of a company scandal of  
some sort, and the crooked employees all get  
fired. The usual response to a downturn is  
layoffs, not firings. Here, no scandal or other  
motive has been alleged for firings (rather than  
layoffs) in response to a downturn. Hence,  
BROWN'S statement in ¶ 28 is immaterial.

Moreover, even if (arguendo) prior to  
September 2006 there had been 2 or 3 prior  
slow downs in work that resulted in no layoffs,  
that does not refute the undisputed fact of what  
happened in September 2006!

54. In September 2006, the CORPORATION  
laid off three or four of its regular employees,  
all of whom were factory workers.

No reply.

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MASON DEPO 16:16-20; 17:8-18. NANCY

DECL ¶ 46. MATT DECL ¶ 48. MASON

DECL ¶ 36.

***Plaintiff's Response:***

Undisputed.

55. In October 2006, the CORPORATION laid off three, four five or six of its regular employees, and, in addition to factory workers, this layoff included an office worker.

MASON DEPO 18:25 to 19:7. NANCY

DECL ¶ 47. MATT DECL ¶ 49. MASON

DECL ¶ 37.

***Plaintiff's Response:***

DISPUTED. According to Respondents, they started laying off warehouse (factory) employees in September and October 2006. (Nancy Dixon Depo., 42:7-21; Mason Depo., 16:5-15.) There were no layoffs prior to September 2006. (Mason Depo., 17:19-21, 20:7-11.)

The "layoffs" included bout 3 people in September and 3-6 people in October 2006.

(Mason Depo., 16:16-20, 18:25 - 19:4.)

**The employees let go were all factory**

*Plaintiff's response fails to bring this undisputed material fact into dispute.*

This Item has two parts: (a) in October 2006, 3-6 regular employees were laid off, and (b) at least one was an office worker.

Opposing counsel expressly concedes the first part (a): "The 'layoffs' included bout [sic] 3 people in September and 3-6 people in October 2006. (Mason Depo., 16:16-20, 18:25 - 19:4.)" (Plaintiffs Response to SS2 Item 55.)

Then opposing counsel tries to refute the second part (b) by claiming "**The employees let go were all factory workers.** (Mason Depo., 17:8-12.)" (Plaintiffs Response to SS2 Item 55, emphasis in original.) But MASON DEPO 17:8-12 to which he refers addresses layoffs in September 2006 (not October 2006 as is referenced in this Item): "Q. And these employees who were let go **in September 2006,**

*workers.* (Mason Depo., 17:8-12.)

Nancy then tried to claim two non-factory workers (i.e. expediters) were let go. (Nancy Dixon Depo., 40:12-21.)

*Nancy later recanted*, admitting instead the two left voluntarily. (Nancy Dixon Depo., 42:8-10, 42:23 - 43:2.)

Two other expediters, and Charles Jameson, a non-disabled employee who replaced Claimant, were all retained. (Nancy Dixon Depo., 40: 12-21, 42: 7-25, 43:1-2; Mason Depo., 54:20-22.)

what type of workers were they? A. Workers, factory workers. Q. Factory workers? A. Yes.” (MASON DEPO 17:8-12.) The relevant portion of LINDA’S testimony is that cited here in this SS2 Item 55—MASON DEPO 18:25 to 19:7—which states: “Q. How many people did you lay off -- did the company lay off **in October of 2006?** ... A. Anywhere from three to six, I would say. **Q. Again, all factory workers?** **A. No.** I believe there may have been an office person in that at that time as well.” (MASON DEPO 18:25 to 19:7.)

Opposing counsel cites NANCY’S testimony, but it references two expediters leaving in April 2007, not October 2006. And there are other kinds of office workers in addition to expediters.

56. In November 2006, the CORPORATION laid off at least two of its regular employees, one of whom was BROWN. MASON DEPO 21:2-14. NANCY DECL ¶ 48. MATT DECL ¶ 50. MASON DECL ¶ 38.

***Plaintiff’s Response:***

DISPUTED. According to Respondents, they

*Plaintiff’s response fails to bring this undisputed material fact into dispute.*

This item concerns November 2006 only. Opposing counsel cites irrelevant testimony concerning various other months (September 2006 and October 2006 expressly, and April 2007 in NANCY’S allegedly

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2  
3 started laying off warehouse (factory)  
4 employees in September and October 2006.  
5 (Nancy Dixon Depo., 42:7-21; Mason Depo.,  
6 16:5-15.) There were no layoffs prior to  
7 September 2006. (Mason Depo., 17:19-21,  
8 20:7-11.)

9 The “layoffs” included about 3 people in  
10 September and 3-6 people in October 2006.  
11 (Mason Depo., 16:16-20, 18:25 - 19:4.)

12 **The employees let go were all *factory***  
13 ***workers*.** (Mason Depo., 17:8-12.)

14 Nancy then tried to claim two non-  
15 factory workers (i.e. expeditors) were let go.  
16 (Nancy Dixon Depo., 40:12-21.)

17 *Nancy later recanted*, admitting instead  
18 the two left voluntarily. (Nancy Dixon Depo.,  
19 42:8-10, 42:23 - 43:2.)

20 Two other expeditors, and Charles  
21 Jameson, a non-disabled employee who  
22 replaced Claimant, were all retained. (Nancy  
23 Dixon Depo., 40: 12-21, 42: 7-25, 43:1-2;  
24 Mason Depo., 54:20-22.)

25 57. On November 21, 2006, BROWN was laid  
26 off and on that same date was personally

“recanted” testimony), none of which is  
November 2006. Also testimony about Charles  
Jameson *not* being laid off is irrelevant to the  
number of employees who *were* laid off.

*Plaintiff's response fails to bring this*  
*undisputed material fact into dispute.*

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3 handed his layoff letter while he was at work  
4 on the PROPERTY.  
5 MASON DEPO 58:18 to 59:13, and Exhibit 1  
6 thereof. RFA and RFA RESPONSES Nos. 22  
7 and 23. Complaint ¶¶ 17, 49 and 62. NANCY  
8 DECL ¶ 49. MATT DECL ¶ 51. MASON  
9 DECL ¶ 39.

10 ***Plaintiff's Response:***

11 DISPUTED. The Second Stint ended when  
12 Claimant was Wrongfully Terminated by  
13 Nancy and Matt. Linda even admitted  
14 Claimant complained (to her personally) about  
15 the unsafe workplace on a “frequent basis,”  
16 specifically two to three times *each week*  
17 following his July injury, not just once.  
18 (Mason Depo., 39:13 - 40:10.) These  
19 complaints specifically regarded the dust, the  
20 building making him sick, the cat, *and the*  
21 *animals in the back.* (Mason Depo., 39:20-25.)  
22 Linda then made the fatal admission that  
23 Claimant’s demeanor (i.e., complaints) was  
24 causing problems in the company and was a  
25 factor in the decision to terminate. (Mason

Opposing counsel sets forth the same  
arguments here as in response to SS2 Item 28  
for the proposition that, rather than being “laid  
off,” BROWN was “wrongfully terminated.”  
Please see the extensive discussion in the reply  
at SS2 Item 28 which refutes opposing  
counsel’s argument.



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3 Depo., 53:24 - 54:8.)

4 In addition, Claimant was the only one  
5 terminated at that time. (Brown Decl., ¶ 27.)

6 Two other expeditors, and Charles Jameson, a  
7 non-disabled employee who replaced

8 Claimant, were all retained. (Nancy Dixon

9 Depo., 40: 12-21, 42: 7-25, 43:1-2; Mason

10 Depo., 54:20-22.)

11 Moreover, at the same time, Linda  
12 handed Claimant a \$5,000 personal check from

13 Matt that could be cashed on the condition that

14 Claimant sign a release of liability. (Brown

15 Decl., ¶ 29.)

16 58. BROWN was laid off because of the

17 DOWNTURN and the consequent lack of

18 work for him to do. At the time, he was the

19 “logical next person” to be let go.

20 MASON DEPO 14:2-25, 36:16-19. NANCY

21 DEPO 38:17-23; 40:1-4. NANCY DECL ¶

22 50. MATT DECL ¶ 52. MASON DECL ¶ 40.

23 ***Plaintiff’s Response:***

24 DISPUTED. Claimant was Wrongfully

25 Terminated by Nancy and Matt. Linda even

26 admitted Claimant complained (to her

*Plaintiff’s response fails to bring this  
undisputed material fact into dispute.*

Opposing counsel sets forth the same  
arguments here as in response to SS2 Item 28  
for the proposition that, rather than being “laid  
off,” BROWN was “wrongfully terminated.”

Please see the extensive discussion in the reply  
at SS2 Item 28 which refutes opposing  
counsel’s argument.

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3 personally) about the unsafe workplace on a  
4 “frequent basis,” specifically two to three  
5 times *each week* following his July injury, not  
6 just once. (Mason Depo., 39:13 - 40:10.)  
7 These complaints specifically regarded the  
8 dust, the building making him sick, the cat,  
9 *and the animals in the back*. (Mason Depo.,  
10 39:20-25.) Linda then made the fatal  
11 admission that Claimant’s demeanor (i.e.,  
12 complaints) was causing problems in the  
13 company and was a factor in the decision to  
14 terminate. (Mason Depo., 53:24 - 54:8.)

15 In addition, Claimant was the only one  
16 terminated at that time. (Brown Decl., ¶ 27.)  
17 Two other expediters, and Charles Jameson, a  
18 non-disabled employee who replaced  
19 Claimant, were all retained. (Nancy Dixon  
20 Depo., 40: 12-21, 42: 7-25, 43:1-2; Mason  
21 Depo., 54:20-22.)

22 Moreover, at the same time, Linda handed  
23 Claimant a \$5,000 personal check from Matt  
24 that could be cashed on the condition that  
25 Claimant sign a release of liability. (Brown

Decl., ¶ 29.)

59. BROWN was not laid off because of his being negative, sarcastic, complaining about his asthma, and/or complaining that NANCY and MATT were responsible for his illness. MASON DEPO 53:20 to 54:14. NANCY DECL ¶ 51. MATT DECL ¶ 53. MASON DECL ¶ 41.

***Plaintiff's Response:***

DISPUTED. Claimant was Wrongfully Terminated by Nancy and Matt. Linda even admitted Claimant complained (to her personally) about the unsafe workplace on a "frequent basis," specifically two to three times each week following his July injury, not just once. (Mason Depo., 39:13 - 40:10.) These complaints specifically regarded the dust, the building making him sick, the cat, and the animals in the back. (Mason Depo., 39:20-25.) Linda then made the fatal admission that **Claimant's demeanor (i.e., complaints) was causing problems in the company and was a factor in the decision to terminate**. (Mason Depo., 53:24 - 54:8.)

*Plaintiff's response fails to bring this undisputed material fact into dispute.*

Opposing counsel sets forth the same arguments here as in response to SS2 Item 28 for the proposition that, rather than being "laid off," BROWN was "wrongfully terminated." Please see the extensive discussion in the reply at SS2 Item 28 which refutes opposing counsel's argument.

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3 In addition, Claimant was the only one  
4 terminated at that time. (Brown Decl., ¶ 27.)  
5 Two other expediters, and Charles Jameson, a  
6 non-disabled employee who replaced  
7 Claimant, were all retained. (Nancy Dixon  
8 Depo., 40: 12-21, 42: 7-25, 43:1-2; Mason  
9 Depo., 54:20-22.)

10 Moreover, at the same time, Linda  
11 handed Claimant a \$5,000 personal check from  
12 Matt that could be cashed on the condition that  
13 Claimant sign a release of liability. (Brown  
14 Decl., ¶ 29.)

15 60. In December 2006, the CORPORATION  
16 laid off three, four or five of its regular  
17 employees.  
18 MASON DEPO 32:1-13. NANCY DECL ¶  
19 52. MATT DECL ¶ 54. MASON DECL ¶ 42.  
20 ***Plaintiff's Response:***  
21 DISPUTED. According to Respondents, they  
22 started laying off warehouse (factory)  
23 employees in September and October 2006.  
24 (Nancy Dixon Depo., 42:7-21; Mason Depo.,  
25 16:5-15.) The "layoffs" included bout 3  
26 people in September and 3-6 people in October

*Plaintiff's response fails to bring this  
undisputed material fact into dispute.*

This item concerns December 2006  
only. Opposing counsel cites irrelevant  
testimony concerning various other months  
(September 2006 and October 2006 expressly,  
and April 2007 in NANCY'S allegedly  
"recanted" testimony), none of which is  
December 2006. Also testimony about Charles  
Jameson *not* being laid off is irrelevant to the  
number of employees who *were* laid off.

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2006. (Mason Depo., 16:16-20, 18:25 - 19:4.)

**The employees let go were all *factory workers*** . (Mason Depo., 17:8-12.) There were no layoffs prior to September 2006. (Mason Depo., 17:19-21, 20:7-11.)

Nancy then tried to claim two non-factory workers (i.e. expediters) were let go. (Nancy Dixon Depo., 40:12-21.) *Nancy later recanted*, admitting instead the two left voluntarily. (Nancy Dixon Depo., 42:8-10, 42:23 - 43:2.)

Moreover, Respondents hired a new employee to fill in for Claimant. (Nancy Dixon Depo. 44: 25; 45: 1-7.) Upon his return, Respondents told Claimant he had already been replaced. (Brown Decl., ¶ 18.) Indeed, Charles Jameson continued working and continues to work at the entity that purchased the assets of the company. (Mason Depo., 30:2-7.) Upon his termination, Respondents never even considered offering Claimant his old position and terminating Charles Jameson instead. (Mason Depo., 30:8-16.)

61. During most of the SECOND STINT—up

No reply.

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3 until he took his PAID LEAVE—BROWN  
4 was the Warehouse/Shipping Manager at the  
5 CORPORATION.

6 MASON DEPO 13:5-10. Complaint ¶ 7.

7 NANCY DECL ¶ 53. MATT DECL ¶ 55.

8 MASON DECL ¶ 43.

9 ***Plaintiff's Response:***

10 Undisputed.

11 62. When BROWN was absent from work on  
12 PAID LEAVE during the summer of 2006, the  
13 CORPORATION really needed him, and made  
14 weekly calls to him to see if he was ready to  
15 come back to work.

