

[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, INC;
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 SEPARATE STATEMENTS OF
UNDISPUTED MATERIAL FACTS IN SUPPORT
OF THEIR MOTION FOR SUMMARY
JUDGMENT, OR ALTERNATIVELY, FOR
SUMMARY ADJUDICATION**

Filed concurrently with Defendants Nancy Dixon and
Matt Dixon’s Motion for Summary Judgment, or
Alternatively, for Summary Adjudication; Declarations
of Attorney [redacted], Nancy Dixon, Matt Dixon, and
Linda Mason.

Hearing date: _____
Hearing time: _____
Hearing Dept: [redacted]

Pursuant to Code of Civil Procedure section 437c(b)(3) and California Rules of Court
rule 3.1350(d) and (h), Defendants NANCY DIXON (hereinafter “NANCY”) and MATT
DIXON (hereinafter “MATT”) submit this separate statement of undisputed material facts,
together with references to supporting evidence, in support of their Motion for Summary

1
2 Judgment or in the Alternative for Summary Adjudication (hereinafter the “**MOTION**”)
3 against Plaintiff TOM BROWN (hereinafter “**BROWN**”).
4

5 Defendant DIXON FURNITURE, INC (hereinafter the “**CORPORATION**”) takes
6 no part in the MOTION.

7 The Declaration of Attorney [redacted] (hereinafter “**ATTY DECL**”), filed
8 concurrently herewith, sets forth the following exhibits:

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

11 Exhibit 2: The CORPORATION’S Bylaws (hereinafter “**BYLAWS**”).

12 Exhibit 3: Printout from Secretary of State’s web site showing the
13 CORPORATION has an “active” status (hereinafter “**SOS**
14 **PRINTOUT**”).

15 Exhibit 4: Stock certificate for the CORPORATION’S only outstanding
16 shares of stock (hereinafter “**STOCK CERTIFICATE**”).

17 Exhibit 5: All the minutes of the CORPORATION’S shareholder and board of
18 director’s meetings (hereinafter “**MINUTES**”).

19 Exhibit 6: Pertinent pages from the CORPORATION’S Agreement of Sale
20 and Purchase of Assets (hereinafter “**SALE AGMT**”).

21 Exhibit 7: The Bill of Sale executed by the CORPORATION (hereinafter
22 “**BILL OF SALE**”).

23 Exhibit 8: Pertinent pages of the Deposition of NANCY DIXON (hereinafter
24 “**NANCY DEPO**”);
25

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2 Exhibit 9: Pertinent pages of the Deposition of MATT DIXON (hereinafter
3 **“MATT DEPO”**);

4 Exhibit 10: Pertinent pages of the Deposition of Linda Mason (hereinafter
5 **“MASON DEPO”**);

6 Exhibit 11: Pertinent pages of the Form Interrogatories Set One propounded
7 on BROWN (hereinafter **“FORM ROGGS”**).

8 Exhibit 12: Pertinent pages of BROWN’S Responses to Form Interrogatories
9 Set One (hereinafter **“FI RESPONSES”**).

10 Exhibit 13: Pertinent pages of the Special Interrogatories Set One propounded
11 on BROWN (hereinafter **“SPEC ROGGS”**).

12 Exhibit 14: Pertinent pages of BROWN’S Responses to Special
13 Interrogatories Set One (hereinafter **“SI RESPONSES”**).

14 Exhibit 15: Pertinent pages of the Requests for Admissions Set One
15 propounded on BROWN (hereinafter **“RFA”**).

16 Exhibit 16: Pertinent pages of BROWN’S Responses to Requests for
17 Admissions Set One (hereinafter **“RFA RESPONSES”**).

18 Also filed concurrently herewith are the Declaration of NANCY DIXON (hereinafter
19 **“NANCY DECL”**), the Declaration of MATT DIXON(hereinafter **“MATT DECL”**), and
20 the Declaration of Linda Mason (hereinafter **“MASON DECL”**).

