

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

MARIA LUISA JOHNSON, CARMELIA
DAVIS-RAINES, CHERYL MUSKELLY,
PAULINE ROBINSON, ELAINE SEAY-
DAVIS, TONI WILLIAMSON, and LYND
A JONES,

Plaintiffs,

v.

SEATTLE PUBLIC UTILITIES, a department
of the CITY OF SEATTLE, a municipality,

Defendant.

NO. 15-2-03013-2 SEA

DECLARATION OF ARTHUR
SIMPSON IN SUPPORT OF
DEFENDANT SEATTLE PUBLIC
UTILITIES' OPPOSITION TO
MOTION TO COMPEL
TESTIMONY OF ROGER
FAUSTINO

I, Arthur Simpson, declare and state as follows:

1. I am an associate attorney at Davis Wright Tremaine LLP, attorney of record for Defendant Seattle Public Utilities ("SPU") in this case. I have personal knowledge of the facts contained in this Declaration.

2. Attached as Exhibit A is a true and correct copy of the April 26, 2016 Subpoena Duces Tecum that Plaintiffs' counsel issued to Roger Faustino in the above-entitled lawsuit.

3. Attached as Exhibit B is a true and correct copy of the transcript from the May 5, 2016 deposition of Roger Faustino, which was conducted by Plaintiffs' counsel.

1 4. Attached as Exhibit C is a true and correct copy of an email exchange between
2 SPU's counsel and Plaintiffs' counsel in which Plaintiffs' counsel indicates his desire to re-
3 depose Mr. Faustino after copies of the documents from Mr. Faustino's thumb drive are
4 provided to his office.

5 5. Attached as Exhibit D is a true and correct copy of an email exchange between
6 SPU's counsel and Plaintiffs' counsel in which SPU's counsel informs Plaintiffs' counsel that
7 SPU has no obligation to provide Mr. Faustino for a second deposition but indicates SPU will
8 provide Mr. Faustino for a follow-up deposition if Plaintiffs' counsel agrees to a limited scope.

9 6. Attached as Exhibit E is a true and correct copy of an email exchange between
10 SPU's counsel and Plaintiffs' counsel in which SPU's counsel reiterates the limited scope of
11 the second deposition of Mr. Faustino, to which Plaintiffs' counsel appears to indicate his
12 assent.

13 7. Attached as Exhibit F is a true and correct copy of the transcript from the May
14 18, 2016 deposition of Roger Faustino, which was conducted by Plaintiffs' counsel.

15 8. I have attended most of the Plaintiffs' depositions in this case and have reviewed
16 all of the Plaintiffs' deposition transcripts. At their depositions, each Plaintiff admitted that
17 they had never seen any supposed video of Roger Faustino using racial epithets in regards to
18 several of the Plaintiffs. None of the Plaintiffs testified that Mr. Faustino had ever admitted to
19 having made such a video, nor did Plaintiffs recount having ever heard Mr. Faustino say
20 anything that they considered racially derogatory to persons of color.

21
22 EXECUTED this 27th day of May, 2016, in Seattle, Washington.

23
24 By /s/ Arthur Simpson
25 Arthur Simpson
26
27

CERTIFICATE OF SERVICE

I hereby certify that I caused a true and correct copy of the document to which this certificate is attached to be served in the manner as indicated below:

John P. Sheridan, WSBA #21473
Attorney for Plaintiffs
The Sheridan Law Firm, P.S.
705 Second Avenue, Suite 1200
Seattle, WA 98104
Tel: (206) 381-5949
Fax: (206) 447-9206
Email: jack@sheridanlawfirm.com

- Via Legal Messenger
- U.S. Mail, postage prepaid
- Federal Express
- Facsimile
- E-Serve Application
- Email

Declared under penalty of perjury under the laws of the state of Washington dated at Seattle, Washington this 27th day of May, 2016.

/s/ Lynn Nydam
Lynn Nydam

Exhibit A

Issued by the
**SUPERIOR COURT FOR THE STATE OF WASHINGTON
KING COUNTY**

MARIA LUISA JOHNSON, et al.
Plaintiffs,

vs.

SEATTLE PUBLIC UTILITIES,
Defendant.

SUBPOENA DUCES TECUM

CAUSE NUMBER: 15-2-03013-2 SEA
HON. Barbara Mack
TRIAL DATE: July 11, 2016

**TO: Roger Garcia Faustino
908 E. Terrace St.
Seattle, WA 98122**

YOU ARE COMMANDED to appear in the Superior Court of the State of Washington at the place, date, and time specified below to testify in the above case.

PLACE OF TESTIMONY

COURTROOM

DATE AND TIME

YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the deposition in the above case.

PLACE OF DEPOSITION

The Sheridan Law Firm, P.S.
Hogue Building, Suite 1200
705 Second Avenue
Seattle, WA 98104

DATE AND TIME

May 5, 2016 at 2:30 p.m.

METHOD OF RECORDING
Court Reporter

YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or tangible things at the place, date, and time specified below (list documents or objects).

SEE ATTACHMENT "A"

PLACE

The Sheridan Law Firm, P.S.
Hogue Building, Suite 1200
705 Second Avenue
Seattle, WA 98104

DATE AND TIME

May 5, 2016 at 2:30 p.m.

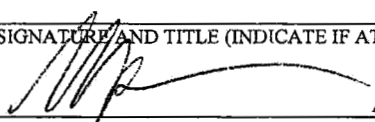
METHOD OF RECORDING
Court Reporter

YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.

PREMISES

DATE AND TIME

ISSUING OFFICER SIGNATURE AND TITLE (INDICATE IF ATTORNEY FOR PLAINTIFF OR DEFENDANT)



Attorney for Plaintiff

DATE

April 26, 2016

WSPR 4/19/16

ISSUING OFFICER'S NAME, ADDRESS AND PHONE NUMBER

John P. Sheridan (WSBA #21473) 705 Second Avenue, Suite 1200, Seattle, WA 98104 (206) 381-5949

PROOF OF SERVICE

DATE PLACE
SERVED
SERVED ON (PRINT NAME) MANNER OF SERVICE

SERVED BY (PRINT NAME) TITLE

DECLARATION OF SERVER

I declare under penalty of perjury under the laws of the State of Washington that the foregoing information contained in the Proof of Service is true and correct.

Executed on _____
DATE/PLACE

SIGNATURE OF SERVER

ADDRESS OF SERVER

(c) Protection of Persons Subject to Subpoenas.

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee.

(2)(A) A person commanded to produce and permit inspection and copying of designated books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial.

(B) Subject to paragraph (d)(2) of this rule, a person commanded to produce and permit inspection and copying may, within 14 days after service of subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials or of the premises. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce and all other parties, move at any time for an order to compel the production. Such an order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded.

(3)(A) On timely motion, the court by which a subpoena was issued shall quash or modify the subpoena if it:

- (i) fails to allow reasonable time for compliance;
- (ii) fails to comply with RCW 5.56.010 or subsection (e)(2) of this rule;

(iii) requires disclosure of privileged or other protected matter and no exception or waiver applies; or

(iv) subjects a person to undue burden, provided that, the court may condition denial of the motion upon a requirement that the subpoenaing party advance the reasonable cost of producing the books, papers, documents, or tangible things.

(B) If a subpoena

(i) requires disclosure of a trade secret or other confidential research, development, or commercial information, or

(ii) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

(d) Duties in Responding to Subpoena.

(1) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

(2) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

ATTACHMENT "A"

"Document" should be interpreted in the broadest possible manner and includes any written, graphic, printed, typed, photocopied, photographic, electronic, magnetic, laser, recorded or tangible matter of any kind or character, or any video and/or audio recorded material, however produced or reproduced, whether prepared by you or otherwise, including all papers, books, records, transcripts, drafts, contracts, diaries, calendars, desk pads, minutes, lists of attendees, brochures, pamphlets, advertisements, circulars, press releases, correspondence, telephone records, communications, telegrams, teletypes, memoranda, notes, studies, work papers, summaries, analyses, reports, notebooks, manuals, guidelines, rules, instructions, operating procedures, drawings, blueprints, mylars, models, graphs, charts, maps, films, videotapes, photographs, electronic data storage materials, email, tapes, diskettes, digitally recorded information, lists, minutes, and entries in books of account, bills and invoices and also including drafts of documents, and every copy of a document that is not identical to the original (whether because of notes made on or attached to such copy or otherwise). The term Document also includes any electronically stored data on magnetic or optical storage media as an "active" file or files (readily readable by one or more computer applications or forensics software); any "deleted" but recoverable electronic files on said media; any electronic file fragments (files that have been deleted and partially overwritten with new data); and slack (data fragments stored randomly from random access memory on a hard drive during the normal operation of a computer or residual data left on the hard drive after new data has overwritten some but not all of previously stored data).