16 MASON DEPO 38:18-19. NANCY DECL ¶

17 54. MATT DECL ¶ 56. MASON DECL ¶ 44.

18 ***Plaintiff's Response:***

19 DISPUTED. Respondents hired a new  
20 employee to fill in for Claimant. (Nancy  
21 Dixon Depo. 44: 25; 45: 1-7.) Upon his return,  
22 Respondents told Claimant he had already  
23 been replaced. (Brown Decl., ¶ 18.) Indeed,  
24 Charles Jameson continued working and  
25 continues to work at the entity that purchased  
26 the assets of the company. (Mason Depo.,

*Plaintiff's response fails to bring this  
undisputed material fact into dispute.*

This Item merely addresses the need for  
BROWN to return to work and the fact that  
regular calls were made to him. Opposing  
counsel cites testimony about Charles Jameson  
which is completely irrelevant to this Item.

The only “relevance” of Mr. Jameson is  
that his named was mentioned in the testimony  
that establishes this Item: “Q. You said Mr.  
Jameson was a temporary person. What does  
that mean? A. Initially he was a temporary  
person. Initially, we advertised while Tom was  
out sick, we -- he missed like six weeks of  
work. We advertised -- **we were calling him  
every week. I was calling him every week.**

30:2-7.)

63. When BROWN was absent from work on PAID LEAVE during the summer of 2006, the CORPORATION advertised on craigslist and hired a temporary worker to replace him as Warehouse Manager. Charles Jameson was hired in that capacity.

MASON DEPO 29:21-25, 38:13-25. NANCY DECL ¶ 55. MATT DECL ¶ 57. MASON DECL ¶ 45.

***Plaintiff's Response:***

DISPUTED. Respondents hired a new employee to fill in for Claimant. (Nancy Dixon Depo. 44: 25; 45: 1-7.) Upon his return, Respondents told Claimant he had already been replaced. (Brown Decl., ¶ 18.) Indeed, Charles Jameson continued working and continues to work at the entity that purchased the assets of the company. (Mason Depo., 30:2-7.)

64. As Warehouse Manager, heavy lifting was

**We really wanted him back. We needed him.” (MASON DEPO 38:13-19.)**

*Plaintiff's response fails to bring this undisputed material fact into dispute.*

This Item addresses the initial hiring of Charles Jameson in a temporary capacity to fill in for BROWN as Warehouse Manager before it was known that BROWN would refuse to take that position back upon his return to work.

“We advertised on Craigslist for a **temporary** Warehouse Manager. When Charles was hired, he was told that the Warehouse Manager was out sick. We couldn't do without one. **We were hoping he [BROWN] would return, and at that time Charles's job would finish.**” (MASON DEPO 38:21-25.)

Opposing counsel cites irrelevant testimony about Charles Jameson later (after BROWN refused to take back his former position) being made into a regular employee as Warehouse Manager, and, to this day, retaining that position which BROWN did not want.

MOVING DEFENDANTS wish to amend this

1  
2  
3 a part of ADAM’S job. When BROWN  
4 returned from his PAID LEAVE, he was  
5 offered the help of an assistant to do the heavy  
6 lifting in his capacity as Warehouse Manager,  
7 but he refused to resume the duties of  
8 Warehouse Manager because he did not want  
9 to lift furniture anymore. Then, BROWN was  
10 offered a position in the Production  
11 Department at the same rate of pay, which he  
12 accepted.

13 MASON DEPO 27:10 to 28:8; 31:1-6;  
14 66:17-20. NANCY DECL ¶ 56. MATT  
15 DECL ¶ 58. MASON DECL ¶ 46. Complaint  
16 ¶ 15.

17 ***Plaintiff’s Response:***

18 DISPUTED. Claimant made clear he could no  
19 longer do his former job due to the asthma.  
20 (Mason Depo., 96:19-24.) Indeed,  
21 Respondents understood he could not do  
22 anything that would aggravate his asthma.  
23 (Mason Depo., 61:5-22.)

24 Toward the end of his leave, Claimant  
25 notified Linda he was able to come back to

Item to the following undisputed material fact,  
where the underlined words are newly inserted:  
“As Warehouse Manager, heavy lifting was a  
part of ADAM’S job. When BROWN returned  
from his PAID LEAVE, he was offered the help  
of an assistant to do the heavy lifting in his  
capacity as Warehouse Manager, but he refused  
to resume the duties of Warehouse Manager  
because he did not want to lift furniture  
anymore or do anything that might aggravate  
his asthma. Then, BROWN was offered a  
position in the Production Department at the  
same rate of pay, which he accepted.”

This modification does not impact any  
of the arguments contained in the Motion for  
Summary Judgment.

With this modification, *Plaintiff’s*  
*response fails to bring this undisputed material*  
*fact into dispute.*



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3 work, though not in the same capacity, as  
4 Warehouse Manager. (Mason Depo., 65:25 -  
5 66:15.)

6 Linda admittedly received a medical  
7 note dated July 31, 2006, (from Samuel  
8 Wagnon, M.D.,) stating that a desk job in an  
9 air-conditioned controlled environment was  
10 necessary to accommodate Claimant's  
11 restrictions. (Mason Depo., 67:4-21)

12 Linda also admitted she received a note  
13 indicating Claimant must have modified work.  
14 (Mason Depo., 60:14-19.) This prevented him  
15 from returning to his old job. Nancy similarly  
16 understood Claimant could not be exposed to  
17 dust or irritant. (Nancy Dixon Depo. 35:  
18 20-22.)

19 Respondents, knowing Claimant's  
20 allergies and injuries, initially tried to give  
21 Claimant his original job in the Warehouse, the  
22 place where he had the asthma attack. (Mason  
23 Depo., 27:1 - 30:1.)

24 Nevertheless, Nancy claims they  
25 accommodated him by offering an office job as

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3 an expediter, writing-up orders, allowing him  
4 to sit in air-conditioned office. (Nancy Dixon  
5 Depo. 34: 20-25, 35: 2-5, 36: 25, 37: 1-7.)

6 65. Since BROWN refused to resume the  
7 duties of Warehouse Manager when he  
8 returned from his PAID LEAVE, Charles  
9 Jameson, who had been hired as a temporary  
10 worker to replace BROWN as Warehouse  
11 Manager, was made into a regular employee.  
12 MASON DEPO 29:21 to 30:7. NANCY  
13 DECL ¶ 57. MATT DECL ¶ 59. MASON  
14 DECL ¶ 47.

15 ***Plaintiff's Response:***

16 DISPUTED. Respondents hired a new  
17 employee to fill in for Claimant. (Nancy  
18 Dixon Depo. 44: 25; 45: 1-7.) Upon his return,  
19 Respondents told Claimant he had already  
20 been replaced. (Brown Decl., ¶ 18.) Indeed,  
21 Charles Jameson continued working and  
22 continues to work at the entity that purchased  
23 the assets of the company. (Mason Depo.,  
24 30:2-7.)

*Plaintiff's response fails to bring this  
undisputed material fact into dispute.*

This Item addresses the **change** in  
Charles Jameson's employment status from  
temporary to regular employee—which change  
occurred when BROWN returned to work and  
refused to take back his former Warehouse  
Manager position.

“Q. Why didn't you offer to Mr. Brown  
for him to take Mr. Jameson's position and let  
Mr. Jameson go? A. Because Mr. Brown had  
made it clear on numerous occasions he was not  
interested in that position.... Q. Did you ask him  
that question in September of 2006? A.

Throughout the fall I know I know I asked him  
on more than one occasion, and I know he made  
it clear to me on more than on occasion that he  
wasn't interested in that job.” (MASON DEPO  
30:8-25.)

**Please also see replies in SS2 Items 62  
and 63 above.**

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3 66. At the time he was laid off, BROWN was  
4 working as a Production Assistant in the  
5 Production Department, which had two other  
6 employees.

7 MASON DEPO 21:25 to 22:8. NANCY  
8 DECL ¶ 58. MATT DECL ¶ 60. MASON  
9 DECL ¶ 48.

10 ***Plaintiff's Response:***

11 DISPUTED as to Claimant being "laid off."  
12 Undisputed as to all else. Claimant was  
13 Wrongfully Terminated by Nancy and Matt.  
14 Linda even admitted Claimant complained (to  
15 her personally) about the unsafe workplace on  
16 a "frequent basis," specifically two to three  
17 times each week following his July injury, not  
18 just once. (Mason Depo., 39:13 - 40:10.)  
19 These complaints specifically regarded the  
20 dust, the building making him sick, the cat,  
21 and the animals in the back. (Mason Depo.,  
22 39:20-25.) Linda then made the fatal  
23 admission that Claimant's demeanor (i.e.,  
24 complaints) was causing problems in the  
25 company and was a factor in the decision to

*Plaintiff's response fails to bring this  
undisputed material fact into dispute.*

Opposing counsel sets forth the same  
arguments here as in response to SS2 Item 28  
for the proposition that, rather than being "laid  
off," BROWN was "wrongfully terminated."  
Please see the extensive discussion in the reply  
at SS2 Item 28 which refutes opposing  
counsel's argument.

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3 terminate. (Mason Depo., 53:24 - 54:8.)

4 In addition, Claimant was the only one  
5 terminated at that time. (Brown Decl., ¶ 27.)

6 Moreover, at the same time, Linda  
7 handed Claimant a \$5,000 personal check from  
8 Matt that could be cashed on the condition that  
9 Claimant sign a release of liability. (Brown  
10 Decl., ¶ 29.)

11 67. At the time he was laid off, there were no  
12 other job opportunities for BROWN within the  
13 CORPORATION.

14 MASON DEPO 37:14-24. NANCY DECL ¶  
15 59. MATT DECL ¶ 61. MASON DECL ¶ 49.

16 ***Plaintiff's Response:***

17 DISPUTED. Respondents never even looked  
18 to see if there were any other open positions.  
19 (Mason Depo., 38:8-10.)

20 Further, Respondents admit no other  
21 office worker was laid off and Claimant's  
22 replacement in the Warehouse, Charles  
23 Jameson was retained. (Nancy Dixon Depo.,  
24 40: 12-21, 42: 7-25, 43:1-2; Mason Depo.,  
25 54:20-22.)

26 Nancy also claims that Linda offered

*Plaintiff's response fails to bring this  
undisputed material fact into dispute.*

Opposing counsel absurdly argues that  
the defendants had a "duty" to "look to see."  
He claims "Respondents never even looked to  
see if there were any other open positions."  
(Plaintiff's Reply in SS2 Item 67.) There was  
no such duty. Some things are obvious to those  
in a position to know. Suppose a homeowner is  
asked whether there is room to park a third car  
in his two-car garage. Is it necessary for him to  
"look to see if there are any open positions" for  
parking a third car? Certainly not.

Likewise, MATT, NANCY and LINDA  
were acutely aware of when positions opened  
up. DIXON FURNITURE was a small

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3 Claimant his job in the Warehouse in  
4 November 2006, immediately prior to laying  
5 him off. (Nancy Dixon Depo., 45:14-25,  
6 46:1-17.) Nevertheless, Linda admits she did  
7 not offer him this in November 2006, but  
8 rather months earlier, upon his return from  
9 medical leave (when he physically was unable  
10 to take the job.) (Mason Depo., 28:20-24,  
11 29:13-15.)

12 According to Respondents, they started  
13 laying off warehouse (factory) employees in  
14 September and October 2006. (Nancy Dixon  
15 Depo., 42:7-21; Mason Depo., 16:5-15.) The  
16 “layoffs” included about 3 people in September  
17 and 3-6 people in October 2006. (Mason  
18 Depo., 16:16-20, 18:25 - 19:4.) **The**  
19 **employees let go were all factory workers .**  
20 (Mason Depo., 17:8-12.) There were no layoffs  
21 prior to September 2006. (Mason Depo.,  
22 17:19-21, 20:7-11.)

23 Nancy then tried to claim two non-  
24 factory workers (i.e. expeditors) were let go.  
25 (Nancy Dixon Depo., 40:12-21.) *Nancy later*

business, not General Motors. At GM no  
person could possibly have such knowledge  
without “looking to see.” Here, the defendants  
had no duty to “look to see” what they already  
knew for certain—that no jobs were open that  
BROWN would accept (all possible jobs were  
in the factory where he would be exposed to  
dust).

Opposing counsel belabors the question  
of whether LINDA expressly re-offered  
BROWN the Warehouse Manager position at  
the time he was laid off. That is irrelevant  
because, if she had re-offered it to him at that  
time, **it is a legal certainty that he would have**  
**refused it**. The only way BROWN would have  
accepted such an offer would be *if his asthma*  
*had been alleviated or healed* during the 3.5  
month time period from when he returned to  
work on August 1, 2006 (Complaint ¶ 13) to  
when he was laid off on November 21, 2006. It  
was not. Indeed, he remains under doctor care  
today and currently takes prescription  
medication for his asthma. (see SS3 Item 98) In

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3 *recanted*, admitting instead the two left  
4 voluntarily. (Nancy Dixon Depo., 42:8-10,  
5 42:23 - 43:2.)  
6  
7 Moreover, Respondents hired a new  
8 employee to fill in for Claimant. (Nancy  
9 Dixon Depo. 44: 25; 45: 1-7.) Upon his return,  
10 Respondents told Claimant he had already  
11 been replaced. (Brown Decl., ¶ 18.) Indeed,  
12 Charles Jameson continued working and  
13 continues to work at the entity that purchased  
14 the assets of the company. (Mason Depo.,  
15 30:2-7.) Upon his termination, Respondents  
16 never even considered offering Claimant his  
17 old position and terminating Charles Jameson  
18 instead. (Mason Depo., 30:8-16.)

June 2007 more than six months after leaving  
DIXON FURNITURE, he had another asthma  
attack (see SS3 Item 94). On April 10, 2008  
BROWN was examined by a physician and  
subsequently diagnosed with nonoccupational  
allergic asthma (see SS3 Items 97, 99, 104).

