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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

J. Derham Cole, Jr., Circuit Court Judge

Case No. 2011-CP-42-4538
Appellate Case No. 2014-000902

Gary G. Harris, Appellant,

v.

Tietex International Ltd., Respondent.

RECORD ON APPEAL

VOLUME 2 OF 2

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STATE OF SOUTH CAROLINA)
)
COUNTY OF SPARTANBURG)
)
Gary G. Harris,)
)
Plaintiff,)
)
v.)
)
Tietex International, Ltd.,)
)
Defendant.)
_____)

IN THE COURT OF COMMON PLEAS

C. A. No.: 2011-CP-42-4538

MEMORANDUM IN SUPPORT OF DEFENDANT'S
RENEWED MOTION FOR SUMMARY JUDGMENT

Defendant Tietex International, Ltd. ("Tietex") submits this Memorandum in Support of its Renewed Motion for Summary Judgment. There is not a genuine dispute as to any material fact with respect to Plaintiff Gary G. Harris' ("Harris") claims, and Tietex is entitled to summary judgment.

Harris' claims are nothing more than an attempt to get a second bite at the apple, as he already lost his first lawsuit against Tietex in which he alleged that Tietex had discriminated against him on the basis of his age. While the Federal Court in Harris' first lawsuit declined to exercise supplemental jurisdiction over and render a decision on Harris' state law claims, the facts on which Harris relies are identical to those from his unsuccessful lawsuit and are equally deficient in this case.

No Contract Claims

Harris has never identified any contractual obligation with which Tietex was required to comply when terminating his employment, rendering his contract claims insufficient as a matter of law. Even if Tietex were obligated to provide progressive discipline to Harris—though the

record demonstrates no such obligation—Tietex did so by giving Harris two written warnings (the second of which Harris himself characterized as his “final warning”) before terminating his employment.

No Defamation Claims

Harris’ defamation claims fail because (1) Harris has failed to produce any evidence beyond his own conclusory allegations that the allegedly defamatory statements were false, (2) all of the allegedly defamatory statements were internal memoranda from Harris’ supervisor to his own supervisor and Human Resources regarding Harris’ performance deficiencies, making the statements subject to a qualified privilege, and (3) Harris has not produced any evidence of actual malice or that Tietex otherwise exceeded the scope of the privilege.

No Outrage Claims

Tietex is entitled to summary judgment on Harris’ outrage claim because Harris has failed to allege (and certainly cannot prove) any facts that would permit his outrage claim to proceed to trial. Moreover, Harris’ outrage claim must be dismissed as untimely under the statute of limitations and under the doctrine of *res judicata*, as Harris did not raise his outrage claim in his federal lawsuit against Tietex and first did so on September 5, 2012—more than five years after any event on which the claim could be based. While the statute of limitations on the state law claims asserted in his first lawsuit may have been tolled under 28 U.S.C. § 1367(d), no tolling applies to Harris’ outrage claim that he did not assert in his first lawsuit.

No Premature Motion

When Tietex first moved for summary judgment in this action—relying largely on the doctrine of collateral estoppel—Harris’ counsel insisted that Tietex’s motion was premature given his alleged inability to complete all of the discovery he needed to prove his case. Judge

Frank R. Addy, Jr., denied Tietex's motion and granted Harris permission to take the depositions of two Tietex executives. Harris noticed those depositions; however, on January 14, 2014—two days before they were scheduled to take place—his counsel inexplicably cancelled the depositions and made clear that he would not be taking the depositions before trial. Harris has not engaged in any discovery since Judge Addy denied Tietex's first motion for summary judgment. Because no additional discovery has taken place and the trial of this matter is now imminent, Tietex requests that the Court examine the undisputed facts set forth below, which make clear that Harris' claims fail as a matter of law.

I. INTRODUCTION AND STATEMENT OF THE CASE

Harris originally filed a lawsuit against Tietex in this Court on August 15, 2008—C.A. No. 2008-CP-42-4316 ("First Action"). Harris' lawsuit included a claim for violation of the Age Discrimination in Employment Act ("ADEA"), and various state law claims.¹ Tietex removed the First Action to the United States District Court for the District of South Carolina based on Harris's ADEA claim. After both parties engaged in thorough discovery in the First Action, Tietex moved for summary judgment on all of Harris's claims. On October 28, 2010, the Federal Court granted Tietex's motion on Harris's ADEA claims but chose not to address Harris's remaining state law claims, dismissing them without prejudice. The Fourth Circuit Court of Appeals affirmed the District Court's decision.

Harris filed a *pro se* Complaint in the present action ("Second Action") on October 21, 2011. Harris's *pro se* Complaint asserted claims against Tietex for defamation and unspecified

¹ Harris asserted claims against Tietex in the First Action alleging (1) violation of the Age Discrimination in Employment Act ("ADEA"), (2) breach of contract, (3) breach of contract accompanied by a fraudulent act, and (4) defamation (consisting of four separate sub-claims). All of Harris's claims in the First Action arose from allegations regarding his employment with Tietex and his separation therefrom.

discrimination, relying on the same general facts alleged in the First Action.

On March 8, 2012, Harris's current counsel entered his appearance. On August 10, 2012, the Court granted Harris's motion to amend his Complaint. On September 5, 2012, Harris filed his Amended Complaint in the Second Action alleging identical claims to those alleged in the First Action (except his ADEA claim) and adding a new claim for intentional infliction of emotional distress ("outrage") based on the same facts.² Identical to the First Action, all of Harris's claims in the Second Action arose from allegations regarding his employment with Tietex and his separation therefrom.

On May 3, 2013, Tietex moved for summary judgment in the second action asserting that (1) Harris' claims were barred as a matter of law based on the conclusive findings by the Federal Court in the First Action; (2) Harris' outrage and three new defamation claims were barred by the statutes of limitation and the doctrine of *res judicata*; and (3) Tietex was entitled to summary judgment on the merits because Harris failed to identify a genuine dispute of material fact as to any of his claims.

On September 23, 2013, Judge Frank R. Addy, Jr., denied Tietex's motion for summary judgment, stating his opinion that the doctrine of collateral estoppel did not apply.³ Judge Addy did not address Tietex's arguments that Harris' outrage and new defamation claims were barred by the statute of limitations or *res judicata*, and did not rule on the merits.

² In addition to the wholly new claim of outrage, Harris's defamation allegations in his *pro se* Complaint added two new defamation claims that he never identified in the First Action, and Harris identified a third new defamation claim during his deposition in the Second Action.

³ Tietex continues to assert that the doctrine of collateral estoppel precludes Harris from relitigating any factual findings or legal conclusions set forth in the orders of the Federal Court. While Tietex could not appeal Judge Addy's order denying Tietex's motion for summary judgment, Tietex fully intends to assert its collateral estoppel defense throughout any trial and appeal in this matter.

Presumably, Judge Addy believed any ruling on the merits would be premature given his decision to allow Harris to engage in additional discovery—specifically including the depositions of Tietex executives Martin Wildeman and Reed Cunningham—which Harris’ attorney insisted was necessary.⁴ Notwithstanding Harris relying on his alleged need for additional discovery in arguing that summary judgment was premature, Harris has failed to engage in any discovery since Judge Addy’s ruling. This total lack of discovery makes clear that there are no additional facts on which Harris intends to rely in support of his claims. Tietex now renews its Motion for Summary Judgment, as the undisputed facts in the record lead to only one reasonable conclusion—that Tietex is entitled to judgment as a matter of law on all of Harris’ claims.

II. STATEMENT OF FACTS⁵

A. Harris’ Employment.

1. Harris Was Employed At-Will and Had No Contract.

Harris began working at Tietex on July 13, 1994, as a Senior Research Chemist. (Harris Dep. 1 at 58-60, Exs. 6-7; Harris Dep. 2 at 140, Ex. 7⁶.) Harris accepted an offer of employment;

⁴ Harris’ counsel argued as follows during the hearing on Tietex’s first motion for summary judgment: “It is clear that I have not had a full and fair opportunity to complete discovery. I would simply argue that just on that record, the – the fact that – the fact that – that we have not been able to complete discovery, should preclude summary judgment on – any factual issue in this case.” (Transcript, Aug. 30, 2013 Hearing, at 16.) The relevant excerpts from the transcript of the summary judgment hearing are Attachment A.

⁵ The undisputed facts the Federal Court adopted in granting Tietex’s motion for summary judgment in the First Action are essentially identical to the Statement of Facts set forth herein.

⁶ All excerpts and exhibits from Harris’s deposition in the First Action are Attachment B and are referenced as “Harris Dep. 1” followed by the applicable page number(s), exhibit number(s), or both. All excerpts and exhibits from Harris’s deposition in the Second Action are Attachment C and are referenced as “Harris Dep. 2” followed by the applicable page number(s), exhibit number(s), or both. Harris acknowledged that all of his testimony from his deposition in the First Action remains true and accurate. (Harris Dep. 2 at 26.)

he knew he was employed at will; knew he could be terminated at any time for any reason; and knew he could leave Tietex at any time, for any reason. (Harris Dep. 1 at 60-61, Ex. 6; Harris Dep. 2 at 140-42.) Harris admits he had no written contract of employment. (Harris Dep. 1 at 61-62; Harris Dep. 2 at 142.)

Harris claims he was given a copy of an employee handbook, which he kept for several years. (Harris Dep. 1 at 62.) Harris does not have a copy of the alleged handbook. (*Id.* at 63; Harris Dep. 2 at 143.) Harris claims employees were asked to turn in the handbooks at some point during his employment.⁷ (*Id.*) Harris says he periodically referred to the handbook, but never read it cover to cover. (Harris Dep. 1 at 62.) There was nothing in the handbook that Harris did not understand, and he admits he would have asked if he had any questions about a policy. (*Id.* at 62-63.)

Harris claims there was a progressive discipline policy in the handbook, but cannot give any details about the policy. (*Id.* at 64; Harris Dep. 2 at 143-44.) This is the only policy he specifically recalls from the alleged handbook. (Harris Dep. 1 at 64.)

Harris does not know what policies he contends created a contract of employment upon which he bases his claim of breach of contract. (*Id.* at 64-65; Harris Dep. 2 at 143-45.) Harris admits he cannot state the basis for his breach of contract claim, or his claim for breach of contract accompanied by a fraudulent act. (Harris Dep. 1 at 65; Harris Dep. 2 at 144-45.)⁸

⁷ Tietex has never had an employee handbook. (Griffin Aff. ¶ 3.) The Affidavit of Pamela Griffin is Attachment D.

⁸ Harris admits that the his answers to the questions he was asked in his first deposition concerning his contract claims would be the same today as they were at that time. (Harris Dep. 2 at 142, 145.)

2. Harris' Work Hours.

Harris' normal working hours were 8:00 a.m. to 5:00 p.m., but he claims he was often at work by 6:00 or 6:30 a.m. and stayed later than 5:00 p.m. (Harris Dep. 1 at 74-75.) On occasion, Harris stayed until 8:00, 9:00, or 10:00 at night. (Harris Dep. 1 at 77.) Harris admits that he was told by his supervisor, Wade Wallace, not to work in the plant for safety reasons when it was not operating. (Harris Dep. 1 at 124.) At one point, Wallace told Harris that he could work in the plant anytime the plant was operational, and he could come into the facility to do office work when the plant was down. (Harris Dep. 1 at 123-24.) Harris admittedly ignored these directives due to his own opinion that it was safe for him to work with chemicals when the plant was not operating. (Harris Dep. 1 at 75-76, 124.) While his erratic hours had been acceptable to his previous supervisor, they were not acceptable to Wallace, and Harris admits this was a new directive under Wallace's supervision. (Harris Dep. 1 at 125) Harris admits he was the only employee who did lab work after hours. (Harris Dep. 1 at 126-27.)

3. Harris Left Messages at Odd Hours.

Harris admits that he left messages for managers when he knew they would not be answering their phones. (Harris Dep. 1 at 81-82 & Exs. 10 & 14.) The only reasonable conclusion was that Harris was attempting to avoid a two-way conversation.

4. Jake Butts Relocated His Office to More Closely Supervise Harris.

There are four sections in the technical building: an office area; wet lab; physical testing; and an extension of the wet lab for chemists' work, with a burn room.⁹ (Harris Dep. 1 at 86.) Harris' former supervisor, Jake Butts, had had difficulty keeping track of Harris due to Harris'

⁹ Although the technical building consists of several lab areas and the office area, it is often referred to in the transcript generically as "the lab" as opposed to the production facility, which is referred to as "the plant."

erratic work hours, so Butts relocated his office from the plant to the office areas of the technical building (the lab), where Harris' office was situated, in order to more closely supervise Harris. (Harris Dep. 1 at 83, 86.) Harris admits that Butts' relocation was effective, as he saw Butts infrequently before Butts moved his office, but more often thereafter. (Harris Dep. 1 at 85-86.)

5. Harris' Complaints About the Smell of Mold Resulted in His Reassignment.

Soon after Butts relocated his office, Harris claimed he noticed a mold smell and had symptoms of congestion, sinus headache, and flu. (Harris Dep. 1 at 87.) Harris admitted that he does not recall anyone else complaining about the alleged smell. (Harris Dep. 1 at 88.) Harris claimed that the smell originated from Butts' clothing and the furniture Butts moved into his relocated office. (Harris Dep. 1 at 93-94.) After some time and several visits to doctors, including an ENT and allergist, Harris contended that the smell was the source of his illness due to an allergy to mold. (Harris Dep. 1 at 88-89.) Harris reported his belief to Butts. (*Id.*)

As a result of Harris' allegation that mold in the lab was making him ill, Tietex hired a hygienist to perform testing in the lab. (Harris Dep. 1 at 89.) Harris admits the hygienist reported that there was no mold contamination and that the air in the lab was cleaner than the outside air. (Harris Dep. 1 at 91.) Although Harris claims the testing was flawed, he admits he has no evidence of that. (Harris Dep. 1 at 89-92.) Harris does not know who performed the testing or what kind of testing was performed. (*Id.*) Harris admits he has no first-hand knowledge of how the testing was conducted. (Harris Dep. 1 at 90-91.) Harris' only specific complaint about the testing was that it did not focus solely on the office area of the lab, but tested all four sections of the laboratory. (Harris Dep. 1 at 92.)

At some time in late 2006, Harris established a second office in the main plant. (Harris Dep. 1 at 87-88.) Harris continued to do work in the lab until February 2007. (Harris Dep. 1 at

87.) Effective February 1, 2007, Harris was removed from Butts' supervision and placed under the supervision of Wallace, in part due to Harris' continued complaints about the smell associated with Butts.¹⁰ (Harris Dep. 1 at 101.)

B. Harris Began Reporting to Wade Wallace.

1. Tietex's Resolution of Harris' Complaint About the Mold Smell.

Between February 2 and 5, Harris and Wallace discussed by e-mail whether Harris would be able to continue working in the lab because of Harris' continued complaints about the mold smell. (Harris Dep. 1 at 94, Ex. 12.) Wallace agreed that Tietex would do whatever was necessary to shield Harris from any further exposure to an environment(s) that might negatively impact his health. (Harris Dep. 1 at 95, Ex. 12.) Wallace instructed Harris to wear a mask when he worked in the lab. (Harris Dep. at Ex. 12.) However, Harris decided that the mask would not give him enough protection. (*Id.*¹¹) Wallace then told Harris not to enter the lab under any circumstances. (Harris Dep. 1 at 101, Ex. 12.) Thereafter, Harris asked if he could work in the lab if he signed a waiver. (Harris Dep. 1 at 122-23, Ex. 17.) Tietex rejected the waiver stating that a waiver was "unacceptable from an HR/liability perspective since [Tietex] would be allowing [Harris] to come in contact with an environment that might negatively affect [his] health." (*Id.*) Wallace's e-mail communications with Harris made clear that Tietex was more concerned about Harris' health than its own liability. (Harris Dep. 1 at Ex. 12.)

¹⁰ Harris "believes the reason for the change in his reporting relationship was so that Wallace could assist him in getting more involved with special projects." (Harris Dep. 1 at 101-03.) While this was a factor in the decision, Tietex was also concerned about Harris' health. (Harris Dep. 1 at 95 & Ex. 12.)

¹¹ Harris acknowledges that he could have left Wallace a message concerning wearing the mask but states he does not remember doing so, and he doesn't know what he said to Wallace about the matter. (Harris Dep. 1 at 99-100.)

Tietex purchased equipment to accommodate Harris' needs outside of the lab. (Harris Dep. 1 at 112-13, Ex. 14.) Tietex provided Harris with an alternative work area because Tietex wanted to protect Harris' health. (Harris Dep. 1 at Ex. 12.) Harris has no contradictory evidence. (Harris Dep. 1 at 123.)

2. February 7, 2007, Discussion Between Wallace and Harris.

On February 7, 2007, Harris told Wallace that he was overwhelmed by personal and emotional problems which had occurred in his personal life over the past year, and he was having difficulty functioning. (Harris Dep. 1 at Ex. 13.) Harris admits that his wife was ill during this time period. (Harris Dep. 1 at 106.) Dealing with his wife's illness left him stressed with major sleep disturbances. (Harris Dep. 1 at 106-07, 111, Exs. 14, 44.) Harris admits he was a "wreck" because of his wife's illness. (Harris Dep. 1 at 107 & Ex. 44.) Wallace told Harris that Tietex "would support him if he felt he needed to utilize EAP," but Harris stated that was not necessary. (Harris Dep. 1 at 111, Ex. 13.)

3. Documentation of Voicemail Complaints from Harris.

On February 22, 2007, Harris left voice mail messages for both Wallace and Tietex's Owner, Martin Wildeman, at 3:00 a.m., complaining about his inability to sleep, and about unspecified work-related issues. (Harris Dep. 1 at 81, Ex. 14.) Wallace documented that Harris expressed concern about being moved from the lab and that he was "still not set up to easily do his bench work." (Harris Dep. 1 at Ex. 14.) Harris asked for a lab pad coater and a vented hood. (*Id.*) Wallace stated that he would take time to locate, acquire, and install the equipment, but stated that in the meantime Harris could use the equipment in the beam/dye area, and/or coordinate to use Robert Culbreth, a chemical technician, to perform work for him in the lab. (Harris Dep. 1 at 111-13, Ex. 14.) Harris believes that Tietex was motivated to keep him out of

the laboratory to avoid liability for any health problems he might experience rather than out of a real concern for his health.” (Harris Dep. 1 at 123.) Importantly, Harris does not assert that Tietex was motivated to keep him out of the lab because of any unlawful reason. (*Id.*)

Harris admits he complained about being required to stay involved with environmental reporting and stated he was concerned about completing an environmental report that was due on March 1, given his other projects. (Harris Dep. 1 at 113, Dx. 15.) Wallace saw no reason that Harris’ projects would interfere with his ability to get the report done on time and made this clear to Harris. (*Id.*) Harris admits that it was reasonable for Wallace to expect him to complete the environmental report on time. (Harris Dep. 1 at 113.)

Wallace also asked Harris to come to him directly with issues before going to Wildeman. (Harris Dep. 1 at Ex. 14; Wallace Dep. 2 at Ex. 1 ¶ 23.¹²) Harris admits that, at times, he went directly to Wildeman, rather than using the chain of command. (Harris Dep. 1 at 116.) Harris admits it was inappropriate for him to complain to Wildeman about having to do the environmental reporting. (*Id.* at 115.)

C. Harris’ Performance Deficiencies.

1. Memorandum Dated March 5, 2007.

On March 5, 2007, Wallace discussed several issues with Harris regarding his performance and documented the discussion at Harris’ request in a memorandum to Human Resources Director David Wilson, with a copy to Vice President of Manufacturing, Mark Isbell and Harris. (Harris Dep. 1 at 117-18, Ex. 16.) Wallace noted Harris made emotional and overly vocal accusations and statements without supporting research or data, was not honoring the chain of command, harbored grudges over past grievances and toward the management in general, and

¹² Exhibit 1 from Wallace’s deposition in the Second Action is Attachment E and is referenced as “Wallace Dep. 2 at Ex. 1” followed by the applicable paragraph number (¶) from the Exhibit.

complained about ownership of environmental reporting duties. (Harris Dep. 1 at Ex. 16.) The memorandum concluded with the statement, "As we discussed these issues are not sustainable and it is mandatory that Harris make significant progress towards resolving these issues within the next 30 days." (Harris Dep. 1 at 120-21, Ex. 16.)

At the time, Harris did not protest any of the points in the March 5, 2007, memorandum or claim that Wallace's observations were not true. (Harris Dep. 1 at 122.) As noted above, Harris admits he was experiencing emotional stress (Harris Dep. 1 at 106-07, 111 & Exs. 14, 44), circumvented Wallace by going directly to Wildeman (*id.* at 116), and complained about environmental reporting tasks (*id.* at 113). Harris does not deny the statement that he harbored grudges, and admits that he had unresolved issues that existed before he began reporting to Wallace and had discussed those issues with Wallace. (*Id.* at 119-20.)

2. Memorandum Dated June 18, 2007.

On June 18, 2007, Wallace had another discussion with Harris regarding his subpar performance. Wallace documented the discussion in a memorandum to Harris, with a copy to David and Isbell. (Harris Dep. 1 at 128, Ex. 18.) The discussion focused on two projects for which Harris was responsible. (Harris Dep. 1 at 130, Ex. 18.) The first was the development and qualification of a Tietex coating compound as a replacement for the coating that was currently being used on C237 ("C237 Project"). (Harris Dep. 1 at 129, Ex. 18.) The second was the development of a finish formula and process for parabolic application of T602 ("T602 Project"). (Harris Dep. 1 at 129-30.)

a. *The C237 Project.*

Harris had been working on the C237 Project for about six months. (Harris Dep. 1 at 131, Ex. 18.) Harris had predicted that the C237 Project would result in significant cost savings for

Tietex. (Harris Dep. 1 at 131-32, Ex. 18.) Harris claimed he had a successful trial before he began reporting to Wallace. (Harris Dep. 1 at 132.) Despite Harris' characterization of the compound he created as a success, it was unacceptable to Tietex because it was much more complicated to produce commercially than Harris had initially promised. (Harris Dep. 1 at Ex. 16.) In February, Wallace began working separately on a parallel C237 Project because it appeared that Harris would fail to achieve the cost savings he had predicted. (Harris Dep. 1 at 134, Exs. 16, 18.) Eventually, the situation was resolved by the provider lowering its price. (Harris Dep. 1 at 134.)

b. The T602 Project.