1. The video posted on youtube.com and/or facebook.com, and/or any other social media, which contained an image of Toni Williamson, Cheryl Muskelly or any other employee who was employed or is currently employed at the City of Seattle, which is in your possession, custody, or control;
2. All documents in your possession, custody, or control, showing an image of Toni Williamson, Cheryl Muskelly or any other employee who was employed or is currently employed at the City of Seattle;
3. All documents in your possession, custody, or control, containing an audio recording of you talking about Toni Williamson, Cheryl Muskelly or any other employee who was employed or is currently employed at the City of Seattle;
4. All emails and/or text messages in your possession, custody, or control, referencing Toni Williamson, Cheryl Muskelly or any other employee at the City of Seattle and/or Seattle Public Utilities, if sent to another employee; and
5. All documents in your possession, custody, or control, containing communications with anyone at the City regarding any such documents.

Exhibit B

DEPOSITION OF ROGERICH FAUSTINO, 5/5/16

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
KING COUNTY

MARIA LUISA JOHNSON, CARMELIA)
DAVIS-RAINES, CHERYL MUSKELLY,)
PAULINE ROBINSON, ELAINE SEAY-DAVIS,)
TONI WILLIAMSON, AND LYNDA JONES,)
)
Plaintiffs,)
)
vs.) No. 15-2-03013-2 SEA
)
SEATTLE PUBLIC UTILITIES, a)
department of the CITY OF SEATTLE,)
)
Defendant.)
)

DEPOSITION UPON ORAL EXAMINATION OF
ROGERICH FAUSTINO

Thursday, May 5, 2016
2:30 p.m.
705 Second Avenue, Suite 1100
Seattle, Washington

Reported by Marlis J. DeJongh, CCR, RPR
Lic. No. DE JO-NM-J498K9

MARLIS J. DeJONGH & ASSOCIATES
1400 HUBBELL, SUITE 1510, SEATTLE, WA 98101
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A P P E A R A N C E S

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For the Plaintiffs:

JOHN P. SHERIDAN, Esq.
SHERIDAN LAW FIRM
705 Second Avenue, Suite 1100
Seattle, Washington 98104

For the Defendant:

PORTIA R. MOORE, Esq.
DAVIS WRIGHT TREMAINE
1201 Third Avenue, Suite 2200
Seattle, Washington 98101
-and-
SARAH E. TILSTRA, Esq.
City Attorney's Office
701 Fifth Avenue, Suite 2050
Seattle, Washington 98104

Court Reporter:

MARLIS J. DeJONGH, CCR, RPR
1400 Hubbell, Suite 1510
Seattle, Washington 98101

Also Present:

TONI WILLIAMSON
CARMELIA DAVIS-RAINES
LYNDA JONES
ELAINE SEAY-DAVIS
GUILLEMETTE REGAN

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I N D E X O F E X A M I N A T I O N

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Examination of Rogerich Faustino

By Mr. Sheridan	4
By Ms. Moore	29

I N D E X O F E X H I B I T S

No.	Description	Marked	Identified
1.	Subpoena	9	9
2.	CCSS Transaction Summary	15	15
3.	7/13/10 Text Message	12	12
4.	Facebook Posting, 2/6/14	17	17
5.	Facebook Posting, 2/19/14	18	18
6.	Facebook Posting, 1/31/14	19	19
7.	Facebook Posting, 1/26/14	21	21

1 ROGERICH FAUSTINO, deponent herein, being first duly
2 sworn on oath, was examined and
3 testified as follows:
4

5 EXAMINATION

6 BY MR. SHERIDAN:

7 Q. Please state your full name for the record.

8 A. Rogerich HG Faustino.

9 Q. How do you spell your first name?

10 A. It's R-o-g-e-r-i-c-h.

11 Q. And Faustino, F-a-u-s-t-i-n-o?

12 A. Yes.

13 Q. And what is your home address?

14 A. [REDACTED]

15 [REDACTED]

16 Q. How long have you lived there?

17 A. Three and a half years.

18 Q. Married or single?

19 A. Married.

20 Q. Kids?

21 A. No.

22 Q. How long have you been married?

23 A. About three, four years now.

24 Q. I'm not going to ask you the date.

25 A. My wife would kill me.

1 Q. With whom are you employed?

2 A. Seattle Public Utilities.

3 Q. How long have you been there?

4 A. Since October 2008.

5 Q. What do you do there?

6 A. I'm currently a utilities account representative
7 supervisor.

8 Q. How long have you been a supervisor?

9 MS. MOORE: If you recall.

10 A. Since 2011.

11 Q. And to get that position did you have to go through
12 a competitive process?

13 A. We did, yes.

14 Q. Do you know who the hiring authority was?

15 A. At that time it was Mohammed Memon, who was an
16 out-of-class contact center manager who was filling in.
17 Debra Russell was the director at that time as well.

18 Q. And since you've worked there have you been
19 disciplined?

20 MS. MOORE: Vague and ambiguous.

21 A. No, I haven't.

22 The only disciplinary action that took place was more of
23 a coaching and counseling session.

24 Q. When was that?

25 A. I don't recall.

1 Q. Do you remember what it was in connection with?

2 A. It was more followup with team members. That was
3 probably it.

4 MS. MOORE: If you recall.

5 A. It's been so long since I've been disciplined
6 during that timeframe.

7 Q. Was it when you were a supervisor or before?

8 A. It was during when I was a supervisor, yes.

9 Q. And do you remember what generally it was that you
10 allegedly did wrong?

11 A. I don't know. It's the disciplinary action that
12 sticks out the most was I was -- it was a verbal written.
13 This was prior to me becoming a supervisor so I don't know
14 if this is going to answer your question. I will do it to
15 the best of my memory, which is when I was an agent, a
16 fellow agent went ahead and asked me to create a payment
17 arrangement on the account, which was well within the
18 payment arrangement guidelines.

19 So we would set up a payment arrangement based on
20 certain criteria. For example, if the account was past due
21 or if it wasn't past due, could we make a payment
22 arrangement during that time. So the payment arrangement
23 was created well within the policy.

24 Now when I became a supervisor Debra Russell went ahead
25 and issued disciplinary action because of that. We were not

1 supposed to be working on each other's accounts or on
2 another fellow, a peer's account at that time.

3 Q. And did she tell you that, that you weren't
4 supposed to be doing it?

5 A. Correct.

6 Q. Is it fair to say that at the time you did it you
7 didn't know there was anything wrong with doing it?

8 MS. MOORE: Assumes facts not in evidence,
9 mischaracterizes the witness's testimony.

10 MR. SHERIDAN: You can answer.

11 A. At that time I don't remember.

12 Q. Well, you wouldn't knowingly violate the policies,
13 would you?

14 MS. MOORE: Assumes facts not in evidence,
15 mischaracterizes the witness's testimony.

16 A. I'm sorry, what was the question?

17 Q. You wouldn't knowingly violate a policy, would
18 you?

19 MS. MOORE: Assumes facts not in evidence,
20 argumentative, mischaracterizes the witness's
21 testimony.

22 A. Not knowingly violate. Are you saying -- I'm
23 sorry, can you restate it a different way?

24 Q. So you basically made a payment adjustment for a
25 coworker, right?

1 A. Yeah.

2 Q. And --

3 A. Excuse me, not a payment adjustment. Those are
4 different. Payment arrangement.

5 Q. So when you made the payment arrangement for your
6 coworker, you believed it was okay for you to do it, right?

7 MS. MOORE: Assumes facts not in evidence,
8 mischaracterizes the witness's testimony, argumentative,
9 misleading.

10 A. The arrangement fell within the policy.

11 Q. Say again.

12 A. The arrangement fell within the policy.

13 Q. Meaning that you felt you were doing the right
14 thing, you weren't doing anything wrong?

15 MS. MOORE: Same objections, misleading, assumes
16 facts not in evidence, mischaracterizes the witness's
17 testimony.

18 MR. SHERIDAN: You can answer.

19 A. I don't believe so. I don't know. I don't believe
20 so.

21 Q. You're agreeing with me, you did not think you were
22 doing anything wrong?

23 A. If I were to place this in a customer's standpoint
24 and them being my customer, if they had called in and said,
25 hey, I'm so-and-so, this is my address, this is my account

1 number, and if it's within the guidelines, if they were on
2 the phone with me and if it was within the guidelines of
3 creating a proper payment arrangement, I would have done
4 it.

5 MR. SHERIDAN: Let's have this marked.

6 (Exhibit No. 1 marked for identification.)

7 Q. For Exhibit 1, which is the subpoena, you got a
8 copy of this, right?

9 A. I did.

10 Q. It asked you to bring in any documents you had.
11 Did you bring anything in?

12 A. I did.

13 Q. All right. Let's see what you've got.

14 MS. MOORE: He brought in a thumb drive that has a
15 video on it.

16 MR. SHERIDAN: For record purposes, I have a purple
17 and white thumb drive. I'm going to go off the record
18 and give it to somebody who knows how to --

19 Q. Before we go off the record, can you tell me how
20 many documents are on it.

21 MS. MOORE: It's not documents.

22 A. They are photos and videos.

23 MR. SHERIDAN: Thanks.

24 (Off the record.)