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23 **Note: I advised the attorney in this matter of the requirement of CRC 3.1350(h) that the**
24 **issues on which summary adjudication is requested be separately laid out in the**
25 **separate statement. I indicated that, because of the significant overlap of facts**
26 **supporting the seven issues delineated in the MSJ, following this requirement would**
27 **take extra work and result in a document, longer and less convenient for the judge to**
28 **read. The attorney then instructed me to ignore the said requirement.**

<u>Undisputed Material Facts</u>	<u>Supporting Evidence</u>
1. NANCY and MATT are, and for more than 32 years have been, married.	MATT DEPO 22:10-12. NANCY DECL ¶ 3. MATT DECL ¶ 3.
2. The CORPORATION is a California Corporation, incorporated in 1976.	ARTICLES. NANCY DECL ¶ 8.
3. The CORPORATION has exactly one shareholder—the Dixon Family Trust of 1985 (hereinafter the “TRUST”).	STOCK CERTIFICATE. ATTY DECL ¶ 7. NANCY DEPO 6:21-24. MATT DEPO 13:22-24. NANCY DECL ¶ 4. MATT DECL ¶ 4.
4. The CORPORATION has exactly two directors—NANCY and MATT.	ATTY DECL ¶ 8. NANCY DECL ¶ 5. MATT DECL ¶ 5.
5. The CORPORATION has exactly two officers—NANCY, who is both President and Chief Financial Officer, and MATT, who is both Vice-President and Secretary.	ATTY DECL ¶ 8. NANCY DECL ¶ 6. MATT DECL ¶ 6. MATT DEPO 22:6-10.
6. The CORPORATION has had an “active” status with the California Secretary of State in each year since its incorporation.	SOS PRINTOUT. NANCY DECL ¶ 7. MATT DECL ¶ 7.
7. The CORPORATION has held shareholder meetings and board of directors meetings each year since 1976 in accordance with both its Bylaws and the law.	MINUTES. BYLAWS. NANCY DECL ¶ 7. MATT DECL ¶ 7.
8. The CORPORATION operated a furniture manufacturing business (hereinafter the “FURNITURE BUSINESS”) in Pasadena, California. Over the past	MATT DEPO 15:14-17. NANCY DECL ¶ 8. MATT DECL ¶ 8. MASON DECL ¶ 4.

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3 thirty years, the CORPORATION manufactured
4 thousands of items of furniture and shipped them to
5 customers all over the United States. It operated
6 furniture showrooms in California and in Colorado.

7 9. The real property on which the CORPORATION
8 operated its FURNITURE BUSINESS (hereinafter the
9 “PROPERTY”) is located at [redacted], Pasadena,
10 California.

MASON DEPO 13:19-24.
NANCY DECL ¶ 10. MATT DECL
¶ 10. MASON DECL ¶ 5.

11 10. At all relevant times, the PROPERTY has been
12 owned by the TRUST.

NANCY DEPO 10:24 to 11:1.
MATT DEPO 21:24 to 22:1.
NANCY DECL ¶ 11. MATT DECL
¶ 11.

13
14 11. “[redacted]” is a brand name the used by the
15 FURNITURE BUSINESS.

SALE AGMT p. 1 ¶ 1.2.
NANCY DECL ¶ 9. MATT DECL
9.

16
17 12. Due to the seasonal nature of the FURNITURE
18 BUSINESS, each summer the CORPORATION
19 augmented its regular year-round staff with temporary
20 workers who were subsequently let go in the fall.

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

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

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

23
24 14. Beginning in the last quarter of 2006, the
25 CORPORATION experienced a major downturn in its
26 business (hereinafter the “DOWNTURN”) that greatly

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

1
2 exceeded the usual seasonal decline in the fall.

3 15. On December 14, 2007, the CORPORATION
4 sold all its FURNITURE BUSINESS assets, including its
5 machinery, equipment, inventory, accounts receivable,
6 work in progress, intellectual property (including the
7 “[redacted]” trademark), permits, vendor list and
8 customer list, to XYZ Manufacturing, Inc. (hereinafter
9 “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.

10 16. Before the DOWNTURN, the CORPORATION
11 had approximately 50 regular employees.

Complaint ¶ 32. MASON DEPO
15:8-12. NANCY DECL ¶ 16.
MATT DECL ¶ 16. MASON DECL
¶ 10.

14 17. At the time the CORPORATION sold its
15 FURNITURE BUSINESS to XYZ on December 14,
16 2007, the CORPORATION had 27 employees.