18 68. After BROWN was laid off, nobody was  
19 hired to replace him.  
20 MASON DEPO 23:5-10. NANCY DECL ¶  
21 60. MATT DECL ¶ 62. MASON DECL ¶ 50.  
22 ***Plaintiff's Response:***  
23 Respondents hired a new employee to fill in  
24 for Claimant. (Nancy Dixon Depo. 44: 25; 45:  
25 1-7.) Upon his return, Respondents told  
26 Claimant he had already been replaced.

*Plaintiff's response fails to bring this  
undisputed material fact into dispute.*  
  
This Item refers *exclusively* to the time  
after November 21, 2006, the date BROWN  
was laid off. Opposing counsel refers to the  
hiring of Charles Jameson several months  
before BROWN was laid off, which is  
irrelevant to this Item.

(Brown Decl., ¶ 18.) Indeed, Charles Jameson continued working and continues to work at the entity that purchased the assets of the company. (Mason Depo., 30:2-7.) Upon his termination, Respondents never even considered offering Claimant his old position and terminating Charles Jameson instead.

(Mason Depo., 30:8-16.)

69. The CORPORATION hired no new employees from the time BROWN was laid off on November 21, 2006 through the time of sale to XYZ on December 14, 2007.

MASON DEPO 23:11-13; 26:20-25. NANCY DECL ¶ 61. MATT DECL ¶ 63. MASON DECL ¶ 51.

***Plaintiff's Response:***

DISPUTED as to Claimant being "laid off." Undisputed as to all else. Claimant was Wrongfully Terminated by Nancy and Matt. Linda even admitted Claimant complained (to her personally) about the unsafe workplace on a "frequent basis," specifically two to three times *each week* following his July injury, not just once. (Mason Depo., 39:13 - 40:10.)

*Plaintiff's response fails to bring this undisputed material fact into dispute.*

Opposing counsel sets forth the same arguments here as in response to SS2 Item 28 for the proposition that, rather than being "laid off," BROWN was "wrongfully terminated." Please see the extensive discussion in the reply at SS2 Item 28 which refutes opposing counsel's argument.

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3 These complaints specifically regarded the  
4 dust, the building making him sick, the cat,  
5 *and the animals in the back.* (Mason Depo.,  
6 39:20-25.) Linda then made the fatal  
7 admission that Claimant’s demeanor (i.e.,  
8 complaints) was causing problems in the  
9 company and was a factor in the decision to  
10 terminate. (Mason Depo., 53:24 - 54:8.)

11 In addition, Claimant was the only one  
12 terminated at that time. (Brown Decl., ¶ 27.)

13 Moreover, at the same time, Linda  
14 handed Claimant a \$5,000 personal check from  
15 Matt that could be cashed on the condition that  
16 Claimant sign a release of liability. (Brown  
17 Decl., ¶ 29.)

18 70. At the time BROWN was laid off, he was  
19 doing UPS packaging and UPS online, which  
20 by that time had dwindled to shipping just two  
21 or three items per day. He was also doing  
22 labeling of fabric shipments received, but by  
23 that time fabric shipments had dwindled to  
24 about two or three rolls per day.

25 MASON DEPO 26:4-12. NANCY DECL ¶  
26 62. MATT DECL ¶ 64. MASON DECL ¶ 52.

*Plaintiff’s response fails to bring this  
undisputed material fact into dispute.*

Opposing counsel sets forth the same  
arguments here as in response to SS2 Item 28  
for the proposition that, rather than being “laid  
off,” BROWN was “wrongfully terminated.”  
Please see the extensive discussion in the reply  
at SS2 Item 28 which refutes opposing  
counsel’s argument.



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3 ***Plaintiff's Response:***

4 DISPUTED as to Claimant being "laid off."  
5 Undisputed as to all else. Claimant was  
6 Wrongfully Terminated by Nancy and Matt.  
7 Linda even admitted Claimant complained (to  
8 her personally) about the unsafe workplace on  
9 a "frequent basis," specifically two to three  
10 times *each week* following his July injury, not  
11 just once. (Mason Depo., 39:13 - 40:10.)  
12 These complaints specifically regarded the  
13 dust, the building making him sick, the cat,  
14 *and the animals in the back.* (Mason Depo.,  
15 39:20-25.) Linda then made the fatal  
16 admission that Claimant's demeanor (i.e.,  
17 complaints) was causing problems in the  
18 company and was a factor in the decision to  
19 terminate. (Mason Depo., 53:24 - 54:8.) In  
20 addition, Claimant was the only one terminated  
21 at that time. (Brown Decl., ¶ 27.)

22 Moreover, at the same time, Linda  
23 handed Claimant a \$5,000 personal check from  
24 Matt that could be cashed on the condition that  
25 Claimant sign a release of liability. (Brown

Decl., ¶ 29.)

71. At the time BROWN was laid off, he and two other employees were in the Production Department, but there not even enough work for two of the three employees. Each of the three was carrying approximately a two-thirds workload with nothing to do in the remaining one-third of their time. After BROWN was laid off, the other two employees each had full workloads.

MASON DEPO 23:20 to 25:3. NANCY  
DECL ¶ 63. MATT DECL ¶ 65. MASON  
DECL ¶ 53.

***Plaintiff's Response:***

DISPUTED as to Claimant being "laid off."  
Undisputed as to all else. Claimant was Wrongfully Terminated by Nancy and Matt. Linda even admitted Claimant complained (to her personally) about the unsafe workplace on a "frequent basis," specifically two to three times each week following his July injury, not just once. (Mason Depo., 39:13 - 40:10.)  
These complaints specifically regarded the dust, the building making him sick, the cat,

*Plaintiff's response fails to bring this undisputed material fact into dispute.*

Opposing counsel sets forth the same arguments here as in response to SS2 Item 28 for the proposition that, rather than being "laid off," BROWN was "wrongfully terminated."  
Please see the extensive discussion in the reply at SS2 Item 28 which refutes opposing counsel's argument.

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3 *and the animals in the back.* (Mason Depo.,  
4 39:20-25.) Linda then made the fatal  
5 admission that Claimant’s demeanor (i.e.,  
6 complaints) was causing problems in the  
7 company and was a factor in the decision to  
8 terminate. (Mason Depo., 53:24 - 54:8.)  
9 In addition, Claimant was the only one  
10 terminated at that time. (Brown Decl., ¶ 27.)  
11 Moreover, at the same time, Linda handed  
12 Claimant a \$5,000 personal check from Matt  
13 that could be cashed on the condition that  
14 Claimant sign a release of liability. (Brown  
15 Decl., ¶ 29.)

16 72. At the time BROWN was laid off, the  
17 CORPORATION did not consider putting him  
18 back into his former warehouse position  
19 because BROWN refused to take back his job  
20 in the warehouse. In or about the second week  
21 of November 2006, just before the decision  
22 was finalized to lay BROWN off, NANCY and  
23 MATT questioned MASON about whether  
24 BROWN would take back his prior position in  
25 the warehouse, and MASON informed  
26 NANCY and MATT that BROWN

*Plaintiff’s response fails to bring this  
undisputed material fact into dispute.*

Opposing counsel expressly concedes  
that BROWN did not want his former job back  
because he feared it would aggravate his  
asthma. “Respondents understood he could not  
do anything that would aggravate his asthma.”  
(Plaintiff’s Response to SS2 Item 72).

Opposing counsel then belabors the  
question of whether BROWN was expressly re-  
offered the Warehouse Manager position at the

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3 “absolutely, unequivocally [did] not want it  
4 back.”

5 MASON DEPO 27:1 to 28:24; 31:1-6; 54:20  
6 to 55:13. NANCY DEPO 45:14-17; 62:19 to  
7 63:4. NANCY DECL ¶ 64. MATT DECL ¶  
8 66. MASON DECL ¶ 54.

9 ***Plaintiff's Response:***

10 DISPUTED. In the summer, upon his return  
11 from medical leave, Respondents asked  
12 Claimant if he wanted his old position as  
13 Warehouse Manager, but he could no longer  
14 do this work for fear it would irritate his  
15 asthma. (Mason Depo., 27:1-18, 28:4-14.)  
16 Claimant made clear he could no longer do his  
17 former job due to the asthma. (Mason Depo.,  
18 96:19-24.) Indeed, Respondents understood he  
19 could not do anything that would aggravate his  
20 asthma. (Mason Depo., 61:5-22.)

21 However, at the time of Claimant's  
22 termination, the company did not offer him his  
23 old position again because someone had filled  
24 it. (Mason Depo., 28:20-25; 29:13-19.)

25 Respondents hired a new employee to fill in

time he was laid off. That is irrelevant because,  
if he had been re-offered it at that time, **it is a  
legal certainty that he would have refused it.**

The only way BROWN would have accepted  
such an offer would be *if his asthma had been  
alleviated or healed* during the 3.5 month time  
period from when he returned to work on  
August 1, 2006 (Complaint ¶ 13) to when he  
was laid off on November 21, 2006. It was not.  
Indeed, he remains under doctor care today and  
currently takes prescription medication for his  
asthma. (see SS3 Item 98) In June 2007 more  
than six months after leaving DIXON  
FURNITURE, he had another asthma attack  
(see SS3 Item 94). On April 10, 2008 BROWN  
was examined by a physician and subsequently  
diagnosed with nonoccupational allergic asthma  
(see SS3 Items 97, 99, 104).

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3 for Claimant. (Nancy Dixon Depo. 44: 25; 45:  
4 1-7.) Upon his return, Respondents told  
5 Claimant he had already been replaced.  
6 (Brown Decl., ¶ 18.) Indeed, Charles Jameson  
7 continued working and continues to work at  
8 the entity that purchased the assets of the  
9 company. (Mason Depo., 30:2-7.) Upon his  
10 termination, Respondents never even  
11 considered offering Claimant his old position  
12 and terminating Charles Jameson instead.  
13 (Mason Depo., 30:8-16.)

14 73. In response to a special interrogatory  
15 asking “Please describe all facts supporting  
16 YOUR allegations in COMPLAINT ¶¶ 17, 18h  
17 and 62 that YOUR termination by DIXON  
18 FURNITURE was not due to lack of  
19 business,” BROWN offered no fact to refute  
20 the DOWNTURN or the many other layoffs  
21 that were happening at the time, and instead  
22 merely reiterated his false allegations of  
23 discrimination and retaliation as stated in the  
24 COMPLAINT.

25 SPEC ROGGS and SI RESPONSES No. 7.

26 ***Plaintiff’s Response:***

*Plaintiff’s response fails to bring this undisputed material fact into dispute.*

This Item states that, in response to an interrogatory, BROWN offered no fact no fact to refute the DOWNTURN or the many other layoffs that were happening at the time of his layoff.

Oposing counsel makes various irrelevant statements that do not address what was stated in BROWN’S response to the interrogatory.

Special Interrogatory No. 7 asks, “Please describe all facts supporting YOUR

DISPUTED. Claimant had been through 2 or 3 prior downturns with the company, though he claims they were cyclical and did not ever result in layoffs. (Brown Decl., ¶ 28.)

During the course of this litigation, Respondents sold the entirety of the assets of the corporation while *personally* retaining the liabilities, leaving nothing but an empty shell. (Nancy Dixon Depo. 10:4-7, 10:20-23, 16:22-25; Matt Dixon Depo., 17:4-15.)

Indeed, **Nancy claimed she sold the business for personal reasons and initially would not divulge the reasons.** (Nancy Dixon Depo. 11: 13-18.) Nancy then admitted she had never thought of selling the business prior to April 2007, **which was during the course of the instant litigation.** (Nancy Dixon Depo. 17: 8-19.)

Further, Nancy and Matt admitted to receiving compensation and personally retaining the liabilities. (Matt Dixon Depo., 14:23 - 15:5; Nancy Dixon Depo., 12:13 - 13:2.) Nevertheless, Nancy and Matt refused

allegations in COMPLAINT ¶¶ 17, 18h and 62 that YOUR termination by DIXON FURNITURE was not due to lack of business.” (SPEC ROGGS No. 7.)

BROWN’S gave the following long-winded response, which is devoid of any facts that to refute the DOWNTURN or that many other layoffs were happening at the time of his layoff: “Objection. Calls for speculation, expert opinion and a legal conclusion. Without the waiver of objections stated herein, plaintiff worked for defendant DIXON FURNITURE for approximately four years as a Warehouseman and Supervisor. Defendant DIXON FURNITURE manufactured custom furniture. In late May 2006, plaintiff developed and/or aggravated an asthma condition due to dust and cat hair exposure at defendant DIXON FURNITURE's plant. Defendants had a cat present at the plant for some two years. Plaintiff requested medical assistance, and requested to file a workers' compensation claim. Defendants' lied to plaintiff and told him that they had a

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3 to testify as to what they did with the proceeds  
4 from the sale of DIXON FURNITURE., Ltd.  
5 (Nancy Dixon Depo. 12: 21-25, 13: 1-25, 14:  
6 1-25, 15: 1-25; Matt Dixon Depo., 14:23-25,  
7 15:1-5.)

'high deductible' on their workers'  
compensation coverage, and that they would  
promptly cover any medical bills occurred by  
plaintiff. Pursuant to his physician's orders,  
plaintiff went out on medical leave. Plaintiff  
began to present medical bills to Defendants,  
who began stalling the payments. Plaintiff  
complained repeatedly to Linda Mason, who  
had assumed Human Resource duties, and was  
repeatedly assured that the bills were paid or  
where in the process of being paid. When  
plaintiff returned to work, defendants  
immediately retaliated against him and gave  
him an office job in the Production Office for  
less pay, removing his supervisory duties.  
When plaintiff refused to work for less pay,  
defendants relented and agreed to pay his  
regular rate. From that point forward, plaintiff  
was routinely and systematically ostracized by  
management and other employees. During  
plaintiff's medical leave, defendants had  
acquired a number of chicken and ducks which  
they placed on the premises of the plant, in

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close proximity to an outside eating area. The chicken and ducks deposited a large amount of fecal matter around the eating area, which plaintiff noticed when he returned and reported to his supervisors. Defendants did nothing, and several days before he was wrongfully terminated, plaintiff contacted a Los Angeles County Health Department hotline and reported the violations. On November 21, 2006, within temporal proximity of his return and his numerous complaints, plaintiff was pretextually ‘laid off’ for lack of business. On or about December 1, 2006, plaintiff received a copy of the report notice and the violations ‘accumulation of animal excrement’ and ‘distance of domestic animals.’ It was sent to him by defendant Matt Dixon, who wrote ‘Nice try my friend Pete’ and ‘think of something else’ with a smiley face (!) written on the notice. It is obvious that defendants think nothing of their unlawful and abusive actions.”