25 MR. SHERIDAN: Back on the record.

1 Q. So that's being looked at by people who know how to
2 look.

3 Can you tell me, could you summarize what kind of videos
4 are on it?

5 A. They would have been videos either at a shooting
6 range or may have been at a party, but it's all pictures and
7 videos related to current and past employees, pictures of
8 retirement photos. We have something called Recognition
9 Committee, so we have particular events that we throw in the
10 contact center. It would be photos of those.

11 So they would also include pictures of like holiday
12 parties, for example. It would include myself and one other
13 employee or maybe two other employees that was invited as
14 well. There would be photos of me and another coworker
15 going on a trip. So, yeah.

16 Q. All right. So did you -- do you go by the name
17 Brown Priest?

18 A. That was a Facebook account.

19 Q. Tell me about that. Is it true that you did go by
20 the name Brown Priest?

21 A. That was an account that I had, yes. That was more
22 of an alias of sorts.

23 Q. During what time period did you have it?

24 A. It's been a while. I don't remember.

25 Q. So back in October of 2012 did you post a video

1 under the name Brown Priest that basically was a video of
2 Toni Williams and other people in the break room?

3 A. No.

4 Q. You did not?

5 A. I did not.

6 Q. Did there come a time in the October 2012 timeframe
7 where you basically took a picture of Toni and another
8 person in the break room?

9 A. I did not.

10 Q. Was there a time where you were basically told by a
11 supervisor to stop taping in the break room?

12 A. No, that never happened.

13 Q. Did you post things on Facebook during the time
14 when you went as Brown Priest as an alias?

15 A. At that time, sporadically. It wasn't a constant
16 or anything. They were intermittent posts. They weren't
17 regular at all.

18 Q. But it's fair to say that -- did you ever post any
19 images of Toni Williams or Cheryl --

20 A. No.

21 Q. -- Muskelly?

22 A. No.

23 Q. Have you ever, as a person who goes by the name
24 Brown Priest -- back in 2010 you still had Facebook, didn't
25 you?

1 A. At that time I did, yeah.

2 Q. It's true, is it not, that in July 2010 you posted
3 a post where you wrote words to the effect, is totally
4 getting tired of the squawking from the old hags at work
5 about retirement. Everyone knows they were forced to retire
6 early. Give it up already, wrinkles.

7 Did you post that?

8 A. I don't remember.

9 MR. SHERIDAN: Let's have this marked.

10 (Exhibit No. 3 marked for identification.)

11 Q. And that's your alias, is it not?

12 A. It is.

13 Q. Can you tell me, now looking at this, does it
14 refresh your recollection?

15 A. Vaguely it does.

16 Q. So you did post this?

17 A. Yeah.

18 Q. Can you tell us why?

19 A. During that timeframe -- I don't remember during
20 that.

21 MS. MOORE: If you recall.

22 A. To the best of my ability, if I remember correctly,
23 there was a lot of commotion on the floor. There were
24 people being released and let go without any information.
25 We would see employees literally leave and then their bosses

1 were following thereafter without any word from management
2 whatsoever. So in 2010 was when I was still an agent.

3 Q. What does an agent mean?

4 A. Meaning utility account representative. So it
5 was -- we were seeing some --

6 MS. MOORE: Are you sure about the timeframe? This
7 is July 13, 2010. I don't want you to speculate.

8 MR. SHERIDAN: Let's not have --

9 MS. MOORE: I don't want him to speculate.

10 MR. SHERIDAN: Well, he's answering the question.
11 Let's not cut him off. Go ahead.

12 MS. MOORE: I don't want you to speculate.

13 Q. Keep talking there, young man.

14 A. I can't -- all the events that took place, they all
15 tend to run on. To be specific about a timeframe, it's
16 difficult for me to pin down.

17 Q. But you worked in the call center?

18 A. I did.

19 Q. You were a UAR?

20 A. Yes.

21 Q. Who was your supervisor?

22 A. At that time it was Beverly Flowers.

23 Q. And in 2012 it was Beverly Flowers, was it not?

24 A. 2012 it was not. It was -- that's when I became a
25 supervisor.

1 Q. So now that we're talking about this Brown Priest
2 thing, sometimes talking about one exhibit helps you think
3 about another.

4 A. Of course.

5 Q. So let me ask you again. In the October 2012
6 timeframe didn't you post a video link on Facebook that
7 linked to Utube that depicted persons in the break room?

8 A. No, sir, not that I remember.

9 Q. Did you ever have to talk to anyone at your union
10 about having posted a video on -- a video link on Facebook
11 that was shown on Utube?

12 A. There would not be a reason for me to talk to a
13 union representative about that.

14 Q. Why is that?

15 A. Because there was no rhyme or reason to do it, nor
16 did I even post a video.

17 Q. Did anyone from management ever talk to you about
18 posting a video?

19 A. No one.

20 Let me clarify real quick.

21 The assumption is that I posted a video and the
22 questions were specifically about a video that I had posted.

23 Q. Let me make sure we're clear here. What I'm
24 intending to ask you is whether or not anyone in management
25 ever spoke to you about improperly posting a video?

1 A. No.

2 MR. SHERIDAN: Let's have this marked.

3 (Exhibit No. 2 marked for identification.)

4 Q. We have this document that we got that lists your
5 name, and it says, This short summary report details the
6 results of the consolidated customer service system
7 transaction audit conducted by the risk and quality
8 assurance division in regards to transactions made by SPU
9 employee Rogerich Faustino relative to the account of a
10 close personal friend Lina Asano.

11 A. Yes, sir.

12 Q. Have you ever seen this document before?

13 A. Not this specific document.

14 Q. But you know who Lina Asano is?

15 A. That is my wife.

16 Q. Was she your wife back in 2010?

17 A. No, sir.

18 Q. So it looks to me that you are -- that what's
19 depicted here is that you created some type -- is that an
20 adjustment, a PYAR?

21 MS. MOORE: If you know. I instruct you not to
22 speculate. If you know.

23 A. I need to be able to see the context of what that
24 was for.

25 Q. Did there come a time that somebody told you that

1 you improperly did something for Lina Asano that you should
2 not have done?

3 MS. MOORE: It's a yes or no.

4 A. This may have been related to the write-up. I'm
5 not sure.

6 Q. Okay. So as you sit here today you don't know
7 whether -- take a moment to try to recall. That's fine.

8 MS. MOORE: If you recall.

9 A. I don't remember.

10 MS. MOORE: That's fine if you don't remember.

11 A. I don't remember. I need to be able to see the
12 user ID associated with this activity.

13 Q. As you sit here today you don't --

14 A. I don't remember.

15 Q. Did you say before that at some point in your
16 career but not when you were a supervisor you received some
17 kind of a written verbal warning?

18 A. Yeah. That came down from Debra Russell, but this
19 was after -- this was -- this could have been within the
20 same timeframe.

21 Q. What year did you become a supervisor?

22 MS. MOORE: Asked and answered.

23 A. About 2011, 2012.

24 Q. So this has May 2013 on it. So if you were
25 disciplined regarding this it would have been during the

1 time you were a supervisor, right?

2 MS. MOORE: Assumes facts not in evidence, the
3 document speaks for itself.

4 If you know. I'm going to instruct you not to
5 guess.

6 A. Yeah, I don't know.

7 Q. During the time that you had your Facebook account,
8 did you ever make comments about fried chicken, cornbread
9 and watermelon not being racist?

10 A. I don't remember.

11 (Exhibit No. 4 marked for identification.)

12 Q. I'm going to direct your attention to the middle of
13 the printout here. And you were Brown Priest in February
14 2014, were you not?

15 A. Yes.

16 Q. So go ahead and read into the record what is under
17 your name there.

18 A. The script?

19 Q. Yes.

20 A. Please tell me how fried chicken, cornbread and
21 watermelon is racist. Aren't these foods that any person
22 can and will eat because these items are so delicious.
23 Again, tell me where the racism is in these foods.

24 Q. Would you read into the record what Jason Godin
25 said below your entry.

1 A. Everything you listed, delicious... I must be
2 black.

3 Q. And so could you just help educate us on how
4 Facebook worked? Would the Jason Godin comment have come
5 first in time ahead of your comment and Bobby Pineda's?

6 A. No, it would have been --

7 MS. MOORE: If you know. I'm instructing you not
8 to guess.

9 A. I don't know.

10 Q. Fair enough. Have you ever referred to anyone as
11 my chocolate brotha?

12 A. I have.

13 Q. In what circumstance?

14 A. That would be a friend of ours, or a friend of
15 mine. His name is Soumit, S-o-u-m-i-t, Soloman,
16 S-o-l-o-m-a-n.

17 Q. Is he a coworker?

18 A. No, he's not. He was a mutual friend of ours.

19 Q. When you say ours, you mean you and your wife?

20 A. Yeah.

21 MS. MOORE: I'm going to note for the record that
22 this entire line of questioning is harassment,
23 argumentative and outrageous.

24 (Exhibit No. 5 marked for identification.)

25 MS. MOORE: After you ask this question I want to

1 take a break.