Because of the expense, a plant production trial is only done if laboratory production is successful. (Wallace Dep. 2 at Ex. 1 ¶ 28.) Harris told Wallace that the lab samples for the T602 project were promising and recommended a production trial. (Harris Dep. 1 at 135.) According to Harris, the first plant production trial showed mixed results with some samples that were "not good," but others that were "comparable," depending on the amount of finish. (Harris Dep. 1 at 136.) However, Harris told Wallace that, based on the results, another plant production trial was warranted. (Harris Dep. 1 at 137, Ex. 18.) On Harris' recommendation, a second plant production trial was performed, which was unsuccessful. (Harris Dep. 1 at 137, 295, Ex. 18.) A third trial was similarly unsuccessful. (Harris Dep. 1 at 137-38, 295, Ex. 18.) When the second and third trials failed, Wallace reviewed the results of the first plant production trial himself. (Harris Dep. 1 at Ex. 18; Wallace Dep. 2 at Ex. 1 ¶ 29-31.) Wallace saw "that the results of the first trial had not been as [Harris] portrayed them, so the second and third trials were unwarranted based on the results of the first." (*Id.*)

Wallace cited Harris for his poor analytical practices and instructed him to improve his performance within 30 days. (Harris Dep. 1 at 141, Ex. 18.) Harris considered this his final written warning. (Harris Dep. 1 at 139, Ex. 18.)

D. Final Events Leading Up to Harris' Termination.

Despite being told and understanding that his job was in jeopardy if his performance failed to improve, Harris' poor performance and poor judgment continued. Harris made no effort to complete the C237 project. (Harris Dep. 1 at Ex. 19.) Instead, Harris began taking multiple days of vacation immediately after being given the warning on June 18. (Harris Dep. 1 at 145-48.) These vacation days were frequently taken on short notice. (Harris Dep. 1 at 145-46, Ex. 20.) Sometimes, Harris waited until the day before to notify Wallace. (*Id.*) Other than the environmental reporting, Harris had not improved on the issues cited in the memorandum of March 5, 2007. (Harris Dep. 1 at Ex. 19.) Gate records and management observation showed that Harris continued to ignore the directive not to work in the chemical lab areas at nights or on the weekends. (Harris Dep. 1 at Ex. 19.) The same records showed inconsistent work hours and erratic patterns of entry and exit to and from the facility. (*Id.*) Harris' co-workers complained that he did not return calls or e-mails consistently, disrupting their work patterns. (Harris Dep. 1 at Ex. 19.)

Harris was scheduled to fly to Indiana on June 14 to visit a customer and return on June 15. (Harris Dep. 1 at 148-149, Ex. 19.) After flying the first leg of his trip, Harris turned around and came home because he had a headache. (*Id.*) Harris never told Wallace he had not met with the customer in Indiana. (Harris Dep. 1 at Ex. 19.)

E. Events of July 3, 2007.

On the evening of Monday, July 2, after work, Harris left a voicemail message for Wallace, telling him that he had an ant infestation at his house. (Harris Dep. 1 at 151-52.) Harris

said he would take care of the ants first thing the following morning and then go to Hexion, a chemical facility, and work on a project. (*Id.*) Since Harris left this message after work hours, Wallace did not hear the message until the morning of Tuesday, July 3, 2007. (Harris Dep. 1 at 151-52, Ex. 19; Wallace Dep. 2 at Ex. 1 ¶ 38.)

Harris purchased pesticide chemicals at Lowe's on the morning of July 3, at approximately 7:30 a.m. (Harris Dep. 1 at 251; Attach. F.) Harris called Wallace and left a second voice mail message around 9:00 a.m., saying he had resolved the ant problem and was going to work at Hexion. (Wallace Dep. 1 at Ex. 1 ¶ 39.) Harris did not arrive at Hexion until 1:30 p.m. (Harris Dep. 1 at 154 & Ex. 21.) Harris could not enter Hexion because he could not contact anyone he knew there to gain entry. (Harris Dep. 1 at 152-53, 155-56.) Harris left without performing any work. (*Id.*) There are no witnesses to establish how long Harris was allegedly at Hexion. (*Id.* at 157.) Harris is vague about how long he was at Hexion trying to get in—he estimates he was at Hexion between thirty and ninety minutes.¹³ (Harris Dep. 1 at 157-58.)

Harris claims that after leaving Hexion, he drove around for 30 to 45 minutes, looking for Chemurgy, another chemical facility. (Harris Dep. 1 at 159-60.) When Harris located Chemurgy, no one was there, so he did not stay. (*Id.*)

Harris did not telephone Wallace to tell him that he could not get in Hexion and that he was going to Chemurgy or anywhere else. (Harris Dep. 1 at 160.) Harris admits it would have been reasonable for him to call Wallace and tell him that his plans had changed. (Harris Dep. 1 at 165.) Harris understood he needed to let Wallace know his whereabouts, to let him know when

¹³ Harris previously testified to the SCESC that he was at Hexion around thirty minutes. (Harris Dep. 2 at 96-97.)

he was away from the plant, and to keep his cell phone on so he could be reached. (Harris Dep. 1 at 117.) Harris acknowledges that it was reasonable for his supervisor to expect to be informed of his whereabouts "at all times." (Harris Dep. 1 at 117.)

George Henderson, the Hexion employee, brought the sulfuric acid to Tietex for Harris.¹⁴ (Harris Dep. 1 at 160.) Wallace was confused, as Harris was supposed to be at Hexion. Wallace later called Henderson and asked if he had seen Harris that day, but Henderson had not. (Wallace Dep. 2 at Ex. 1 ¶ 42-43.) Henderson said that he had a voicemail from Harris saying he needed some sulfuric acid urgently because he was planning to do some work on July 4th. (*Id.*) Wallace was troubled because Harris was not where he said he would be and because it appeared Harris had planned to work with chemicals in the lab on a day the plant was supposed to be closed. (*Id.*) Additionally, having sulfuric acid delivered in this way was against policy.

Harris admits that Wallace had no idea what Harris was doing, or even if Harris was working. (Harris Dep. 1 at 164-65.) Harris claims Wallace called him on his cell phone between 4:30 p.m. and 5:00 p.m. and asked where he was. (Harris Dep. 1 at 162.) Harris told Wallace that he had been to Hexion. (*Id.*) Wallace told Harris that Henderson had been to Tietex and said that Harris had not been at Hexion that day. (Wallace Dep. 2 at Ex. 1 ¶ 44.) Harris then stated he had gone to Hexion, but had been unable to get in or find anyone, so he left. (*Id.*) Harris could not give Wallace an adequate explanation of his whereabouts for the day. (Harris Dep. 1 at 158-59, Ex. 19; Wallace Dep. 2 at Ex. 1 ¶ 44, 47-48.)

Wallace told Harris he was suspended until Wallace returned from vacation. (Harris Dep. 1 at 165.) During the phone call, Harris and Wallace were disconnected, and Wallace could not reach Harris again by telephone. (Harris Dep. 1 at 165-66; Wallace Dep. 2 at Ex. 1 ¶ 45.)

¹⁴ Harris admits he needed the acid and had asked Hexion for it, but claims he intended to pick it up, rather than have Mr. Henderson deliver it. (Harris Dep. 1 at 161.)

Wallace believed Harris had hung up on him, although Harris denies it. (*Id.*) Wallace talked to Wilson about what transpired, and a voice mail message was left for Harris reiterating that he was suspended with pay and should not return to work until contacted by Tietex. (Wallace Dep. 2 at Ex. 1 ¶ 45.)

F. Wallace Recommended the Termination of Harris' Employment.

Wallace conducted an investigation of the events of July 3 when he returned from vacation, but could not establish Harris whereabouts for most of the hours between 9:00 a.m. and 4:00 p.m. on July 3. (Harris Dep. 1 at Ex. 19; Wallace Dep. 2 at Ex. 1 ¶ 47.) Wallace recommended Harris' employment be terminated, and the decision to do so was made by Wallace, Wilson, Wildeman, Cunningham, and Isbell. (Wallace Dep. 2 at Ex. 1 ¶ 49.) Harris was told he was not being terminated for one specific deficiency, but for many shortcomings that "added up," including the issues Wallace had addressed with him in the March 5, 2007, memorandum. (Harris Dep. 1 at 142, Ex. 16.) These issues were also documented in a memorandum dated July 18, 2007. (Harris Dep. 1 at Ex. 19.) Harris' employment was terminated on July 19, 2007. (Harris Dep. 1 at 167, Ex. 22.) Harris admits his employment was terminated for unsatisfactory performance. (*Id.*)

III. ARGUMENT

Tietex is entitled to summary judgment on all of Harris' claims. Harris has not established that he had any contract of employment with Tietex; therefore, Tietex could not have breached a contract, with or without fraudulent intent. Harris has not established that Tietex published any defamatory statements about him to any third party, as all allegedly defamatory statements were substantially true and covered by a qualified privilege that Harris cannot overcome. Harris has failed to allege (and certainly cannot prove) any set of facts that would permit his outrage claim to proceed to trial. Finally, Harris' failure to assert three of his seven

defamation claims and his outrage claim in the First Action bar those claims under the applicable statutes of limitation and the doctrine of *res judicata*. Accordingly, Harris' Amended Complaint should be dismissed in its entirety.

A. Summary Judgment Standard.

"The purpose of summary judgment is to expedite disposition of cases which do not require the services of a fact finder." *D.R. Horton, Inc. v. Wescott Land Co.*, 398 S.C. 528, 541, 730 S.E.2d 340, 347 (Ct. App. 2012) (citations omitted). Summary judgment "shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Rule 56(c), SCRCP. An issue of fact is "genuine" when the evidence is such that a reasonable jury could return a verdict for the nonmoving party. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). "In determining whether any triable issues of fact exist, the evidence and all reasonable inferences therefrom must be viewed in the light most favorable to the non-moving party." *D.R. Horton*, 398 S.C. at 541, 730 S.E.2d at 347.

The moving party has the initial burden of demonstrating the absence of a genuine issue of material fact. *Baughman v. AT&T*, 306 S.C. 101, 115, 410 S.E.2d 537, 545 (1991). The moving party may discharge this responsibility "by pointing out to the trial court that there is an absence of evidence to support the nonmoving party's case, and it is not necessary for the moving party to support its motion with affidavits or other similar materials negating the opponent's claim." *D.R. Horton*, 398 S.C. at 542, 730 S.E.2d at 347. "Once the moving party carries its initial burden, the opposing party must do more than rest upon the mere allegations or denials of his pleadings." *Id.* (citing *inter alia* Rule 56(e), SCRCP). "[T]he nonmoving party

must do more than ‘simply show that there is a metaphysical doubt as to the material facts but must come forward with specific facts showing that there is a genuine issue for trial.’” *Russell v. Wachovia Bank, N.A.*, 353 S.C. 208, 220, 578 S.E.2d 329, 335 (2003) (quoting *Baughman*, 306 S.C. at 107, 410 S.E.2d at 545).

“Where a verdict is not ‘*reasonably possible*’ under the facts presented, summary judgment is proper.” *Id.* (quoting *Bloom v. Ravoir*, 339 S.C. 417, 529 S.E.2d 710 (2000)) (emphasis in original). Harris has failed to present any facts demonstrating the presence of a genuine issue for trial. Accordingly, “[t]his case illustrates well the utility of summary judgment in disposing of a meritless claim.” *Cox & Floyd Grading, Inc. v. Kajima ConsDep. Svcs., Inc.*, 356 S.C. 512, 517, 589 S.E.2d 789, 792 (Ct. App. 2003).

B. Harris Has Not Identified a Genuine Dispute of Material Fact with Respect to Any of His Claims, and Tietex is Entitled to Summary Judgment on the Merits.

1. Harris’ Contract Claims Fail Due to the Complete Absence of Contractual Obligations and or any Breach of Alleged Contractual Obligations.

“To recover for a breach of contract, the plaintiff must prove: (1) a binding contract; (2) a breach of that contract; and (3) damages proximately resulting from the breach.” *Manios v. Nelson, Mullins, Riley & Scarborough, LLP*, 389 S.C. 126, 146, 697 S.E.2d 644, 655 (Ct. App. 2010) (citing *Fuller v. E. Fire & Cas. Ins. Co.*, 240 S.C. 75, 89, 124 S.E.2d 602, 610 (1962)).

“To maintain an action for breach of contract accompanied by a fraudulent act, a plaintiff must prove three elements: (1) *a breach of contract*; (2) fraudulent intent relating to the breaching of the contract and not merely to its making; and (3) a fraudulent act accompanying the breach.” *Conner v. City of Forest Acres*, 348 S.C. 454, 465-66, 560 S.E.2d 606, 612 (2002) (emphasis added). Both of Harris’ contract claims fail because he has not identified any contractual obligations that Tietex allegedly owed to him.

“South Carolina has long recognized the doctrine of employment at-will.” *Grant v. Mt. Vernon Mills, Inc.*, 370 S.C. 138, 145, 634 S.E.2d 15, 19 (Ct. App. 2006) (citing *Conner*, 363 S.C. at 471, 611 S.E.2d at 910-11). “This doctrine allows either party to terminate the employment ‘for any reason or no reason’ without being subject to a claim for breach of contract, subject to narrow exceptions and prohibitions against illegal discrimination which are not present here.” *Id.* at 146, 634 S.E.2d at 19 (quoting *Horton v. Darby Elec. Co.*, 360 S.C. 58, 67, 599 S.E.2d 456, 460 (2004)). “The at-will employment doctrine is essentially an economic incentive that provides critically needed flexibility in the marketplace.” *Id.* (citing *Prescott v. Farmers Tel. Co-op., Inc.* 335 S.C. 330, 334-35, 516 S.E.2d 923, 925 (1999)). In order to rebut the presumption of at-will employment, the burden is on Harris to establish that “all of the elements of a contract” are present. *Prescott*, 335 S.C. at 336, 516 S.E.2d at 926. Harris cannot meet his burden of proving that a contract existed, as he admits that he was an at-will employee and cannot point to anything that altered that relationship.

Harris admits that he “was aware of Tietex being an at will employer.” (Harris Dep. 1 at 61; Harris Dep. 2 at 141-42.) Harris further acknowledges that “under the terms of [his employment] offer [with Tietex], [he] w[as] employed at will.” (Harris Dep. 1 at 60; Harris Dep. 2 at 141.) Based on his status as an at-will employee, Harris fully understood (1) that his “employment could be terminated any time for any reason,” and (2) that he “could quit Tietex if [he] wanted to for whatever reason whenever.” (Harris Dep. 1 at 60-61; Harris Dep. 2 at 141-42.)

Harris admits that he “didn’t have any kind of written contract of employment when [he] w[as] hired” and that “during the time that [he] worked for Tietex, nobody ever gave [him] a written contract of employment to sign.” (Harris Dep. 1 at 61-62; Harris Dep. 2 at 142.) Harris’

lone attempt to claim that a contract allegedly existed consists of his entirely unsupported contention that an employee handbook contained a progressive discipline policy.¹⁵ (Am. Compl. at 5; Harris Dep. 1 at 64; Harris Dep. 2 at 143.) However, Harris has not produced a copy of this alleged employee handbook and admits that he does not have a copy. (Harris Dep. 1 at 63; Harris Dep. 2 at 143.) Harris' inability to produce a copy of the alleged handbook (and the fact that he cannot remember anything in the handbook other than the purported progressive discipline policy¹⁶) stems directly from the fact that Tietex has never had an employee handbook. (Griffin ¶ 3.)

Even assuming Harris' claims that he had an employee handbook for several years are true, Harris has testified that at some point during his employment, Tietex required all employees to turn in their copies of the alleged handbook "so [Tietex] could revise [it], and [he] never got a revised copy." (Harris Dep. 1 at 63; Harris Dep. 2 at 143.) Under the principles of unilateral contract (which apply to all cases in which employees attempt to show contractual obligations based on handbooks), Tietex rescinded any "offer" that allegedly existed in the non-existent handbook when it demanded that employees turn in that handbook. Tietex then made a new "offer" to continue working in an at-will status with no handbook, and Harris accepted that offer by continuing to perform his job duties. Harris admits that he "never got a revised copy" of the alleged handbook after he turned in his copy. (*Id.*) Even if there had been an employee

¹⁵ While Harris' Amended Complaint specifically identifies the alleged progressive discipline policy as the basis for his contract claims, Harris acknowledged during his deposition in the First Action that he did not "know what policies in the handbook . . . created a contract of employment" and that he did not "know what in the handbook [he] would base [his] contract claims on." (Harris Dep. 1 at 64-65; Harris Dep. 2 at 143-44.)

¹⁶ Harris cannot give details about any of the policies in the alleged handbook, or even recall the existence of any policy other than a progressive discipline policy. (Harris Dep. 1 at 64; Harris Dep. 2 at 143-44.)

handbook—though there was not—it clearly had no bearing on Harris’ terms and conditions of employment at the time of his termination.

Harris has failed to produce any evidence beyond his unsupported and conclusory allegations that Tietex owed him any contractual obligations with respect to his employment or separation therefrom. In the absence of any such evidence, Tietex is entitled to summary judgment on both of Harris’ contract claims.

Even if Tietex was obligated to provide Harris progressive discipline prior to terminating his employment—though there is no evidence of such a requirement—Harris has all but admitted that Tietex did just that. The March 5, 2007 memorandum documented a verbal counseling/warning that Wallace had given to Harris and made clear that “it [wa]s mandatory that [Harris] make significant progress towards resolving the[] issues within the next 30 days.” (Harris Dep. 1 at Ex. 16.) Next, the June 18, 2007 memorandum built upon the March 5 memorandum and provided further warning/counseling to Harris. (Harris Dep. 1 at Ex. 18.) Harris has testified that he understood the June 18 memorandum to be his “final written warning.” (Harris Dep. 1 at 139.) Then, in July 2007—after first giving him a verbal warning and a “final written warning”—Tietex terminated his employment. Tietex thus provided Harris progressive discipline whether it had to or not. Harris’ contract claims fail for this reason as well.

2. Harris’ Defamation Claims Fail Because All Statements Harris has Identified as Allegedly Defamatory were True and were Covered by a Qualified Privilege that Harris cannot Overcome, and Tietex was Not Negligent in Making the Alleged Statements.

Harris must “prove the following four elements to state a claim for defamation: ‘(1) a false and defamatory statement was made; (2) the unprivileged publication was made to a third party; (3) the publisher was at fault; and (4) either actionability of the statement irrespective of

special harm or the existence of special harm caused by the publication.” *Fountain v. First Reliance Bank*, 398 S.C. 434, 441, 730 S.E.2d 305, 309 (2012) (quoting *Erickson v. Jones St. Publishers, L.L.C.*, 368 S.C. 444, 465, 629 S.E.2d 653, 664 (2006)).

The truth of an alleged defamatory statement “is a complete defense to an action based on defamation and evidence establishing a statement is substantially true is a sufficient defense.” *Haulbrooks v. Overton*, 295 S.C. 380, 383, 368 S.E.2d 676, 679 (Ct. App. 1988) (citing *Ross v. Columbia Newspapers, Inc.*, 266 S.C. 75, 221 S.E.2d 770 (1976)). “It is not necessary to establish the literal truth of the precise statement made.” Restatement (Second) of Torts § 581A (1977).

The United States Supreme Court has made clear that there can be no strict liability for defamation. *Gertz v. Robert Welch, Inc.*, 418 U.S. 323 (1974). Some level of fault is required to establish liability for defamation, even when the plaintiff is a private figure. *Id.*; Restatement (Second) of Torts § 580B, cmt. c. The Restatement notes that negligence is likely the lowest fault threshold permissible under the *Gertz* standard.¹⁷ *Id.*

South Carolina courts have neither expressly accepted nor rejected the prevailing view that negligence is the appropriate standard to apply to alleged defamation of a private figure. *See Erickson*, 368 S.C. at 475-76, 629 S.E.2d at 670 (applying negligence standard because the parties assumed it applied). However, given the constitutional imperative established in *Gertz*, the South Carolina Supreme Court has suggested that the negligence standard should apply. *See, e.g., Holtzscheiter v. Thomson Newspapers, Inc.*, 332 S.C. 502, 523, 506 S.E.2d 497, 508-09 (1998) (Toal, J., concurring) (opining that South Carolina should join most jurisdictions in

¹⁷ Notably, the drafters of the Restatement have recognized that the fault requirement essentially eliminates the common law burden on defendants to prove truth. Restatement (Second) of Torts § 580B, cmt. j.

requiring a private-figure plaintiff to prove negligence to recover for defamation); *see also* Ralph King Anderson, Jr., South Carolina Requests to Charge – Civil § 14-11 (2009) (requiring proof of negligence to recover for defamation).

Under the negligence standard, Harris must prove that declarants of the alleged defamatory statements he has identified were negligent in making the statements—that the speaker breached a duty to exercise due care to refrain from making statements about Harris that are false and defamatory. *See* Anderson, South Carolina Requests to Charge – Civil § 20-1.

“One who publishes defamatory matter concerning another is not liable for the publication if (1) the matter is published upon an occasion that makes it conditionally privileged, and (2) the privilege is not abused.” *Fountain*, 398 S.C. at 444, 730 S.E.2d at 310 (citing *Swinton Creek Nursery v. Edisto Farm Credit, ACA*, 334 S.C. 469, 484, 514 S.E.2d 126, 134 (1999)). “The essential elements of a conditionally privileged communication may be enumerated as good faith, an interest to be upheld, a statement limited in its scope to this purpose, a proper occasion, and publication in a proper manner and to proper parties only.” *Id.* (quoting *Manley v. Manley*, 291 S.C. 325, 331, 353 S.E.2d 32, 315 (Ct. App. 1987)). “There is a basis for applying a qualified privilege to situations in which an employee’s job performance is properly evaluated.” *Wright v. Sparrow*, 298 S.C. 469, 474, 381 S.E.2d 503, 506 (Ct. App. 1989); *see also* *Bell v. Bank of Abbeville*, 211 S.C. 167, 44 S.E.2d 328 (1947) (attaching a qualified privilege to communications between an employer and employee during the employer’s inquiry into the employee’s alleged misconduct).