74. BROWN blamed NANCY and MATT for his sickness because, according to BROWN, there was too much DUST in the factory and

No Reply.



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3 he was forced to work near the CAT hair and  
4 FOWL feces.

5 MASON DEPO 34:9-14; 52:21 to 53:5;  
6 73:19-22; 74:22-24.

7 ***Plaintiff's Response:***

8 Undisputed.

9 75. BROWN was exposed to animal feces in  
10 the yard around his own home.

11 RFA and RFA RESPONSES No. 18.

12 ***Plaintiff's Response:***

13 Undisputed.

14 76. While the COMPLAINT alleges BROWN  
15 suffered from “severe fright” and “severe  
16 shock,” he admits that these were nothing  
17 more than his emotional reaction to the  
18 BREATHING INCIDENT and to his own  
19 symptoms of asthma. (BROWN denied  
20 requests for admission Nos. 29 and 30, which  
21 stated, “Admit that no act by DIXON  
22 FURNITURE or any of its agents or  
23 employees during the course of your  
24 employment at DIXON FURNITURE caused  
25 YOU to suffer ‘severe fright’ [in No. 29, and  
26 ‘severe shock’ in No. 30].” In response to

No Reply.

*Plaintiff's response fails to bring this  
undisputed material fact into dispute.*

This Item goes to the question of  
whether any conduct of the defendants caused  
BROWN to suffer “severe fright” and “severe  
shock” and indicates that those emotional  
reactions had nothing to do with the defendants’  
conduct, but rather were emotional reactions to  
his asthma symptoms.

Opposing counsel absurdly states that  
the interrogatories and requests for admission  
were compound or confusing, but opposing  
counsel made no such objection in the

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3 Form Interrogatory No. 17 as to both denials,  
4 he identically stated, “[P]laintiff suffered from  
5 breathing difficulties including asthma which  
6 caused plaintiff panic and fear that he would  
7 not be able to breathe.”)

8 FORM ROGGS and FI RESPONSES No. 17  
9 as to RFA Nos. 29 (on p. 58) and 30 (on p. 60).

10 ***Plaintiff’s Response:***

11 DISPUTED. The Interrogatories and Request  
12 for Admission were compound and confusing.  
13 Claimant alleges pain and suffering and  
14 exacerbation of his physical symptoms as a  
15 result of Respondents; unlawful conduct.

16 Claimant was Wrongfully Terminated  
17 by Nancy and Matt. Linda even admitted  
18 Claimant complained (to her personally) about  
19 the unsafe workplace on a “frequent basis,”  
20 specifically two to three times each week  
21 following his July injury, not just once.  
22 (Mason Depo., 39:13 - 40:10.) These  
23 complaints specifically regarded the dust, the  
24 building making him sick, the cat, and the  
25 animals in the back.. (Mason Depo., 39:20-25.)

responses to the cited discovery. In both  
referenced requests for admissions, the only  
objection made was, “Calls for expert medical  
opinion and a legal conclusion.” (RFA  
RESPONSES No.s 29 and 30.) And the  
referenced interrogatory is a Judicial Council  
Form Interrogatory, which is permitted to be  
compound (CCP § 2030.060(f) states, “No  
specially prepared interrogatory shall contain  
subparts, or a compound, conjunctive, or  
disjunctive question.”), and to which no  
objection was made (FI RESPONSES No. 17 as  
to RFA Nos. 29 (on p. 58) and 30 (on p. 60).

Opposing counsel then makes various  
irrelevant statements about so-called “wrongful  
termination” that do not concern whether  
BROWN’S alleged “severe fright” and “severe  
shock” were caused by anything other than his  
asthma symptoms.

BROWN was offered \$5,000 in  
severance pay, which he refused to accept. It  
was the CORPORATION’S intention that the  
severance pay ease the transition and cover

Linda then made the fatal admission that Claimant's demeanor (i.e., complaints) was causing problems in the company and was a factor in the decision to terminate. (Mason Depo., 53:24 - 54:8.)

Also, Claimant was the only one terminated at that time. (Brown Decl., ¶ 27.) Moreover, at the same time, Linda handed Claimant a \$5,000 personal check from Matt that could be cashed on the condition that Claimant sign a release of liability. (Brown Decl., ¶ 29.)

some of BROWN'S living and medical expenses while he looked for another job. MATT DECL-2 ¶ 3. This is likewise irrelevant to this Item which concerns whether BROWN'S alleged "severe fright" and "severe shock" were caused by anything other than his asthma symptoms.

77. While the COMPLAINT alleges BROWN suffered from "severe pain," he admits that this were nothing more than chest pain in connection with his asthma. (BROWN denied request for admission Nos. 31, which stated, "Admit that no act by DIXON FURNITURE or any of its agents or employees during the course of your employment at DIXON FURNITURE caused YOU to suffer 'severe pain.'" In response to Form Interrogatory No. 17 as to this denials, he stated, "[P]laintiff suffered from breathing difficulties including

*Plaintiff's response fails to bring this undisputed material fact into dispute.*

This Item goes to the question of whether any conduct of the defendants caused BROWN to suffer "severe pain" and indicates that his pain had nothing to do with the defendants' conduct, but rather was chest pain in connection with his asthma.

Opposing counsel absurdly states that the interrogatories and requests for admission were compound or confusing, but opposing counsel made no such objection in the

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3 asthma which caused plaintiff pain in his  
4 chest.”)  
5 FORM ROGGS and FI RESPONSES No. 17  
6 as to RFA No. 31 (on p. 61).  
7 ***Plaintiff's Response:***  
8 DISPUTED. The Interrogatories and Request  
9 for Admission were compound and confusing.  
10 Claimant alleges pain and suffering and  
11 exacerbation of his physical (BROWN denied  
12 request for admission Nos. 31, which stated,  
13 “Admit that no act by DIXON FURNITURE  
14 or any of its agents or employees during the  
15 course of your employment at DIXON  
16 FURNITURE caused YOU to suffer ‘severe  
17 pain.’” In response to Form Interrogatory No.  
18 17 as to this denials, he stated, “[P]laintiff  
19 suffered from breathing difficulties including  
20 asthma which caused plaintiff pain in his  
21 chest.”) FORM ROGGS and FI RESPONSES  
22 No. 17 as to RFA No. 31 (on p. 61).  
23 symptoms as a result of Respondents; unlawful  
24 conduct. Claimant was Wrongfully Terminated  
25 by Nancy and Matt. Linda even admitted

responses to the cited discovery. In both  
referenced requests for admissions, the only  
objection made was, “Calls for expert medical  
opinion and a legal conclusion.” (RFA  
RESPONSES No. 31.) And the referenced  
interrogatory is a Judicial Council Form  
Interrogatory, which is permitted to be  
compound (CCP § 2030.060(f) states, “No  
specially prepared interrogatory shall contain  
subparts, or a compound, conjunctive, or  
disjunctive question.”), and to which no  
objection was made (FI RESPONSES No. 17 as  
to RFA No. 31 (on p. 61).

Opposing counsel then makes various  
irrelevant statements about so-called “wrongful  
termination” that do not concern whether  
BROWN’S alleged “severe pain” was caused  
by anything other than chest pain in connection  
with his asthma.

BROWN was offered \$5,000 in  
severance pay, which he refused to accept. It  
was the CORPORATION’S intention that the  
severance pay ease the transition and cover

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<p>Claimant complained (to her personally) about the unsafe workplace on a “frequent basis,” specifically two to three times <u>each week</u> following his July injury, not just once. (Mason Depo., 39:13 - 40:10.) These complaints specifically regarded the dust, the building making him sick, the cat, <u>and the animals in the back</u>. (Mason Depo., 39:20-25.)</p> <p>Linda then made the fatal admission that Claimant’s demeanor (i.e., complaints) was causing problems in the company and was a factor in the decision to terminate. (Mason Depo., 53:24 - 54:8.)</p> <p>Also, Claimant was the only one terminated at that time. (Brown Decl., ¶ 27.)</p> <p>Moreover, at the same time, Linda handed Claimant a \$5,000 personal check from Matt that could be cashed on the condition that Claimant sign a release of liability. (Brown Decl., ¶ 29.)</p>	<p>some of BROWN’S living and medical expenses while he looked for another job.</p> <p>MATT DECL-2 ¶ 3. This is likewise irrelevant to this Item which concerns whether BROWN’S alleged “severe fright” and “severe shock” were caused by anything other than his asthma symptoms.</p>
<p>78. NANCY and MATT never commingled their personal funds with the funds of the CORPORATION.</p> <p>NANCY DECL ¶ 65. MATT DECL ¶ 67.</p>	<p><i>Plaintiff’s response fails to bring this undisputed material fact into dispute.</i></p> <p>MATT’S statement that he received “compensation” for selling the business is both</p>

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3 MASON DECL ¶ 55.

4 ***Plaintiff's Response:***

5 DISPUTED. Matt admitted receiving  
6 compensation for selling the business. (Matt  
7 Dixon Depo., 14: 23-25; 15: 1-5.) Matt  
8 testified he currently owns the land and  
9 buildings. (Matt Dixon Depo., 14: 14-17.)  
10 Nancy and Matt also control the Dixon Family  
11 Trust, which currently owns the buildings at  
12 the facility. (Nancy Dixon Depo. 10: 24-25;  
13 11: 1-3.)

14 Nancy and Matt refused to testify as to  
15 what they did with the money from the sale,  
16 claiming such information to be privileged.  
17 (Nancy Dixon Depo. 12: 21-25, 13: 1-25, 14:  
18 1-25, 15: 1-25; Matt Dixon Depo., 14:23-25,  
19 15:1-5.)

20 Moreover, Nancy admittedly  
21 personally paid Claimant's work injury  
22 medical bills by her *personal* credit card.  
23 (Nancy Dixon Depo. 19:22-24, 20: 24-25, 21:  
24 1-10.) Linda paid other bills, and even had  
25 some that had gone to collections transferred to

nebulous and irrelevant. Did he receive  
"salary" or a "bonus" in consideration for his  
time and effort negotiating and closing the deal  
with XYZ? Perhaps. But receiving salary and/  
or bonus does not constitute commingling of  
funds. Opposing counsel did not question  
MATT about the *proceeds* from the sale. But if  
the CORPORATION distributed some or all of  
the proceeds of the sale to its sole shareholder,  
the TRUST, that does not constitute  
commingling of funds. Nor does the fact that  
NANCY and MATT are to co-trustees of the  
TRUST cause any dividend distribution that  
may have been made to the TRUST to  
constitute commingling of funds. Nor does the  
fact that NANCY and MATT claimed privilege  
when asked where the money from the sale  
went constitute or even reasonably suggest the  
commingling of funds. Opposing counsel  
presents no evidence of any improper  
commingling of funds from the sale.

NANCY'S testimony about personally  
paying some of BROWN'S medical bills

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2  
3 the name of  
4 the company. (Mason Depo., 85:22 - 86:14.)  
5 Indeed, some bills were actually billed in the  
6 name of the company, a fact no one corrected.  
7 (Mason Depo., 86:20 - 89:9.) Respondents  
8 actually told Claimant “Bring *all* of your bills  
9 in and let us help you pay them.” (Mason  
10 Depo., 82:6-7.) Nancy continued to pay even  
11 after Claimant left the company. (Nancy Dixon  
12 Depo. 44: 7-10.)

13 Further, Respondents refused to submit  
14 Claimant’s worker’s compensation claim.  
15 (Brown Decl., ¶ 13, 19; Mason Depo., 62:21 -  
16 63:12.) Nancy testified she did not submit the  
17 claim and medical bills through her worker’s  
18 compensation carrier, because she claims it  
19 was *not work related*. (Nancy Dixon Depo. 23:  
20 5-8.) Claimant notified Linda it was the  
21 company’s fault that he got sick and they  
22 should pay for the medical expenses. (Mason  
23 Depo., 73:12-22; 73:23 - 74:1.) Nancy offered  
24 no justification for not submitting the claim to  
25 their carrier. (Nancy Dixon Depo. 23: 5-16)

indicates that she felt compassion for him but  
reasonably believed his asthma was *not work-*  
*related*—and she was correct (See SS3 Items  
101-104). Since she cared about him as a  
human being, there was nothing improper about  
her using personal funds to help him out. Her  
doing so does not constitute commingling of  
funds.

Furthermore, both the CORPORATION  
and NANCY personally have the right to give  
money to a person in need. That is called  
charity. Any individual can give charitably, and  
so can any corporation or other business entity.  
Neither the CORPORATION nor NANCY had  
any obligation to pay BROWN’S medical bills,  
because his asthma was not work related (see  
SS3 Items 101-104). The fact that the  
CORPORATION and NANCY each, on  
separate occasions, paid portions of BROWN’S  
medical bills does not constitute commingling  
of funds.

Oposing counsel’s discussion of  
worker’s compensation is completely irrelevant

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Finally, upon Claimants termination, Respondents offered Claimant a personal check from Matt for \$5,000.00 to sign a release of all claims. (Brown Decl., ¶ 29.)

to the question of commingling of funds. Refusal to submit Claimant’s worker’s compensation claim when for a non- work-related injury does not constitute commingling of funds. (See SS3 Items 101-104.)

BROWN was offered \$5,000 in severance pay, which he refused to accept. It was the CORPORATION’S intention that the severance pay ease the transition and cover some of BROWN’S living and medical expenses while he looked for another job. MATT DECL-2 ¶ 3.

79. Neither NANCY nor MATT has ever directly employed 50 or more persons to perform services for a wage or salary. NANCY DECL ¶ 66. MATT DECL ¶ 68.