2 Q. So this is also a page from your Facebook posting,
3 is it not?

4 A. Yeah.

5 Q. And so towards the bottom there, see it says, Brown
6 Priest: Yes, my chocolate brotha, I can't sleep.

7 You wrote that?

8 A. Yeah, it's posted.

9 Q. I'm sorry, say again.

10 A. Yes.

11 MR. SHERIDAN: Let's take a break.

12 (Recess.)

13 MR. SHERIDAN: Back on the record.

14 Q. On your Facebook page did you ever post a post
15 using the phrase round-eyed westerners, or words to that
16 effect?

17 MS. MOORE: If you can recall.

18 A. I don't remember.

19 MR. SHERIDAN: Let's have this marked.

20 (Exhibit No. 6 marked for identification.)

21 Q. So look at the January 31st, 2014 post for Brown
22 Priest. Go ahead and read that into the record.

23 A. Big Dong Fat Chode. Happy last day of January for
24 all you round eye westerners.

25 Q. What does Big Dong Fat Chode mean to you?

1 A. Supposed to be a -- well, Happy New Year in
2 Chinese, is the best way that I could have wrote it.

3 Q. And I guess we should say for record purposes, your
4 ethnic background is what?

5 A. Filipino.

6 Q. Were you born here in the states?

7 A. I was born in Quam.

8 Q. When did you come to the states?

9 A. 1993.

10 Q. Did you serve in the military?

11 A. No, sir, I did not.

12 Q. Did you come with your family?

13 A. I did, yes.

14 Q. On your Facebook posts, did you ever make reference
15 to duck face pics?

16 A. Yeah.

17 Q. If you recall?

18 A. I do.

19 Q. You did?

20 A. Yeah.

21 MR. SHERIDAN: Let's have this marked as the next
22 exhibit.

23 MS. MOORE: Again, I'm objecting to this whole line
24 of questioning, Exhibits 3, 4, 5, 6, and now what I
25 assume to be 7, as argumentative, harassment and

1 irrelevant.

2 (Exhibit No. 7 marked for identification.)

3 Q. Take a look at Exhibit 7, and do you recognize this
4 as being more of your posts?

5 A. Yes.

6 Q. The bottom post, January 26, 2014, could you read
7 that into the record.

8 A. Okay, I just don't understand, or, I don't get the
9 duck face pics. Why the fuck do you people do that. I
10 swear you guys look like fucking boaters. Yes, that also
11 means you, white, black and Hispanic folks. You Asians
12 better be ashamed of yourselves. Fucking duck face pics.
13 Shit. The pouting faces belong to children, not grown-ass
14 people.

15 Q. What were you referring to?

16 MS. MOORE: If you recall.

17 A. People who make duck face pictures, yeah.

18 Q. What is a duck face?

19 A. Pouty lips. It's -- yeah.

20 Q. Do you also have posts related to guns?

21 A. Yes.

22 Q. And I gather you're a gun owner?

23 A. I am.

24 Q. Have you ever brought a gun to work?

25 A. Never.

1 Q. To your knowledge has anyone ever complained that
2 you have intimidated them?

3 A. Excuse me?

4 Q. To your knowledge has anyone ever complained to
5 management that you've intimidated them?

6 A. No.

7 MS. MOORE: Wait a minute.

8 Vague and ambiguous, calls for speculation.

9 Q. As of today where do you work?

10 A. I still work within the contact center.

11 Q. Who is your supervisor today?

12 A. Currently Debra Reed.

13 Q. And how long has she been your supervisor?

14 A. She's been a supervisor of mine for the last three
15 years.

16 Q. Would you describe the chain of command since
17 you've been a UAR supervisor. How does it -- what position
18 does the person above you report to, up to Mr. Hoffman?

19 A. From being a UAR at the time or being as my
20 position now?

21 Q. Now.

22 A. As a supervisor, my direct report, I directly
23 report to Debra Reed. Her direct -- she reports to now
24 Marcus Jackson, formerly Debra Russell. Marcus Jackson now
25 reports to Susan Sanchez who is the deputy director. Susan

1 Sanchez reports to Ray Hoffman.

2 Q. And back in the 2012 timeframe, what was the chain
3 of command from the time, again, with you as a UAR
4 supervisor?

5 A. In 2012 the only differences would have been the
6 director position, which is -- hang on. Debra Russell at
7 the time.

8 Q. So who was your immediate supervisor then?

9 A. At that time it would have been Mohammed Memon, if
10 I remember correctly.

11 Q. And just to refresh my memory, when was Ms. Flowers
12 your supervisor?

13 A. Ms. Flowers was my, was assigned to be my
14 supervisor October 2008.

15 Q. So was she still there in October 2012?

16 A. As a current employee she's still there, yeah.

17 Q. Does she have the same job she had back then?

18 A. Yes, she does.

19 MR. SHERIDAN: Let's take a quick break.

20 (Off the record.)

21 MR. SHERIDAN: Just couple more questions.

22 Back on the record.

23 So we're having trouble opening the thing, so if we
24 can't get it to open so we can see it, we'll give it
25 back to you, Portia, and you can get a print to us.

1 MS. MOORE: And I was actually going to ask you if
2 I could get a copy of whatever you got because that was
3 his only copy.

4 MR. SHERIDAN: We can't seem to get it to work. I
5 don't know if it's us or the thing itself.

6 THE WITNESS: Should have been able to open it.
7 It's an open file.

8 MR. SHERIDAN: It flashed pink, or something, for a
9 little while and then it didn't --

10 MS. MOORE: Why don't you give it back to us and
11 we'll make copies of it and that way we'll have two
12 copies, because we don't have a copy of what we gave
13 you.

14 MR. SHERIDAN: That's a plan.

15 Q. We're still on the record.

16 Are you aware of anybody that drinks on the job?

17 A. On the job, no.

18 Q. How about comes to work with alcohol in their
19 system?

20 MS. MOORE: Calls for speculation.

21 MR. SHERIDAN: Only personal knowledge. Don't
22 speculate.

23 MS. MOORE: Calls for expert opinion.

24 A. No, I'm sorry, I don't recall.

25 Q. Has anyone ever accused you of drinking on the job?

1 A. No.

2 Q. Do you drink on the job?

3 A. No.

4 Q. And do you socialize with your coworkers?

5 A. I do.

6 Q. Which coworkers specifically?

7 A. You'll see them all in your photos.

8 Q. You may have to name them. I may not recognize
9 them.

10 A. Before it was Angel Cainglet, C-a-i-n-g-l-e-t.
11 First name is Angel.

12 Tracy Kramer, Kathy Thielen, T-h-i-e-l-e-n; Diane
13 Clement. Back then it was Lynn Andrews, Roman Baladad,
14 B-a-l-a-d-a-d. Rita Palomino, Beverly Flowers, Reba
15 Moreland, and Dee Reed, but the last five people that I just
16 mentioned were more of just happy hour gatherings, but that
17 was it.

18 Q. When you socialize with members of this group is it
19 at lunch or after work?

20 A. After work.

21 Q. How about at lunch?

22 A. No, we don't socialize for lunch. If at an event
23 we had to go out for a lunch meeting, we would, but those
24 are far and few between.

25 Q. When you were a UAR, was your day fairly full

1 answering the phone?

2 A. Yes.

3 Q. Did you have much time to do things like check
4 e-mails?

5 MS. MOORE: It's vague and ambiguous.

6 A. We had time to check e-mails. Being on the phone
7 you had time because you're on the phones and you can
8 multitask.

9 Q. You mean check e-mails while you're talking to a
10 customer?

11 A. Yes.

12 Q. When you're talking to a customer are you supposed
13 to be taking notes?

14 A. Yes, you're supposed to be taking notes as a call
15 comes through. Some agents, and I'll speak to myself when I
16 was an agent. I took notes as a call came through on a
17 notepad and then did the work or the conversation with the
18 customer online.

19 Now once the call is done, I need to go ahead and wrap
20 up or place in the notes after the fact all the things that
21 I've done.

22 Q. So if you wrote a page you would basically
23 handwrite it and then type it into the note?

24 A. I would write only the pertinent information.

25 Q. During the time that you were a UAR -- strike that.

1 When you became a UAR supervisor did you still take
2 calls?

3 A. Yes.

4 Q. The same amount of calls as when you were a UAR?

5 A. No, the call volume as a supervisor dramatically
6 changed because I'm not direct hands-on with the customer,
7 only through escalations, and escalations were maybe two to
8 three an hour, if that.

9 Q. An escalation being that somebody complained and
10 said, I want to talk to a supervisor?

11 A. Exactly.

12 Q. When you were a UAR, approximately how many calls
13 did you get a day?

14 A. I don't remember.

15 Q. Would you say over 100?

16 A. I would be guessing.

17 Q. As a supervisor do you keep track of how many calls
18 people get a day?

19 A. Do I keep track of my agents' call volume?

20 Q. Yes.

21 A. I do.

22 Q. On a typical day how many calls do your agents get,
23 just as an estimate?

24 MS. MOORE: Vague and ambiguous as to time.

25 A. This is guessing --

1 MS. MOORE: I don't want you to guess.

2 A. So I can't help you there.

3 Q. So when you keep track, is it documented somewhere
4 what the call volume is?

5 A. We do run reports and they're historical so we can
6 pull them up at any time.

7 Q. Does the public have access to those?

8 A. They should.

9 Q. What are they called, those reports?

10 A. We have several reports, one of which could have --
11 one of which is a TSF report, which would also account for
12 call volumes for the week that every agent in the contact
13 center has.