SALE AGMT p. 7 ¶ 8 and also
Schedule 8.1 (List of All Employees).
NANCY DECL ¶ 17. MATT DECL
¶ 17. MASON DECL ¶ 11.

18 18. Because of the DOWNTURN, the
19 **CORPORATION ultimately lost more than 46% of**
20 **its regular employee staff**, falling from about 50 regular
21 employees to 27 employees. The math is simple:
22 approximately 23 employees were lost (50 minus 27),
23 and 23 is 46% of 50. Most of the lost employees were
24 laid off, but some quit.

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

26 19. Because of the DOWNTURN, the

NANCY DEPO 40:5-7. NANCY

CORPORATION had to close its showrooms.	DECL ¶ 19. MATT DECL ¶ 19. MASON DECL ¶ 13.
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.
21. Neither NANCY nor MATT nor the CORPORATION sought a buyer for the CORPORATION’S FURNITURE BUSINESS. Instead, they were approached in April 2007 by two individuals [names redacted], who initiated discussions for XYZ purchasing the FURNITURE BUSINESS.	NANCY DEPO 16:10-18; 17:8-10. NANCY DECL ¶ 21. MATT DECL ¶ 21.
22. The filing of the Complaint by BROWN was unrelated to [redacted] initiating discussions for XYZ purchasing the FURNITURE BUSINESS. The filing of the Complaint by BROWN was also unrelated to the CORPORATION selling its FURNITURE BUSINESS to XYZ.	NANCY DEPO 17:11-13. NANCY DECL ¶ 22. MATT DECL ¶ 22.
23. BROWN was employed by the CORPORATION from 1994 to 1999 (hereinafter the “FIRST STINT”).	MATT DEPO 24:3 to 25:18. NANCY DECL ¶ 23. MATT DECL ¶ 23. MASON DECL ¶ 15.
24. BROWN was again employed by the	MATT DEPO 24:3 to 25:18.

<p>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, INC”</p>	<p>NANCY DEPO 51:9-19 and Exhibit 22 thereof (W-2 Statements). Complaint ¶ 7. NANCY DECL ¶ 24. MATT DECL ¶ 24. MASON DECL ¶ 16.</p>
<p>25. BROWN was an “at will” employee of the CORPORATION.</p>	<p>NANCY DEPO Exhibit 25 (Employee Handbook) p. 4 ¶ 4 and p. 29.</p>
<p>26. BROWN was a good employee at the CORPORATION.</p>	<p>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.</p>
<p>27. The FIRST STINT ended when BROWN voluntarily quit his employment at the CORPORATION.</p>	<p>MATT DEPO 24:3-10. NANCY DECL ¶ 26. MATT DECL ¶ 26.</p>
<p>28. The SECOND STINT ended when BROWN was laid off by the CORPORATION on November 21, 2006.</p>	<p>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.</p>
<p>29. BROWN was <u>never</u> employed by NANCY or by MATT. His Federal W-2 statements for 2004, 2005 and 2006 do <u>not</u> list NANCY or MATT as his employer. BROWN has <u>no facts</u> to support his allegations that he</p>	<p>NANCY DEPO 51:9-19 and Exhibit 22 thereof (W-2 Statements). SPEC ROGGS and SI RESPONSES No. 63. FORM ROGGS and FI</p>

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3 was employed by NANCY or MATT. (In response to a
4 special interrogatory requesting such facts, BROWN
5 merely stated, “At all relevant times, defendant NANCY
6 DIXON was owner and president of defendant DIXON
7 FURNITURE, INC. and MATT DIXON was a
8 shareholder of DIXON FURNITURE, INC.” Also, in
9 response to a form interrogatory asking if he was an
10 employee of anyone, BROWN replied that he was an
11 employee of the CORPORATION but did not indicate
12 that he was an employee of either NANCY or MATT.)

RESPONSES No. 2.11.