“Where the occasion gives rise to a qualified privilege, there is a prima facie presumption to rebut the inference of malice, and the burden is on the plaintiff to show actual malice or that the scope of the privilege has been exceeded.” *Swinton Creek Nursery*, 334 S.C. at 484-85, 514

S.E.2d at 134. To prove actual malice, Harris must show that Tietex was activated by ill will, intending to causelessly and wantonly injure Harris, or that the statements were published with such recklessness as to show a conscious disregard for Harris' rights. *Id.* at 485, 514 S.E.2d at 134.

Whether an occasion gives rise to a qualified privilege is a question of law for the court. *Id.* "“While abuse of privilege is ordinarily an issue for the jury, . . . in the absence of a controversy as to the facts . . . it is for the court to say in a given instance whether or not the privilege has been abused or exceeded.”” *Fountain*, 398 S.C. at 444, 730 S.E.2d at 310 (quoting *Woodward v. S.C. Farm Bureau Ins. Co.*, 297 S.C. 29, 32-33, 292 S.E.2d 599, 601 (1981)) (emphasis in original); *see also* Restatement (Second) of Torts § 619, cmt. b (court decides if privilege has been abused where only one conclusion can reasonably be drawn).

While Harris' Amended Complaint includes only one cause of action for defamation, he has identified seven separate allegedly defamatory statements or incidents on which he is attempting to rely. (Harris Dep. 2 at 27-30.) Separate allegations of defamation are analyzed as independent claims. *See, e.g., George v. Fabri*, 345 S.C. 440, 456-61, 548 S.E.2d 868, 876-79 (2001) (analyzing defamation allegations separately in affirming grant of summary judgment); *McBride v. School Dist. of Greenville County*, 389 S.C. 546, 559-63, 698 S.E.2d 845, 851-54 (Ct. App. 2010) (analyzing alleged defamatory statements individually). Each of Harris' seven defamation claims fails as a matter of law due to his inability to prove several requisite elements for each of his claims.

a. February 9, 2007 E-mail from Wallace to Wilson.

Harris' first defamation claim is based on a February 9, 2007 e-mail that Wallace (his supervisor) sent to David Wilson (Human Resources Director) with a copy to Mark Isbell (Wallace's supervisor). (Harris Dep. 2 at 27-28, Ex. 13.) In this internal e-mail between

managerial employees at Tietex, Wallace simply summarized a discussion he had with Harris two days earlier regarding personal and emotional problems Harris was experiencing that were impacting his performance. (Harris Dep. 2 at Ex. 13.) Harris claims this e-mail was defamatory because he alleges that it was false and that it “showed a definite disregard for [his] stability mentally and that kind of thing.” (*Id.* at 27.)

This defamation claim fails because the content of the February 9 e-mail was substantially (if not completely) true. Harris has admitted as much on more than one occasion—during his unemployment hearing (*id.* at 38), and during his deposition in the First Action (*id.* at 34-37). This defamation claim also fails because the February 9 e-mail clearly gives rise to a qualified privilege, and Harris has not presented any evidence showing that Wallace acted with actual malice or otherwise abused the privilege. In fact, Harris has admitted that he has no evidence of malice on Wallace’s part, stating that he did not think Wallace was trying to “get rid of him,” and has no idea about Wallace’s motivation. (Harris Dep. 1 at 196, 337-338.)¹⁸ Similarly, Harris cannot show that Wallace was negligent in making the statements set forth in the February 9, e-mail, as the facts make clear that he did nothing more than accurately recount a conversation to his own supervisor and Tietex’s Human Resources Manager—both of whom

¹⁸ In his prior lawsuit, Harris alleged Isbell, Wallace’s supervisor, was the one who wanted to terminate Harris’ employment. In the context of his age discrimination lawsuit, this narrative supported Harris’ vague claims that Isbell was motivated to replace him with a younger female acquaintance. Now that Harris’ claim is defamation based on written documents authored by Wallace, he has shifted the blame to point directly to Wallace. While Harris previously testified he did not think Wallace was out to sabotage him, and did not have any evidence regarding any improper motivation on Wallace’s part, Harris now claims Wallace acted maliciously in creating lies about Harris’ poor performance in order to terminate Harris’ employment. In the First Action, Harris clearly stated he did not believe Wallace wanted to terminate his employment (Harris Dep. 1 at 196, 337-38). Harris is simply shifting blame in a self-serving effort to support his only surviving claims, in direct contradiction to his prior testimony. The Federal Court rejected Harris unsupported suppositions regarding any individual or conspiratorial effort to terminate Harris’ employment.

Harris admits “had legitimate business need to know about and discuss” the issues in the e-mail. (Harris Dep. 2 at 55-56.) Therefore, summary judgment is proper on this claim.

b. March 5, 2007 Memorandum from Wallace to Wilson.

Harris’ second defamation claim focuses on the March 5, 2007 memorandum that Wallace sent to Wilson with copies to Isbell and Harris. (Harris Dep. 2 at 28, Ex. 16.) Like the February 9, e-mail, this memorandum simply documented a performance-related discussion that Wallace had with Harris. (*Id.* at Ex. 16.) In fact, Harris admits that Wallace only generated the March 5 memorandum because Harris requested that he do so. (*Id.* at 60.)

This memorandum cannot constitute actionable defamation because Harris has admitted that each of the points Wallace made in the memorandum was substantially true. (Harris Dep. 1 at 106-07, 111, 113, 116, 119-20.) The truth of the memorandum is further shown by the fact that, during the performance discussion referenced in the memorandum, Harris did not protest any of the listed deficiencies or claim they were inaccurate. (*Id.* at 122; Harris Dep. 2 at 65.) Additionally, South Carolina precedent establishes that this type of performance-related discussion regarding an employee is entitled to a qualified privilege, and Harris cannot show that Wallace acted with actual malice in drafting the memorandum (particularly since Harris himself specifically requested that Wallace prepare it). Neither could Wallace have acted negligently in preparing this memorandum, as it accurately summarizes the meeting and lists only deficiencies that Harris has acknowledged to be accurate. Accordingly, Tietex is entitled to summary judgment.

c. June 18, 2007 Memorandum from Wallace to Harris.

Harris’ third defamation claim relates to the June 18, 2007 memorandum that Wallace provided to Harris (with copies to Wilson and Isbell), which Harris has described as his “final

written warning.” (Harris Dep. 2 at 28, Ex. 18.) The June 18 memorandum focuses exclusively on Harris’ performance issues with respect to the C237 and T602 projects.

Harris’ own testimony leaves no room for Harris to claim that the June 18 memorandum was false and defamatory, as he admits the statements in the memorandum are substantially true. Harris admits he had been working on the C237 project for six month and projected significant savings for Tietex (Harris Dep. 1 at 131-32, Ex. 18.) Although Harris claims he had a successful trial before reporting to Wallace, he admits the direction of the project shifted. (Harris Dep. 1 at 132.) Tietex was convinced Harris’ compound was too complicated to produce commercially, and, therefore, unacceptable. (Harris Dep. 1 at Ex. 18.) Harris admits that Wallace began working separately on a parallel C237 project in February. (Harris Dep. 1 at 134, Ex. 18.) Harris admits his compound was never used by Tietex. (Harris Dep. 1 at 134.) Harris admits the first trial of the T602 project was not completely successful, with mixed results, but he recommended a production trial anyway. (Harris Dep. 1 at 135-37, Ex. 18.) Harris admits the two subsequent trials, run on his recommendation, were unsuccessful. (Harris Dep. 1 at 137-38, Ex. 18.) Accordingly, the June 18 memorandum is substantially true, according to Harris’ own testimony.

Harris failed to perform up to Tietex’s legitimate expectations with respect to the C237 and T602 projects. This very performance issue is what Wallace documented in the June 18 memorandum, and the truth of the memorandum is thus established according to Harris’ own testimony.¹⁹ Here again, the June 18 memorandum was also subject to a qualified privilege, and

¹⁹ Harris’ subjective perception of these undisputed facts in a self-serving way is irrelevant. Although Harris blames others for his failures and perceives that he was successful in his endeavors, the bottom line is that he failed to create a compound that was acceptable for Tietex’s needs. It is the perception of Tietex that matters, not the subjective perception of Harris’ own view of his performance. See *Holland v. Wash. Homes, Inc.*, 487 F.3d 208, 217 (4th Cir. 2007) (“[U]ltimately, ‘[i]t is the perception of the decisionmaker which is relevant.’” (quoting *Tinsley v. First Union Nat’l Bank*, 155 F.3d 435, 444 (4th Cir. 1998))).

Harris cannot in good faith argue that Tietex abused that privilege or was negligent. Thus, Harris' claim fails as a matter of law.

d. July 18, 2007 Memorandum from Wallace to Harris.

The final actual statement on which Harris relies in making his defamation claims is the July 18, 2007 memorandum from Wallace to Wilson (with a copy to Isbell) in which Wallace summarized Harris' pattern of poor performance and recommended the termination of his employment. (Harris Dep. 2 at 28-29, Ex. 19.) This claim fails for reasons similar to Harris' first three defamation claims.

The July 18 memorandum truly and accurately summarized Harris' performance deficiencies between February 2007 and July 2007. The accurate nature of the memorandum is clear based on Harris' own testimony. (Harris Dep. 1 at 106-07, 111, 113, 116-17, 119-20, 131-32, 134-38, 145-49, 151-60, 165; *see also* Section II *supra*.) There can be no doubt that an internal memorandum to an employee's supervisor and Human Resources recommending the employee's termination based on performance issues is entitled to a qualified privilege. Harris acknowledges that Wallace did not abuse the privilege and acted reasonably in providing the memorandum to Wilson and Isbell, as he admits that both Wilson and Isbell "would have had a need to know" about the subject matter of the memorandum. (Harris Dep. 2 at 100.) Harris cannot meet his burden with respect to this claim, mandating the entry of summary judgment.

e. Rumors in the Industry.

Harris' fifth defamation claim surrounds his contention that there were "rumors in the industry that [he] w[as] terminated from Tietex for falsifying a test report." (Harris Dep. 2 at 29.) However, Harris has never identified a single actual statement that Tietex allegedly made with respect to these mysterious "rumors." Rather, Harris has simply contended that he spoke to two former Tietex employees who allegedly informed him that they had heard about rumors

being spread about him. (*Id.* at 114-24.) Harris has never even alleged that Tietex was the actual source of these alleged “rumors,” and he has certainly never produced a witness to testify about what Tietex supposedly said. In the absence of any such allegations or testimony, this defamation claim is far from adequate to overcome Tietex’s motion for summary judgment. Rule 56(e), SCRCR, plainly requires that a party desiring to oppose summary judgment with testimony must “set forth such facts as would be admissible in evidence.” Harris’ claim regarding “rumors in the industry” is based on nothing more than inadmissible hearsay. Thus, Harris cannot even establish that there was a statement or that Tietex published the statement, let alone prove the remaining elements of this claim.

f. Harris’ July 2007 Suspension with Full Pay.

Harris’ sixth defamation claim alleges that Tietex somehow defamed him by suspending his employment—with full pay and benefits—in July 2007. (Harris Dep. 2 at 29.) The only statements Harris has identified with respect to this claim are (1) Wallace’s telephone call to Harris in which he informed Harris of the suspension, and (2) Wallace allegedly informing an individual at another company (Textile Rubber) that Harris was suspended. (*Id.* at 124-30.)

With respect to the telephone call between Wallace and Harris, there was obviously no publication to a third party, as Harris admits that they were the only parties on the call. (*Id.* at 126-27.) Regarding Wallace’s alleged statement to the Textile Rubber employee, Harris once again is relying on nothing more than inadmissible hearsay. Beyond being unable to specify any details regarding the alleged statement, Harris admits that “[t]he only information [he] h[as] is like second hand what George Henderson told [him].” (*Id.* at 129.) Thus, Harris cannot establish that any statement was published for the purposes of this motion. Even assuming Wallace had informed this individual that Harris was suspended, that statement is 100% true and cannot be defamatory as a matter of law. Therefore, Tietex is entitled to summary judgment.

g. Harris' February 2007 Ban from the Laboratory.

Finally, Harris contends that being “banned from going to the laboratory building” in February 2007 was defamatory. (Harris Dep. 2 at 29-30.) The only “statement” that Tietex can infer from this allegation is when Wallace told Harris “not to enter the lab under any circumstances.” (Harris Dep. 1 at 101, Ex. 12.) While Wallace did make that statement, Tietex is unable to determine how it could even potentially be defamatory with respect to Harris.

First, the statement was not even about Harris—it was a work directive. Second, Wallace only made that statement (and Tietex only prohibited Harris from entering the lab) after Harris complained that the work conditions in the lab were detrimentally impacting his health. Tietex and Harris jointly attempted to find a solution that would have allowed Harris to continue working in the lab without harming his health, but they were unable to do so. After “banning” Harris from the lab, Harris admits that Tietex made special purchases of equipment to allow him to set up a work area in a different location that would be better for his health. Harris’ claim regarding this statement must be dismissed accordingly.

3. Harris’ Outrage Claim Fails To Allege Any Facts that Rise to the Level of Extreme and Outrageous Conduct or Severe Emotional Distress that South Carolina Courts Require for Such a Claim.

Harris is obligated to prove all of the following elements to recover under his outrage claim: (1) that Tietex “intentionally or recklessly inflicted severe emotional distress, or was certain, or substantially certain, that such distress would result from [its] conduct”; (2) that Tietex’s conduct “was so ‘extreme and outrageous’ so as to exceed ‘all possible bounds of decency’ and must be regarded as ‘atrocious and utterly intolerable in a civilized community’”; (3) that Tietex’s actions caused Harris’ emotional distress; and (4) that “the emotional distress suffered by [Harris] was ‘severe’ such that ‘no reasonable man could be expected to endure it.’” *Hansson v. Scalise Builders of S.C.*, 374 S.C. 352, 356, 650 S.E.2d 68, 70 (2007) (quoting *Ford*

v. Hutson, 276 S.C. 157, 162, 276 S.E.2d 776, 778 (1981)). The South Carolina Supreme Court has “emphasized the heightened burden of proof articulated in the second and fourth elements of the tort, insisting that in order to prevail in a tort action alleging damages for purely mental anguish, the plaintiff must show both that the conduct on the part of the defendant was ‘extreme and outrageous,’ and that the conduct caused distress of an ‘extreme or severe nature.’” *Id.*, 650 S.E.2d at 71 (quoting *Ford*, 276 S.C. at 161, 276 S.E.2d at 778).

“In order to prevent claims for intentional infliction of emotional distress from becoming ‘a panacea for wounded feelings rather than reprehensible conduct,’ the court plays a significant gatekeeping role in analyzing a defendant’s motion for summary judgment.” *Id.* at 358, 650 S.E.2d at 72 (quoting *Todd v. S.C. Farm Bureau Mut. Ins. Co.*, 283 S.C. 155, 171, 321 S.E.2d 602, 611 (Ct. App. 1984)). Thus, “the court must determine that a genuine issue of material fact exists for each essential element of the plaintiff’s claim.” *Id.*, 650 S.E.2d at 71. A brief review of the facts alleged by Harris quickly demonstrates that he cannot come close to meeting his “heightened burden of proof” with respect to “the second and fourth elements of” of his outrage claim. *Id.* at 356, 650 S.E.2d at 71 (quoting *Ford*, 276 S.C. at 161, 276 S.E.2d at 778).

Harris’ outrage claim relies solely on his contentions that (1) Tietex somehow set him up for failure in his position (Am. Compl. at 3-4, 8), (2) Wallace allegedly used a “disrespectful tone of voice” a Harris on three occasions (Harris Dep. 2 at 146-56), and (3) Wallace allegedly yelled at Harris on those same three occasions (*id.* at 218-21). South Carolina appellate courts have made clear that allegations similar to Harris’—and even allegations far more egregious than Harris’—do not qualify as “extreme and outrageous” as a matter of law.

In *Wright*, the plaintiff made allegations that were nearly identical to Harris’ contention that Tietex set him up for failure in an effort to “be rid of” him. *See* 298 S.C. at 472, 381 S.E.2d

at 505. Specifically, the plaintiff alleged that the employer “set out on a course . . . to ‘build a case’ to justify firing her. She allege[d] he loaded her with responsibility while stripping her of authority. She also allege[d] he would change the manner of performing duties and then accuse her of not following his directions.” *Id.* The Court of Appeals held that, while the plaintiff and her employer disagreed about her job performance, the employer’s “actions were not so extreme and outrageous as to exceed all possible bounds of decency.” *Id.* at 473, 381 S.E.2d at 506.

In *Shipman v. Glenn*, the plaintiff alleged a set of facts that was plainly and palpably more outrageous than Harris’ allegations about Wallace using a disrespectful tone of voice and yelling at him. *See* 314 S.C. 327, 328-29, 443 S.E.2d 921, 922 (Ct. App. 1994). There, the Court of Appeals was confronted with the following facts:

(1) [the plaintiff] suffer[ed] from cerebral palsy, a condition that limit[ed] her speech and her physical movements; (2) [the employer] verbally abused and threatened her on the day in question with the loss of her job because she had discussed with others her concerns that she was the victim of intentional discrimination through a reduction in the school’s work force; (3) [the employer] ridiculed her speech impediment; and (4) [the employer’s] actions caused her to become emotionally upset, distressed, and worried, caused her to be physically ill to the point that she had to leave work early that day, caused her to live in constant fear of [her employer] and what he might do to injure her or harm her career, and adversely affected her personal life and her ability to function in her job.

Id. While the Court of Appeals recognized that the employer’s conduct was “both callous and offensive,” the Court held that the conduct “cannot provide the basis for an action for intentional infliction of emotional distress.” *Id.*

If the conduct alleged in *Wright* and *Shipman* does not rise to the level of “extreme and outrageous” as a matter of law, there is simply no possibility that Harris’ allegations could even approach that heightened threshold. Harris’ claim is merely an attempt to accomplish what our courts have noted a “widespread reluctance . . . to permit” the conversion of “the tort of

outrage [into] a panacea for wounded feelings rather than reprehensible conduct.” *Hansson*, 374 S.C. at 357, 650 S.E.2d at 71 (quoting *Todd*, 283 S.C. at 171, 321 S.E.2d at 611).

Even assuming Harris could establish the presence of “extreme and outrageous” conduct, he cannot meet his heightened burden of proving that he suffered emotional distress so severe that “no reasonable man could be expected to endure it.” *Id.* at 356, 650 S.E.2d at 70 (quoting *Ford*, 276 S.C. at 162, 276 S.E.2d at 778). All Harris has offered with respect to his alleged “distress” is his own conclusory allegations. This is insufficient as a matter of law. *Id.* at 358, 650 S.E.2d at 72 (“Under the heightened standard of proof for emotional distress claims . . . , a party cannot establish a prima facie claim for damages resulting from a defendant’s tortious conduct with mere bald assertions.”). To survive summary judgment, Harris was required to provide “something ‘more’ – in the form of third party witness testimony and other corroborating evidence – in order to make a prima facie showing of ‘severe’ emotional distress.” *Id.* Harris has made no such showing. In fact, Harris has admitted that he received absolutely no medical treatment as a result of the incidents he alleges to have been “extreme and outrageous.” (Harris Dep. 2 at 158-60.) Thus, any alleged “emotional distress” that Harris purportedly suffered was far from “severe” under the well-established legal framework. Because Harris cannot make even a prima facie showing of the second or fourth elements of his outrage claim, Tietex is entitled to summary judgment.

C. Harris’ Outrage Claim and Three of His Defamation Claims are Barred by the Statutes of Limitation and the Doctrine of *Res Judicata*.

Harris admits that his First Action did not in any way allege the following claims: (1) his outrage claim (Harris Dep. 2 at 17); (2) his defamation claim based on the February 9, 2007 e-mail from Wallace to Wilson (*id.* at 33); (3) his defamation claim based on Tietex suspending his employment in July 2007 (*id.* at 33-34); or (4) his defamation claim based on Tietex “bann[ing]

him from the laboratory” (*id.* at 34). Rather, he first asserted these claims on the following dates: (1) his outrage claim first appeared in his Amended Complaint in the Second Action, which he filed on September 5, 2012; (2) he first pleaded his defamation claim based on the February 9, 2007 e-mail from Wallace in his *pro se* Complaint in the Second Action, which he filed on October 21, 2011; (3) he first alleged his defamation claim based on Tietex suspending his employment in his *pro se* Complaint in the Second Action; and (4) he only identified his defamation claim based on being banned from the lab in his deposition in the Second Action, which occurred on March 14, 2013. Even assuming that Harris has properly pleaded all of these claims in the Second Action and that they relate back to the filing of his *pro se* Complaint on October 12, 2011, these claims are barred by the applicable statutes of limitation. Due to Harris failing to in any way plead these claims in the First Action, they are also barred by the doctrine of *res judicata*.

The statute of limitations applicable to Harris’ cause of action for outrage is three years. S.C. Code Ann. § 15-3-530. July 19, 2007—the date on which Tietex terminated his employment—is the latest date that any event on which Harris could be basing his outrage claim took place. That date is approximately four years and four months before the date on which Harris filed his *pro se* Complaint in the Second Action (which did not even include the outrage claim). Accordingly, the three-year statute of limitations on Harris’ outrage claim had long passed when Harris filed his *pro se* Complaint, and the claim is barred under S.C. Code Ann. § 15-3-20. While Harris asserts that the statute of limitations for his outrage claim should have been tolled under 28 U.S.C. § 1367(d) while his First Action was pending, he misreads the plain language of that statute. Section 1367(d) is limited on its face to “any claim asserted under [a federal court’s supplemental jurisdiction], and for any other claim in the same action that is

voluntarily dismissed at the same time as or after the dismissal of the claim under [a federal court's supplemental jurisdiction]." Harris did not plead his outrage claim in the First Action, and his outrage claim was not dismissed from the First Action. Thus, it is plainly excluded from the tolling provision of section 1367(d).