14 Q. Is it broken down by agent?

15 A. It is broken down by team and agent.

16 Q. Is that the best report to see that data?

17 A. I don't know if it's the best but it is a report
18 that you can see that data, yes.

19 MR. SHERIDAN: No more questions. Thank you.

20 And, Portia, I'm passing you the little thing that
21 he brought and ask you to send us a copy.

22 MS. MOORE: This is a thumb drive, and I will make
23 a copy of what's on here and provide a copy to you and
24 provide a copy to -- keep a copy for myself.

25 MR. SHERIDAN: Thanks very much.

1 MS. MOORE: I want to ask Mr. Faustino some
2 questions.

3

4

EXAMINATION

5 BY MS. MOORE:

6 Q. Mr. Faustino, you were aware that in 2011 there
7 began an investigation into the CCSS system. Is that
8 correct?

9 A. Yes.

10 Q. At any time were you involved in that investigation
11 in any way?

12 A. No.

13 Q. Were you involved in any of the, the decision to
14 discipline anybody in that CCSS investigation?

15 A. No.

16 MS. MOORE: Thank you.

17 MR. SHERIDAN: No followup. Thanks.

18 (The deposition adjourned at 3:15 p.m.)

19 (Signature reserved.)
20
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C O R R E C T I O N S

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PLEASE MAKE ALL CORRECTIONS, CHANGES OR CLARIFICATIONS TO YOUR TESTIMONY ON THIS SHEET, NOT IN THE TRANSCRIPT ITSELF, SHOWING PAGE AND LINE NUMBER AND THE NATURE OF THE CHANGE. IF THERE ARE NO CHANGES, WRITE "NONE" ACROSS THE PAGE. PLEASE SIGN THIS SHEET AND RETURN WITHIN 30 DAYS TO THE ATTENTION OF JOHN P. SHERIDAN, ESQ., AT 705 SECOND AVENUE, SUITE 1100, SEATTLE, WA 98104 FOR FILING WITH THE ORIGINAL TRANSCRIPT.

PAGE LINE CORRECTION AND REASON

ROGERICH FAUSTINO

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REPORTER'S CERTIFICATE

STATE OF WASHINGTON)
) ss.
COUNTY OF KING)

I, MARLIS J. DeJONGH, CCR, RPR, a Notary Public in and for the State of Washington, do hereby certify:

That prior to being examined, the witness named in the foregoing deposition was duly sworn to testify the truth, the whole truth and nothing but the truth;

That said deposition was taken down by me in shorthand at the time and place therein named and thereafter transcribed by means of computer-aided transcription, and that the foregoing transcript contains a full, true and verbatim record of the said deposition;

I further certify that I have no interest in the event of the action.

WITNESS my hand and seal this 12th day of May, 2016.

Notary Public in and for the State of Washington, residing in Seattle.
My commission expires 01/15/2020.
Lic. No. DE-JO-NM-J498K9

Exhibit C

Simpson, Arthur

From: Jack Sheridan <jack@sheridanlawfirm.com>
Sent: Thursday, May 05, 2016 5:37 PM
To: Moore, Portia
Cc: Simpson, Arthur; Mark Rose; Cygnor, Jennifer; Cole, Tamra J; Fabel, Kim; Ashalee May; Tilstra, Sarah E; Johnson, Josh
Subject: Re: Johnson v. SPU - Stipulation to Amend Complaint

Portia,

Agreed. Could you send along Mr. Faustino's documents as soon as possible? I'll want to depose him again briefly once I have them. Maybe we could roll him into the two days we already planned. Also, as I said, I'd like to depose Kelly Enright for about 30 minutes. We can roll her into those dates too if you are willing. Thanks.

Jack

PS—we also talked about motions to compel at the discovery cutoff. I'm suggesting we agree to allow that without objection. You did not agree. Please reconsider. Thanks.

Jack

Jack Sheridan
The Sheridan Law Firm, P.S.
705 2nd Ave., Suite 1200
Seattle, WA 98104
Tel: 206-381-5949
Cell: 206-931-7430
jack@sheridanlawfirm.com

On May 5, 2016, at 3:53 PM, Moore, Portia <PortiaMoore@dwt.com> wrote:

Jack has agreed to revise the complaint to remove these portions. Once he does so, we can agree to stipulate

Portia R. Moore | Davis Wright Tremaine LLP
1201 Third Avenue, Suite 2200 | Seattle, WA 98101
Tel: (206) 757-8089 | Fax: (206) 757-7089 | Mobile: (206) 384-0781
Email: portiamoore@dwt.com | Website: www.dwt.com
Bio: www.dwt.com/People/PortiaRMoore

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-----Original Message-----

From: Simpson, Arthur
Sent: Thursday, May 05, 2016 3:29 PM
To: Mark Rose
Cc: Cygnor, Jennifer; Cole, Tamra J; Fabel, Kim; Jack Sheridan; Ashalee May; Moore, Portia; Tilstra, Sarah E; Johnson, Josh

Subject: RE: Johnson v. SPU - Stipulation to Amend Complaint

Hi Mark,

This is generally okay, but there are a few points we'd like addressed before executing the stip. I think they're really just vestiges from earlier in the case, so I don't imagine it'll present any issues.

Paragraph 4.1 states Plaintiffs are seeking to recover medical expenses, but we understand that the Plaintiffs are not pursuing such a theory. Can that be removed?

Similarly, Paragraph 4.2 suggests that Plaintiffs Davis-Raines and Jones are pursuing back and front pay, which seems incompatible with their ongoing employment with the City (as evidenced by their own economic expert). Can that be clarified in the TAC?

Thanks,
Arthur

Arthur Simpson | Davis Wright Tremaine LLP
1201 Third Avenue, Suite 2200 | Seattle, WA 98101
Tel: (206) 757-8288 | Fax: (206) 757-7700
Email: arthursimpson@dwt.com | Website: www.dwt.com

Anchorage | Bellevue | Los Angeles | New York | Portland | San Francisco | Seattle | Shanghai | Washington, D.C.

-----Original Message-----

From: Mark Rose [<mailto:mark@sheridanlawfirm.com>]
Sent: Wednesday, May 04, 2016 10:13 AM
To: Moore, Portia; Simpson, Arthur; Tilstra, Sarah E; Johnson, Josh
Cc: Cygnor, Jennifer; Cole, Tamra J; Fabel, Kim; Jack Sheridan; Ashalee May
Subject: Johnson v. SPU - Stipulation to Amend Complaint

Counsel,

Attached is a proposed stipulation to amend the complaint to drop Plaintiffs' hostile work environment and disparate impact claims; and to also drop Plaintiff Maria Luisa Johnson and Elaine Seay-Davis's claims for retaliation.

Exhibit 1 to the stipulation, Plaintiff's Third Amended Complaint, is also attached. You will find the relevant edits at ¶ 3.2 and note that ¶ 3.3 has been deleted.

Let us know if you approve the stipulation and we will forward it to the Court.

Thanks,
- Mark

Mark Rose
Sheridan Law Firm, P.S.
705 2nd Ave., Suite 1200
Seattle, WA 98104
Tel: (206) 381-5949

Exhibit D

Simpson, Arthur

From: Jack Sheridan <jack@sheridanlawfirm.com>
Sent: Friday, May 06, 2016 12:53 PM
To: Moore, Portia
Cc: Cole, Tamra J; Simpson, Arthur; Tilstra, Sarah E
Subject: Re: Court Room

Portia,

You are honorable, and a good lawyer. I'm going to trust that you will evaluate each question at the time it is asked to decide if you will object. I don't think you will—although of course I can't share my strategy with you. I will certainly ask the witness about the documents produced on the thumb drive.

Jack

Jack Sheridan
The Sheridan Law Firm, P.S.
705 2nd Ave., Suite 1200
Seattle, WA 98104
Tel: 206-381-5949
Cell: 206-931-7430
jack@sheridanlawfirm.com

On May 6, 2016, at 12:45 PM, Moore, Portia <PortiaMoore@dwt.com> wrote:

Jack

You finished Faustino's deposition. That was your choice. I will not let you open it up again to go over ground that you either forgot or chose not to do so. In an attempt to work with you, I am agreeing to allow you to question him about the documents that were on the flash drive that he *timely* produced, pursuant to your SDT – although I have no obligation to do so. If we cannot agree to these parameters, please let me know. I will withdraw my agreement to produce him for a second time.