13 30. Neither NANCY nor MATT is personally liable
14 for any obligation of the CORPORATION that is alleged
15 in the Complaint. BROWN has no facts to support his
16 allegations that NANCY or MATT is personally liable.
17 (In response to a special interrogatory requesting such
18 facts, BROWN provided the following hopelessly
19 ungrammatical reply: “At all times relevant, defendant
20 NANCY DIXON was owner and president of defendant
21 DIXON FURNITURE, INC. and MATT DIXON was a
22 shareholder for [sic] DIXON FURNITURE holding [sic]
23 defendants NANCY DIXON was [sic] owner and present
24 [sic] of defendant DIXON FURNITURE, INC and
25 MATT DIXON liable for their actions as representatives
26 of defendant DIXON FURNITURE, INC.”)

SPEC ROGGS and SI
RESPONSES No. 66.

<p>31. In July 2006 an incident occurred on the PROPERTY wherein BROWN complained that he was having difficulty breathing (hereinafter the “BREATHING INCIDENT”). The CORPORATION sent him to its clinic and the doctor diagnosed that symptoms of a longstanding asthma condition had just surfaced.</p>	<p>MASON DEPO 40:19 to 41:1; 41:15-20; 60:7-11. NANCY DECL ¶ 28. MATT DECL ¶ 28. MASON DECL ¶ 19.</p>
<p>32. Immediately after the BREATHING INCIDENT, BROWN went on a leave of absence from work for about six weeks (hereinafter the “PAID LEAVE”) because he was suffering from asthma.</p>	<p>MATT DEPO 26:3-9. MASON DEPO 40:11-17. NANCY DECL ¶ 29. MATT DECL ¶ 29. MASON DECL ¶ 20. Complaint ¶ 13.</p>
<p>33. While BROWN was absent from work during the PAID LEAVE, the CORPORATION kept his job position open for him.</p>	<p>MASON DEPO 41:3-4. NANCY DECL ¶ 30. MATT DECL ¶ 30. MASON DECL ¶ 21.</p>
<p>34. BROWN 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 BROWN 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.</p>	<p>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; 44:1-18. NANCY DECL ¶ 31. MATT DECL ¶ 31. MASON DECL ¶ 22.</p>

<p>35. Additionally, and without any obligation to do so, the CORPORATION continued to pay BROWN his full pay while he was absent from work during the PAID LEAVE.</p>	<p>MASON DEPO 41:6-7; 72:14-16. NANCY DECL ¶ 32. MATT DECL ¶ 32. MASON DECL ¶ 23.</p>
<p>36. Wood dust (hereinafter “DUST”) is a normal condition in any woodshop.</p>	<p>MATT DEPO 31:23-24. NANCY DECL ¶ 33. MATT DECL ¶ 33. MASON DECL ¶ 24.</p>
<p>37. The FURNITURE BUSINESS operates a wood shop with heavy woodworking machinery, including table saws, band saws, lathes, miter saws, drill presses, belt sanders, brush sanders, carving machines, joiners, planers, a jigsaw and a radial arm saw, all of which generate a large volume of DUST, but most of the DUST is absorbed by a professionally installed dust collection system.</p>	<p>SALE AGMT Schedule 1.2 Assets (Machinery and Equipment). NANCY DECL ¶ 34. MATT DECL ¶ 34. MASON DECL ¶ 25.</p>
<p>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.</p>	<p>MATT DEPO 32:17 to 33:2. NANCY DEPO 36:2-4. NANCY DECL ¶ 35. MATT DECL ¶ 35. MASON DECL ¶ 26.</p>
<p>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.</p>	<p>NANCY DEPO 60:23-25. NANCY DECL ¶ 36. MATT DECL ¶ 36. MASON DECL ¶ 27.</p>
<p>40. BROWN had very little contact with the CAT, because the executive offices where the CAT was kept</p>	<p>MATT DEPO 83:25 to 84:6; 84:23 to 86:16. MASON DEPO</p>