The statute of limitations applicable to Harris' defamation claims is two years. S.C. Code Ann. § 15-3-550. The two-year statute of limitations runs from the date on which the allegedly defamatory statement was published, not from the time the statement was allegedly discovered. *Jones v. City of Folly Beach*, 326 S.C. 360, 369, 483 S.E.2d 770, 775 (Ct. App. 1997) ("[S]ummary judgment [should be granted] because South Carolina has not adopted the discovery rule in libel and slander cases."). Harris' defamation claims based on (1) the February 9, 2007 e-mail from Wallace, (2) Tietex suspending his employment in July 2007, and (3) Tietex banning him from the lab in February 2007 are all based on "statements" that Tietex allegedly made in February and July 2007. Harris first alleged these claims in the Second Action, which he did not file until October 12, 2011. (Harris Dep. 2 at 33-34.) Thus, each of these three defamation claims must be dismissed based on Harris' failure to bring them with the two-year statute of limitations.

The complete absence of these three defamation claims and the outrage claim in the First Action also implicates the doctrine of *res judicata*. "The doctrine of *res judicata* bars a litigant from raising any issues which were adjudicated in the former suit [between the parties] and any issues which might have been raised in the former suit." *Pye*, 325 S.C. at 432, 480 S.E.2d at 458 (emphasis added) (citing *Hilton Head CDep. v. Public Serv. Comm'n*, 294 S.C. 9, 362 S.E.2d 176 (1987)); *see also id.* ("Res judicata also bars subsequent actions by the same parties when the claims arise out of the same transaction or occurrence that was the subject of a prior action

between those parties.”) (quoting *Riedman Corp. v. Greenville Steel Structures, Inc.* 308 S.C. 467, 469, 419 S.E.2d 217, 218 (1992)).

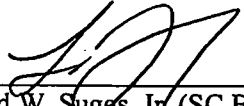
Harris cannot dispute that these three defamation claims and his outrage claim arose out of the same transaction or occurrence that was the subject of the First Action—his employment with Tietex and separation therefrom. Harris could have raised these claims in the First Action, but he chose not to do so. Based on Harris’ failure to assert these claims in the First Action, the doctrine of *res judicata* precludes him as a matter of law from asserting the claims in the Second Action. Accordingly, Tietex is entitled to summary judgment on these claims.

III. CONCLUSION

For all of the foregoing reasons, Tietex is entitled to summary judgment on all of Harris’ claims against it. Accordingly, Tietex respectfully asks the Court to dismiss Harris’ lawsuit in its entirety.

Dated this 23rd day of January, 2014.

Respectfully submitted,

By: 
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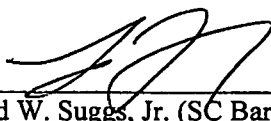
Attorneys for Defendant Tietex International, Ltd.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF SPARTANBURG	)	
	)	
Gary G. Harris,	)	
	)	
Plaintiff,	)	
	)	
v.	)	C. A. No.: 2011-CP-42-4538
	)	
Tietex International, Ltd.,	)	
	)	
Defendant.	)	

CERTIFICATE OF SERVICE

I hereby certify that on the 23rd day of January, 2014, a true and correct copy of the above **MEMORANDUM IN SUPPORT OF DEFENDANT'S RENEWED MOTION FOR SUMMARY JUDGMENT** was served by U.S. Mail, postage prepaid, upon Plaintiff at the following address:

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Attachment A
Transcript of Record
of Hearing
August 30, 2013

STATE OF SOUTH CAROLINA COURT OF COMMON PLEAS
COUNTY OF SPARTANBURG 2011-CP-42-4538

Gary G. Harris,

Plaintiff,

-vs-

Tietex International, LTD,

Defendant.

TRANSCRIPT OF RECORD

August 30, 2013
Spartanburg, South Carolina

Ordered: November 20, 2013

Delivered: January 5, 2014

BEFORE:

THE HONORABLE FRANK R. ADDY, JR., Presiding Judge.

APPEARANCES:

Mr. D. Alan Lazenby,, Esquire
Attorney Appearing for the Plaintiff

Mr. Frederick Suggs, Esquire
Mr. Lucas Asper, Esquire
Attorneys Appearing for the Defendant

Pamela Faucette, CVR-M
Circuit Court Reporter

PAMELA FAUCETTE, CVR - 864-574-9534 or 336-260-2864

1 THE COURT: We're getting into the merits now. Is the only thing
2 that you've got to prove outrage that he got yelled at?

3 MR. LAZENBY: Okay. As far as — as far as the — the merits of the
4 case, Your Honor, I've taken one deposition in this case.

5 THE COURT: Okay.

6 MR. LAZENBY: I had to fight to get that. After I deposed the — the
7 representative for six hours and we even continued till the next day,
8 Defendant fought that; filed a motion to — to keep me from deposing him
9 again. We finally got that done.

10 I, then, noticed around five depositions. And Defendant immediately
11 filed a motion to stay discovery until this summary judgment could be heard.

12 It is clear that I have not had a full and fair opportunity to complete
13 discovery. I would simply argue that just on that record, the — the fact that —
14 the fact that — that we have not been able to complete discovery, should
15 preclude summary judgment on — on any factual issue in this case.

16 What I did in my brief, Your Honor, is cite to the testimony of — of Mr.
17 Harris. And it wasn't — it wasn't raising his voice which I think is what Counsel
18 said it was. My client described it as berating and yelling and that my client
19 was scared. And it was — it was bad conduct.

20 And — and so, substantively, we would disagree with that. But we
21 would also say we — we need more time to — to develop this. It's premature
22 to grant summary judgment on any factual basis.

23 THE COURT: All right. I understand your position.

24 MR. SUGGS: Judge, may I be heard?

25 THE COURT: Sure. Please.

REPORTER'S CERTIFICATE

I, the undersigned **PAMELA FAUCETTE**, Official Court Reporter for the Seventh Judicial Circuit of the State of South Carolina, do hereby certify that I acted as the court reporter at the foregoing proceeding; that the foregoing pages, numbered 1 through 24, were transcribed by me and represent a true and accurate transcript of said proceeding to the best of my knowledge and belief.

I do further certify that I am not of counsel for or in the employment of either of the parties to this action, nor am I interested in the results of this action.

December 31, 2013



Pamela S. Faucette
Official Court Reporter
Seventh Judicial Circuit

Attachment B
Excerpts and Exhibits
from First Deposition
of Gary Harris

Transcript of the Testimony of:

Gary G. Harris

July 13 & 15, 2009

In the Matter of

**Gary G. Harris v. Tietex International, LTD
7:08-3020-HFF-WMC**

G. W. Coleman Associates

*P. O. Box 9177
Greenville, South Carolina 29604
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Email: SueHAPS@AOL.com*

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1 Q: Do you have any significant debts?
2 A: Not right now.
3 Q: Other than your mortgage?
4 A: No. Everything right now is in reasonably good
5 shape. The only debt I guess would be significant is one of
6 the cars there's probably \$3,000 owed on it thereabouts.
7 Q: You don't have any big credit card debts?
8 A: Since this bankruptcy, I have gotten credit cards
9 back and I probably got, I don't know, six or eight. I'll
10 use two and put those away, use two more. But I will not
11 let a, if a get a statement, I pay it immediately.
12 Q: You were telling me and I stopped you, about
13 getting a call when you were at Chatham about the job at
14 Tietex. Tell me about that. How did you find out about the
15 job at Tietex?
16 A: I received a phone call and I think it would have
17 been from some agency that they had hired to find someone
18 would be my, based on what I remember of the situation.
19 Q: All right. And then you went for an interview,
20 correct?
21 A: I did in April.
22 (Defendant's Exhibit 5 was marked for identification).
23 Q: And Exhibit 5 is your letter back to Tietex,
24 essentially, thanking them for the interview.
25 A: Okay.

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1 Q: Correct?
2 A: Yes.
3 Q: And you interviewed, according to this letter,
4 with Martin Wildeman and the HR Manager, Don Woodward, and
5 the Printing and Finishing Manager, Dave Hughston, and then
6 John somebody. Who's John?
7 A: John Broughton.
8 Q: Spell that, please.
9 A: B-r-o-u-g-h-t-o-n.
10 Q: Who actually hired you?
11 A: John Broughton along with Dave Hughston, but John
12 was the key figure.
13 Q: And you see on this Exhibit 5, the fourth
14 paragraph where you talk about Tietex having a very clean,
15 modern facility. Do you see that?
16 A: Uh-huh (affirmative response).
17 Q: And would you agree that the facility stayed clean
18 throughout your employment?
19 A: Yes.
20 (Defendant's Exhibit 6 & 7 were marked for identification).
21 Q: I'm going to give you two together. Exhibit 6 is
22 an Offer of Employment to you and Exhibit 7 is looks like
23 your New Hire sheet. According to these documents, you
24 began working at Tietex on July 13, 1994. Any reason to
25 dispute that?

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1 A: No.
2 Q: And your salary at hiring was \$55,000. Any reason
3 to dispute that?
4 A: No.
5 Q: And you were hired as a Senior Research Chemist.
6 Any reason to dispute that?
7 A: That was the job title, but it did not cover what
8 I was hired for.
9 Q: All right. And that Senior Research Chemist
10 position was in the Printing and Finishing Department of
11 Tietex, correct?
12 A: As far as the pay for that position, yes.
13 Q: As far as the what?
14 A: The pay.
15 Q: Well, it says, looking at Exhibit 6, it says in
16 that first paragraph, second line, I'm sorry, first line,
17 "We are pleased to offer you the position of Senior Research
18 Chemist in our Printing and Finishing Department." Do you
19 see that?
20 A: Yes, sir. That's what it reports to, but it
21 doesn't spell out the responsibilities were plant wide.
22 Q: Okay. So Exhibit 6 is not a job description,
23 right, it just states the name of the job?
24 A: Yes.
25 Q: And you reported to Dave Hughston, the Plant

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1 Manager of Printing and Finishing?
2 A: Yes.
3 Q: Now, if you will look, please, at Exhibit 6, the
4 second page, which is Bates Numbered 229. Do you see the
5 bold underlined language that's two paragraphs above Mr.
6 Woodward's signature?
7 A: Yes.
8 MR. STEWART: Objection to form.
9 Q: It says, "This letter summarizes our offer.
10 Nothing herein should be construed as a Contract of
11 Employment or as a promise of any specific terms for any
12 determined period of time. Did I read that correctly?
13 A: Yes.
14 Q: So under the terms of your offer, you were
15 employed at will, correct?
16 MR. STEWART: Objection to form. You can answer,
17 I'm objecting for the record.
18 Q: Remember what we said, that he might object but
19 you go ahead and answer.
20 A: Okay. Yes.
21 Q: And your employment could be terminated any time
22 for any reason, correct?
23 A: May I add to that?
24 Q: Sure. Well, give me a yes or no and then qualify
25 it.

15 (Pages 57 to 60)

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1 A: Yes. I'm not sure time wise how long it was after
2 I started the job, but Dave Hughston brought a paper in one
3 day for me to sign. And, basically, it said, spelled out
4 Tietex being an at will employer and so forth, and then it
5 went on to say, you know, specifically that I could leave
6 for any reason at any time and Tietex could ultimately do
7 the same. It was both ways. And I told Dave, I said, "I
8 don't think I want to sign this," something to that effect.
9 And something to the effect of what happens if I don't sign.
10 And he, essentially, told me that if you don't sign it,
11 you'll probably lose your job, so that's when I signed it,
12 but I was aware of Tietex being an at will employer.
13 Q: Do you have a copy of that document?
14 A: I do not.
15 Q: Well, you had quit other work, right, during your
16 career before Tietex?
17 A: Sure.
18 Q: And you knew that you could quit Tietex if you
19 wanted to for whatever reason whenever, correct?
20 A: Yes.
21 Q: And you told me about this document that Mr.
22 Hughston brought you, but you didn't have any kind of
23 written Contract of Employment when you were hired, did you?
24 A: Nothing formal that I know of.
25 Q: And during the term, well, during the time that

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1 you worked for Tietex, nobody ever gave you a written
2 Contract of Employment to sign, did they?
3 A: No.
4 Q: Did you go through an orientation?
5 A: I don't recall.
6 Q: Do you ever recall anybody explaining and
7 reviewing the Employee Handbook with you?
8 A: I do not recall that.
9 Q: Do you ever recall being given a copy of the
10 Employee Handbook?
11 A: I definitely was given a copy. I do not know how
12 early on it was, but I had one in my possession for several
13 years.
14 Q: Did you read it?
15 A: I periodically would reference it regarding, say,
16 one of the folks that reported to me had a question or
17 anything of that nature, I would use it as a reference
18 manual to try to answer questions or for my own.
19 Q: But you never read it cover to cover?
20 A: No.
21 Q: Do you recall any part of the Handbook that you
22 read not understanding?
23 A: The only thing I can remember, and this is really
24 too vague to be bringing up, but I do remember some things
25 in there that I felt like were either outdated, a lot of

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1 outdated stuff that didn't really apply. And the thought
2 there is, you know, this manual needs to be revised. That's
3 the only thing I can recall that I didn't understand.
4 Q: Do you remember what they were?
5 A: No, I don't.
6 Q: Do you recall asking questions for clarification
7 about the Handbook?
8 A: I don't recall it, but I'm sure if I was trying to
9 get an answer for someone and I, just to back up my
10 interpretation, I'm sure I probably did that, but I don't
11 recall it.
12 Q: That would be in giving an answer for someone else
13 who came to you, correct?
14 A: Most likely.
15 Q: Do you have a copy of that Handbook?
16 A: No. I actually, I'm not sure what year it was, it
17 was around 2005, '6, along in there, there was a call for
18 the manuals to be turned in so they could revise, and I
19 never got a revised copy.
20 Q: I'm going to, if I may, read you the question and
21 answer which is Interrogatory 13. "Interrogatory. Identify
22 the specific statements, policies, or procedures which
23 Harris claims were expressed in mandatory terms and formed a
24 contract of employment." "Answer. Plaintiff believes that
25 Tietex had an employment handbook when he was first hired

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1 which laid out responsibilities and duties of the employee
2 and the employer. However, he does not currently have a
3 copy of this handbook. It is believed that the Defendant
4 would have a copy of this handbook and Plaintiff will
5 formally request it. Therefore, the Answer to this
6 Interrogatory will be supplemented as discovery progresses."
7 Did you hear all that?
8 A: Yes.
9 Q: So would it be fair to say that as of today, as
10 we're talking, you don't know what policies were in the
11 Handbook?
12 A: I do know there was a policy in there that had to
13 do with termination and the steps that were to be taken. I
14 can't cite them or anything, but I knew they were like
15 written warning, verbal warnings, and then written warnings
16 and then termination. I knew that was in there.
17 Q: All right. Other than that, you don't know what
18 was in the Handbook?
19 MR. STEWART: Object to the form.
20 A: I mean, I couldn't specifically tell you. I mean,
21 we could sit here and talk and can tell you the kind of
22 things that were in there, but I couldn't tell you a page
23 number or anything.
24 Q: All right. Well, it would be fair to say then,
25 that you don't know what policies in the handbook that you

16 (Pages 61 to 64)

Page 65	Page 67
1 would contend today created a Contract of Employment? 2 MR. STEWART: Object to the form. 3 A: Yeah, I don't really feel like I could answer that 4 question, so I'll just say I don't know the answer. 5 Q: You don't know. It's fair. Look, you can say 6 yes, you can say no, you can say yes and no and qualify it, 7 and you can say I don't know. 8 A: I'll say I don't know then. 9 Q: So you don't know what in the Handbook that you 10 would base your contract claims on? 11 MR. STEWART: Same objection. 12 Q: Correct? 13 A: I don't know, I mean, I've got my thinking but I 14 don't think it's, again, I don't think it's — The answer 15 would be, no, I'm not sure. No, I'm not able to put my 16 finger on something right now, but I have my thinking on it. 17 I don't know. 18 Q: Okay. Now, there is a breach of contract claim in 19 your Complaint which we just talked about. Then there is a 20 second claim that's breach of contract accompanied by a 21 fraudulent act. What do you claim that Tietex did that was 22 fraudulent? 23 A: I'm not exactly sure where that is right now. 24 I'll say I'm not sure right now. 25 (Defendant's Exhibit 8 was marked for identification).	1 A: Yeah, but, I mean, this is the first time I've 2 ever seen this so that's why I'm ... 3 Q: Go ahead and take your time. 4 (Reviewing document). 5 A: I mean, most of the things on it are things that I 6 was involved in, but there are some things that are not 7 here. 8 Q: All right. Well, tell me what you would add. 9 A: Well, I can't, I mean, I could take this home and, 10 you know, do some recall and come up with several I'm sure, 11 but I'm looking for environmental stuff right now and I'm 12 not seeing it. Maybe I'm overlooking it. 13 Q: Okay. So you say you had some environmental 14 duties that aren't listed in the 16 job duties? 15 A: I would have to say, in all fairness to me, that I 16 had the greatest degree of responsibility with regard to all 17 EPA and environmental work and reporting. 18 Q: And your point is that to the extent that you had 19 those environmental or EPA duties, they're not listed on 20 Exhibit 9? 21 A: They're not listed. I don't believe I've 22 overlooked them. 23 Q: No, I read it, I didn't see them either. Jake 24 Butts is who you reported to, right? 25 A: At that time.
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1 Q: Can you identify Exhibit 8 as the Equal Employment 2 Opportunity Policy from the Tietex Policy Manual? 3 A: That's what I'm looking at, that's what it says. 4 Q: All right. And it says, "It is the policy of the 5 Company to provide equal opportunity to all employees and 6 applicants. No person shall be discriminated against 7 because of race, religion, color, sex, age, national origin, 8 handicap, or veteran status." Do you see that? 9 A: Yes. 10 Q: Did I read it correctly? 11 A: Yes. 12 Q: Now, remember when we were talking about your 13 Offer Letter and you said, well, you know, that describes my 14 title, but it doesn't really describe the job? Do you 15 remember that? 16 A: Yes. 17 (Defendant's Exhibit 9 was marked for identification). 18 Q: I'm going to give you Exhibit 9, which is a Job 19 Description for the job title that you had, Senior Research 20 Chemist. Is Exhibit 9 an accurate description of the job 21 that you had as Senior Research Chemist? 22 A: One second, please. 23 Q: All right. And let me just invite your attention 24 to the second page which is marked 344. You can see it was 25 written by Jake Butts, and he dated it January 6, 1998.	1 Q: And he was the QA and Environmental Manager? 2 A: According to this. 3 Q: Now, you were first hired as a Senior Research 4 Chemist, correct? 5 A: There was a job open and the title was Senior 6 Research Chemist that within the, within the framework of 7 that particular job that was open or duties that had been 8 vacated by a gentleman who had gone elsewhere. 9 Q: So when you went to work for Tietex, we've already 10 established that your job title was Senior Research Chemist, 11 correct? 12 A: The title was because that was what was what was 13 available, but the discussions I had with John Broughton and 14 Dave Hughston at the time we were considering me or they 15 were considering me, it was clear that I was over qualified 16 for the job as written. 17 Q: And the last day you worked at Tietex, your job 18 title was still Senior Research Chemist, wasn't it? 19 A: It was newly created, I believe it was like 20 February of '07, it was newly created. It was a newly 21 created position for me. It was advertised as a newly 22 created, posted job, posted as a newly created whatever. 23 Q: All right. This is the transcript of your 24 testimony before the Appeal Hearing on September 12, 2007. 25 A: Okay.

17 (Pages 65 to 68)

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1 A: I can't answer that. I was having to take, as far 2 as environmental goes, I was having to take things home with 3 me and do them, because I wasn't allowed to work overtime, 4 that kind of thing, and I was carrying stuff home with me to 5 do records keeping and reporting, so I don't know. I don't 6 know. 7 Q: Okay. If you don't know, that's fair. Did you 8 ever supervise employees? Did you ever have people 9 reporting to you ... 10 A: A few. 11 Q: ... so that they looked at you as their 12 supervisor. 13 A: Let me just throw this in. It's important, I 14 think. When I first went to work there, Dave Hughston, the 15 plant manager, gave me responsibility over all department 16 managers. I had that responsibility over all of them. They 17 would listen to me. That was a given. As far as actual 18 folks reporting to me, I just had a few in the laboratory 19 area. 20 Q: Who were they? 21 A: It would be Judy Cramer. What was the Quinn 22 lady's ... 23 MS. DAVIS: Jean. 24 A: Jean Quinn, Rhonda Blanchard, Robert Culbreth, 25 Gene Panell.	1 for lunch. Most of the time, I'm talking about when I was 2 actually involved and this other stuff hadn't started, I 3 would be there 6, 6:30. 4 A: A.M.? 5 A: Uh-huh (affirmative response). And stay there for 6 as long as I needed to to get as much done as possible. It 7 wasn't unusual to stay there till 6, 6:30. 8 Q: Were there safety reasons for you to be at work 9 during regular business hours? 10 A: Since I was the key person regarding safety, are 11 you talking about chemicals and things I worked with? 12 Q: Yes. 13 A: I was the person, the person that made decisions 14 as to what was safe, what was not, maintain the MSDS books 15 for the most of the time I was there and oversaw a lot of 16 that without title, I was the one that was relied upon for 17 making those kind of decisions. And in the first, before I 18 reported to Wade Wallace, there was never one instance where 19 anyone came to me and said you shouldn't be in here on 20 Saturday or Sunday. 21 Q: Were there reasons that you shouldn't be working 22 alone with chemicals and lab equipment? 23 A: No. 24 Q: You claim it would have been safe for you to work 25 alone with chemicals and lab equipment?
Page 74	Page 76
1 Q: Last name? 2 A: Panell, P-a-n-e-l-l. 3 Q: Is that a male or a female? 4 A: It's a man. And what's the girl that had so many 5 difficulties that worked with Rhonda who is another 6 technician? Kay Ward. 7 Q: So all of these employees that you just named 8 reported to you at some time or another? 9 A: Yes. 10 Q: All right. How many usually reported to you at 11 once? 12 A: I guess at a minimum over the time I was there 13 until I started reporting to Wade Wallace, maybe at any 14 given time a minimum of three or four. 15 Q: Three or four at a time? 16 A: Yeah. 17 Q: What were your normal hours of work? 18 A: Let me just say that during an approximate six, 19 seven year span, I would say that I averaged a minimum of 70 20 hours on the job site. 21 Q: I think my question wasn't clear. On the normal 22 day, what time would you go to work and what time would you 23 leave? What was your expected time to be at work? 24 A: The expected time, I believe, was 8 o'clock, and I 25 believe the expected time we could leave was 5 with an hour	1 A: No. I'm a professional in that area and I know 2 what precautions to take. It would have actually been, I 3 mean, take a scenario where I'm there and the plant's 4 running and I'm working with chemicals, which I didn't do a 5 lot of that, I mean, talking about hazardous chemicals, if 6 I'm working with hazardous chemicals which, again, did not 7 occur but fairly infrequently, I don't want, I'm not going 8 to allow anyone else to be around me because then they would 9 be, if something happened, then they would be exposed to it. 10 There's no one any safer with regard to those kind of things 11 than I. And it gets into the same area I was talking about 12 earlier about being concerned for employee health. 13 Q: All right. If you had one of these employees that 14 you named working under your supervision, would you permit 15 them to work in the lab not during business hours but work 16 back there by themselves? 17 A: Well, they did. 18 Q: Okay. Did part of your duties include working 19 with production personnel in the testing processes? 20 A: I'm sorry. 21 Q: When you were working on tests and trials and so 22 forth, things like that, did you need to work with 23 production personnel? 24 A: That's a pretty broad question. There were times 25 when I did and there were times when I didn't need to.