*Plaintiff’s response fails to bring this undisputed material fact into dispute.*

***Plaintiff’s Response:***

DISPUTED. Matt and Nancy controlled each and every aspect of Brown’ and other employees’ work performance, pay, job duties, ability to take time off, and payment of medical bills. (Nancy Dixon Depo., 6:21 - 7:3, 10:1-7, 10:20-23, 20:24 - 21:10; Matt Dixon Depo., 13:14-23, 14:3-4, 17:7-15; Brown

Oposing counsel again tries to argue that BROWN was employed by MATT and/or NANCY, rather than (or in addition to) being employed by the CORPORATION. This argument is utter absurdity as explained in depth at SS2 Item 29 above. **Please see reply at SS2 Item 29 above showing BROWN was not employed by NANCY or MATT.**

Oposing counsel is evidently trying to generalize his absurd proposition as to one



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3 Decl., ¶ 2, 15, 20, 29; Mason Depo., 61:14-15,  
4 85:3-8, 96:25 - 97:21, 98:14 - 102:17.)  
5 Moreover, there were more than 50 employees  
6 of the company at times. (Mason Depo.,  
7 15:8-15.)  
8 Moreover, upon his termination, Respondents  
9 offered Claimant a \$5,000.00 personal check  
10 from Matt to release his claims. He refused.  
11 (Brown Decl., ¶ 29.)

person (BROWN) being an employee of MATT  
and/or NANCY personally, to all the employees  
of the CORPORATION being employees of  
MATT and/or NANCY personally. And yet  
opposing counsel expressly concedes that “there  
were more than 50 employees of the company  
at times.” (Plaintiff’s Response to SS2 Item 79,  
emphasis added.)

BROWN was offered \$5,000 in  
severance pay, which he refused to accept. It  
was the CORPORATION’S intention that the  
severance pay ease the transition and cover  
some of BROWN’S living and medical  
expenses while he looked for another job.

MATT DECL-2 ¶ 3.

18 80. At all times relevant to BROWN’S  
19 employment by the CORPORATION, neither  
20 NANCY nor MATT had any natural person in  
21 service other than domestic workers in their  
22 home.

23 NANCY DECL ¶ 67. MATT DECL ¶ 69.

24 ***Plaintiff’s Response:***

25 DISPUTED. Matt and Nancy controlled each  
26 and every aspect of Brown’ and other

*Plaintiff’s response fails to bring this  
undisputed material fact into dispute.*

**Please see reply at SS2 Item 79 above.**

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employees' work performance, pay, job duties, ability to take time off, and payment of medical bills. (Nancy Dixon Depo., 6:21 - 7:3, 10:1-7, 10:20-23, 20:24 - 21:10; Matt Dixon Depo., 13:14-23, 14:3-4, 17:7-15; Brown Decl., ¶ 2, 15, 20, 29; Mason Depo., 61:14-15, 85:3-8, 96:25 - 97:21, 98:14 - 102:17.)

Moreover, there were more than 50 employees of the company at times. (Mason Depo., 15:8-15.)

Moreover, upon his termination, Respondents offered Claimant a \$5,000.00 personal check from Matt to release his claims. He refused. (Brown Decl., ¶ 29.)

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**SEPARATE STATEMENT OF RECENTLY DISCOVERED UNDISPUTED  
MATERIAL FACTS (“SS3”)**

<u>Recently Discovered</u> <u>Undisputed Material Facts</u>	<u>Supporting Evidence</u>
81. Between the FIRST STINT and the SECOND STINT, BROWN held at least two other jobs. The first was at a company called JPM in South Gate. The second was at a company called Unger Supply in Torrance.	BROWN DEPO 59:2-24; 60:18 to 61:6.
82. BROWN worked for three years as a truck driver in a freight yard at JPM.	BROWN DEPO 60:18 to 61:6.
83. When BROWN worked in the freight yard at JPM, there was a lot of dust in the freight yard.	BROWN DEPO 61:9-11.
84. BROWN worked from 2000 to 2001 in a warehouse at Unger Supply.	BROWN DEPO 59:15 to 60:1.
85. When BROWN worked in the warehouse at Unger Supply, the warehouse was a dusty environment.	BROWN DEPO 60:2-3.
86. On March 21, 2001, while working at Unger Supply, BROWN prepared a hand-written note, which he signed, and to which he attached a hand-written doctor note on a form from the [redacted] Family Health Center in Santa Monica. (It appears that BROWN must have presented the note to his boss at Unger	BROWN HANDWRITTEN MARCH 2001  NOTE

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3 Supply probably to get his boss to transfer him  
4 to an office job away from the dusty  
5 warehouse). The note in BROWN'S all-caps  
6 handwriting states:

7           **“3-21-01 AFTER A CONSULTATION**  
8 **WITH MY PHYSICIAN ON 3-20-01, HE**  
9 **HAS PRESCRIBED ME MEDICATION**  
10 **TO HELP WITH BREATHING AND**  
11 **NASAL PROBLEMS DUE TO SEVERE**  
12 **DUST POLLUTION IN THIS**  
13 **WAREHOUSE. [Signed] Tom Brown”**

14 [Emphasis Added.]

15 The attached note from the doctor states:

16           “3/20/01 This is to certify that Tom  
17 Brown has been under my care for the  
18 following: (1) Ringing Ears (2) Low Back Pain  
19 (3) **Allergic Rhinitis** and is able to return to  
20 work on [date left blank]. Remarks: patient is  
21 suffering from **problems due to work**  
22 **exposures**. Pt [Patient] would benefit from  
23 time away from these exposures and  
24 commercial driving. [illegible doctor  
25 signature]” [Emphasis Added.]

26 87. The CORPORATION had workers’

ACE LETTER. BROWN DEPO (cover page)

<p>compensation insurance from Ace American Insurance Company, c/o ESIS (hereinafter “ACE”).</p>	<p>and WC TRIAL NOTICE, both listing Ace American Insurance Company as a co-defendant with DIXON FURNITURE. Ltd.</p>
<p>88. Sometime after his November 21, 2006 layoff, BROWN filed a workers’ compensation claim against the CORPORATION and ACE (ACE claim number [redacted; WCAB case No. [redacted]), and on [redacted], 2008 he testified at a deposition in that matter that was taken by attorney [redacted], who represents ACE.</p>	<p>ACE LETTER. BROWN DEPO, cover page. WC TRIAL NOTICE.</p>
<p>89. At the deposition on January 24, 2008, <b>BROWN told the fatal lie when he stated under oath that the first time he experienced any problems with his breathing was in March 2006 at the time he was working at DIXON FURNITURE, when, in truth and in fact, he had experienced problems with his breathing five years earlier</b> and on March 20, 2001 was prescribed medication for his breathing problems due to severe dust pollution at Unger Supply warehouse.</p>	<p>BROWN DEPO 23:6-8 (“Q. When did you first start having any problems with either your skin or breathing? A. I would say late march of ’06. Q. What were you doing at the time you started noticing it? A. It came on especially at night when I would be, basically, in bed. Very labored breathing. I would get up, walk and try to get fresh air and I would wheeze...”). BROWN HANDWRITTEN MARCH 2001 NOTE (“3-21-01 After a consultation with my physician on 3-20-01, he has prescribed me medication to help with breathing and nasal</p>

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	problems due to severe dust pollution in this warehouse. ... [signed] Tom Brown”). DR. BRUNER REPORT p. 15.
90. When BROWN was on his PAID LEAVE, he was examined by Dr. Wagnon, who gave him a skin test and told him he was allergic to dust and cats. BROWN reported the results of the skin test to LINDA.	BROWN DEPO 29:10-18 (describing skin test and its results), 30:21-24 (showing he was on PAID LEAVE when the skin test occurred), 32:3-11 (showing he reported the results to LINDA).
91. At the deposition on January 24, 2008, <b>BROWN gave fatally contradictory testimony as to whether he first formulated his opinion that his asthma was work-related <u>before</u> or <u>after</u> he learned he was allergic to dust and cats.</b> First he gave the “reasonable-sounding” testimony that he formulated the opinion <u>after</u> taking the skin test and being told by Dr. Wagnon that he was allergic to dust and cats. Then, when prompted by counsel as to his informing DIXON FURNITURE of his opinion that his asthma was work-related <u>after</u> the skin test, BROWN emphatically testified he informed DIXON FURNITURE of this opinion <u>before</u> taking the skin test!	BROWN DEPO 30:18-22 (“A. When I was having the asthma attacks, I considered it work-related. It had to be coming from work. Q. Well, when did you formulate that opinion? A. <u>After</u> the skin test.”), and 32:3-9 (“So... the skin test is what firmed up in your mind that it was work-related? A. Oh, yes. Q. So when did you talk to the employer after that? A. Right away. As soon as I got the test back that day.”), <u>but</u> 31:14-19 (“Q. So you talked to the employer, let’s say, sometime in July? A. June. Q. Right <u>after</u> the skin test? A. <u>Before</u> . <u>Before</u> I went for the skin test, I told them I thought it was work related.”). (See SS3 Items 101-104.)
92. At the deposition on January 24, 2008,	BROWN DEPO 47:23-24 (“The only cat I’ve

<p>BROWN, who was born in 1953 and has lived in the United States since 1981, gave <b>ludicrous, impossible-to-believe testimony that, prior to seeing the CAT on the PROPERTY, he had never seen a cat before in his entire life.</b></p>	<p>seen in my life was the one kept in the Dixon’s office.” Q. The only cat I’ve seen in your entire life? A. I’ve never had one.”). DR. BRUNER REPORT p. 1 bottom (as to birth and immigration dates).</p>
<p>93. The CAT was kept constrained on a chain inside the in the executive offices.</p>	<p>BROWN DEPO 49:3-4 (“[The CAT] lived in the office. The boss took a chain to it and kept it in the office.”)</p>
<p>94. In May or June 2007, BROWN moved in with a friend in a building where wild cats lived. Three weeks later in June 2007, he had an asthma attack, which he attributed to the wild cats.</p>	<p>BROWN DEPO 51:6 to 52:7. .</p>
<p>95. On January 29, 2008, ACE denied ADAM’S workers’ compensation claim on the grounds that there was no medical evidence that he sustained a work related injury at DIXON FURNITURE.</p>	<p>ACE LETTER.</p>
<p>96. After his workers’ compensation claim was denied by ACE on January 29, 2008, BROWN pursued the matter with the Worker’s Compensation Appeals Board. This led to his being examined on April 10, 2008 by Dr. Gary Bruner, and the matter is set for trial before</p>	<p>ACE LETTER (showing Jan 29, 2008 denial date). DR. BRUNER REPORT (showing WCAB case number and ACE claim number, and April 10, 2008 examination date on cover page). WC TRIAL NOTICE (showing [redacted], 2008 trial date on p. 1—see also p. 2</p>

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Administrative Judge [redacted] on Monday, [redacted], 2008 (the same date this Reply is due).	thereof showing near the bottom boxes checked for “set for” and “trial” and “[redacted]” hand written after “set on.”).
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97. On April 10, 2008, BROWN was given extensive testing for his asthma condition, including chest x-rays, lung function testing, pulse oximetry, electrocardiogram and extensive blood tests.	DR. BRUNER REPORT p. 1 and pp. 4-7.
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98. BROWN suffers from asthma today and is currently takes prescription medication to control it.	BROWN DEPO 12:15 to 13:2 (“Q. What parts of your body currently bother you that you associate with your employment at DIXON FURNITURE? A. ... breathing has been okay because I’m on medication, but anytime I cough or any form of respiratory problems it gets -- I get worried because I may have another attack. I keep inhalers close by. Q. Do you <u>currently</u> use inhalers? A. Not the inhalers. <u>I’m on Advair and Singulair which are two asthma medications.</u> ”). DR. BRUNER REPORT p. 15 (“Final Diagnosis: Nonoccupational asthma”).
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99. After being examined on April 10, 2008, BROWN was diagnosed with atopic disorder (elevated serum IgE level) with allergic rhinitis. This is an underlying disorder that makes him susceptible to allergic “triggers”	DR. BRUNER REPORT p. 15 “Final Diagnosis” section, item 2; discussed on p. 17 ¶ 3 through p. 18 ¶ 1.
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(such as dust and cats) but those “triggers” are not responsible for his basic underlying health problem.

100. The doctor reviewed BROWN’S medical history and consulted numerous medical records from BROWN’S past. In the report, the physician not only cites BROWN HANDWRITTEN MARCH 2001 NOTE, but also numerous other items of evidence indicating that BROWN’S asthma condition pre-dated his employment by the CORPORATION.

DR. BRUNER REPORT pp. 8-15

101. Because allergies and allergic problems are so common in the working population, medical science has gone to great lengths to establish certain criteria for distinguishing whether these types of conditions are work-related or not.

DR. BRUNER REPORT p. 18 ¶ 2.

102. BROWN does not meet the established, well-recognized medical criteria for determining that he developed occupational asthma or any permanently disabling work-related respiratory disease.

DR. BRUNER REPORT p. 19 ¶ 9; p. 23 ¶ 5 to p. 24 ¶ 1.

103. BROWN’S asthma condition is not related to his being exposed to the DUST, the

DR. BRUNER p. 24 ¶ 4 (“it has not been established within reasonable medical

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CAT or the FOWL FECES while employed at DIXON FURNITURE.	probability that Tom Brown has developed occupational asthma or any permanently disabling work-related respiratory or internal medical disease causally related to environmental exposures he encountered while previously employed for DIXON FURNITURE. Ltd.”)
104. <b>BROWN is diagnosed with <u>nonoccupational allergic asthma.</u></b>	DR. BRUNER REPORT p. 15, “Final Diagnosis” section, item 1.
105. Dr. Bruner is an expert in determining whether asthma-related problems are work-related. He is a board-certified respiratory specialist and internist. He has spent “countless hours” reviewing the pertinent medical literature on asthma and authored the chapter entitled “Asthma” which appears in the <u>Manual of Acute Respiratory Care.</u>	DR. BRUNER REPORT p. 25, ¶ 2..
106. BROWN cannot afford to pay the legal fees being accrued by opposing counsel. BROWN’S current pay rate at is current job is \$17.00 per hour. He worries about how he will be able to pay his bills. He cannot afford the cost of medical care unless it is paid for by his employer. He is upset that his prescribed medications are so expensive and are not	BROWN DEPO 12:5-6, 17:21 to 18:14.