Portia R. Moore | Davis Wright Tremaine LLP
1201 Third Avenue, Suite 2200 | Seattle, WA 98101
Tel: (206) 757-8089 | Fax: (206) 757-7089 | Mobile: (206) 384-0781
Email: portiamoore@dwt.com | Website: www.dwt.com
Bio: www.dwt.com/People/PortiaRMoore

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<image003.jpg>

From: Jack Sheridan [<mailto:jack@sheridanlawfirm.com>]
Sent: Friday, May 06, 2016 12:38 PM
To: Moore, Portia
Cc: Cole, Tamra J (Tamra.Cole@seattle.gov); Simpson, Arthur; Tilstra, Sarah E (Sarah.Tilstra@seattle.gov)
Subject: Re: Court Room

I agree not to cover ground already covered.
Jack

Jack Sheridan
The Sheridan Law Firm, P.S.
705 2nd Ave., Suite 1200
Seattle, WA 98104
Tel: 206-381-5949
Cell: 206-931-7430
jack@sheridanlawfirm.com

On May 6, 2016, at 12:35 PM, Moore, Portia <PortiaMoore@dwt.com> wrote:

Jack:

If we produce Faustino again, we will limit your questioning to the documents that were on the thumb drive. We will be producing those to you shortly. They are all pictures of non-relevant events but you are welcome to question him about those if you chose to do so. We will not allow him to answer any other questions.

Enright is not available next week.

Portia R. Moore | Davis Wright Tremaine LLP
1201 Third Avenue, Suite 2200 | Seattle, WA 98101
Tel: (206) 757-8089 | Fax: (206) 757-7089 | Mobile: (206) 384-0781
Email: portiamoore@dwt.com | Website: www.dwt.com
Bio: www.dwt.com/People/PortiaRMoore

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<image003.jpg>

From: Jack Sheridan [<mailto:jack@sheridanlawfirm.com>]
Sent: Friday, May 06, 2016 12:27 PM
To: Moore, Portia
Cc: Cole, Tamra J (Tamra.Cole@seattle.gov); Simpson, Arthur; Tilstra, Sarah E (Sarah.Tilstra@seattle.gov)
Subject: Re: Court Room

Portia,
Can I add in Fausto and Enright for a half hour each next week on Monday or Tuesday?

Jack Sheridan
The Sheridan Law Firm, P.S.
705 2nd Ave., Suite 1200
Seattle, WA 98104
Tel: 206-381-5949
Cell: 206-931-7430
jack@sheridanlawfirm.com

On May 6, 2016, at 12:16 PM, Moore, Portia
<PortiaMoore@dwt.com> wrote:

Tamara:

Jack has agreed that he too, would like to see if we can get the fancy courtroom. What are the next steps that we need to do to try and make that happen?

Portia R. Moore | Davis Wright Tremaine LLP
1201 Third Avenue, Suite 2200 | Seattle, WA 98101
Tel: (206) 757-8089 | Fax: (206) 757-7089 | Mobile: (206) 384-0781
Email: portiamoore@dwt.com | Website: www.dwt.com
Bio: www.dwt.com/People/PortiaRMoore

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Exhibit E

Simpson, Arthur

From: Jack Sheridan <jack@sheridanlawfirm.com>
Sent: Wednesday, May 11, 2016 8:06 PM
To: Moore, Portia
Cc: Tilstra, Sarah E; Ashalee May; Simpson, Arthur; Cole, Tamra J; Fabel, Kim
Subject: Re: Johnson - Mary Denzel

How about 4:00?

On May 11, 2016, at 7:32 PM, Moore, Portia <PortiaMoore@dwt.com> wrote:

Faustino can be available for deposition on the limited questions of the documents included on the flash drive that he timely produced pursuant to your subpoena on the afternoon of May 18th. I assume that this deposition will take no longer than 45 minutes. Please confirm.

Sent from Portia's I-pad

On May 11, 2016, at 6:36 PM, Jack Sheridan <jack@sheridanlawfirm.com> wrote:

What do her doctors say? Also, where are we on Roger Fauster?
Thanks.
Jack

On May 11, 2016, at 5:54 PM, Moore, Portia <PortiaMoore@dwt.com> wrote:

Jack
We are not going to produce someone for deposition who is fighting cancer and is undergoing chemo treatments. You can send a subpoena and will oppose it.
You have known about Ms. Denzel for over a year. Had you wanted to depose her you had plenty of time to do so.
We will not put Ms. Denzel through the stress of a deposition absent a court order requiring us to do so. That you would ask us to do so is disappointing to say the least.

Sent from my iPhone

On May 11, 2016, at 6:06 PM, Jack Sheridan <jack@sheridanlawfirm.com> wrote:

Sarah,
I do need to depose Ms. Denzel. Let's do her by video so that we don't have to call her for trial. We can do it at her home if that is good for her.
Let me know what you think.

Thanks.
Jack

On May 10, 2016, at 6:04 PM,
Tilstra, Sarah E
<Sarah.Tilstra@seattle.gov> wrote:

Jack, now that you have deposed Ms. Howe, Ms. Sumitani, and Mr. Jones, do you still feel Ms. Denzel is necessary? As I mentioned, she is retired, and is actively undergoing chemotherapy treatments twice a week, and all that goes along with that. I do not want to put any additional burden on her if it is not absolutely necessary.

Sarah Tilstra
Assistant City Attorney

Seattle City Attorney's Office
701 Fifth Avenue, Suite 2050
Seattle, WA 98104-7097
Phone: 206-684-8230
FAX: 206-684-8284

sarah.tilstra@seattle.gov

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Exhibit F

1 IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
2 KING COUNTY

3 MARIA LUISA JOHNSON, CARMELIA)
DAVIS-RAINES, CHERYL MUSKELLY,) No. 15-2-03013-2 SEA
4 PAULINE ROBINSON, ELAINE)
SEAY-DAVIS, TONI WILLIAMSON, and)
5 LYNDA JONES,)
6 Plaintiffs,)
7 vs.)
8 SEATTLE PUBLIC UTILITIES a)
department of the CITY OF SEATTLE,)
9 Defendant.)

11 DEPOSITION UPON ORAL EXAMINATION OF
12 ROGER GARCIA FAUSTINO
13 (VOLUME II)
14

16 wednesday, May 18, 2016
17 4:16 p.m.
18 The Sheridan Law Firm, P.S.
19 705 Second Avenue
20 suite 1200
21 Seattle, Washington
22

24 Laurie E. Heckel, CCR, RPR
Court Reporter
25 CCR License No. 2616

¶

1 wednesday, May 18, 2016
2 Seattle, Washington

3 A P P E A R A N C E S

4 For the Plaintiffs:

FAUSTINO

5 JOHN P. SHERIDAN
6 Attorney at Law
7 The Sheridan Law Firm, P.S.
705 Second Avenue, Suite 1200
Seattle, Washington 98104

8 For the Defendant:

9 ARTHUR SIMPSON
10 Attorney at Law
11 Davis Wright Tremaine LLP
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12 Seattle, Washington 98101-3045

13 Also present:

14 CARMELIA DAVIS-RAINES
15 TONI WILLIAMSON
16 LYNDA JONES

♀

34

1 Wednesday, May 18, 2016
2 Seattle, Washington

3 I N D E X

4 Witness: ROGER GARCIA FAUSTINO Page
5 Examination by Mr. Sheridan 36

7 E X H I B I T S

8 No. Description Marked/ID'd
9 8 Black and white photographs (8 pages) */36
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10	9	Declaration of Toni williamson	45
11	10	E-mail string, Subject: Re: Court Room	47
12	11	E-mail string, Subject: Re: Johnson -	47
13		Mary Denzel	
14	12	E-mail string, Subject: Re: Johnson,	47
15		et al v. City of Seattle, et al	

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25 * Exhibit 8 premarked for identification.

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1 ROGER GARCIA FAUSTINO

2 having been called as a witness, was duly sworn and testified
3 as follows:

4 E X A M I N A T I O N

5 BY MR. SHERIDAN:

6 Q Okay. So at the last deposition we didn't have access to
7 your thumbnail drive documents, so the other side was kind
8 enough to send us copies.

9 A Yeah.

10 Q And so we're going to talk to you about some -- just some of
11 them today.

12 MR. SIMPSON: Jack, if you don't mind.

13 MR. SHERIDAN: Please, go ahead.

14 MR. SIMPSON: Just for the record, Arthur Simpson from

FAUSTINO

15 the law firm, Davis Wright Tremaine, representing Defendant
16 Seattle Public Utilities here today with Mr. Faustino.

17 The last round of Mr. Faustino's deposition occurred on
18 May 5, 2016. That deposition was closed at the end. Our
19 office has communicated with Mr. Sheridan for purposes of
20 allowing the second round of the deposition to go forward for
21 the express and limited purpose of discussing documents that
22 he brought with him on a thumb drive pursuant to the
23 previously issued subpoena.

24 MR. SHERIDAN: Yeah. So I -- I think we can address
25 whether it was actually closed at a later time, but I welcome

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1 your making the record.

2 MR. SIMPSON: Thank you, Jack.

3 MR. SHERIDAN: Okay. All right.

4 E X A M I N A T I O N

5 BY MR. SHERIDAN:

6 Q So -- so these are -- this document that's marked Exhibit 1,
7 it contains some photographs from your thumb drive, and I'm
8 going to ask you if you can to do your best to -- I'm just
9 going to give you the Bate stamp number.