19 (Pages 73 to 76)

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1 There were other things more important that I needed to be
2 doing that had to do with that trial.
3 Q: Were there times when you did not work from 8 to 5
4 or from 6 to 6 but worked irregular hours?
5 A: The only time I worked 8 to 5 was when I worked
6 for Wade Wallace.
7 Q: And why was that?
8 A: Well, the main basic reason was I was not allowed
9 to work after hours, weekends, or whatever.
10 Q: Wade Wallace was trying to keep track of you?
11 A: No, I would not classify it as that, no. There
12 was no point in that.
13 Q: Did you ever report to work at 10 p.m. at night?
14 A: Now, when you say that, the first thing that comes
15 to mind is one of the plant trials early on was going to
16 have to be done on third shift which started, say, at 11
17 o'clock and I needed to go in at 10 in order to be there for
18 the trial. Other than that, with me not being a night
19 person, there's no reason I would go in to do work at 10
20 o'clock at night. Now, I may have been in there finishing
21 up something at 8, 9, or 10, but there's no reason I'd show
22 up at 10 other than for something like a plant trial.
23 Q: Did you ever work those hours like coming in on
24 third shift before you reported to Wade Wallace?
25 A: Oh, I mean, the hours I had, again, I want to

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1 minimize those few years leading in to reporting to Wade
2 Wallace since the last few years, because things were going
3 on that was changing what I could do. But when you look at
4 the heart of the matter going back I want to say 2003 and
5 back, maybe part of '4 and back, I worked a lot of hours.
6 It included the regular hours plus overtime.
7 Q: Did Jake Butts ever complain to you that he
8 couldn't keep track of where you were?
9 A: No one, not Jake, not John, not anyone I ever
10 reported to ever said the first negative about my job
11 performance and they had plenty of good to say.
12 Q: Do you know if Jake ever complained to other
13 people within Tietex management that he couldn't keep track
14 of you?
15 A: The only thing I've heard about that, it was at
16 the ESC Hearing and that's the extent of what I've — But
17 other than that, no, never.
18 Q: Now, in our Requests to Admit that you responded
19 to, you said that in order to have access to equipment and
20 materials at other labs, you had to work at those other labs
21 when the employees who were regularly employed there weren't
22 present?
23 A: No.
24 Q: Not true?
25 A: No. Actually, what that probably stems from, I

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1 had an opportunity, and I was banned from the lab building,
2 period, when I went to work for Wade. There was a section
3 in the main plant that had some lab equipment. It was a,
4 call it a finishing department lab or whatever, but it was a
5 small lab that employees working in those departments used
6 and they used it everyday. That was their job. I couldn't
7 do anything in there when they were there, but had I been
8 given permission to work overtime when they weren't there, I
9 could have utilized that equipment. That was where that's
10 coming from.
11 Q: Okay. What other labs were you working at?
12 A: Probably the main one during — You're talking
13 about when I was reporting to Wade, obviously?
14 Q: Right. Right.
15 A: It would have been Rohm and Haas would be the big
16 one.
17 Q: Any others besides Rohm and Haas?
18 A: Hexion.
19 Q: Okay.
20 A: And Rohm and Haas was a long way off, Charlotte.
21 Hexion, I was beginning to get bad fibs there so there was
22 one or two more in the works that I, as things had have
23 gone on, I probably would have been able to do some work
24 there.
25 Q: For Rohm and Haas you had to go all the way to

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1 Charlotte?
2 A: Yes. And the reason for it being Rohm and Haas is
3 one of the projects I was working on, they had an employee,
4 a strong, strong technical guy with regard to back coating,
5 and he was assisting me. He was assisting me in the back
6 coating project that was primary importance.
7 Q: Whose idea was it for you to work at these other
8 labs like Rohm and Haas and Hexion?
9 A: I was given a substantial number of assignments
10 and no place to do them. And I'm still a little bit puzzled
11 about this, except I got my take of it now, but why would a
12 manager really disable me. There's no doubt in my mind I
13 was disabled. But yet, allow me to go to other places to
14 try to get a job done. So it was my idea in order to try to
15 get the work done.
16 Q: And who gave you permission to do Tietex's work at
17 these other labs?
18 A: Wade.
19 Q: Did you leave a voice mail message for coworkers
20 in the middle of the night?
21 A: Specifically, I woke up, when I knew I was going
22 to be terminated and I couldn't sleep, then I woke up, I
23 don't know, it was 2 or 3 in the morning and I knew my only
24 hope — I mean, this was a very traumatic time for me. I
25 can't describe how traumatic it was. And I, I mean, I knew

20 (Pages 77 to 80)

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1 Martin wasn't at work, Martin Wildeman wasn't at work at 2 2 or 3 in the morning. I left a message and told him I'd like 3 to meet with him if I could. 4 Q: So you left a message for Mr. Wildeman in the 5 middle of the night? 6 A: I don't know that it mattered when I left it, 7 because I knew he wasn't at work. 8 Q: Would it have been like 3 o'clock in the morning? 9 A: It could have been. It could have been 4, it 10 could have been 2. It was when I woke up and all was on my 11 mind was getting terminated. 12 Q: So you admit you called Mr. Wildeman like 3 or 4 13 o'clock in the morning? 14 A: No. I did not call him, I left a message on his 15 work phone knowing he was not there. 16 Q: This is Attachment 5 to your communications to the 17 EEOC. 18 MR. STEWART: Fred, can I see these before you 19 hand them over? 20 MR. SUGGS: Sure. Sure. Let me show you. Look 21 at the C part which is the last paragraph. 22 Q: See C part it says, "Tietex stated that Gary 23 Harris made phone calls and left messages in the middle of 24 the night when he knew no one would be there to answer them. 25 Of course, that's a malicious lie."	1 Q: Now, is this a document that you gave to the EEOC? 2 A: I would think so. It looks like it. 3 Q: And then if you look at Exhibit 11 and go down to 4 paragraph C, that's the paragraph that says it's a malicious 5 lie, right? 6 A: Yeah, that's correct. And may I add? 7 Q: Sure. 8 A: I had information already that in one of our 9 former hearings that it was stated in a way that I routinely 10 did that, and it included more than one person and it 11 included Wade Wallace. That's the reason I call it a 12 malicious lie because it's just not true and the person that 13 said that wasn't true. 14 Q: And who said it, Wade Wallace? 15 A: In one of our ESC Hearings, maybe the last one, it 16 was brought up. I don't know who to attribute it to. 17 Q: All right. Now, before Wade Wallace, you said 18 Jake Butts was your immediate supervisor? 19 A: Yes, sir. 20 Q: And at some time did Butts move his office from 21 the plant to the lab? 22 A: He did. 23 Q: Would that have been about June 2006? 24 A: Yes. 25 Q: Do you know why Butts moved his office from the
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1 A: Yeah. What that, the intent of the way that's 2 said, no. Yeah, that's a lie based on the way it's worded 3 and what it's trying to convey. That's not what happened. 4 Can I see that again, please? 5 Q: Sure. That was Document Tietex 284. Do you 6 recall leaving messages for Wade Wallace in addition to 7 Martin Wildeman at non-business hours? 8 A: On the, I guess it was the evening of July 2 when 9 I went home and saw this serious ant problem and non- 10 business 7 o'clock ... 11 Q: PM or AM? 12 A: PM. You know, those are all non-business hours. 13 I'm sure that I left messages that would have fallen outside 14 of 8 to 5, but they were necessary or reasonable. I never 15 left an unreasonable message. 16 (Defendant's Exhibit 10 & 11 were 17 marked for identification). 18 Q: I'm going to show you these two together, and 19 you've already seen one of them. Exhibit 10, that's 20 Attachment 3 for the EEOC. And Exhibit 11, that's 21 Attachment 5 for the EEOC. So if you're looking at Exhibit 22 10 and you go to the top of the page and then you come down 23 to the third paragraph, you see it where it says, "One night 24 I woke up about 3:00 a.m."? 25 A: Yeah.	1 plant to the lab? 2 A: I know that he and I had discussions over a period 3 of time and I encouraged him because he was in this huge 4 room and one desk in it. Well, there was another desk that 5 was used sometimes for doing some, when the filing person 6 was filing. And he and I would talk about it and he had 7 occasionally periodically over time said, you know, things 8 like I might move up here or whatever, but I encouraged him 9 to move up there because for a lot of reasons. It just made 10 sense. So why he moved, I don't know how much, if anything, 11 but I certainly wasn't against it. 12 Q: Did Butts tell you that he was moving his office 13 to the lab because he had difficulty keeping track of you 14 and he thought he could have more direct supervision over 15 you if he moved to the lab? 16 A: Absolutely not. In fact, Jake Butts was already 17 encouraging me to establish a place down in the plant. So 18 based on the scenario that you just mentioned, it would be 19 more likely that he was, it was something in the works for 20 him to go ahead and get up there and for me to be moved down 21 to the plant so, no. 22 Q: How often did you see Mr. Butts before he moved 23 from the plant to the lab? 24 A: Jake made a statement to me that I think's 25 important with regard to your question. This goes back to

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1 the first time I started reporting to him. He essentially, 2 said that he had no abilities with regard to what I did, 3 that he didn't understand the things I did. He didn't 4 understand anything in the area, any chemistry or nothing, 5 but he knew that my record was very good and, basically, he 6 said to me, "You're your own supervisor. I know you'll do 7 the right things and you have been doing the right things." 8 And so that, to answer your question, we didn't see a lot of 9 each other. 10 Q: So you saw him infrequently before he moved to the 11 lab? 12 A: Yes. If he had something that he wanted done, 13 most likely he would go directly to a technician, like a 14 test or whatever. He didn't really, even the environmental 15 part of it, I was really doing most of that and even though 16 he had the title there. And we would, of course, get our 17 things together when it came down to do a report or 18 something and he would actually provide me with something he 19 had accumulated so that it would enable me to do the 20 complete report. 21 Q: And after Jake Butts moved to the lab, did you see 22 him everyday? 23 A: After he moved to the lab? It didn't change 24 anything I was doing at the time. 25 Q: Did you see him everyday after he moved to the	1 Q: Where did you move it to? 2 A: Now, let me qualify that and say I didn't move it 3 out of the lab, I just established another office, you might 4 say, we'll call it an office, in the main plant. 5 Q: Do you know when that was? 6 A: It was — I'm going to take a stab at this, 7 maybe December, November, December of 2006. 8 Q: Did you continue working in the lab up until, say, 9 February 2007? 10 A: Yes. 11 Q: When do you claim you began to smell mold? 12 A: The middle of June '06. Well, whenever the 13 furniture was moved in and that would have been in June. 14 Q: And what impact do you claim that these mold 15 smells had on you? 16 A: I'm going to just, I'm going back to an area that 17 I haven't looked at in more than two years as far as 18 anything in writing, but I do remember being stopped up and, 19 occasionally, it would go on to the point if like a, sort of 20 like flu symptoms almost. But stopping up is one of the big 21 things and occasionally that might lead to like a sinus 22 headache or something, but really getting stopped up and 23 couldn't breathe very well. 24 Q: Did anyone else voice complaints about the mold 25 besides you?
Page 86	Page 88
1 lab? 2 A: I can't say yes or no to that. I don't know. 3 Q: All right. Did you see him just about everyday? 4 A: I don't know. 5 Q: Did you see him more often than you had seen him 6 before he moved to the lab? 7 A: I would have had to have. 8 Q: Okay. That's what I thought. Did you object to 9 Jake Butts supervising you more closely after Butts moved to 10 the lab? 11 A: He never supervised me more closely. 12 Q: Now, when Butts moved to the lab, was your office 13 in the lab? 14 A: Oh, yeah. There's four sections to the technical 15 building and I was considered to be the Technical Center 16 Manager, an accredited lab area. One section was the office 17 area, another section was the wet lab, another section 18 physical testing, and another section was sort of an 19 extension of the wet lab, but it was where a real chemist 20 would work, and we had a burn room. So, yes. He, 21 obviously, moved into the office area which was huge and the 22 area I had encouraged him to move to. 23 Q: And at some point did you move your office out of 24 the lab? 25 A: Yes.	1 A: I can say this about that. The technicians that 2 reported to me were very careful about anything they said. 3 They were highly concerned for their job and had they had an 4 opinion, in my mind, they would not have expressed it. 5 Q: Well, is the answer no? 6 A: I don't recall. 7 Q: You don't recall anybody else voicing a complaint 8 to you about the mold? 9 A: I do not recall that, no. 10 Q: Did you complain about the mold smells and the 11 stopping up and the flu like symptoms? 12 A: It took some time. It was not until I went to a 13 second doctor and he was asking me a lot of questions and 14 things and he's the one that led me to believe that it had 15 to do with work. 16 Q: Who is this doctor? 17 A: Weir, Dr. Weir. 18 Q: Where is he? 19 A: In Spartanburg. 20 Q: Is that W-e-i-r? 21 A: I think it is, David Weir. 22 Q: What kind of doctor is he? 23 A: Ear, nose, and throat. 24 Q: ENT. Okay. Did you complain to anybody at 25 Tietex?

22 (Pages 85 to 88)

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1 A: After — Oh, it became, I mean, things evolved 2 to the point, which I can't remember all the details, but 3 I'm sure that after I was convinced that that was what was 4 going on, I don't recall saying anything to anyone, but it 5 wouldn't have surprised me if hadn't have said something to 6 like a nurse or somebody. I even brought it to Jake's 7 attention, I know that. 8 Q: You did bring it to Jake's attention? 9 A: Absolutely. 10 Q: What did you say? 11 A: I don't recall what I said. I just recall that 12 well into it and after, this is after I had put up, 13 something triggered it that he said or whatever, but this 14 was after I put up an office down in the plant and I believe 15 it was after I went to an allergy specialist where they 16 stick all these things in you and they determined I was 17 allergic to mold. 18 Q: Did Tietex have a hygienist check the lab? 19 A: I was told that that occurred. 20 Q: Do you know what type of testing was performed? 21 A: I saw at some point, I forgot how, I managed to 22 get a hold of an after the fact report and, I mean, I'm a 23 strong technician and I know how to, I know how to do 24 projects, I know how to get from point A to point B in the 25 shortest time possible. Based on what I saw, it was a	1 A: I do not know. 2 Q: So you claim that the testing that was done was 3 flawed, correct? 4 A: Yes. 5 Q: But you admit that the hygienist reported finding 6 no evidence of mold contamination, correct? 7 A: Yes. Yes. 8 Q: Well, and you were shown a copy of the report? 9 A: I don't remember how — I did see a copy, but 10 I'm not sure if I had to go looking or what, but it was well 11 after it was done that I was told it had been done and it 12 may have been David Wilson. I'm not sure. 13 Q: And the hygienist said that the air in the lab was 14 cleaner than the outside air, correct? 15 A: Yeah, that's the same thing these employees in the 16 nickel bath were told, the situation I mentioned earlier. 17 Q: So you draw a parallel between the nickel bath 18 situation at — What company was that? 19 A: Cherokee Finishing. 20 Q: At Cherokee Finishing and the mold at Tietex? 21 A: With regard to that kind of a statement. I think 22 that's really an irresponsible statement. 23 Q: But you don't have any firsthand knowledge about 24 how the hygienist's tests were conducted, right? 25 A: I do not, but I do know, also another thing I'll
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1 pathetic evaluation. They spent very little time and they 2 did not concentrate on the area where the complaint was, 3 which was the office area, and they did a little bit of 4 dabbling around in several different sections of the 5 laboratory when they should have been spending their time, 6 all of it, concentrated wise in the office area. 7 Q: Do you know who performed the testing? 8 A: I do not. 9 Q: Do you know whether mold testing was performed? 10 A: No. 11 Q: No, you don't know or, no, it wasn't? 12 A: Oh, did you say where it was performed? 13 Q: Mold testing. 14 A: And where? 15 Q: Well, I just asked you if you knew whether mold 16 testing was performed? 17 A: If I remember correctly, I believe the report said 18 something to the effect that there's nothing — In order 19 for it to have been tested for mold, it would have had to 20 have stated what it did, which was, you know, it was very 21 clear that kind of thing. 22 Q: So you believe mold testing was performed? 23 A: The paper showed it, but if I had to qualify it as 24 being performed, I would say no, being a technician. 25 Q: Do you know whether mildew testing was performed?	1 add to this, that all the furniture was sprayed, in the 2 general area where it was was sprayed with Lysol 3 periodically and it would have had to have been on weekends 4 and after hours, so it would had to have been — If they 5 were tested early in the week, it's a good possibility it 6 was right on top of Lysol treatment. 7 Q: And you weren't present during the test? 8 A: No, sir. 9 Q: What information do you have to support your 10 contention that the test was somehow faulty or unreliable? 11 A: The magnitude or degree of attention paid to the 12 area of complaint, which was the office area. They had so 13 much time to do testing, they had so much equipment to do it 14 with, and they, it looks like to me, from memory, it looks 15 like to me they delegated equal time to each of the four 16 sections of the laboratory rather than concentrated on that 17 one key area. 18 Q: So do you have any other information to support 19 your contention that the testing was faulty other than the 20 fact that they did not concentrate on the office? 21 A: No. 22 Q: Did you continue to complain about the mold smell 23 after the testing? 24 A: I don't recall. 25 Q: Do you claim that Jake Butts was the cause of the

23 (Pages 89 to 92)

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1 smell?

2 A: Yes. I did have other employees concur with me
3 there. I don't recall names or anything, but regarding what
4 I envisioned, because I've seen this before and I certainly
5 don't fault Jake, but a house that's, you know, real shaded
6 or a older house, moisture problems, I've walked into houses
7 like that like looking for a house, when you're looking at
8 houses for sale, and you could smell that musty mildew.
9 And if one hangs their clothes in there, you know, it's
10 just going to, it's no way around the clothes smelling like
11 that.

12 Q: So you claim that Jake Butts wore clothes that
13 smelled like mildew?

14 A: Yes. Without question, yes. I'm not saying
15 everything he wore everyday, but many times.

16 Q: Did anybody, did you ever discuss that with
17 anybody at Tietex?

18 A: I'm sure I probably did, but not as a casual
19 thing. It would have been with maybe the plant nurse or
20 someone. And after Jake was aware of it, I wouldn't have, I
21 don't think I would have handled it unprofessionally as far
22 as going out and just, you know, making a joke of it or
23 something. I don't recall any details.

24 Q: And you claim his office furniture smelled like
25 mildew?

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1 A: Yes.

2 (Defendant's Exhibit 12 was marked for identification).

3 Q: Exhibit 12 is a series of e-mails beginning at the
4 bottom with an e-mail from Wade Wallace to you and then it
5 goes on with a message from you to Wade and then from Wade
6 to you all in early February, between the 2nd and the 5th.
7 Would you take a moment to look over that, please.

8 A: Okay.
9 (Reviewing document).

10 A: Okay.

11 Q: All right. You ready?

12 A: Yes.

13 Q: And would you agree with me that Exhibit 12 shows
14 that Tietex moved you from the lab to remove you from the
15 source of mold that you were complaining about?

16 A: I would prefer using the term banned, because I
17 was already situated in the plant and they just didn't
18 want me going back up there to do work anywhere in the
19 building.

20 Q: And that was because you had complained about the
21 mold, right?

22 A: In my opinion, no.

23 Q: All right. What evidence do you have to support
24 your opinion?

25 A: Now, I cannot, I cannot say what David Wilson

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1 discussed. Obviously, David was only at Tietex for a few
2 years. I think he came in 2005, so he was totally unaware
3 of what occurred before then, only what he would be told. I
4 don't know his relationship with Wade and how this, why this
5 occurred. I don't know who was the stronger person. Was
6 Wade purely doing what David Wilson required because of what
7 he had experienced in his previous employment? That's
8 possible. But it also fits very well with, you know,
9 hindsight being 20/20 and my being able to get away from the
10 situation and become more objective and not so subjective,
11 it also fits in with a lot of other things that was a
12 malicious thing. If Wade were in control of this actually
13 happening just to get me away from being able to do the work
14 because they knew that was my lifeline. They knew the
15 laboratory building and everything in there was key for me
16 to be able to do my job.

17 Q: All right. Looking at Exhibit 12 and the e-mail
18 to you from Wade Wallace, it says, "I received your voice
19 mail this morning. As we discussed yesterday, we will do
20 whatever is necessary to shield you from any further
21 exposure to an environment(s) that might negatively affect
22 your health." Do you see that?

23 A: Yes.

24 Q: And then he goes on to say, "As David Wilson
25 directed, please do not enter the lab or any other work

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1 areas that Jake occupies unless it is an approved exception
2 (see the next paragraph)." See that?

3 A: On this?

4 Q: Yeah, right at the — Here, let me show you.
5 Right down here.

6 A: Okay. Yes, I see that.

7 Q: All right. So you complained that the smell was
8 coming from Jake, Jake's clothes and his furniture, so the
9 company said, well, if it's impacting your health, don't go
10 in the lab, correct?