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available in less-expensive generic form.  
107. After sale of the CORPORATION'S  
business to XYZ Manufacturing, Inc. was  
consummated, 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. At this point, the only matter still  
pending is this action by BROWN. Once it is  
resolved, the CORPORATION will be  
dissolved.

MATT DECL-2 ¶ 4.

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**SEPARATE STATEMENT IN REPLY TO PLAINTIFF'S SEPARATE STATEMENT OF MATERIAL FACTS (SS4)**

NOTE: The material presented by opposing counsel in this SS4 is highly duplicative of what is presented in his responses in SS2. MOVING DEFENDANTS are pressed for time to get this Reply completed by Monday Aug. 18, 2008 and have therefore not supplied all supporting evidence in the right-hand column where such evidence is set forth in SS2 and/or SS3

<u>Plaintiff's Statement of Facts and Supporting Evidence</u>	<u>Defendants' Replies and Supporting Evidence</u>
1. From 1974 to 2007, Nancy and Matt owned and ran DIXON FURNITURE, Ltd. <u>1. (Nancy Dixon Depo. 6: 21-25, 7: 1-3; Matt Dixon Depo., 13: 14-16.)</u>	Admitted.
2. Matt and Nancy are the only two shareholders, each holding one-half interest in the corporation. <u>2. (Matt Dixon Depo., 13: 17-23;14: 3-4.)</u>	DENIED. The TRUST is the only shareholder.
3. Nancy was the President and chief designer. <u>3. (Nancy Dixon Depo., 6:25 - 7:3.)</u>	Admitted.
4. Nancy and Matt sold the business to former employees in April 2007. <u>4. (Nancy Dixon Depo., 9:20-25; Matt Dixon Depo., 14:5 - 15:8, 20:24 - 21:5.)</u>	DENIED. The CORPORATION sold the business.
5. Nancy and Matt both testified they <i>personally retained the liabilities</i> , upon the	DENIED. This misstates their testimony. The CORPORATION retained the liabilities. Please

<p>1</p> <p>2</p> <p>3 sale of the company's business assets in 2007.</p> <p>4 <u>5. (Nancy Dixon Depo. 10: 1-7, 10: 20-23;</u></p> <p>5 <u>Matt Dixon Depo., 17: 7-15.)</u></p>	<p>see SS2:30.</p>
<p>6 6. Nancy and Matt were the sole shareholders</p> <p>7 of the corporation, each owning one-half</p> <p>8 interest.</p> <p>9 <u>6. (Matt Dixon Depo., 13:22-24; see also</u></p> <p>10 <u>Nancy Dixon Depo., 6:21-22.)</u></p>	<p>DENIED. The TRUST is the only shareholder.</p>
<p>11 7. Nancy and Matt were the sole owners of the</p> <p>12 company until it ceased to exist.</p> <p>13 <u>7. (Matt Dixon Depo., 14:9-13.)</u></p>	<p>DENIED. The CORPORATION still exists and</p> <p>the TRUST is the only shareholder.</p>
<p>14 8. DIXON FURNITURE., Ltd., carried no</p> <p>15 worker's compensation insurance for its 50-60</p> <p>16 employees.</p> <p>17 <u>8. (Brown Decl., ¶ 12; Mason Depo., 96:25 -</u></p> <p>18 <u>97:21; Mason Depo., 98:14 - 102:17.)</u></p>	<p>DENIED. ACE LETTER.</p>
<p>19 9. During the course of this litigation,</p> <p>20 Respondents sold the entirety of the assets of</p> <p>21 the corporation while <i>personally</i> retaining the</p> <p>22 liabilities, leaving nothing but an empty shell.</p> <p>23 <u>9. (Nancy Dixon Depo. 10:4-7, 10:20-23, 16:</u></p> <p>24 <u>22-25; Matt Dixon Depo., 17:4-15.)</u></p>	<p>DENIED. The CORPORATION sold the</p> <p>business, and the CORPORATION retained the</p> <p>liabilities. Please see SS2:30.</p>
<p>25 10. Nancy and Matt refused to testify as to</p> <p>26 what they did with the proceeds from the sale</p> <p>of DIXON FURNITURE., Ltd.</p> <p><u>10. (Nancy Dixon Depo. 12: 21-25, 13: 1-25,</u></p>	<p>Admitted.</p>

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<p><u>14: 1-25, 15: 1-25; Matt Dixon Depo., 14:23-25, 15:1-5.)</u></p>	
<p>11. Nancy and Matt admitted to receiving compensation and personally retaining the liabilities.</p> <p><u>11. (Matt Dixon Depo., 14:23 - 15:5; Nancy Dixon Depo., 12:13 - 13:2.)</u></p>	<p>DENIED. The CORPORATION received the proceeds of the sale, and the CORPORATION retained the liabilities. Please see SS2:30.</p>
<p>12. Nancy and Matt paid for company debt when they personally paid Claimant's medical bills from his work injury.</p> <p><u>12. (Nancy Dixon Depo., 20:24-21:10; Mason Depo., 61:14-15, 85:3-8.)</u></p>	<p>DENIED. Plaintiff's injury was not work related and his medical bills were not a company debt. His medical bills were partially paid out of compassion for him.</p>
<p>13. Respondents sold the business in an effort to shield the company assets from this litigation.</p> <p><u>13. (Nancy Dixon Depo. 11: 13-18; 17:8-19.)</u></p>	<p>DENIED. The business was sold because buyers made an offer and the DOWNTURN made it no longer feasible to continue.</p>
<p>14. For many years, and over two separate periods of employment, Claimant was considered a good and valued employee for Respondents as a Shipping/Warehouse Manager, and later as Expediter, working in the office.</p> <p><u>14. (Mason Depo., 13:5-24; Nancy Dixon Depo., Exhibit 18 attached thereto [Claimant's Employee Performance Evaluation listing</u></p>	<p>Admitted.</p>

<p>Claimant's work as "Excellent"]; Nancy Dixon Decl., ¶ 25; Matt Dixon Decl., ¶ 25; Mason Decl., ¶ 17.)</p>	
<p>15. Claimant was never disciplined or even criticized.</p> <p>15. (Matt Dixon Depo., 24:16 - 25:18; Mason Depo., 56:5-25, 57:12-18.)</p>	<p>Admitted.</p>
<p>16. According to Manager, Bookkeeper and Person Most Knowledgeable Linda Mason, Claimant was known to be an "exceptional employee" and a real asset to the company "before he got sick."</p> <p>16. (Mason Depo., 39:8-12.)</p>	<p>Admitted. BROWN was greatly needed in the warehouse, and there was less need for him in the Production Office.</p>
<p>17. Throughout Claimant's employment, Respondents allowed a cat to live and roam freely throughout the entire facility, including the production offices and the warehouse.</p> <p>17. (Mason Depo., 46:11-25.)</p>	<p>DENIED. The CAT was in a separate building from the warehouse and was confined to a chain.</p>
<p>18. Respondents maintained ducks and chickens on the property.</p> <p>18. (Mason Depo., 35:4-7.)</p>	<p>Admitted.</p>
<p>19. Claimant complained about these animals coming into the buildings.</p> <p>19. (Mason Depo., 35:25 - 36:3.)</p>	<p>DENIED. The FOWL never came near the entrance to, much less inside, any building, and BROWN never made such a complaint.</p>
<p>20. Claimant suffered multiple asthma attacks while at work. A number of employees saw</p>	<p>Admitted.</p>

<p>them occur and become concerned..</p> <p><u>20. (Brown Decl., ¶ 4, 8-9; Mason Depo., 40:19-24.</u></p>	
<p>21. The company physically took Claimant to a doctor.</p> <p><u>21. (Brown Decl., ¶ 5; Mason Depo., 40:19-24; see PSMF 8.)</u></p>	Admitted.
<p>22. The doctor placed Claimant on light duty, restricted his lifting, and <i>restricted access to places which would aggravate his asthma.</i></p> <p><u>22. (Mason Depo., 61:5-22.)</u></p>	Admitted.
<p>23. Claimant requested time off to get his asthma taken care of, and <u>because he was a good employee</u> (and not out of duty) Respondents kept his job open for him.</p> <p><u>23. (Mason Depo., 41:2-4).</u></p>	Admitted.
<p>24. Respondent’s Person Most Knowledgeable Linda admitted Claimant complained to her personally about the unsafe working environment on a “frequent basis,” each time he had occasion to be in her office.</p> <p><u>24. (Mason Depo., 39:13-19 [This contradicts Linda’s declaration, in which she states “To my knowledge, BROWN made no complaints to anyone at the CORPORATION about any</u></p>	DENIED. While there may have been casual conversation, Plaintiff stated in his verified responses to discovery that he complained <i>only once</i> —and that was about the CAT, FOWL and DUST, but not about any “unsafe working environment.”



<p>1</p> <p>2</p> <p>3 <u>unlawful conduct by NANCY, MATT, or the</u></p> <p>4 <u>CORPORATION.”].)</u></p>	
<p>5 25. Claimant complained to Linda about the</p> <p>6 dust, the building making him sick, the cat, and</p> <p>7 the animals in the back.</p> <p>8 <u>25. (Mason Depo., 39:20-25)</u></p>	<p>Admitted.</p>
<p>9 26. Claimant complained to Linda two to three</p> <p>10 times each week <i>after</i> returning from medical</p> <p>11 leave, through his termination in November</p> <p>12 2006.</p> <p>13 <u>26. (Mason Depo., 40:1-7.)</u></p>	<p>DENIED. While there may have been casual</p> <p>conversation, Plaintiff stated in his verified</p> <p>responses to discovery that he complained <i>only</i></p> <p><i>once</i>—and that was about the CAT, FOWL and</p> <p>DUST, but not about any “unsafe working</p> <p>environment.”</p>
<p>14 27. Following the asthma attack, Linda</p> <p>15 understood the doctor had diagnosed Claimant</p> <p>16 with asthma.</p> <p>17 <u>27. (Mason Depo., 40:25 - 41:1.)</u></p>	<p>Admitted.</p>
<p>18 28. Linda admits Claimant kept her, (and in</p> <p>19 turn she kept Nancy and Matt) apprised of his</p> <p>20 condition at all times.</p> <p>21 <u>28. (Mason Depo., 42:1-12.)</u></p>	<p>Admitted.</p>
<p>22 29. Matt and DIXON FURNITUREoth were</p> <p>23 aware of Claimant’s condition.</p> <p>24 <u>29. (Matt Dixon Depo., 25: 19-25, 26: 1-2, 76:</u></p> <p>25 <u>4-10; Nancy Dixon Depo., 18:4-15, Exhibit 20</u></p> <p>26 <u>attached thereto.)</u></p>	<p>Admitted.</p>
<p>30. Claimant took time off for medical leave</p>	<p>Admitted.</p>

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3	around July 2006.	
4	<u>30. (Matt Dixon Depo., 25:25; 26: 1-6)</u>	
5	31. Claimant was out for six weeks.	Admitted.
6	<u>31. (Mason Depo., 40:11-17.)</u>	
7	32. Claimant then notified Linda he was able	Admitted.
8	to come back to work, though not in the same	
9	capacity, as Warehouse Manager.	
10	<u>32. (Mason Depo., 65:25 - 66:15.)</u>	
11	33. Linda admittedly received a medical note	Admitted.
12	dated July 31, 2006, (from Samuel Wagon,	
13	M.D.,) stating that a desk job in an air-	
14	conditioned controlled environment was	
15	necessary to accommodate.	
16	<u>33. (Mason Depo., 67:4-21)</u>	
17	34. Linda also admitted she received a note	Admitted.
18	indicating Claimant must have modified work.	
19	<u>34. (Mason Depo., 60:14-19.)</u>	
20	35. Nancy similarly understood Claimant	DENIED. It was understood that he needed a
21	could not be exposed to dust or irritant.	job where there would be <i>less</i> exposure, not
22	<u>35. (Nancy Dixon Depo. 35: 20-22.)</u>	zero exposure.
23	36. Respondents, knowing Claimant's allergies	Admitted. The warehouse was where he was
24	and injuries, initially tried to give Claimant his	needed, and it was hoped that he had healed
25	original job in the Warehouse, the place where	sufficiently to take his old job back.
26	he had the asthma attack.	
27	<u>36. (Mason Depo., 27:1 - 30:1.)</u>	
28	37. Claimant also told Linda that he could not	Admitted.
	be around the cat.	

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3	<u>37. (Mason Depo., 70:2-6.)</u>	
4	38. Respondents refused to remove the animals from the facility.	DENIED as to the meaning of “facility.” The animals were not in any facility where BROWN
5	<u>38. (Mason Depo., 44:4 - 45:6.)</u>	worked.
6	39. Nancy testified when Claimant said he was hurt, the company took steps to find modified	Admitted.
7	duty for him.	
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9	<u>39. (Nancy Dixon Depo. 34: 8-16.)</u>	
10	40. Nancy claims they accommodated him by offering an office job as an expediter, writing-	Admitted.
11	up orders, allowing him to sit in air-	
12	conditioned office.	
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14	<u>40. (Nancy Dixon Depo. 34: 20-25, 35: 2-5, 36: 25, 37: 1-7.)</u>	
15	41. Linda admits Claimant complained the environment at the company was unsafe.	DENIED. While there may have been casual conversation, Plaintiff stated in his verified responses to discovery that he complained <i>only once</i> —and that was about the CAT, FOWL and
16		DUST, but not about any “unsafe environment.”
17	<u>41. (Mason Depo., 34:2-5.)</u>	
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20	42. Claimant first complained to Linda upon becoming sick earlier in the year when he	Admitted as to his informing Linda that he was sick, but he did not report that he believed it to
21	developed asthma.	be work related.
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23	<u>42. (Mason Depo., 34:6-9.)</u>	
24	43. Claimant specifically linked the asthma to the factory having too much dust, and	Admitted. However, BROWN is no medical expert.
25	exposure to the cat.	
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3	43. <u>(Mason Depo., 34:6-12.)</u>	
4	44. Claimant also complained about the ducks	Admitted.
5	and chickens.	
6	44. <u>(Mason Depo., 34:15 - 35:3.)</u>	
7	45. Following Claimant's complaints, Matt and	DENIED. The CAT was kept in a separate
8	Nancy said they would keep the cat in a	building from where BROWN worked.
9	separate area, but they would not remove it	
10	from the premises.	
11	45. <u>(Mason Depo., 44:4 - 45:6.)</u>	
12	46. Respondents admitted that they paid	DENIED. The bills were paid out of
13	medical bills to treat Claimant's asthma, which	compassion, and not out of any belief that his
14	(from conversations with various doctors) they	condition was related to the CAT.
15	knew could be irritated by allergies from cats.	
16	46. <u>(Mason Depo., 76:2 - 77:4, Exhibits 3, 4,</u>	
17	<u>6-12, attached thereto.)</u>	
18	47. Indeed, doctors told Linda these work	DENIED. The cited testimony states, "All the
19	conditions might have caused a problem and	doctors I spoke to were specific in saying that
20	triggered Claimant's asthma.	the conditions at work <b>might</b> contribute to
21	47. <u>(Mason Depo., 77:9-16.)</u>	allergies which could, in turn, be a problem
22		with the asthma, <b><u>but not that it contributed to</u></b>
23		<b><u>the asthma itself</u></b> . That was an acute [meaning
24		chronic] condition." (MASON DEPO
25	48. Respondents failed to remove the animals	77:12-16.)
26	from the area.	DENIED as to the meaning of "area." The
27	48. <u>(Mason Depo., 61:25 - 62:12.)</u>	animals were nowhere near where BROWN
28		worked.