10 MR. SIMPSON: Jack, sorry to interrupt you. Exhibit 8,
11 correct?

12 MR. SHERIDAN: Is it -- is it -- oh, yeah, 8, thanks
13 very much, yeah.

14 I'm going to give you the Bate stamp number, which is
15 that little number on end there, and ask you if you can
16 identify the persons in the photo, who took the photo, and
17 where and when it was taken. All right? So we'll just start
18 with Bate stamp number 162. Do you recognize this photo?

19 MR. SIMPSON: Objection, foundation.

FAUSTINO

20 MR. SHERIDAN: You can answer.
21 THE WITNESS: I do recognize this photo.
22 Q (By Mr. Sheridan) All right. And can you tell us -- do you
23 know -- can you tell who took it?
24 A No, I don't remember who took it.
25 Q All right. And can you tell us who is depicted in this?

¥

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1 A Yeah. The gentleman on the furthest left is Roman, last name
2 Baladad, B-a-l-a-d-a-d.
3 THE COURT REPORTER: Spell the first name.
4 THE WITNESS: Roman, R-o-m-a-n.
5 THE COURT REPORTER: Thanks.
6 THE WITNESS: The woman in the center of the photograph
7 is his wife, Maricell, M-a-r-i-c-e-l-l.
8 MR. SHERIDAN: Okay.
9 THE WITNESS: The woman on the right, the first right,
10 is Amy, A-m-y, last name Saturay, S-a-t-u-r-a-y.
11 Q (By Mr. Sheridan) All right. And are any of these persons
12 employed with the City?
13 MR. SIMPSON: Objection, calls for speculation.
14 THE WITNESS: Yes.
15 Q (By Mr. Sheridan) All right. Who?
16 A Roman Beladad works for the City. His wife, Maricell works
17 for Seattle Public Libraries.
18 Q Okay.
19 A And Amy Saturay works for the City as well.
20 Q All right. Anybody work in your organization?
21 MR. SIMPSON: Objection. confusing, define,
22 organization.
23 MR. SHERIDAN: If -- do you -- do you understand what I
24 mean?

25 THE WITNESS: Within SPU? I'm not -- I'm not quite sure

♀ 38

1 what you mean.

2 MR. SHERIDAN: Yeah, SPU.

3 THE WITNESS: Yes.

4 Q (By Mr. Sheridan) who?

5 A For Seattle Public Utilities currently is Amy Saturday.

6 Q All right. And can you tell us what she does there?

7 A She also is a utility accounts representative.

8 Q All right. And can you tell us where this picture was taken?

9 MR. SIMPSON: Objection, calls for speculation.

10 MR. SHERIDAN: And when.

11 MR. SIMPSON: Objection, calls for speculation.

12 THE WITNESS: I don't remember, um --

13 MR. SIMPSON: We don't want you to guess.

14 THE WITNESS: This was at a holiday party.

15 This photo was taken at a holiday party at -- the

16 location is called Jimmy's on Broadway.

17 MR. SHERIDAN: All right.

18 THE WITNESS: Yeah.

19 Q (By Mr. Sheridan) And do you know what the occasion was, what
20 the holiday was?

21 MR. SIMPSON: Objection, calls for speculation.

22 THE WITNESS: Christmas.

23 MR. SHERIDAN: Okay.

24 THE WITNESS: Or I -- it's in the holiday time frame.

25 Q (By Mr. Sheridan) The Christmas time frame?

♀ 39

1 A Yeah.

2 Q All right. Okay, okay. And I gather you were in attendance

3 at this?

4 A Yes.

5 Q Okay. Okay, next page is 163. Is this the same holiday
6 party or a different one?

7 MR. SIMPSON: Objection, calls for speculation.

8 Objection, assumes facts not in evidence.

9 THE WITNESS: I'm sorry. What was the question? I'm
10 sorry.

11 Q (By Mr. Sheridan) Yeah, is this the same -- is this -- is
12 this a photograph of basically a different image of the same
13 party?

14 A Different image of the same party, yes.

15 Q Okay. And on the right side, who were the two individuals
16 closest?

17 MR. SIMPSON: Objection, assumes facts not in evidence.

18 THE WITNESS: The individuals on the right-hand side, I
19 believe that's Thomas -- Thomas' partner, Patrick. I don't
20 know what his last name is. It's Patrick.

21 Q (By Mr. Sheridan) All right. And who is the person --

22 A Next to him, if we're looking at the second gentleman there,
23 that's Thomas Hughes.

24 Q And where does he work?

25 A He also works within SPU.

‡ 40

1 Q All right. Okay. And how about in the next image, 164, is
2 this the same function or a different function?

3 MR. SIMPSON: Objection, calls for speculation.

4 THE WITNESS: This is the same function.

5 Q (By Mr. Sheridan) Okay. And who are the two persons on the
6 right closest to the camera?

7 A Right side.

8 Q Yeah.

FAUSTINO

9 MR. SIMPSON: Objection, calls for speculation.
10 THE WITNESS: I don't remember his name.
11 MR. SIMPSON: Don't guess.
12 THE WITNESS: Yeah, I don't -- I -- I'm pretty sure I
13 don't remember this gentleman's name on the furthest right-
14 hand side.
15 Q (By Mr. Sheridan) All right. How about the woman seated next
16 to him?
17 A The individual next to him, her name is Cathy Thielen.
18 Q Is she an SPU employee?
19 A Yes.
20 Q What does she do there?
21 A She currently works as a utility service representative --
22 or, excuse me, an account executive. Excuse me.
23 Q All right. And how about the woman sitting next to her, who
24 is that?
25 A That is -- what's her name?

41

1 MR. SIMPSON: Objection, calls for speculation.
2 THE WITNESS: The names are similar. Edita, I think is
3 who this is, Edita, E-d-i-t-a, last name is -- what was her
4 last name, Manalo, M-a-n-a-l-o.
5 Q (By Mr. Sheridan) Okay. And was she a Filipino person?
6 MR. SIMPSON: Objection, calls for speculation.
7 THE WITNESS: I believe so, yeah.
8 Q (By Mr. Sheridan) Okay. Who is seated next to her?
9 MR. SIMPSON: Objection, calls for speculation.
10 THE WITNESS: The woman next to her would be Pina,
11 P-i-n-a. Last name is Ulep, L -- I'm sorry -- U-l-e-p.
12 Q (By Mr. Sheridan) Okay. And is she an SPU employee?
13 A Yes, she is.

FAUSTINO

- 14 Q And what does she do?
- 15 A She's also a utility accounts representative.
- 16 Q All right. And -- and anybody in this picture SPU employees
- 17 other than the ones you've already identified as such?
- 18 A The ones that I've identified are SPU employees.
- 19 Q All right. Turn to the next page.
- 20 A Ah --
- 21 Q Go ahead. I'm sorry.
- 22 A If I may correct, Edita is a former --
- 23 Q SPU --
- 24 A -- SPU employee.
- 25 Q All right. Thanks.

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- 1 A Yeah.
- 2 Q All right. Turn to the next page, 165, and who were these
- 3 two gentlemen?
- 4 A The gentleman on furthest left of the photo is myself.
- 5 Q Okay. And who is sitting next to you?
- 6 A That would be Soumit Soloman, S-o-u-m-i-t, last name is
- 7 Soloman, S-o-l-o-m-a-n.
- 8 Q And is he an SPU employee?
- 9 A No.
- 10 Q Okay. All right. Next page, same guy?
- 11 A Same persons.
- 12 Q And that's 166?
- 13 A Yes.
- 14 Q Next page, how about 167?
- 15 A Same persons.
- 16 Q How about 119, the next page?
- 17 MR. SIMPSON: Please slow down so I can see the photos
- 18 as we go.

FAUSTINO

19 MR. SHERIDAN: Sure.

20 MR. SIMPSON: Thank you.

21 Q (By Mr. Sheridan) I'm on 119 now. Anybody in this picture
22 other than yourself an SPU employee?

23 A Yes.

24 Q who?

25 A The gentleman on the furthest left.

‡

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1 Q Who is he?

2 A His name is Angel.

3 Q Okay.

4 A And last -- last name is Cainglet, C-a-i-n-g-l-e-t.

5 Q And where does he work?

6 A Also within SPU.

7 Q All right. Can you tell that -- that -- is this a selfie, I
8 gather?

9 A This was -- I -- I don't know how this was taken, maybe by --

10 MR. SIMPSON: Don't guess.

11 THE WITNESS: Yeah.

12 Q (By Mr. Sheridan) You don't recall?

13 A I don't. I don't remember. Yeah, I -- I don't remember.

14 Q Okay.

15 A Sorry.

16 Q All right. So you recognize this as yourself in the image,
17 but you don't recall who took the picture.

18 A Right, because during this time frame, we had other -- I had
19 other friends.

20 Q Okay. Do you happen to know approximately when this photo
21 was taken?

22 A I -- I do not remember. No, I don't remember.

23 Q Okay.

24 A Yeah.

25 Q Next photo at 61, and who is in this picture?

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1 MR. SIMPSON: Objection, calls for speculation.