11 MR. STEWART: Object to the form of the question.

12 A: There's one thing I would say about that. When
13 this was being discussed and all, I said, "Okay. If you
14 believe that my exposure to Jake will take care of, and my
15 getting away from exposure to Jake will take care of the
16 problem, then going forward, I do not want Jake Butts coming
17 to see me nor in my office areas down here." He came when
18 he wanted to and he stayed as long as he wanted to.

19 Q: But weren't you removed from being supervised by
20 Jake so that you wouldn't have to interact with him?

21 A: He was still environmental and I was still doing
22 environmental.

23 Q: But that was part of the reason for removing you
24 from Jake Butts' supervision was so that you wouldn't have
25 to interact with him, right?

24 (Pages 93 to 96)

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1 MR. STEWART: Object to the form.
2 A: I mean, my opinion, no.
3 Q: Well, the result would be of saying, well, you're
4 no longer going to be supervised by Jake Butts, you wouldn't
5 have to encounter him, right?
6 A: I think that would mean being that we both were
7 key people at Tietex that, obviously, we would have to have
8 encounters sometime.
9 Q: Sometime, but you wouldn't have the routine
10 sustained encounters that you would have with your
11 supervisor, correct?
12 A: But I'd already solved that problem before I went
13 to work for him. There was no problem when I started
14 reporting to Wade Wallace. My I finish?
15 Q: Let me ask you a question and then you can.
16 MR. STEWART: No, let him finish. No, let him
17 finish his ...
18 Q: Sure. Go ahead.
19 A: When I established the office in the plant in like
20 November, December of '06, that took me away from Jake as
21 far as being in that bad room. I continued to have access
22 to the work areas up there where I needed to have access and
23 there was no contamination in those areas if that were a
24 problem, okay. So everything had already been resolved in
25 that area when I went to work.

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1 Q: But you just said you didn't want to encounter
2 Jake anywhere else, so you were taken out from under Jake's
3 supervision, correct?
4 MR. STEWART: Object to the form.
5 A: No, no. Actually, I was already reporting to Wade
6 Wallace when this all was, this was when I was already
7 reporting to him. This was all being discussed with regard
8 to not going to the lab and not being exposed to Jake. And,
9 really, just to counter what they were saying here, I said,
10 "Okay, if you're not going to allow me to go up there
11 because of my health and being exposed to Jake, then it
12 makes sense that I don't be exposed to Jake anywhere." And
13 I made it clear that I did not want Jake coming to my
14 areas.
15 Q: And nobody disagreed with that, did they?
16 A: They did not — I was told, okay, we will take
17 care of that, it never happened. So I would say all that to
18 say this. It shows that they really, the premise that they
19 were stating this on, it sounds great but they really didn't
20 care about my health.
21 Q: All right. If you look at the second paragraph,
22 the paragraph at the bottom of the page, middle of that
23 paragraph it says, "Therefore, you will need to enter the
24 lab to do so." Are you with me?
25 A: Yes.

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1 Q: "In these situations, always wear proper
2 respiratory protection in the form of a mask with sufficient
3 coverage and filtration to keep out any potential
4 irritants." Go up and read to yourself the paragraph at the
5 top of the page where Wade Wallace is sending you this e-
6 mail.
7 (Reviewing document).
8 A: Okay.
9 Q: So did you leave Wade Wallace a voice mail and
10 saying, "Wade, I've been thinking about this and I don't
11 think I ought to go into the lab even with a mask"?
12 A: I mean, this makes no sense right now, reading it
13 right now. I do remember, now that we've gotten back into
14 this, this being an issue about I had to do — I was
15 working on a key project that required doing flame testing
16 in just the burn section of the lab and I don't know why
17 this says what it says. I don't understand it.
18 Q: It says, "Thanks. I got your voice mail this
19 morning where you mentioned that your original thoughts on
20 wearing a mask may have been wrong and that it may still not
21 be enough protection." Do you see that?
22 A: I do, and I have to consider who wrote the e-mail.
23 I don't know what I said.
24 Q: Do you recall leaving Wade Wallace a voice mail
25 message saying you didn't think you ought to go in the lab

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1 even wearing a mask?
2 A: Absolutely not.
3 Q: Do you know why Wade Wallace would have written
4 the e-mail referencing your voice mail if you hadn't left
5 him one?
6 A: I could have left him a message but it doesn't
7 necessarily mean that that's what I mentioned in the
8 message, because like I said, looking at this, that makes
9 no, this doesn't ring any kind of bell and it's really
10 illogical.
11 Q: There's no e-mail that we have where you responded
12 to Wade Wallace and said, "You've got it wrong. I didn't
13 mean to say that I couldn't go in the lab even wearing a
14 mask," is there?
15 A: Not that I remember. But I will say real quickly
16 on this, that my time to actually be able to go to the burn
17 room part of the lab didn't last very long at all. Soon
18 after this, I was totally banned from the lab. I mean, just
19 like no real explanation, you know.
20 Q: Well, it says right here on February 5, "Please do
21 not enter the lab under any circumstances, even if you're
22 wearing a mask."
23 A: Okay.
24 Q: "Give me the list of items you need and I will
25 have them relocated without any need for you to go up

25 (Pages 97 to 100)

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1 there."
2 A: Okay. So it was just a few days really, that was
3 the 2nd of February and then the 5th.
4 Q: So you were told not to enter the lab because, (A)
5 of the mildew smell which you associated with Jake Butts,
6 his clothes and his furniture, and you didn't think that
7 even a mask would be sufficient protection, correct?
8 A: There was no need for a mask. Let me just say
9 this. If a mask would keep mold spores from getting into
10 one's nose or sinuses or whatever, there was no need for a
11 mask in the other three areas of the lab, only in the office
12 area. That was a huge room with a door that closes and all
13 the other rooms were separate with closing doors.
14 Q: All right. Is it fair to say that you began
15 reporting to Wade Wallace around February 1, 2007?
16 A: I think, if I remember correctly, it was the 1st,
17 because that's come up a lot and I think it was.
18 Q: And the reason Wade Wallace became your supervisor
19 is because that you were complaining about Jake Butts and
20 not wanted to have any interaction with him because of the
21 smell you associated with him, right?
22 A: Probably not. I would say that it really stemmed
23 from a conversation I had with the owner several years
24 earlier when there was a lot of things that I was to be
25 working on and a lot of trivial stuff coming my way that

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1 took a lot of time, but it wasn't necessarily stuff that I
2 should have been doing. The owner was discussing with me
3 the situation about getting me more involved. And I think
4 it was all triggered when one day he said to me, he said,
5 "Gary, I don't understand what's going on." He said, "There
6 are a number of projects over the last few years that you
7 should have been involved with." And I was physically
8 separate from the plant as far as an office goes, the main
9 plant, but not that I didn't go down there. I spent time
10 down there. But he said, "I don't understand why you're not
11 involved in some of these key projects and you should be.
12 In fact, you should be heading up some of them. What's
13 going on?" And I said, "Well, Martin, I don't know what
14 you're talking about, but in my opinion, they're projects I
15 don't even know about." Later we got back together and he
16 talked with another person in the plant that was actually
17 overseeing a lot of these projects and he said, "Well, they
18 tell me, Gary, they said that they have approached you on a
19 number of occasions when a key project is coming up that
20 you always tell them that you have other things to do, that
21 you don't have time." And that was never the case.
22 Q: I'm a little lost. My question had to do with
23 Wade Wallace becoming your supervisor because you complained
24 about Jake Butts.
25 A: All right, this is what I'm getting to.

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1 Q: Okay.
2 A: Because the reason for that goes back to Martin.
3 Right after that, Martin and I also talked about the trivial
4 stuff I was doing. He saw what all crazy stuff I was doing
5 as far as things that were taking a lot of time and taking
6 me away from some key technical areas. So he then set
7 things in motion for me to get more involved in the plant.
8 And this Technical Finishing Manager arose from that and I
9 was in the process of getting relocated in the plant so that
10 I could do what he wanted, be closer to everything and get
11 away from a lot of the day-to-day stuff where you don't even
12 expect and it comes. That's how that happened.
13 Q: Was Wade Wallace supposed to assist in that
14 regard, getting you closer to these projects?
15 A: Ultimately, in my opinion, it just took a long
16 time to happen, but that was the end result of what I had
17 discussed with Martin.
18 (Off the Record for Lunch from 12:08 p.m. to 12:58 p.m.)
19 Examination Resumed by Mr. Suggs:
20 Q: Remember when I asked you about lawsuits that you
21 had been involved in?
22 A: Yes.
23 Q: I was going to ask you about whether your wife had
24 been involved in a lawsuit. Did your wife file a claim
25 against a hospital and doctors or both relating to some

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1 surgery that she had?
2 A: It never got that far.
3 Q: Never got that far? Was it settled?
4 A: No. Nothing was — We were encouraged to do so
5 and it was looked into, but for several reasons, including
6 her health, we opted to not go along, but it never got to
7 where there was claims or anything like that or specifics.
8 Q: Okay. Just to make sure you told me everything
9 that you intended to before we broke for lunch, you were
10 telling me about why you thought that you were changed from
11 reporting to Jake Butts to reporting to Wade Wallace and
12 that had to do in part with Mr. Wildeman wanting you to be
13 closer to projects. Did I summarize it correctly?
14 A: I would say that that's certainly a good
15 possibility. I don't know all the details, but I think
16 that certainly is one of the viable reasons that it
17 happened.
18 (Defendant's Exhibit 13 was marked for identification).
19 Q: Okay. I'll show you what's been marked as Exhibit
20 13 and it is an e-mail from Wade Wallace to David Wilson and
21 you are the subject of the e-mail. Would you take a moment
22 and review that, please.
23 A: Yeah, I just saw that recently so I'm familiar
24 with it.
25 Q: Okay. February 7 was about six days after you

26 (Pages 101 to 104)

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1 started reporting to Wade Wallace, correct?

2 A: Yes.

3 Q: And you told Mr. Wallace that you were overwhelmed
4 with personal or emotional problems to the point that you
5 couldn't function?

6 A: No.

7 Q: Tell me what happened.

8 A: There were two things that Wade Wallace wanted me
9 to do. And as time wore on and I'm able to look back now
10 too. Anything that I was doing that was a significant
11 function were being removed from me. There was two of those
12 in the very beginning when I started reporting to Wade that
13 he wanted me to get the information to Jake Butts so he and
14 whoever else could do those and I needed to train them and
15 give them whatever they needed so they could do those. That
16 was in the very beginning and that was paramount for Wade
17 for me to do that. Then I was in the midst of trying to
18 sort things out, find a place to work, and all this, and he
19 comes in on this particular day and the first question he
20 asked, "Have you completed those assignments that I gave you
21 a few days ago to do for Jake Butts?" And I said, "No, I
22 haven't. In fact, I've started on one of them, haven't
23 completed it, and I haven't even started the other." Then
24 he cut loose on me. I had never been talked down to in a
25 demeaning way in my life. It was unbelievable. And I said

1 contributed to how you were feeling?

2 A: What she went through was horrific and anything
3 she goes through negative, I suffer along with her big time
4 because we're so close. But this here is not what happened
5 that day. It did not happen.

6 Q: Let me just invite your attention to page 155 of
7 the hearing before the Employment Security Commission on
8 March 28. I've got it highlighted here. It says, "At this
9 time I was kind of, you know, nerve wise kind of a wreck
10 because of what my wife went through." Do you see that?

11 A: Uh-huh (affirmative response). That's still not
12 what happened here. And, also, I will say this about that
13 transcript, I put no credence, zero credence in that because
14 of when I went back and reviewed it and I got a copy of it,
15 they didn't send me a copy, what I was attributed to saying
16 and what I really said, there were so many fallacies it was
17 unbelievable.

18 Q: Tell me what was the matter with your wife in
19 2006.

20 A: She had a colonoscopy in late '05 and the doctor
21 that did the colonoscopy did a pre-exam and said he picked
22 up on a cyst on one of her ovaries. Anyway, he does the
23 colonoscopy and I went home one day and she was frantically
24 on the phone with the doctor. I got home about six. It
25 could have been that I would have gotten there later and

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1 to him, I said, this is basically what I said, I'm
2 paraphrasing based on a very poor memory, but I said
3 something to him to the effect, I said, "Look, Wade, I've
4 got enough stress as it is and all that and all you're
5 doing now is there's no point in you talking to me," things
6 like that. You know, I don't remember the gist of it, but I
7 do know that's what this is. Then he goes back at some
8 point and creates this on the 9th, two days later, and sends
9 it. I never know about it until we start having the ESC
10 things.

11 Q: All right. Now, you see in the third line of that
12 second paragraph where it says, "He explained that his
13 personal life over the last year has made him so fragile
14 emotionally, that sometimes he has episodes like the one he
15 was experiencing." The last year in this context would have
16 been 2006, right?

17 A: That's correct.

18 Q: Was it 2006 that your wife was ill?

19 A: That's correct.

20 Q: Did that take a toll on you nerve wise and make
21 you kind of a wreck?

22 A: I got into a major sleeping problem caused mainly
23 by stress and it did not happen until I went back to work
24 and the way I was done after I got back to work.

25 Q: Would you say that your wife's condition

1 she'd been dead. But right after I got home, she actually
2 lost consciousness and when I got her to the hospital, she
3 had bled so much all day long. I didn't know about it, but
4 she was calling the doctor, what I would find out later, and
5 he was telling her it would stop, it would stop, don't worry
6 about it, and she was continuing to bleed to death. So,
7 anyway, they basically saved her life at the emergency room.
8 They were waiting for her when I got her there.

9 Q: She had an ovarian cyst?

10 A: No, this was a colonoscopy. This was purely from
11 the colonoscopy.

12 Q: Oh, I see.

13 A: Then after she got through that hospital stay and
14 started feeling somewhat better, it took weeks, then she
15 wanted to handle the ovarian cyst and she actually went to a
16 doctor that the guy that did the colonoscopy recommended.
17 She goes to him and during the course of the surgery which
18 ultimately came about, he severed a uterine connecting the
19 kidney to her bladder and she was in the hospital for three
20 days, two or three days blowing up while they were walking
21 her for gas and the whole time her abdomen was full of urine.
22 and she had a side drain that they put in as a precaution,
23 just a normal part of surgery. That was filling up very
24 irregularly fast. And the nurse kept saying, "This ain't
25 right." And the doctor that did the surgery came in and he

27 (Pages 105 to 108)

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1 said, "Aw, it's normal." But, anyway, surgery was on
2 Monday. On Wednesday afternoon, evening I should say, they
3 found that a stent that had been put in to put the top and
4 lower part of the ureter back together, a temporary stent,
5 and then they sewed and they would take that out later.
6 That when the ureter was severed in the early part of the
7 surgery, then they had to call in a urologist, Dr. Kinard,
8 and he did a great job. And then when they went back in to
9 finish sawing her up and everything, they moved the stent
10 out of place so that the lower part of the stent was down
11 under the gallbladder and it had a "J" shape to it and it
12 was against the wall and urine could not go through that and
13 it was actually going through the severed area of her ureter
14 down into her abdomen.
15 Q: So that was all in 2006?
16 A: That was back to back.
17 Q: In 2006?
18 A: Yep.
19 Q: So that was quite a concern to you?
20 A: Oh, absolutely.
21 Q: Did you ever tell Wade Wallace that you were
22 overwhelmed with personal and emotional problems?
23 A: No, not in those — Those are, I don't know what
24 I said, but I would never say anything like that.
25 Q: Did you ever tell Mr. Wallace that you were

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1 confused and disoriented?
2 A: Never.
3 Q: Did you say anything like that?
4 A: No.
5 Q: Did you tell him that your personal experiences
6 over the last year had made you fragile emotionally?
7 A: I don't know what I could have said that would
8 have triggered that. I think his words and whatever words I
9 might have used are quite different.
10 Q: Well, would you confess that you had been made
11 fragile emotionally because of your wife's condition like it
12 says in the transcript?
13 A: Not emotionally.
14 Q: Sir?
15 A: No, not emotionally.
16 Q: Have you ever had panic attacks?
17 A: I don't know what for sure one is. I was told I
18 had one and I don't agree with it when I was in Thailand.
19 Q: Was that working for Tietex?
20 A: Yeah. That's what it was described as and I don't
21 agree with it being a panic attack.
22 Q: Have you ever been told you had a nervous
23 breakdown?
24 A: No.
25 Q: During the time that your wife was experiencing

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1 these difficulties having to do with the colonoscopy and
2 related surgery and so forth, did the physician give you
3 medication to help you sleep and cope with her situation?
4 A: I actually, when I went back to work and realized
5 what was going on and I started having this serious sleeping
6 problem, I would literally stay up a night or two at a time.
7 I went back to the doctor. I'm not sure what the time frame
8 is relative to her being in the hospital, but I actually
9 went back to him to get his help or whatever.
10 Q: Did you seek help from the EAP as Mr. Wallace
11 suggested that you do in Exhibit 13?
12 A: No.
13 (Defendant's Exhibit 14 was marked for identification).
14 Q: All right. Have you had a chance to review
15 Exhibit 14?
16 A: I've seen all I need to see.
17 Q: Okay. Well, in the first paragraph he just talks
18 about that 3 a.m. call and how Martin Wildeman forwarded it
19 to Wade Wallace, correct?
20 A: It also says that I left Wade Wallace a phone
21 message and I doubt that seriously. I don't know why I
22 would have and don't recall it.
23 Q: Did Mr. Wallace commit to you as this e-mail says,
24 to get you a lab pad coater and vented hood?
25 A: Of course, I mean, Wade's aware of all this, so he

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1 could have — Oh, okay, so the second paragraph is not
2 necessarily related to the phone call, is that correct?
3 Q: Correct.
4 A: It wasn't mentioned in the phone call in other
5 words. I will say this about any and all equipment. There
6 were several pieces of equipment that Wade Wallace agreed to
7 purchase and, in fact, requisitions were done and they were
8 actually purchased. There were several pieces of equipment
9 in particular that I, one being a lab pad, tried my best to
10 get installed for a period of weeks and I guess months. And
11 this all started in probably maybe March. I'm not sure.
12 But there was always something wrong with where it was going
13 to go. Like the lab pad that was never installed. The burn
14 equipment was never put together. Because always someone
15 would find, no, we can't put it there, we can't put it
16 there. And I just finally arrived at the point it's not
17 going to be anywhere. But I stayed with it the entire time
18 I was there trying to get stuff installed. Anything that
19 was bought was never put in place. I'll just put it that
20 way. It was a matter of and to make things look and certain
21 way if I had to say now.
22 Q: But the equipment was purchased?
23 A: Some equipment was purchased, yes.
24 Q: And it was purchased to accommodate you because
25 you couldn't go in the lab?

28 (Pages 109 to 112)

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1 A: That would have been the reason.
2 Q: And the third paragraph, you said you had read
3 enough, I wanted to make sure you read the third paragraph.
4 A: Yeah, but the thing there was not so much a being
5 bothered or anything. It was more taking a stand that why
6 am I, I'm down here, you've dumped all these key
7 manufacturing projects on me, why am I going to stay
8 involved with this environmental reporting which made no
9 sense. So I was really, let's get it to the guy that's
10 getting paid for it, even though I knew he couldn't do it.
11 That's what I was I was really after there. Why am I going
12 to have to do this, all these other major plant projects
13 you've given me. It didn't make sense.
14 Q: But Wade Wallace thought you had time to do it?
15 A: He did, apparently.
16 (Defendant's Exhibit 15 was marked for identification).
17 Q: Take a look, please, at Exhibit 15. And Exhibit
18 15 is just an e-mail from Wade Wallace telling you he
19 expected you to get the environmental report done on time,
20 right?
21 A: Yes.
22 Q: Was that reasonable?
23 A: For him to expect that, yes.
24 Q: And whose responsibility did you think it ought to
25 be?

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1 A: The person in the job title of Environmental
2 Manager.
3 Q: Do you know who that was?
4 A: Over the period of my being there, it could have
5 been Jake Butts at that time, but Jake had it, John Knox had
6 it. There was a guy that was hired back in the early 2000s
7 that was hired specifically for that and he left the
8 company, so at that time I'm not sure who it was.
9 Q: And didn't you voice mail to Mr. Wildeman
10 protesting having to do the environmental report?
11 A: No. No. Are you talking about the one I left in
12 the middle of the night?
13 Q: Yeah, Exhibit 14. It says, basically, Wallace
14 says that Martin Wildeman forwarded your voice mail to him
15 and two things were bothering you. One was lack of
16 equipment and two was environmental reporting.
17 A: I wouldn't have — I'm not seeing that. I'm
18 just seeing, "He was distraught over all that's been going
19 on."
20 Q: All right, look here. Exhibit 14, "Gary left
21 voice mail messages for both me and Martin one morning this
22 week at 3 a.m. Martin forwarded me the one he received.
23 Both messages consisted of him complaining about his
24 inability to sleep due to being distraught over 'all that's
25 been going on.'" The first thing, the equipment. The

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1 second thing, environmental reporting.
2 A: I think those other paragraphs are taken out of
3 context. Those were not left on any message to anyone. It
4 was a general message that I left to Martin requesting a
5 meeting with him and it wouldn't have got specific. It
6 would have mentioned the problems I was having with sleep
7 for sure.
8 Q: So you agree that it would not have been
9 appropriate for you to leave Martin Wildeman a message about
10 not wanting to do the environmental report?
11 A: I'll agree with that, yes. I mean, I don't see
12 why that would even be necessary.
13 Q: Do you recall Mr. Wallace telling you to bring
14 these issues to him before going to Mr. Wildeman?
15 A: First of all, the relationship I had with Martin,
16 most of the time when we got together was a casual encounter
17 and he would say, "Come on in here," and it would involve a
18 project or something and he'd want to know how it was going.
19 And that meeting, that spur of the moment extemporaneous
20 meeting might evolve into our getting into other stuff, how
21 is it going for you and all that, and then some stuff
22 happening like that. But we've had a relationship that, I
23 mean, it's just there. It's just the way Martin was. He
24 never, you know, he never had a problem with it and he never
25 said, you know, you need to bring this. Anything he

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1 suggested I do, I did it though, if it meant bringing
2 something up with whomever, I would always do that.
3 Q: Would you ever go around Wade Wallace to talk to
4 Mr. Wildeman about work related issues?
5 A: No. No. I say that. I probably need to qualify
6 that because if there were things happening that I saw were
7 dishonest or that kind of thing, regardless of who it was,
8 Wade or whomever it might be, I'm not going to go and, I
9 mean, you do what you have to do. It's sort of like your
10 house is on fire and you need to mow the grass, you're not
11 going to cut the grass, you do what you've got to do. But,
12 basically, generally I followed the chain of command.
13 Within reason I followed it and it's just the way things
14 were at Tietex with regard to what we had evolved to as far
15 as my relationship with Martin.
16 Q: But you admit going directly to Mr. Wildeman?
17 A: I don't remember enough about any specific
18 circumstances. I do know that I did that some, but I would
19 say most of the time it had to do with like barrier fabric
20 projects and things of that nature where he was wanting to
21 know about it. It was nothing unusual for Martin to grab up
22 somebody and start talking with them about something.
23 Q: When you began reporting to Wade Wallace, what did
24 Mr. Wallace tell you about his expectations for your
25 reporting to him?