<p>were in a different building from where BROWN worked.</p>	<p>62:6-10. NANCY DECL ¶ 37. MATT DECL ¶ 37. MASON DECL ¶ 28.</p>
<p>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.</p>	<p>MATT DEPO 34:17 to 35:2. MASON DEPO 34:19-23. NANCY DECL ¶ 38. MATT DECL ¶ 38. MASON DECL ¶ 29. Complaint ¶ 46.</p>
<p>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 <u>never</u> ate in any “outside eating area” alleged in COMPLAINT ¶ 10 to be near the FOWL.</p>	<p>MATT DEPO 54:14-16. MASON DEPO 34:19 to 35:3; 35:19-24; 49:20 to 50:1; 62:6-10. RFA and RFA RESPONSES No. 20. NANCY DECL ¶ 39. MATT DECL ¶ 39. MASON DECL ¶ 30.</p>
<p>43. For the entire time that the FOWL were on the PROPERTY, a maintenance employee cleaned up the feces from the FOWL every day.</p>	<p>MATT DEPO 40:5-16. NANCY DECL ¶ 40. MATT DECL ¶ 40. MASON DECL ¶ 31.</p>
<p>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.</p>	<p>MASON DEPO 75:17-21. MASON DECL ¶ 32.</p>
<p>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</p>	<p>NANCY DEPO Exhibit 25 (Employee Handbook) p. 3 ¶ 4 and p. 8 ¶ 7 to p. 9. NANCY DECL ¶ 41. MATT DECL ¶ 41.</p>

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3 supposed to report any other complaints to the
4 CORPORATION.

5 46. BROWN made no complaints to anyone at the
6 CORPORATION about any act of harassment,
7 retaliation, discrimination, physical disability
8 discrimination, perceived physical disability
9 discrimination, intimidation, ostracization, name-calling,
10 slander, insult, humiliation, revenge, and/or other abuse
11 against him. (In response to a pair of special
12 interrogatories asking respectively for identification and
13 description of each internal complaint he made
14 concerning such acts—defined as “ABUSE”—BROWN
15 merely identified that he complained once to MASON
16 about the FOWL feces, which did not amount to any of
17 the foregoing acts of “ABUSE.”)

18 47. Except for one complaint made to MASON about
19 the FOWL feces, BROWN made no other complaints to
20 anyone at the CORPORATION about any “dust, cat hair,
21 fecal matter, and/or other ‘unsafe’ working condition on
22 the PROPERTY.”

23 48. BROWN made no complaints to anyone at the
24 CORPORATION about any unlawful conduct by the
25 defendants. (In response to a special interrogatories
26 asking for identification of each internal complaint he

SPEC ROGGS and SI
RESPONSES Nos. 24 and 25.
NANCY DEPO 43:3-17. NANCY
DECL ¶ 42. MATT DECL ¶ 42.
MASON DECL ¶ 33.

SPEC ROGGS and SI
RESPONSES Nos. 33 and 34.

SPEC ROGGS and SI
RESPONSES Nos. 39 and 40.
NANCY DECL ¶ 43. MATT DECL
¶ 43. MASON DECL ¶ 34.

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3 made concerning unlawful conduct, BROWN merely
4 identified that he complained once to MASON about the
5 FOWL feces, which did not amount to unlawful
6 conduct.)

7 49. On or about November 21, 2006, BROWN made
8 a complaint to the Los Angeles County Department of
9 Health Services (hereinafter “DHS”) concerning dust, cat
10 hair and bird fecal matter on the property.

Complaint ¶¶ 47, 48.

11 50. On November 21, 2006, DHS sent a letter
12 (hereinafter the “DHS LETTER”) to MATT, in his
13 capacity as trustee of the TRUST alleging (a)
14 accumulation of animal excrement, and (b) animals
15 (excluding cats) being within 35 feet of a food
16 establishment. Notwithstanding that BROWN
17 complained to DHS about dust and cat hair, the DHS
18 LETTER did not allege any violation concerning dust or
19 cat hair.

MATT DEPO Exhibit 15 (DHS
LETTER). Complaint ¶ 47-48.
MATT DECL ¶ 44.

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

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

26 52. Neither MATT, NANCY, the CORPORATION
27 nor the TRUST knew about BROWN’S complaint to

MATT DEPO 67:11-16; 73:20 to
74:3. SPEC ROGGS and SI

DHS until MATT received the DHS LETTER. The DHS LETTER is dated November 21, 2006, which is the same date on which BROWN was laid off by the CORPORATION. MATT received the DHS LETTER via mail after November 21, 2006. **BROWN cannot have been laid off in retaliation for the DHS LETTER because the layoff occurred before MATT received the DHS LETTER.**

RESPONSES No. 51. NANCY DECL ¶ 44. MATT DECL ¶ 46.