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49. Even when Claimant complained to Linda and others about the cat, Nancy and Matt said they would keep the cat in a separate area within the offices, but would not remove it from the premises.

49. (Mason Depo., 44:4 - 45:6.)

DENIED as to the meaning of “area.” The animals were nowhere near where BROWN worked.

50. Matt initially testified Claimant never complained about the chickens or duck at work.

50. (Matt Dixon Depo., 37: 1-13)

DENIED. The cited testimony ends on line 13. The only “complaint” BROWN made to MATT was phrased a vulgar question (“What are these fucking chickens doing here?”), which MATT understood to be a casual remark rather than a complaint. BROWN stated that vulgar question just once. Initially under questioning, MATT did not regard the vulgar question as a “complaint” and answered “no”. After a brief interaction with attorney Laurie Butler, he realized it might be regarded as a “complaint” and stated the vulgar question. That did not comprise “recanting” of testimony. See MATT DEPO 37:1-25.

51. Matt later recanted when faced with glaring evidence of a note he personally inscribed on a letter from the Department of Health Services (“DHS”) (which he forwarded

DENIED. The cited testimony ends on line 13. The only “complaint” BROWN made to MATT was phrased a vulgar question (“What are these fucking chickens doing here?”), which MATT

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<p>to Claimant.) Only then, Matt admitted Claimant had complained about the chickens.</p> <p><u>51. (See DHS note, Matt Dixon Depo., 37:21-25, Exhibits 15-16 attached thereto.)</u></p>	<p>understood to be a casual remark rather than a complaint. BROWN stated that vulgar question just once. Initially under questioning, MATT did not regard the vulgar question as a “complaint” and answered “no”. After a brief interaction with attorney Laurie Butler, he realized it might be regarded as a “complaint” and stated the vulgar question. That did not comprise “recanting” of testimony. See MATT DEPO 37:1-25.</p>
<p>52. The ducks and chickens were not removed from the property until after Claimant complained and a report was filed with the government.</p> <p><u>52. (Mason Depo., 49:20 - 50:7-12.)</u></p>	<p>Admitted. However, they were not removed because of the DHS LETTER. DHS dropped the complaint when it learned the FOWL had been caged.</p>
<p>53. Within two weeks of receiving the complaint, (after Claimant was terminated) Nancy and Matt finally removed the duck and chickens.</p> <p><u>53. (Mason Depo., 51:2-7.)</u></p>	<p>Admitted. However, they were not removed because of the DHS LETTER. DHS dropped the complaint when it learned the FOWL had been caged.</p>
<p>54. However, Nancy and Matt still kept the cat.</p> <p><u>54. (Mason Depo., 51:11-23.)</u></p>	<p>Admitted.</p>
<p>55. Linda claimed the dust in the factory area was cleaned out during the summer, before Claimant first complained, and was cleaned-</p>	<p>Admitted.</p>

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3	out again, thereafter.	
4	<u>55. (Mason Depo., 47:25; 48:19 - 49:1.)</u>	
5	56. Matt testified he did not have the facility	Admitted.
6	cleaned of dust in 2006.	
7	<u>56. (Matt Dixon Depo., 33: 7-18.)</u>	
8	57. Respondents refused to submit Claimant's	Admitted. This was because BROWN did not
9	worker's compensation claim.	have a work-related injury.
10	<u>57. (Brown Decl., ¶ 13, 19; Mason Depo.,</u>	
11	<u>62:21 - 63:12.)</u>	
12	58. Nancy and Matt personally guaranteed and	Admitted. This was out of compassion for
13	paid for some of Claimant's medical bills.	BROWN, not out of any obligation.
14	<u>58. (Nancy Dixon Depo. 19: 22-24, 20:24 -</u>	
15	<u>21:10; Mason Depo., 61:14-15, 85:3-8.)</u>	
16	59. Respondents actually told Claimant "Bring	Admitted.
17	<i>all</i> of your bills in and let us help you pay	
18	them."	
19	<u>59. (Mason Depo., 82:6-7.)</u>	
20	60. Nancy admitted she told Linda to pay only	Admitted.
21	<i>some</i> these bills, but not all.	
22	<u>60. (Nancy Dixon Depo. 21: 13-16; 22: 1-17.)</u>	
23	61. Nancy's instructions resulted in some of	DENIED. NANCY agreed to pay some of the
24	Claimant's medical bills going to collections.	bills. Bills went into collection because
25	<u>61. (Mason Depo., 73:4-8.)</u>	BROWN failed to pay the remaining amounts.
26	62. Linda called and convinced at least one	Admitted.
27	collections agency to change it from	
28	collections to billing, and guaranteed	
	Respondent's would cover it.	

<p>62. <u>(Mason Depo., 85:22 - 86:14, Exhibits 5-12, attached thereto.)</u></p>	
<p>63. Medical bills actually were billed in the name of the company, DIXON FURNITURE., and neither Linda nor anyone at the company, corrected the provider.</p> <p>63. <u>(Mason Depo., 86:20 - 89:9, Exhibits 7, 11, and 12, attached thereto.)</u></p>	<p>Admitted. The CORPORATION has a right to make charitable payments.</p>
<p>64. Nancy personally paid several bills from medical provider Samuel K. Wagnon, each around \$700 or \$800, along with some other larger medical expenses.</p> <p>64. <u>(Mason Depo., 72:1-7.)</u></p>	<p>Admitted. NANCY has a right to make charitable payments.</p>
<p>65. Nancy continued to pay even after Claimant left the company.</p> <p>65. <u>(Nancy Dixon Depo. 44: 7-10.)</u></p>	<p>Admitted. NANCY has a right to make charitable payments.</p>
<p>66. Nancy testified she did not submit the claim and medical bills through her worker's compensation carrier, because she claims it was <i>not work related</i>.</p> <p>66. <u>(Nancy Dixon Depo. 23: 5-8.)</u></p>	<p>Admitted.</p>
<p>67. Claimant notified Linda it was the company's fault that he got sick and they should pay for the medical expenses.</p> <p>67. <u>(Mason Depo., 73:12-22; 73:23 - 74:1.)</u></p>	<p>Admitted.</p>
<p>68. Nancy offered no justification for not</p>	<p>DENIED. The justification given was that</p>



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3	submitting the claim to their carrier.	BROWN condition was not work related.
4	<u>68. (Nancy Dixon Depo. 23: 5-16)</u>	
5	69. During his employment, Claimant told	DENIED. LINDA testified BROWN told her
6	Respondents he was going to complain to the	this on November 21, 2006 <i>when she notified</i>
7	DHS, about the ducks and chickens in the	<i>him he was laid off.</i> (MASON DEPO
8	back.	42:13-17.)
9	<u>69. (Mason Depo., 42:13 - 43:4.)</u>	
10	70. Thereafter, Matt received a letter from	DENIED as to the word "Thereafter."
11	DHS.	
12	<u>70. (Matt Dixon Depo., 46: 2-15</u>	
13	71. Matt initially testified he never believed	Admitted.
14	Claimant had been the one to complain.	
15	<u>71. (Matt Dixon Depo., 47: 6-20.)</u>	
16	72. Matt testified he had never contemplated	Admitted.
17	the possibility Claimant would complain.	
18	<u>72. (Matt Dixon Depo., 49: 17-24.)</u>	
19	73. Matt further claimed he never accused	Admitted.
20	Claimant of making the complaint.	
21	<u>73. (Matt Dixon Depo., 50: 1-5.)</u>	
22	74. Linda admitted Claimant told the company	DENIED. LINDA testified BROWN told her
23	he was going to complain to the DHS about the	this on November 21, 2006 <i>when she notified</i>
24	ducks and chickens.	<i>him he was laid off.</i> (MASON DEPO
25	<u>74. (Mason Depo., 42:13 - 43:4)</u>	42:13-17.)
26	75. Linda further admitted to telling Matt	DENIED. LINDA testified BROWN told her
27	Claimant told the company he was going to	this on November 21, 2006 <i>when she notified</i>
28	complain to the DHS about the ducks and the	<i>him he was laid off.</i> (MASON DEPO
	chickens.	42:13-17.)

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<u>75. (Mason Depo., 43:5-12.)</u>	
76. Linda further testified Matt became upset and was personally insulted by the threat.	Admitted.
<u>76. (Mason Depo., 43:5-12.)</u>	
77. Confronted with this, Matt recanted, admitting he sent Claimant notes accusing him of complaining to the DHS.	DENIED as to ambiguity in timing. <u>After</u> BROWN was laid off, MATT sent him a copy of the DHS LETTER.
<u>77. (Matt Dixon Depo., 50: 3-16.)</u>	
78. Matt admitted inscribing “Nice Try my friend, Tom” to the note, which he forwarded to Claimant.	Admitted.
<u>78. (See DHS Note, Matt Dixon Depo., Exhibit 15 attached thereto; Matt Dixon Depo., 52: 6-7.)</u>	
79. Matt admitted “Nice try” meant for reporting to the DHS.	Admitted. ADAM’S alleged “threat” to report so-called “violations” to the government was an <u>empty threat</u> . The DHS complaint was dropped because the FOWL had been caged, and DHS refused to allege anything about the DUST or the CAT. Thus, ADAM’S was unsuccessful getting DHS to do what he wanted them to do.
<u>79. (Matt Dixon Depo., 65: 1-4.)</u>	Hence, “nice try.”
80. Matt also recanted his previous denials, claiming Linda may have told him of Claimant’s complaints.	DENIED. MATT’S cited testimony is: “Could have been. I have so many things in my head. When you run a factory, everybody makes remarks about the chickens. The workers --
<u>80. (Matt Dixon Depo., 53: 16-23)</u>	

	<p>‘Where are the eggs? An are we going to get any eggs?’ People talk about those chickens.”</p> <p>MATT DEPO 53:19-23.</p>
<p>81. Matt admitted he knew Claimant had a problem with the chickens.</p> <p><u>81. (Matt Dixon Depo., 54: 3-5.)</u></p>	<p>DENIED. MATT’S cited testimony is: “I guess so” (MATT DEPO 54:5). Guessing is not knowing.</p>
<p>82. Matt claimed he may not have been listening to Linda <i>because he felt it unimportant.</i></p> <p><u>82. (Matt Depo.,54: 21-25; 55: 1.)</u></p>	<p>Admitted.</p>
<p>83. Claimant was terminated November 2006 on a claimed layoff.</p> <p><u>83. (Brown Decl., ¶26; Mason Depo., 53:13-23; Nancy Dixon Depo., 38:18-19.)</u></p>	<p>Admitted.</p>
<p>84. Two other expediters, and Charles Jameson, a non-disabled employee who replaced Claimant, were all retained.</p> <p><u>84. (Nancy Dixon Depo., 40: 12-21, 42: 7-25, 43:1-2; Mason Depo., 54:20-22.)</u></p>	<p>Admitted. However, both other expediters found other jobs and left the CORPORATION in early 2007 because they knew they too would soon be laid off because of the DOWNTURN.</p>
<p>85. Upon his termination, Respondents offered Claimant a \$5,000.00 personal check from Matt to release his claims. He refused.</p> <p><u>85. (Brown Decl., ¶ 29.)</u></p>	<p>BROWN was offered \$5,000 in severance pay, which he refused to accept. It was the CORPORATION’S intention that the severance pay ease the transition and cover some of BROWN’S living and medical expenses while he looked for another job.</p>
<p>86. Matt and Nancy testified they sold only the</p>	<p>DENIED. The CORPORATION sold the assets</p>

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3	assets while retaining the liabilities.	and retained the liabilities. Please see SS2:30.
4	<u>86. (Nancy Dixon</u>	
5	87. Then only after a not so subtle promoting	DENIED. NANCY did not “recant” anything.
6	by her attorney, (immediately following a	She was speaking in common parlance without
7	break), Nancy attempted to recant this	being formal about legal technicalities. She
8	admission, “Mrs. Dixon, you had something to	never went to law school. After the break, she
9	say with respect to the liabilities of the	realized she needed to speak in legal
10	company?” Nancy <i>recanted</i> her admission,	technicalities.
11	claiming, “That DIXON FURNITURE, the	
12	company, took over the liabilities, not my	
13	husband and I personally.”	
14	<u>87. (Nancy Dixon Depo. 11: 19-25; 12: 1-8.)</u>	
15	88. Indeed, Matt told Claimant the company	DENIED. The CORPORATION was insured
16	had no insurance, and that one claim could	by ACE.
17	sink them.	
18	<u>88. (Brown Decl., ¶ 12.)</u>	
19	89. Neither Nancy nor Matt could recall the	Admitted, but irrelevant. The CORPORATION
20	name of the insurance carrier.	was insured by ACE.
21	<u>89. (Nancy Dixon Depo. 7: 13-14; Matt Dixon</u>	
22	<u>Depo., 80: 10-20.)</u>	
23	90. Nancy claimed Linda was responsible for	Admitted.
24	obtaining worker’s compensation insurance for	
25	the company.	
26	<u>90. (Nancy Dixon Depo. 7: 7-12.)</u>	
27	91. Linda claimed a broker may have come to	Admitted.
28	speak to the company about the insurance	