29 (Pages 113 to 116)

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1 A: I really don't recall to be honest.
2 Q: Did Mr. Wallace tell you he expected you to let
3 him know your whereabouts?
4 A: I don't think that came up that way, because at
5 the stage of the game, you might say, I mean, that was like
6 an understood thing. It was not like kindergarten or
7 something.
8 Q: So you understood you were supposed to let Wade
9 Wallace know where you were?
10 A: Our agreement was if I were, as far as where I
11 was, that to me would mean away from the plant, and our
12 agreement was keep the cell phone on was our agreement.
13 Q: But you agree with me that it's reasonable for a
14 supervisor to want to know the whereabouts of the employees
15 under his supervision, right?
16 A: At all times.
17 (Defendant's Exhibit 16 was marked for identification).
18 Q: You have before you Exhibit 16, which is a memo
19 from Wade Wallace to David Wilson.
20 (Reviewing document).
21 Q: You got that?
22 A: Yes, sir.
23 Q: Okay. Now, it's from Wallace to Wilson with a
24 copy to you and Mark Isbell, right?
25 A: Yes.

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1 Q: Do you have any evidence that this memorandum was
2 seen by anyone other than you, David Wilson, Wade Wallace,
3 and Mark Isbell?
4 A: I mean, right off the cuff, I don't know, I don't
5 know that I have an answer for that.
6 Q: Do you have any evidence that the memo, which is
7 Exhibit 16, was seen by anyone outside of Tietex or in the
8 context of this lawsuit and your claims against Tietex?
9 A: I really don't, I don't know.
10 Q: Okay. If you examine the memo, it's dated March
11 5, 2007. Did Wade Wallace have a conversation with you on
12 or about March 5 about the items listed in this memo?
13 A: Actually, I triggered this memo by requesting
14 it. And the way that happened, Mr. Wallace called me to his
15 ...
16 Q: Pardon me for interrupting and I'm going to let
17 you say whatever you want to. But my question was simply
18 did Wade Wallace have a conversation with you on March 5
19 about the items mentioned in the memo? And that's a yes or
20 no answer.
21 A: Yes.
22 Q: Okay. Now, with respect to the items listed in
23 the memo, tell me any parts of it that believe are not true?
24 A: All of it. We're talking in degrees when I say
25 that, but my assessment to make a strong statement is either

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1 one of those by itself is and I disagree with all of them.
2 Q: All right. Taking the first one that you become
3 emotional and overly vocal about problems before researching
4 the situation. What evidence do you have to support your
5 contention that that statement is not true?
6 A: It's just not me. Never done it.
7 Q: All right. "Not honoring the chain of command."
8 What evidence do you have to support your contention that
9 that statement is not true?
10 A: I can't go back and recreate everything, but I'll
11 say this, I think most of the time if there was a formal get
12 together with Martin Wildeman and one where we didn't just
13 run into each other, I would have run it by Wade.
14 Q: It says in the third bullet, "He harbors
15 negativity over past grievances with management." Did you
16 have some unresolved grievances with management at the time
17 that Wade Wallace began supervising you?
18 A: I'm not sure what he's referencing there. The
19 only thing I can say about this is this stems from some
20 discussion I had with him, so with that said, I feel like
21 for him to take and broadcast it this way was certainly way
22 out of line.
23 Q: Okay. My question was, when Wallace started
24 supervising you, did you have some unresolved issues with
25 the company that existed prior to his undertaking the

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1 supervision of you?
2 A: Oh, I had, I had a lot of concern about the things
3 that had been going on since 2003.
4 Q: So you had those concerns when Wallace took over?
5 A: Well, this is all, anything he said here is
6 because he and I talked about some things and not anything
7 that he gathered otherwise. We would have had to have
8 discussed it.
9 Q: What kind of things did you tell Mr. Wallace?
10 A: I don't remember. I do not remember.
11 Q: And then the last bullet is, "He complains about
12 his ownership of environmental reporting." Now, that's
13 true, isn't it?
14 A: You know, again, that falls in the category,
15 here's a guy that I'm supposed to be reporting to and he's
16 going, anything I say to him he broadcasts it. What kind of
17 manager is that?
18 Q: When you say broadcast it, he sends it to David
19 Wilson, Mark Isbell, and you?
20 A: Why would I ever say anything else to him again.
21 Like I'm just having a discussion with him about something
22 I'm concerned about and then the next thing you know, he's
23 holding it against me and threatening me, basically.
24 Q: And he told you in this memo that you needed to
25 make significant progress within 30 days, correct?

30 (Pages 117 to 120)

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1 A: Yes.
2 Q: Did he tell you that when he sat down with you?
3 A: Without taking a lot of our time, this day was the
4 anniversary of like my 30 days or so and he calls me and
5 says, "Gary, we need to talk," to have a 30 day review. Go
6 to his office and he said, "Let's go down to David Wilson so
7 he can sit in on this." I had what seemed to be the flu
8 coming on and I felt, I mean, really, really terrible that
9 day. I do remember that. And he hits me with these things
10 here and it's purely verbal. There's no written, anything
11 written. And when I finished I said, "Wade, would you do me
12 a favor? Would you send me an e-mail covering what we just
13 talked about so I'll know what I need to improve on?" And
14 that's the e-mail that came.
15 Q: All right. Did you ever fail to attend meetings,
16 meaning that a meeting was scheduled that you were supposed
17 to be present for and you just didn't show up?
18 A: Never.
19 Q: Did you ever fail to return voice mails?
20 A: I'm sure over the years that everyone does that,
21 but it's not malicious or intentional. I never
22 intentionally ignored voice mails.
23 Q: And would that be the same for e-mails?
24 A: And same for e-mails. I'll just add this. I
25 don't spend a lot of time at the computer, didn't then.

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1 (Defendant's Exhibit 17 was marked for identification).
2 Q: I'm going to give you Exhibit 17. Before we get
3 to 17. You've told me that with respect to 16, at least the
4 first three bullets were not true in your opinion. At the
5 time that you talked to Wade Wallace, did you protest that
6 these things were not true?
7 A: When we were talking in our meeting when David
8 Wilson was present?
9 Q: Yes, sir.
10 A: I'm not sure what I said. I know I didn't feel
11 like contesting anything that day, so I don't recall how I
12 handled it.
13 Q: But those present in the meeting would have been
14 you, David Wilson, Wade Wallace, and nobody else?
15 A: That's correct.
16 Q: All right. Let's take a look at Exhibit 17, which
17 is April 4, 2007, e-mail from Wade Wallace to you and it's
18 talking about working in the lab. Just let me know when
19 you've read it.
20 (Reviewing document).
21 A: Yes, I've read it.
22 Q: Did you ask if you could work in the lab if you
23 signed a waiver?
24 A: Yes.
25 Q: And you were told that Tietex thought that the

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1 waiver might not be good.
2 A: Yes.
3 Q: Do you agree that Tietex was trying to protect you
4 from a negative impact to your health and from itself being
5 liable for negatively impacting your health?
6 MR. STEWART: Object to the form.
7 A: The second part I'd say yes.
8 Q: You don't agree that Tietex was trying to protect
9 you from a negative impact to your health?
10 A: I don't feel that way, no.
11 Q: What evidence do you have that supports your
12 belief that Tietex was not trying to protect your health?
13 A: We could talk a long time there on my thinking of
14 that, so I'll just, if I may, leave it at that.
15 Q: All right. Did you ask if you could work in the
16 plant on Saturday and Sunday?
17 A: Absolutely.
18 Q: And were you told that you could only work when
19 the plant was operational?
20 A: There was one time I was told that and I don't
21 remember which came first, but I was later told that I
22 couldn't go in at all unless — I'm sorry. Okay, I just
23 confused something in my own mind. Yes, I was told if it
24 were operational, then I could go in on like a weekend or
25 whatever.

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1 Q: And if the plant was down, you could go in but you
2 could only do office work, not lab bench work, right?
3 A: That was what I was going to say. One would
4 supersede the other. I was told at one time I couldn't go
5 in at all, even with the plant, I mean, if the plant were
6 not running, I couldn't go in at all.
7 Q: And that was changed to you could go in and do
8 office work.
9 A: One way. I don't know which came first. I don't
10 remember.
11 Q: But at one point you could go in and do office
12 work?
13 A: That's correct.
14 Q: And that lasted until your last day of work?
15 A: I don't know. Again, I don't know which came
16 first, that particular document or the other verbal. It
17 could have been verbal, it could have been written where I
18 couldn't go in at all unless the plant were running.
19 Q: But you understood that by Wade Wallace saying you
20 could not operate lab equipment or production equipment or
21 handling of dyes or chemicals when the plant was down and
22 there weren't any other employees there was for safety
23 reasons, right?
24 MR. STEWART: Object to the form.
25 A: Well, it could be done under that pretense but I

31 (Pages 121 to 124)

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1 knew. I had done all those things without question and I
2 was the key person as far as all the issues of doing those
3 things and the safety issues related to them and I had done
4 so for 12 1/2 years without ever being told I couldn't come
5 in on weekends, I couldn't come in at night, I couldn't come
6 in when people weren't there. That was never an issue until
7 I started reporting to Wade Wallace.
8 Q: Do you dispute that it was for safety reasons?
9 A: For a yes or no, I'll say yes.
10 Q: All right. And what do you claim the real reason
11 was?
12 A: To keep me from doing the projects I was assigned.
13 Q: And why would Wade Wallace want to do that?
14 A: Well, we've talked about all that before in other
15 meetings and things, but it's involved.
16 Q: Tell me.
17 A: As I've said before, I mean, hindsight being 20/20
18 and I don't have a lot going for me except I do have an
19 analytical mind and I can put pieces of puzzles together and
20 it's clear to me that entire time I was working for him, it
21 was an effort to create cause so I could be terminated.
22 Q: And what evidence do you have to support your
23 belief?
24 A: All the things put together. To make me fail at
25 projects. Keep projects that were assigned and be sure I

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1 failed at them, couldn't do them, and so forth.
2 Q: Do you have any evidence that any other employees
3 were allowed to work when the plant was not operational?
4 A: During my entire time at Tietex, and you could go
5 back to the records kept by the gatekeepers that when they
6 did have folks on the gates and kept records of those coming
7 in, you will see that I was — The only other person I
8 ever saw in there, two people I ever saw in there when the
9 plant wasn't running that I remember would be Robert
10 Fontaine, a key grey mill guy, and Martin Wildeman, the
11 owner. And I was there many weekends trying to do work and
12 ...
13 Q: Do you claim you actually did lab work when the
14 plant was down before Wade Wallace became your supervisor?
15 A: I did. Again, there was a couple of years leading
16 up to that that were kind of dead years, but going back
17 before, say, 2004 and back, I did most of my lab work when
18 the plant, outside of the 8 to 5 hours, I'll put it that
19 way. Because I was so involved with running my other jobs 8
20 to 5, that I had to do these other things outside hours.
21 Q: Was the plant operational?
22 A: Most of the time not. If it were weekends, not,
23 not at all.
24 Q: But you were the only employee who did that?
25 A: For the most part. For the most part.

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1 Q: Can you identify anybody else other than the two
2 you just named, Martin Wildeman and the other guy?
3 A: I would periodically see someone from information
4 services that worked in like the computers' area in to do
5 something, but otherwise, no. I mean, the other
6 manufacturing folks that were salaried and all and the
7 department managers, no, they worked normal hours.
8 (Defendant's Exhibit 18 was marked for identification).
9 Q: Well, I guess there's something I don't understand
10 and that is why couldn't you do the lab work during, say, 8
11 to 5 and if other work was to be done and needed to be done
12 after 5 o'clock, make that your office work?
13 A: The other stuff had to do with managing people and
14 running the laboratories and stuff like that, which had to
15 be done when they were there. In other words, if I went off
16 on, and we're talking about some high level projects in many
17 cases that require a good ability to concentrate and so
18 forth and might be interrupted, and any time I attempted to
19 take on something like that, if I had time to do it, between
20 regular hours ...
21 Q: Excuse me. You could have done your environmental
22 reporting and prepared those documents as office work if the
23 plant wasn't running, couldn't you?
24 MR. STEWART: Object to the form.
25 A: Most of the environmental stuff was done hours

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1 wise, time wise, was done outside of the 8 to 5. Much of
2 that was done at home. Things like that, there was no
3 point, some of it was no point in going to work to do. I
4 carried it home with me.
5 Q: Take a look at Exhibit 18, please. And that has
6 to do with the C237 and T602 projects and it's dated June
7 18, 2007. See that?
8 A: Yes, sir.
9 Q: And that memo is addressed to you from Wade
10 Wallace with a copy to David Wilson and Mark Isbell just
11 like the other one, right?
12 A: Yes.
13 Q: Did you receive a copy of it about the time it was
14 written?
15 A: Yes.
16 Q: Do you have any evidence that this memorandum was
17 seen by anyone else other than the addressees?
18 A: Not offhand I don't.
19 Q: Do you have any evidence that this memorandum has
20 been seen by anyone outside of Tietex or outside the scope
21 of this lawsuit or the other claims that you have made?
22 A: I'm sure my wife has seen it.
23 Q: Because you showed it to her?
24 A: Yeah.
25 Q: Okay. Anybody else?

32 (Pages 125 to 128)

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1 A: I don't know. I don't recall.
2 Q: You don't have any other evidence?
3 A: Not right now, no. Nothing comes to mind.
4 Q: All right. C237 was the development and
5 qualification of a Tietex coating compound formula to
6 replace the current coating formula, is that right?
7 A: It was a mattress fire barrier fabric, Tietex
8 fabric coated with a chemical compound. At the time it was
9 purchased outside and applied at Tietex and was sold to your
10 mattress manufacturers as a barrier fabric.
11 Q: Okay. And T602 was a finish formula change. Is
12 that right?
13 A: T602 was a product that I jointly came up with
14 with a guy named Zhiping Ni. He came up with the fabric.
15 Q: With who?
16 A: Z-h-i-p-i-n-g and his last name is N-i, Chinese.
17 He invented the fabric and I came up with a formula to put
18 on the fabric and it evolved into a Tietex product called
19 T602.
20 Q: Did Mr. Ni work for Tietex?
21 A: Yes.
22 Q: Okay.
23 A: And, anyway, the product was originally run on a
24 pad finish, on one pad finish, and that particular finish
25 was more suited for running window fabrics, finishing window

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1 fabrics. And so we were doing this on that, a unit with the
2 goal of taking it elsewhere. Wade came to me one day and
3 wanted to know if I could create a foam finish so we could,
4 instead of running it through just an old watery pad
5 finishing and padding it on, could I create a foam finish
6 because we had, I don't know, three other machines there
7 that were equipped with foam finish units. He said, "If we
8 can do that, then we can free up this number ten range we're
9 needing for window fabrics." So ultimately, what that led
10 to was that project where I was investigating doing a foam
11 finish on T602 instead of a pad finish.
12 Q: So these two assignments were made to you?
13 A: Absolutely. These two projects no one else there
14 could have taken them on. I was the only one that could
15 have even come close to ...
16 Q: And they were priority projects?
17 A: Big time. Well, I would say that the C237 was
18 definitely big time priority.
19 Q: Were you working on 237 before you started working
20 with Wade Wallace?
21 A: I had done work on weekends and had come up with a
22 formula that would come close to but not, I hadn't gone far
23 enough with it, to replace the business that was currently
24 coming from a company called Noveon.
25 Q: Was the answer yes?

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1 A: Yes. Yes.
2 Q: At the time this memo was written, which is
3 Exhibit 18, had you been working on the 237 project for
4 about six months?
5 A: Yes.
6 Q: Had you made any progress?
7 A: Oh, yeah. Had actually on January 26 ran a trial
8 that, effectively, gave us what we needed.
9 Q: And you say you initiated the project?
10 A: Not really. Martin Wildeman would be the one that
11 prompted it and I was reporting to Jake Butts at the time.
12 This would have been November, December '06 when Martin came
13 to me and — He accosted me. He came over to me in a
14 meeting and he says, "Gary, we've got a major problem and
15 need your help." Basically what he said was, "We've got
16 this barrier business that's only going to grow. We've got
17 good volume now, we're not making any money, because we
18 can't be cost effective." And he said, "The biggest part of
19 it is this compound we're buying from Noveon and I
20 understand you've been doing some work and that you might
21 can help us come up with a cheaper compound." So that
22 started it.
23 Q: Did you tell the management of Tietex that
24 developing the C237 coating would result in significant cost
25 savings to the company?

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1 A: Yes.
2 Q: And that was versus the compound that Tietex was
3 using at the time, right?
4 A: Yes.
5 Q: Did Tietex project the savings that you predicted
6 into the budget?
7 MR. STEWART: Object to the form.
8 A: No.
9 Q: Do you know?
10 A: At the time I started working on the project —
11 On January 26, real quickly, January 26, '07, we had the
12 successful trial. I was not reporting to Wade Wallace. Six
13 days later after having the successful trial, I was
14 reporting to Wade Wallace. And the direction we were going
15 with this and the way we were going to do it was totally
16 changed.
17 Q: Now, you say you ran a successful trial before
18 reporting to Wade Wallace?
19 A: Yes.
20 Q: Were you successful in developing a compound that
21 could be produced commercially?
22 A: Yes.
23 Q: And who would be a witness to that?
24 A: Harry Sparrow.
25 Q: Say again.

33 (Pages 129 to 132)

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1 A: Harry Sparrow, like the bird.
2 Q: Anybody else?
3 A: He was integrally involved in it. I don't know if
4 there was anyone else involved. He and I were the key
5 people that worked on this.
6 Q: Do you know if Wade Wallace started a parallel
7 project to develop a replacement because you hadn't made
8 sufficient progress?
9 A: He did not.
10 Q: Do you know if he worked toward doing that on a
11 parallel basis?
12 A: I'm looking, I'm able to look back now and I know
13 there was a lot of resentment in my getting involved with
14 Martin, even though I did not cause it. When Martin came to
15 me and Mark Isbell and Wade Wallace would find out about
16 this later, they highly resented it based on things that
17 would happen because they felt like, first of all, that was
18 casting a real bad light on what they had already done
19 because the areas that were being complained about were
20 theirs. It was their responsibility. Wade Wallace was the
21 key person at Tietex that called on Noveon and the lady
22 there. He was the key liaison and going all the way back to
23 months before I started reporting to Wade and Martin coming
24 to me, he was that person and we were getting overcharged by
25 Noveon big time. And, anyway, as it moves along, this

1 Q: Okay. T602, did you tell Wade Wallace that the
2 lab samples for this project were promising?
3 A: Oh, absolutely they were promising. They were
4 well above my expectations.
5 Q: Did you recommend a production trial?
6 A: Yes.
7 Q: Who was present at that trial?
8 A: Ron Simms would have been the key figure. Ron
9 Simms oversaw all plant trials. If there was going to be a
10 plant trial in finishing, Ron would be the one to put it
11 together.
12 Q: Ron Simms. Who else?
13 A: Grady Corbin would have been the department
14 manager.
15 Q: All right. C-o-r-b-i-n?
16 A: Yes, sir.
17 Q: Who else?
18 A: That's all I can come up with right now.
19 Q: So it was you, Simms, and Corbin?
20 A: Yes.
21 Q: Wade Wallace was not present?
22 A: Wade was not — Now, we had more than one trial.
23 Q: Well, let's talk about the production trial. Is
24 that the first trial?
25 A: I'd have to go back and review it. Now, I've got

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1 relationship was continuing. When I started to reporting to
2 Wade in February of '07, that relationship continued and
3 since that ...
4 Q: Mr. Harris, I'm going to let you tell me whatever,
5 but I don't understand how what you're telling me relates to
6 the question about whether you know if Wade Wallace was
7 successful in his endeavor to develop a project, a product
8 like 237.
9 A: I thought I said no.
10 Q: Okay.
11 A: Then I was explaining why.
12 Q: All right. Well, do you want to give me some more
13 explanation?
14 A: Only that there is, you know, there's this stuff
15 that happened in February that shows he was, he and I both
16 were working on C237 in tandem separately.
17 Q: So you agree he was working along a parallel
18 course with you?
19 A: It was put down that way.
20 Q: But you claim he was not successful?
21 A: I'm claiming that he wasn't working on it. I'm
22 claiming that all that ultimately would happen would be
23 Noveon lowered their price and then it was passed off as an
24 advanced product or something when all they did was lower
25 their pricing.

1 good notes on all this, but I'd have to go back. I'm sorry,
2 I don't, I can't answer that, but I have good notes if I
3 need to later.
4 Q: Do you recall Wade Wallace being present?
5 A: I recall Wade Wallace dropping in and then
6 dropping out.
7 Q: So he wasn't present the whole time?
8 A: No.
9 Q: Did you tell Wade Wallace that the results of the
10 trial were comparable to the current product?
11 A: Well, we actually reviewed the results. You know,
12 there was no — I did show him the lab results where they
13 were tested and we had some samples that were not good where
14 we put a certain amount of finish on and we had some samples
15 that comparable where we put more finish on, which led us
16 to believe, hey, we can vary the amount of finish and maybe
17 we've got something. But I had no expectations going into
18 this trial as far as it being something we'd be able to do.
19 Q: All right. I'm just reading it from the bottom of
20 page 336 of Exhibit 18. "Although I was not presented the
21 actual numerical results of the first production trial, Gary
22 assured me that the results were comparable to the current
23 product." And my question is did you give that assurance to
24 Wade Wallace that the results were comparable to the current
25 product?