2 THE WITNESS: The woman on the furthest left of the
3 photo, her name is Lynn, L-y-n-n, last name is Andrews,
4 A-n-d-r-e-w-s.

5 Q (By Mr. Sheridan) And where does she work?

6 A She is now retired.

7 Q Where did she work?

8 A I'm sorry?

9 Q Where did she work?

10 A Where? Within Seattle Public Utilities.

11 Q Okay. And what did she do there?

12 A Lynn Andrews was a quality assurance manager.

13 Q Okay. And who is the woman next to her?

14 A That would be Cathy Thielen.

15 Q And where did she work?

16 A We've identified her already.

17 Q Oh, okay, SPU. All right. After the last deposition, after
18 you walked out, did you talk to Toni Williamson?

19 MR. SIMPSON: Objection, Jack, it's outside the scope of
20 what have we --

21 MR. SHERIDAN: It's not.

22 MR. SIMPSON: -- agreed to talk about.

23 MR. SHERIDAN: What I said is, is I would not talk about
24 anything that happened beforehand, and I would not talk about
25 anything that I could have asked during the dep and didn't.

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1 MR. SIMPSON: Yeah, we brought him here with the sole

FAUSTINO

2 understanding that we're limiting it to things on the stick,
3 and that's what we're going to stick to.

4 MR. SHERIDAN: well, you can -- you can walk out, but
5 I'm going to show him this and ask him about it.

6 MR. SIMPSON: Don't answer.

7 MR. SHERIDAN: And I suggest you may want to cooperate
8 on this one.

9 (Exhibit 9 marked for identification.)

10 MR. SIMPSON: No foundation, we're not going to be
11 talking about this, Jack.

12 MR. SHERIDAN: Okay. well, I can't stop you from
13 walking out, but I'm going to say it for the record. I've
14 shown the witness Exhibit 9, and I'm going to ask you now is
15 it true that after the deposition Toni Williamson said to
16 you, You lied, and you responded and said, I'm sorry, I'm
17 scared.

18 MR. SIMPSON: I'm going to instruct you not to answer
19 the question.

20 MR. SHERIDAN: why would you do that?

21 MR. SIMPSON: Because we came with the express
22 understanding from your representations in these e-mails that
23 we're limiting the scope of the deposition.

24 MR. SHERIDAN: We've got e-mails --

25 MR. SIMPSON: I would like to have these entered as

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♀
1 exhibits, Jack.

2 MR. SHERIDAN: You can have them entered.

3 MR. SIMPSON: What number are we at, 9?

4 MR. SHERIDAN: But why -- why would you want to stop
5 this? This is relevant line of questioning.

6 MR. SIMPSON: Jack, you brought us here under false

7 pretenses. We told you --

8 MR. SHERIDAN: I did not --

9 MR. SIMPSON: We told you that the deposition is
10 limited.

11 MR. SHERIDAN: Why should -- look, this is -- this is a
12 gotcha. You're going to lose this if we take this to Court.
13 Let me ask the guy. Let him deny it or admit it.

14 MR. SIMPSON: Jack, no, we came here --

15 MR. SHERIDAN: You're wasting time.

16 MR. SIMPSON: Then bring a motion, Jack.

17 MR. SHERIDAN: All right --

18 MR. SIMPSON: The deposition was closed last time.

19 MR. SHERIDAN: So you're not going to answer?

20 MR. SIMPSON: I'm instructing this witness not to
21 answer.

22 MR. SHERIDAN: All right. And then the deposition is
23 done.

24 MR. SIMPSON: It's not closed. I'm going to have my
25 exhibits entered.

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1 MR. SHERIDAN: Tell me what they are.

2 MR. SIMPSON: They are e-mails between us.

3 MR. SHERIDAN: All right. I'll stipulate that there's
4 e-mails between us --

5 MR. SIMPSON: We're going to put them into evidence.

6 MR. SHERIDAN: Well, I'm not. I'm done.

7 MR. SIMPSON: Okay. I'm going to have them entered as
8 exhibits.

9 MR. SHERIDAN: Let's close the dep.

10 MR. SIMPSON: No. Before we close the dep, I'd like to
11 have these entered as exhibits.

FAUSTINO

12 MR. SHERIDAN: All right. Let's go.
13 (Mr. Sheridan, Carmelia Davis-Raines, Toni Williamson
14 and Lynda Jones exiting the room.)
15 MR. SHERIDAN: So we're going to order this expedited.
16 MR. SIMPSON: Exhibit 9.
17 THE COURT REPORTER: I'm just noting everyone exiting
18 the room. Actually, that is Exhibit 10.
19 MR. SIMPSON: 10, thank you.
20 (Exhibits 10, 11 and 12 marked for identification.)
21 MR. SIMPSON: If you can hand me those back so I can
22 read into the record what they are.
23 THE COURT REPORTER: Okay. There you go.
24 MR. SIMPSON: Thank you.
25 THE COURT REPORTER: Talk slow.

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1 MR. SIMPSON: All right. Thank you. I've been hearing
2 this my entire life.
3 All right. Exhibit 10 is an e-mail from Jack Sheridan
4 to Portia Moore, P-o-r-t-i-a M-o-o-r-e, dated May 6, 2016,
5 dated 12:53 p.m. Highlighted for the record is a
6 representation from Jack Sheridan, quote, I will certainly
7 ask the witness about the documents produced on the thumb
8 drive.
9 And that was in response to Portia Moore stating, I'm
10 agreeing to allow you to question him, meaning Roger
11 Faustino, about the documents that were on the flash drive
12 that he timely produced pursuant to your SDT or subpoena
13 duces tecum - although I have no obligation to do so.
14 If we cannot agree to these parameters, please let me
15 know. I will withdraw my agreement to produce him for a
16 second time, end quote. That's Exhibit 10.

FAUSTINO

17 Exhibit 11 is an e-mail from Jack Sheridan to Portia
18 Moore, and both of these e-mails I was copied on by the way,
19 in which Jack Sheridan represented, quote, Faustino can be
20 available for deposition on the limited questions of the
21 documents included on the flash drive -- pardon me. This is
22 Portia's e-mail to Jack -- that he timely produced pursuant
23 to your subpoena on the afternoon of May 18th. I assume that
24 this deposition will take no longer than 45 minutes. Please
25 confirm. To which Jack Sheridan replied, how about 4:00

¶

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1 o'clock. That was Exhibit 11.

2 Handing the court reporter back what's marked Exhibit
3 12. This is an e-mail from Jack Sheridan to Portia Moore, to
4 which I was copied, dated May 11, 2016 at 8:46 a.m. to which
5 Jack Sheridan told Portia, quote, You and I have already
6 confirmed that I don't intend to cover ground already
7 covered, or to discuss events I chose not to discuss at his
8 first deposition, end quote.

9 Once more stating for the record, the prior deposition
10 was closed and we produced Roger Faustino under the express
11 agreement and understanding with Mr. Sheridan that questions
12 would be limited to the scope of the documents previously
13 brought with him in a thumb drive pursuant to a subpoena
14 duces tecum.

15 All right. And I think we're ready to close the
16 deposition.

17 THE COURT REPORTER: Off the record.

18 MR. SIMPSON: Thank you.

19 (Whereupon, at 4:33 p.m. the deposition was concluded.)

20 (Signature was reserved.)

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C E R T I F I C A T E

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STATE OF WASHINGTON)

3

COUNTY OF KING)

4

I, the undersigned Court Reporter in and for the State of Washington, do hereby certify:

5

6

That the annexed transcript of Wednesday, May 18, 2016 deposition of ROGER GARCIA FAUSTINO (VOLUME II) was taken stenographically by me and reduced to typewriting under my direction;

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10

I further certify that I am not a relative or employee or attorney or counsel of any of the parties to said action, and that I am not financially interested in the said action or the outcome thereof;

11

12

13

14

I further certify that the annexed Wednesday, May 18, 2016 deposition of ROGER GARCIA FAUSTINO is a full, true and correct transcript, including all objections, motions and exceptions of counsel, made and taken at the time of the foregoing proceedings.

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IN WITNESS WHEREOF, I have hereunto set my hand and affixed my signature this 18th day of May 2016.

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25

Laurie E. Heckel, CCR, RPR
Court Reporter in and for the State of
Washington, residing at Seatac.
CCR License No. 2616

♀

FAUSTINO

1 CORRECTIONS

2 PLEASE MAKE ALL CORRECTIONS, CHANGES OR CLARIFICATIONS TO YOUR
3 TESTIMONY ON THIS SHEET, NOT IN THE TRANSCRIPT ITSELF, SHOWING
4 PAGE AND LINE NUMBER AND THE NATURE OF THE CHANGE. IF THERE ARE
5 NO CHANGES, WRITE "NONE" ACROSS THE PAGE. PLEASE SIGN THIS SHEET
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23 JOHNSON, ET AL V. SPU, NO. 15-2-03013-2 SEA

24 _____
25 ROGER GARCIA FAUSTINO (VOL. II)

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