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3	either at the end of 2005 or beginning of 2006.	
4	<u>91. (Mason Depo., 100:2-9.)</u>	
5	92. Before then, Linda could not recall the	Admitted. The CORPORATION was insured
6	company having it.	by ACE.
7	<u>92. (Mason Depo., 100:10-16.)</u>	
8	93. Matt admitted receiving compensation for	DENIED. The proceeds of the sale went to the
9	selling the business.	CORPORATION, not to MATT.
10	<u>93. (Matt Dixon Depo., 14: 23-25; 15: 1-5.)</u>	
11	94. Matt testified he currently owns the land	DENIED. The PROPERTY is owned by the
12	and buildings.	TRUST. MATT was speaking informally.
13	<u>94. (Matt Dixon Depo., 14: 14-17.)</u>	
14	95. Nancy and Matt also control the Dixon	Admitted.
15	Family Trust, which currently owns the	
16	buildings at the facility.	
17	<u>95. (Nancy Dixon Depo. 10: 24-25; 11: 1-3.)</u>	
18	96. Nancy and Matt refused to testify as to	Admitted.
19	what they did with the money from the sale,	
20	claiming such information to be privileged.	
21	<u>96. (Nancy Dixon Depo. 12: 21-25, 13: 1-25,</u>	
22	<u>14: 1-25, 15: 1-25; Matt Dixon Depo.,</u>	
23	<u>14:23-25, 15:1-5.)</u>	
24	97. Nancy admittedly personally paid	DENIED. BROWN'S condition was not work-
25	Claimant's work injury medical bills by her	related.
26	<i>personal</i> credit card.	
27	<u>97. (Nancy Dixon Depo. 20: 24-25; 21: 1-10.)</u>	
28	98. Upon Claimants termination, Respondents	DENIED. This is an exact duplicate of SS4
	offered Claimant a personal check from Matt	Item 85 above.

<p>for \$5,000.00 to sign a release of all claims.</p> <p><u>98. (Brown Decl., ¶ 29.)</u></p>	<p>BROWN was offered \$5,000 in severance pay, which he refused to accept. It was the CORPORATION'S intention that the severance pay ease the transition and cover some of BROWN'S living and medical expenses while he looked for another job.</p>
<p>99. Nancy claimed she sold the business for personal reasons and initially would not divulge the reasons.</p> <p><u>99. (Nancy Dixon Depo. 11: 13-18.)</u></p>	<p>Admitted.</p>
<p>100. Nancy then admitted she had never thought of selling the business prior to April 2007, which was during the course of the instant litigation.</p> <p><u>100. (Nancy Dixon Depo. 17: 8-19.)</u></p>	<p>DENIED as to any suggestion that NANCY "recanted" anything. The <u>timing</u> of her first thinking of selling the business is not the <u>reason</u> for her decision to sell it.</p>
<p>101. Nancy and Matt are the sole owners of all DIXON FURNITURE. Ltd., stock.</p> <p><u>101. (Matt Dixon Depo., 13:22-24.)</u></p>	<p>DENIED. The TRUST is the only shareholder.</p>
<p>102. Both Matt and Nancy admitted that following the asset sale, they became personally liable for the company's debts.</p> <p><u>102. (Nancy Dixon Depo. 10: 1-7, 10: 20-23; Matt Dixon Depo., 17: 7-15.)</u></p>	<p>DENIED. This misstates their testimony. The CORPORATION retained the liabilities. Please see SS2:30.</p>
<p>103. Nancy claims she never even thought of selling the company (despite the nine (9) years of the company losing money) <i>until after the</i></p>	<p>Admitted. However, this does not establish a causal connection between the filing of the lawsuit and the sale.</p>

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3	<i>instant lawsuit was filed.</i>	
4	<u>103. (Nancy Dixon Depo., 17:8-19.)</u>	
5	104. Respondents refused to answer questions regarding the proceeds from the sale.	Admitted.
6	<u>104. (Nancy Dixon Depo., 12:21 - 16:4.)</u>	
7	105. Linda testified that Claimant’s demeanor and complaints <i>played a roll in his</i>	DENIED. Please see discussion at SS2 Item 28.
8	<i>termination.</i>	
9	<u>105. (Mason Depo., 53:24 - 54:6.)</u>	
10	106. Linda claims Claimant was known to be a fantastic employee “Before he got sick.”	Admitted. This duplicates SS4 Item 16.
11		BROWN was greatly needed in the warehouse,
12	<u>106. (Mason Depo., 39:8-12.)</u>	and there was less need for him in the
13		Production Office.
14	107. Linda admitted Claimant complained (to her personally) about the unsafe workplace on a “frequent basis,” specifically two to three	DENIED. While there may have been casual
15	times <i>each week</i> following his July injury, not	conversation, Plaintiff stated in his verified
16	just once.	responses to discovery that he complained <i>only</i>
17	<u>107. (Mason Depo., 39:13 - 40:10.)</u>	<i>once</i> —and that was about the CAT, FOWL and
18		DUST, but not about any “unsafe workplace.”
19	108. These complaints specifically regarded the dust, the building making him sick, the cat,	DENIED. While there may have been casual
20	<i>and the animals in the back.</i>	conversation, Plaintiff stated in his verified
21	<u>108. (Mason Depo., 39:20-25.)</u>	responses to discovery that he complained <i>only</i>
22		<i>once.</i>
23	109. Matt and Nancy controlled each and every aspect of Brown’ (and the other 50-60	Admitted. MATT and NANCY in their
24	employees) work performance, including	capacities as officers of the CORPORATION.
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27		143
28	DEFENDANTS’ REPLIES (SS2 AND SS4) TO PLAINTIFF’S TWO SEPARATE STATEMENTS; DEFENDANTS’ SEPARATE STATEMENT OF NEWLY DISCOVERED UNDISPUTED MATERIAL FACTS (SS3)	

<p>determining his pay, job duties, ability to take time off, and payment of medical bills.</p> <p><u>109. (Nancy Dixon Depo., 6:21 - 7:3, 10:1-7, 10:20-23, 20:24 - 21:10; Matt Dixon Depo., 13:14-23, 14:3-4, 17:7-15; Brown Decl., ¶ 2, 15, 20, 29; Mason Depo., 61:14-15, 85:3-8, 96:25 - 97:21, 98:14 - 102:17.)</u></p>	
<p>110. Previous slow periods had never resulted in firings before.</p> <p><u>110. (Brown Decl., ¶ 28.)</u></p>	<p>Admitted. However, BROWN was not fired. He was laid off.</p>
<p>111. Respondents admit no other office worker was laid off and Claimant's replacement in the Warehouse, Charles Jameson was retained.</p> <p><u>111. (Nancy Dixon Depo., 40: 12-21, 42: 7-25, 43:1-2; Mason Depo., 54:20-22.)</u></p>	<p>DENIED. Not all office workers are expediters. An office worker was laid off in October 2006 prior to BROWN'S layoff. "Q. How many people did you lay off -- did the company lay off <b>in October of 2006?</b> ... A. Anywhere from three to six, I would say. <b>Q. Again, all factory workers?</b> <b>A. No.</b> I believe there may have been an office person in that at that time as well." (MASON DEPO 18:25 to 19:7.)</p>
<p>112. Nancy claims that Linda offered Claimant his job in the Warehouse in November 2006, immediately prior to laying him off.</p> <p><u>112. (Nancy Dixon Depo., 45:14-25, 46:1-17.)</u></p>	<p>DENIED. BROWN had adamantly and repeatedly refused to take back the warehouse job because of his asthma.</p>
<p>113. Linda admits she did not offer him this in November 2006, but rather months earlier,</p>	<p>DENIED. BROWN had adamantly and repeatedly refused to take back the warehouse</p>



<p>upon his return from medical leave (when he physically was unable to take the job.)</p> <p><u>113. (Mason Depo., 28:20-24, 29:13-15.)</u></p>	<p>job because of his asthma.</p>
<p>114. Nancy initially claimed she had to let two other expeditors both go in November 2006.</p> <p><u>114. (Nancy Dixon Depo., 40: 12-21.)</u></p>	<p>DENIED. The cited testimony does not refer to “November 2006.” NANCY DEPO 40: 12-21.</p>
<p>115. The two other expeditors did not leave until 2007, and left voluntarily (not by layoff.)</p> <p><u>115. (Nancy Dixon Depo., 7-25, 43:1-2; Mason Depo., 22:6-18.)</u></p>	<p>Admitted.</p>
<p>116. When faced with this contrary evidence, Nancy was unable to explain this apparent inconsistency.</p> <p><u>116. (Nancy Dixon Depo. Nancy Dixon Depo., 7-25, 43:1-2.)</u></p>	<p>DENIED. The cited testimony contains neither “contrary evidence” nor any inability by NANCY to “explain [any] apparent inconsistency.” The first citation (“Nancy Dixon Depo., 7-25”) contains just a single word, “all.” The second citation (“Nancy Dixon Depo., 43:1-2”) states, “Q. But they both left on their own? A. I don’t remember.”</p>
<p>117. Respondents tried to secure a release of all claims by Claimant upon his termination in exchange for a personal check from Matt for \$5,000.</p> <p><u>117. (Brown Decl., ¶ 29.)</u></p>	<p>DENIED. This is an exact duplicate of SS4 Items 85 and 98 above.</p> <p>BROWN was offered \$5,000 in severance pay, which he refused to accept. It was the CORPORATION’S intention that the severance pay ease the transition and cover some of BROWN’S living and medical</p>

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	expenses while he looked for another job.
118. Respondents told Claimant he was being laid off. <u>118. (Nancy Dixon Depo., 38:14-23.)</u>	Admitted.
119. However, Linda testified that while not specifically a factor, Claimant’s demeanor at work generally played a role in the decision to terminate him. <u>119. (Mason Depo., 53:24 - 54:8.)</u>	DENIED. Please see discussion at SS2 Item 28.
120. Linda claimed Claimant’s demeanor (i.e., complaints) were causing problems in the company and was a factor in the decision to terminate. <u>120. (Mason Depo., 53:24 - 54:8.)</u>	DENIED. Please see discussion at SS2 Item 28.
121. Linda claims she spoke to Claimant on two occasions regarding his demeanor and advised him about “lightening up his attitude.” <u>121. (Mason Depo., 57:19-25.)</u>	Admitted.
122. Nevertheless, Linda never documented either of these situations. <u>122. (Mason Depo., 57:12-18.)</u>	Admitted.
123. Respondents admit Claimant was an asset to the company and a wonderful employee. <u>123. (Mason Depo., 39:8-10; Nancy Dixon Decl., ¶ 25; Matt Dixon Decl., ¶ 25; Linda Mason Decl., ¶ 17.)</u>	Admitted.
124. Claimant observed that no prior slow	Admitted. However, BROWN was not in a

<p>periods had resulted in firings.</p> <p><u>124. ( Brown Decl., ¶ 28.)</u></p>	<p>position to know what was going on in this regard except for the employees he directly supervised as Warehouse Manager.</p>
<p>125. The company employed 50 people in October 2006 and 60 people in August 2006, though in May 2006, because the business was seasonal, they had about 40 employees.</p> <p><u>125. (Mason Depo., 6-15:18.)</u></p>	<p>DENIED to the extent that this distorts the figures. Please see SS2 Items 16, 17, 18, 54, 55, 56 and 60, discussing employee counts and layoff counts at different times.</p>
<p>126. According to Respondents, they started laying off warehouse (factory) employees in September and October 2006.</p> <p><u>126. (Nancy Dixon Depo., 42:7-21; Mason Depo., 16:5-15.)</u></p>	<p>Admitted.</p>
<p>127. The “layoffs” included about 3 people in September and 3-6 people in October 2006.</p> <p><u>127. (Mason Depo., 16:16-20, 18:25 - 19:4.)</u></p>	<p>Admitted, except that there were 3-4 layoffs in September 2006 (see SS2 Item 54).</p>
<p>128. The employees let go were all <i>factory workers</i> .</p> <p><u>128. (Mason Depo., 17:8-12.)</u></p>	<p>DENIED. Not all office workers are expeditors. An office worker was laid off in October 2006 prior to BROWN’S layoff. “Q. How many people did you lay off -- did the company lay off <b>in October of 2006?</b> ... A. Anywhere from three to six, I would say. <b>Q. Again, all factory workers?</b> <b>A. No.</b> I believe there may have been an office person in that at that time as well.” (MASON DEPO 18:25 to 19:7.)</p>
<p>129. There were no layoffs prior to September.</p>	<p>DENIED as to sweeping time generality.</p>

<p>129. 2006. (Mason Depo., 17:19-21, 20:7-11.)</p>	<p>LINDA <b>did not recall</b> any layoffs prior to September 2006, but she was not at DIXON FURNITURE for its entire 31-year history.</p>
<p>130. Nancy then tried to claim two non-factory workers.</p> <p>130. (i.e. expediters) were let go. (Nancy Dixon Depo., 40:12-21.)</p>	<p>DENIED. The statement in the left column is ambiguous as to the meaning of “claim.”</p>
<p>131. Nancy later recanted, admitting instead the two left voluntarily.</p> <p>131. (Nancy Dixon Depo., 42:8-10, 42:23 - 43:2.)</p>	<p>DENIED. This Item appears to refer back to SS4 Item 130, but that item is ambiguous. Opposing counsel has stated nothing that NANCY “recanted.”</p>
<p>132. Respondents admittedly failed to investigate the circumstances surrounding Claimant’s termination, even after receiving a DFEH complaint from him on November 28, 2006.</p> <p>132. (Nancy Dixon Depo., 30:12-19.)</p>	<p>DENIED. No complaint was received from anything called “DFEH.”</p>

Dated: \_\_\_\_\_

[attorney name redacted]

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