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

MASON DEPO 16:12-15; 18:10-24. NANCY DECL ¶ 45. MATT DECL ¶ 47. MASON DECL ¶ 35.

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

MASON DEPO 16:16-20; 17:8-18. NANCY DECL ¶ 46. MATT DECL ¶ 48. MASON DECL ¶ 36.

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.

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.

57. On November 21, 2006, BROWN was laid off and on that same date was personally handed his layoff

MASON DEPO 58:18 to 59:13, and Exhibit 1 thereof. RFA and RFA

<p>letter while he was at work on the PROPERTY.</p>	<p>RESPONSES Nos. 22 and 23. Complaint ¶¶ 17, 49 and 62. NANCY DECL ¶ 49. MATT DECL ¶ 51. MASON DECL ¶ 39.</p>
<p>58. BROWN was laid off because of the DOWNTURN and the consequent lack of work for him to do. At the time, he was the “logical next person” to be let go.</p>	<p>MASON DEPO 14:2-25, 36:16-19. NANCY DEPO 38:17-23; 40:1-4. NANCY DECL ¶ 50. MATT DECL ¶ 52. MASON DECL ¶ 40.</p>
<p>59. BROWN was <u>not</u> laid off because of his being negative, sarcastic, complaining about his asthma, and/or complaining that NANCY and MATT were responsible for his illness.</p>	<p>MASON DEPO 53:20 to 54:14. NANCY DECL ¶ 51. MATT DECL ¶ 53. MASON DECL ¶ 41.</p>
<p>60. In December 2006, the CORPORATION laid off three, four or five of its regular employees.</p>	<p>MASON DEPO 32:1-13. NANCY DECL ¶ 52. MATT DECL ¶ 54. MASON DECL ¶ 42.</p>
<p>61. During most of the SECOND STINT—up until he took his PAID LEAVE—BROWN was the Warehouse/Shipping Manager at the CORPORATION.</p>	<p>MASON DEPO 13:5-10. Complaint ¶ 7. NANCY DECL ¶ 53. MATT DECL ¶ 55. MASON DECL ¶ 43.</p>
<p>62. When BROWN was absent from work on PAID LEAVE during the summer of 2006, the CORPORATION really needed him, and made weekly calls to him to see if he was ready to come back to work.</p>	<p>MASON DEPO 38:18-19. NANCY DECL ¶ 54. MATT DECL ¶ 56. MASON DECL ¶ 44.</p>
<p>63. When BROWN was absent from work on PAID</p>	<p>MASON DEPO 29:21-25,</p>

<p>LEAVE during the summer of 2006, the CORPORATION advertised on craigslist and hired a temporary worker to replace him as Warehouse Manager. Charles Smith was hired in that capacity.</p>	<p>38:13-25. NANCY DECL ¶ 55. MATT DECL ¶ 57. MASON DECL ¶ 45.</p>
<p>64. 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. Then, BROWN was offered a position in the Production Department at the same rate of pay, which he accepted.</p>	<p>MASON DEPO 27:10 to 28:8; 31:1-6; 66:17-20. NANCY DECL ¶ 56. MATT DECL ¶ 58. MASON DECL ¶ 46. Complaint ¶ 15.</p>
<p>65. Since BROWN refused to resume the duties of Warehouse Manager when he returned from his PAID LEAVE, Charles Smith, who had been hired as a temporary worker to replace BROWN as Warehouse Manager, was made into a regular employee.</p>	<p>MASON DEPO 29:21 to 30:7. NANCY DECL ¶ 57. MATT DECL ¶ 59. MASON DECL ¶ 47.</p>
<p>66. At the time he was laid off, BROWN was working as a Production Assistant in the Production Department, which had two other employees.</p>	<p>MASON DEPO 21:25 to 22:8. NANCY DECL ¶ 58. MATT DECL ¶ 60. MASON DECL ¶ 48.</p>
<p>67. At the time he was laid off, there were no other job opportunities for BROWN within the CORPORATION.</p>	<p>MASON DEPO 37:14-24. NANCY DECL ¶ 59. MATT DECL ¶ 61. MASON DECL ¶ 49.</p>
<p>68. After BROWN was laid off, nobody was hired to</p>	<p>MASON DEPO 23:5-10.</p>

<p>replace him.</p>	<p>NANCY DECL ¶ 60. MATT DECL ¶ 62. MASON DECL ¶ 50.</p>
<p>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.</p>	<p>MASON DEPO 23:11-13; 26:20-25. NANCY DECL ¶ 61. MATT DECL ¶ 63. MASON DECL ¶ 51.</p>
<p>70. At the time BROWN was laid off, he was doing UPS packaging and UPS online, which by that time had dwindled to shipping just two or three items per day. He was also doing labeling of fabric shipments received, but by that time fabric shipments had dwindled to about two or three rolls per day.</p>	<p>MASON DEPO 26:4-12. NANCY DECL ¶ 62. MATT DECL ¶ 64. MASON DECL ¶ 52.</p>
<p>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.</p>	<p>MASON DEPO 23:20 to 25:3. NANCY DECL ¶ 63. MATT DECL ¶ 65. MASON DECL ¶ 53.</p>
<p>72. At the time BROWN was laid off, the CORPORATION did not consider putting him back into his former warehouse position because BROWN refused to take back his job in the warehouse. In or about the second week of November 2006, just before the decision</p>	<p>MASON DEPO 27:1 to 28:24; 31:1-6; 54:20 to 55:13. NANCY DEPO 45:14-17; 62:19 to 63:4. NANCY DECL ¶ 64. MATT DECL</p>

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3 was finalized to lay BROWN off, NANCY and MATT
4 questioned MASON about whether BROWN would take
5 back his prior position in the warehouse, and MASON
6 informed NANCY and MATT that BROWN “absolutely,
7 unequivocally [did] not want it back.”

¶ 66. MASON DECL ¶ 54.

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

SPEC ROGGS and SI
RESPONSES No. 7.

17 74. BROWN blamed NANCY and MATT for his
18 sickness because, according to BROWN, there was too
19 much DUST in the factory and he was forced to work
20 near the CAT hair and FOWL feces.

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

21 75. BROWN was exposed to animal feces in the yard
22 around his own home.

RFA and RFA RESPONSES No.
18.

23 76. While the COMPLAINT alleges BROWN
24 suffered from “severe fright” and “severe shock,” he
25 admits that these were nothing more than his emotional
26 reaction to the BREATHING INCIDENT and to his own
27 symptoms of asthma. (BROWN denied requests for

FORM ROGGS and FI
RESPONSES No. 17.1 as to RFA
Nos. 29 (on p. 58) and 30 (on p. 60).

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3 admission Nos. 29 and 30, which stated, “Admit that no
4 act by the CORPORATION or any of its agents or
5 employees during the course of your employment at the
6 CORPORATION caused YOU to suffer ‘severe fright’
7 [in No. 29, and ‘severe shock’ in No. 30].” But in
8 response to Form Interrogatory No. 17.1 as to both
9 denials, he identically stated, “[P]laintiff suffered from
10 breathing difficulties including asthma which caused
11 plaintiff panic and fear that he would not be able to
12 breathe.”)

13 77. While the COMPLAINT alleges BROWN
14 suffered from “severe pain,” he admits that this was
15 nothing more than chest pain in connection with his
16 asthma. (BROWN denied request for admission Nos. 31,
17 which stated, “Admit that no act by the CORPORATION
18 or any of its agents or employees during the course of
19 your employment at the CORPORATION caused YOU
20 to suffer ‘severe pain.’” But in response to Form
21 Interrogatory No. 17.1 as to this denials, he stated,
22 “[P]laintiff suffered from breathing difficulties including
23 asthma which caused plaintiff pain in his chest.”)

24 78. NANCY and MATT never comingled their
25 personal funds with the funds of the CORPORATION.

26 79. Neither NANCY nor MATT has ever directly

FORM ROGGS and FI
RESPONSES No. 17.1 as to RFA
No. 31 (on p. 61).

NANCY DECL ¶ 65. MATT
DECL ¶ 67. MASON DECL ¶ 55.

NANCY DECL ¶ 66. MATT

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employed 50 or more persons to perform services for a wage or salary.

DECL ¶ 68.

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

NANCY DECL ¶ 67. MATT DECL ¶ 69.

Dated: _____

[redacted]

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