34 (Pages 133 to 136)

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1 A: No. 2 Q: What did you tell him? 3 A: I said based on the results, in effect now, this 4 is in effect, based on the results, another plant trial was 5 warranted. 6 Q: And did you do another trial? 7 A: Yes. 8 Q: Was it successful? 9 A: I think we tried two more trials and, again, I'd 10 need to go back and really read to get all the details, but 11 I believe it was the second trial when there was a bent bar 12 that was an integral part of the machinery and this would 13 have been Ron Simms' operator, something for them to pick up 14 on. You'd have to have been there and seen what I had to do 15 as my part of it to know that I couldn't have picked up on 16 it. But they ran, we only had a small amount of yardage to 17 run, and all the yardage was run with a bent bar. All the 18 finish was on one side or the other and the middle of the 19 fabric had no finish, so it was a mechanical malfunction 20 that should have been caught. 21 Q: The second trial for various reasons was not 22 successful? 23 A: That's correct. 24 Q: And how about the third trial, it wasn't 25 successful either, was it?	1 A: One quick comment. 2 Q: Just tell me whether Wade Wallace said that or 3 not, then you can explain. 4 A: Oh, yes. May I explain now? 5 Q: Yes. 6 A: On or about June 15, 14, 15, Mark Isbell, Wade's 7 boss, went to Martin Wildeman. This is what he told him 8 pretty much. And so I didn't know about that. And then on 9 the 18th, three of four days later, I'm called to Wade's 10 office and I see this. 11 Q: "This" meaning Exhibit 18? 12 A: Yes, sir. All right. Then, and this was at a 13 time when, you know, I knew I was going to be terminated. It 14 was just a matter of when then. And, you know, it didn't 15 matter about procedure or anything, but I went to see Martin 16 and I showed him this and he said to me, he looks at it and 17 he reads it. He said, "That's the same thing that Mark 18 Isbell talked with me about back a week, a week and a half 19 ago." 20 Q: Do you think that Mark Isbell prompted Wade 21 Wallace to give you this warning to pave the way for you 22 getting fired? 23 MR. STEWART: Objection to form. 24 A: I mean, I would classify it as, you know, could be 25 a final written warning.
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1 A: The third trial was a failure because of Mark 2 Isbell. We were prepared. We had the bar fixed and we were 3 prepared to run the trial on the machine we had run the 4 first two on. And the word comes to the management and 5 department level, Mark Isbell says we need to run this over 6 on number three instead of two, and two totally different 7 machines. And anyone that, you know, to know what I know, I 8 know, and Ron said right away, said, "You know, that's a 9 mistake. We can't do this," because of the variables that 10 are introduced. And there were several things that we were 11 set up to do on two that we couldn't do on three. And we, 12 essentially, had the same kind of fabric come off of that 13 trial as we did on the second one, a very uneven finish. 14 And I could go back in my notes and give you a good, clear 15 explanation of that, but I don't recall otherwise. 16 Q: Did you do anything wrong or make any mistakes 17 with regard to either the T602 or the C237 projects? 18 A: No. No. When I say that, I mean I did what I was 19 supposed to do and would have done under any circumstances. 20 And these kind of projects are highly involved and technical 21 and it's where my expertise is and I was very aware of 22 everything I needed to do and did my best to see that it was 23 done. 24 Q: But Wade Wallace told you that he thought your 25 performance on these two projects was unacceptable, correct?	1 Q: That wasn't my question. My question is do you 2 think Mark Isbell was behind it to pave the way for your 3 termination? 4 A: Yes. 5 MR. STEWART: Same objection. 6 Q: And do you think that he was behind it because he 7 wanted to see you replaced by his friend, Guzman? 8 A: I don't think that. 9 Q: This is Tietex document 314 and I'm going to show 10 your lawyer the last paragraph of it. This is Attachment 10 11 for the EEOC, Gary G. Harris, April 24, 2008. 12 A: Uh-huh (affirmative response). 13 Q: See that. "Importantly, the report was prompted 14 by Mark Isbell when it went to the owner just a few days 15 before." That's what you just told me, right? 16 A: It is. 17 Q: "The trip appears to have been directly related to 18 paving the way for termination of Harris and bringing 19 someone else on board. (See attachment 9)." And that 20 someone else was Guzman, right? 21 A: Yeah. The key word there is appears. 22 Q: Okay. Which that's what you thought? 23 A: I thought it was a possibility. I mean, again, 24 that's hindsight. Obviously, I didn't know anything about 25 Ms. Guzman until the fall. That's all looking back.

35 (Pages 137 to 140)

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1 Q: But you knew that Isbell and Guzman were friends,
2 right?
3 A: That's what I was told.
4 Q: And on June 18, Wallace told you you had 30 days
5 to improve, correct?
6 A: Yes.
7 Q: Did you have any conversations with Mark Isbell
8 about either C237 or T602?
9 A: Not the I recall.
10 (Defendant's Exhibit 19 was marked for identification).
11 Q: You have before you Exhibit 19. Have I given you
12 plenty of time to read it?
13 A: I'm fine if you're going to just ask specific
14 questions because it's quite voluminous.
15 Q: Well, are you familiar with it?
16 A: Yes.
17 Q: Now, this memo is addressed like the others to
18 David Wilson from Wade Wallace to CC: Mark Isbell, so it's
19 Wilson, Wallace, and Isbell, right?
20 A: Yes.
21 Q: Now, you weren't addressed on the memo, were you?
22 A: No.
23 Q: Did you get a copy of this document on or about
24 the time that you were terminated?
25 A: I don't remember. I may have but I don't

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1 remember.
2 Q: Okay. Do you have any evidence that this document
3 was seen by anyone else other than perhaps you, David
4 Wilson, Wade Wallace, and Mark Isbell?
5 A: No.
6 Q: Who informed you of the termination of your
7 employment?
8 A: David Wilson.
9 Q: Were you told that you were being terminated for
10 failing to improve on the issues that had been addressed to
11 you in the two former meetings and memoranda?
12 A: Generally what I was told was it's not one
13 specific thing, but just a whole lot of things that have
14 added up.
15 Q: Well, Wade Wallace claims in the second paragraph
16 that you still had the issues that he had pointed out back
17 in March, right?
18 A: Yes, he does.
19 Q: With the exception of the environmental reporting.
20 I mean, see that at the bottom of that paragraph? He says,
21 "With the exception of the environmental reporting." So I
22 take it what he means by that is environmental reporting was
23 no longer an issue. Do you agree?
24 A: I take it that he says I wasn't complaining about
25 it.

1 Q: Okay. And you contend that these other things
2 weren't true anyway at the time, right?
3 A: I do.
4 Q: After being told not to do so, did you continue to
5 come in and work in the chemical lab areas late at night and
6 on weekends?
7 A: Never once.
8 Q: It says here, "Gate records and management
9 observation indicate that he has continued to do this." See
10 that?
11 A: That's a lie. Let me just say this. If there
12 were any gate records that showed I came in the plant at any
13 time, it was at a time when it was okay to be there.
14 Otherwise, I'm smart enough to know I could have gone in and
15 out of the plant, I could have gone in and out of the lab
16 building, if I had have wanted to, and they would have never
17 known it. There was no need to use the gate, the main gate
18 and the card that's required. I could have parked outside
19 and gone into the lab building, which was outside. It
20 wasn't in the main gate enclosure. And, also, there was a
21 gate going from the lab building into the main plant, so had
22 I wanted to violate what he had asked me to do, he would
23 have never known it and that is just an untruth. And I'll
24 say again, I never once, not just in that area, in no area
25 did I go against anything he asked me to do. I did

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1 everything he required, no question.
2 Q: And then the bottom part of it says that on the
3 C237 and T602 projects, that you didn't get them done and
4 that you instead of working on the projects, you took
5 vacation.
6 A: Those projects ended on the 18th of June. I can't
7 go into the details, it's just too cumbersome again. But,
8 no, as of June 18, those projects were dead. And I can tell
9 you why if you'd like to know, but ...
10 Q: Okay, tell me why.
11 A: Okay. On the C602 [sic], per my recommendation
12 ...
13 Q: Whoa, whoa, whoa. On the T602?
14 A: Yes, that's one of them, one of the two. I was
15 going to give you both of them.
16 Q: Okay, go ahead.
17 A: As of the 18th of June when that final written I
18 call came out, I had made a recommendation to Wade back when
19 he wanted me to investigate foam finishing the project, I
20 said, "Why don't we take ..." There was an available pad
21 that wasn't being used. I said, "Why don't we take this pad
22 and move it over and put it on the front of the number two
23 tenner frame where we've been doing the foam finishing
24 trials." As of the 18th of June, the decision had been
25 formalized and made and in the works to start doing T602

36 (Pages 141 to 144)

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1 on a new pad, I mean, a used pad that was being installed.
2 So that project was killed because of that decision. We're
3 not going to foam finish anyway, no need to go forward with
4 it.
5 Q: All right.
6 A: The C237, the Noveon folks had already reduced
7 their price by about, I don't know, 20 or 25 cents a pound,
8 and was further working on getting it on down. And the word
9 was rather than go to and continue on with this and have to
10 go to another vendor or whatever, let's just continue to
11 deal with folks we're used to and they'll get our price in
12 order. So that's ultimately what happened. They lowered
13 the price on down into the seventies. So the direction I
14 was going in both cases were brought to a halt.
15 Q: Let me ask you some questions about your vacation.
16 You agree that you took multiple vacation days between
17 Monday, June 18, and Wednesday, July 18, don't you?
18 A: I remember putting in for a week vacation in June.
19 I don't remember anything else. And then asking to add two
20 days to that.
21 Q: Okay. You don't dispute that you left a voice
22 mail message on the morning of Tuesday, June 19, asking to
23 be out that day, June 19, and the next day, June 20?
24 A: I don't recall that. I may have, but I don't
25 recall it.

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1 Q: All right. And on Saturday, June, 23, you
2 requested a week of vacation beginning the next Monday, June
3 25, correct?
4 A: I did request a week of vacation and I followed
5 that up with a phone call requesting that I add July 2 and 3
6 to that. I was going to have seven consecutive working days
7 for vacation.
8 Q: So you left a voice mail message on the afternoon
9 of July 3 indicating that you would be taking the entire
10 week beginning Monday, July 9 through 13?
11 A: No.
12 Q: What evidence do you have to dispute that?
13 A: On the afternoon of July 3, I had received a phone
14 call and been put on administrative suspension or whatever
15 you call it.
16 Q: Before your suspension, you called in and said you
17 wanted to be off July 9 through July 13.
18 A: I don't recall that, I don't at all.
19 Q: None of these vacation days were approved in
20 advance were they?
21 MR. STEWART: Object to the form.
22 A: If advance is before the vacation, actually was
23 what happened, yes.
24 Q: Well, the day of is not before, is it?
25 A: No. No, I'm talking about like the week,

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1 requested a week and the two days that followed. No, those
2 were all advanced then. Those weren't the day of.
3 Q: Well, when you call in on Saturday, which is not a
4 traditional work day, and ask for vacation beginning the
5 next Monday, that's not in advance, is it?
6 MR. STEWART: Object to the form.
7 A: And Saturday what date?
8 Q: The 23rd of June.
9 A: That was covered with an e-mail. That week of
10 vacation was covered with an e-mail.
11 Q: You agree that you were required to request
12 vacation days in advance don't you?
13 A: I think that's pretty normal and I think I was one
14 of those that followed pretty close the way we did things
15 there.
16 Q: Well, let me just be clear. You agree that you
17 were supposed to request vacation in advance, don't you?
18 A: Certainly.
19 Q: And you say that this vacation didn't interfere
20 with the projects because as far as you were concerned,
21 those projects were over on June 8, is that correct?
22 MR. STEWART: Object to the form.
23 A: The projects were over, yes.
24 Q: And you took the vacation days immediately after
25 being given a warning on June 18, which is Exhibit 19.

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1 MR. STEWART: Object to the form.
2 A: That's correct.
3 Q: Now, during the period from June 18 to July 18,
4 did you submit any data to Wallace about these two projects,
5 C237 or T602?
6 A: Not that I remember.
7 Q: Now, you were scheduled to fly to Indiana on June
8 14 to visit a customer and return on the 15th, right?
9 A: If the dates are correct, yes.
10 Q: And you flew to Indiana?
11 A: I'm not sure where I flew to.
12 Q: You flew toward Indiana?
13 A: Somewhere, Detroit or somewhere. I'm trying to
14 remember, but the next leg was to go into Indiana.
15 Q: So you turned around and came home?
16 A: Yes.
17 Q: And you did not visit with the customer?
18 A: No.
19 Q: You claimed you had got a headache on the plane?
20 A: In fact, this trip was arranged by Wade Wallace
21 through the sales manager who wanted me to go and I was not
22 to visit a customer.
23 Q: Was that Steve Acker?
24 A: Yes.
25 Q: The sales manager was?

37 (Pages 145 to 148)

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1 A: Right.
2 Q: And you were to meet Acker and the customer in
3 South Bend?
4 A: For lunch.
5 Q: I'm sorry?
6 A: He was having meetings in the morning and I was
7 going to meet them for lunch.
8 Q: And you returned to the plant without having met
9 with the customer.
10 A: That's correct.
11 Q: And you did not tell Wade Wallace that you had
12 aborted the trip.
13 A: You know, that's an area that I can't say for sure
14 anything on right now, but when I got back in, I'm confident
15 that I would have called him. But Steve Acker, when I
16 called him, I told him the situation I was having and he and
17 I together decided it best that I wait, I waited as long as
18 I could before the flight was to leave for South Bend, and
19 nothing had let up and we decided it best that I either
20 spend the night there or come on back.
21 Q: You don't have any evidence that you told Wade
22 Wallace that you had aborted this trip, do you?
23 A: I mean, I have no records of any kind in writing
24 or anything.
25 Q: And you don't recall doing it?

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1 A: I know I would have. I know I would have called
2 him and left a message if I didn't get him and told him
3 the — It was toward the end of, I don't remember, it was
4 sort of toward the end of the week. I was in pretty sick
5 shape when I got back.
6 Q: You see in the memo it says, "He never informed me
7 of this and while I thought he was in Indiana."
8 A: I disagree with that. I think he may have ignored
9 anything I may have informed him on there and used that like
10 that. But I think the most important thing in that
11 particular scenario is his approving me to go there for no
12 good reason and I didn't even know about and wasn't in on
13 it.
14 Q: Hexion, July 3. Are you with me?
15 A: I know Hexion.
16 Q: July 3?
17 A: Yes.
18 Q: Did you leave a message for Wade Wallace telling
19 him that you would be at Hexion in Greenville all day on
20 July 3?
21 A: I left — You say in Greenville?
22 Q: Yes, Hexion in Greenville.
23 A: No, they're not in Greenville.
24 Q: Where are they?
25 A: They're in, they're near Spartanburg. Roebuck.

1 Q: All right, Roebuck. Did you leave a message for
2 Wade Wallace telling him you would be at Hexion in Roebuck
3 on July 3 and that you would be at Hexion all that day?
4 MR. STEWART: Object to the form.
5 A: No, No.
6 Q: Did you leave him a message at all?
7 A: Yes.
8 Q: What did the message say?
9 A: It said that — Let me just real quickly say it
10 had to do with a project that I was going to work on that I
11 couldn't work on at the plant and could work on it at Hexion
12 and other places. So the message was that there was a
13 serious ant problem at my house that I encountered when I
14 got home and my wife was literally berserk with ants in two
15 or three different places coming into the house and she's
16 highly allergic to them, fire ants. Now, I don't know at
17 what point before that I had left Wade any message, but at
18 that point I left Wade a message and said, "Wade, I've got a
19 serious problem. First thing in the morning I'm going to do
20 my best to get it taken care of and as soon as I finish, I'm
21 going to go on over to Hexion and work on the project." And
22 he knows the project that I was referencing.
23 Q: What time did you leave that message?
24 A: My guess, I think it was early, in early evening
25 after I got home from work.

1 Q: On what date?
2 A: This would have been the 2nd.
3 Q: So you say you didn't leave him a message on the
4 3rd?
5 A: The 3rd is the day I was at Hexion.
6 Q: Did you ever get permission from Wade Wallace to
7 go work at Hexion?
8 A: Oh, yes.
9 Q: When?
10 A: The same permission I had to go to Rohm and Haas
11 or any ...
12 Q: Sort of standing permission in your mind?
13 A: And let him know I was going and when and cell
14 phone on.
15 Q: Did you go to Hexion?
16 A: Yes.
17 Q: What time did you get there?
18 A: I'm going to use a little wider — Well, it
19 would have been around 12:30.
20 Q: But you didn't do any work at Hexion?
21 A: I couldn't get in.
22 MR. STEWART: Object to the form.
23 A: Couldn't get in.
24 Q: So the answer to my question is, no, you did not
25 do any work?

38 (Pages 149 to 152)

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1 A: That day, no. No. 2 Q: What time did you leave Hexion? 3 A: I would say and, again, I'm looking back and 4 guesstimating, 1:15 to 2:00 or something like that. 5 (Defendant's Exhibit 20 was marked for identification). 6 Q: How about take a look at Exhibit 20. 7 (Reviewing document). 8 Q: Do you have any reason to dispute the entries on 9 Exhibit 20? 10 A: The thing that's written here, I don't recall. 11 Q: Which thing? 12 A: Received voice mail on the 19th. 13 Q: "Left voice mail on morning of June 19"? 14 A: Yeah, to be out 19th and 20th. I don't remember 15 that. 16 Q: Okay. 17 A: "left voice mail on afternoon of July 3 ... was 18 suspended." 19 Q: "... before he was suspended." 20 A: And without question, that's not true. I mean, it 21 makes no sense is the reason I say that. I can't imagine 22 that. 23 Q: Well, you would agree with me that June 9 through 24 13 should have been July 9 through 13, right? 25 MR. STEWART: Object to the form.	1 Q: So your work day doesn't normally begin at 1:30 2 p.m., right? 3 A: When I was with Tietex, no. 4 Q: The most this document shows is that you stopped 5 by Hexion and signed in, correct? 6 MR. STEWART: Object to the form. 7 A: I mean, if you take it for what's here, yes, 8 that's true. 9 Q: And you had told Mr. Wallace that you would be at 10 Hexion all day? 11 A: I didn't say that, no. 12 Q: What did you say? 13 A: What I said earlier, I had an ant problem that had 14 to be fixed and as soon as I took care of it, I was going to 15 Hexion. 16 Q: All right. 17 A: No time given. 18 Q: And there was nobody at Hexion to let you in so 19 you left? 20 A: There were people at Hexion that I later would 21 find out that they were having a meeting that included the 22 technicians, the people I would normally call and spoken 23 with and gotten to come to the door. It included key 24 management and everything. They have several buildings and 25 that particular building, they were having a meeting and I
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1 A: I don't know. 2 (Defendant's Exhibit 21 was marked for identification). 3 Q: Let me show you what's been marked as Exhibit 21. 4 Do you contend that this is the Hexion Visitors' Register? 5 A: Absolutely. 6 Q: How did you get it? 7 A: I got it from a girl named Pam Westmoreland. She 8 copied this for me right out of the manual. 9 Q: Out of the what? 10 A: Out of the, whatever you call it, register. I 11 call it a manual. 12 Q: What do you contend that this Visitors' Register 13 proves? 14 A: Well, it shows that I signed it. 15 Q: It says, "7/3 Gary Harris, Tietex, 1:30." 16 A: 1:30. 17 Q: Is that 1:30 p.m.? 18 A: So I guess I got there at 1:30. 19 Q: Is that 1:30 p.m.? 20 A: Yes. 21 Q: And your work day doesn't typically begin at 1:30, 22 does it? 23 A: My work day begins usually when I get up. 24 Q: So not 1:30 p.m.? 25 A: This was not a typical day. No.	1 made phone calls one after another to everyone I knew there 2 over a period of time, waited and tried it again, waited and 3 tried it again. 4 Q: You couldn't get in? 5 A: Couldn't get in. 6 Q: So you left? 7 A: Yes. 8 Q: And you didn't see a living sole at Hexion? 9 A: At that time I did not know of a procedure that 10 they had ... 11 Q: Just please answer the question. Did you see a 12 living sole at Hexion? 13 A: Yes. 14 Q: Who? 15 A: I don't know their names. I saw folks at Hexion. 16 I mean, to answer your question, I saw, physically saw 17 people there, here and there, but they weren't the people I 18 was there to see. They weren't in that building. 19 Q: You didn't see anybody you knew the name of? 20 A: No. 21 Q: Or who knew you? 22 A: No. 23 Q: So this sign in sheet that's Exhibit 21 is the 24 only proof that you have that you were at Hexion? 25 A: Probably some phone calls.

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1 Q: I'm sorry?
2 A: I mean, we don't have it here, but I suspect some
3 phone calls will validate I was there as well during some
4 time.
5 Q: Oh, you mean phone calls that you claim you made
6 from the lobby ...
7 A: Yeah.
8 Q: ... to the interior of the plant?
9 A: Yeah. And also some other records.
10 Q: What other records?
11 A: Phone calls.
12 Q: But there aren't any individuals who can
13 substantiate your being there?
14 A: That's correct. Not that they saw me or anything
15 like that, that's correct.
16 Q: And you admit that you were at Hexion at most for
17 about 30 minutes?
18 A: No. I mean, earlier when you asked me and, again,
19 I haven't looked at this since, what's it been, a year and a
20 half or so, but just trying to recall a time, I said 12:30,
21 getting there at 12:30 and leaving, what 1:15 to 2:00 or
22 something to that effect. Well, now that I see that I was
23 actually there at 1:30 because I forgot, probably would have
24 left more like 2:15 to 3:00 o'clock.
25 Q: All right. Let me invite your attention to the

1 places I hadn't been before. With that said, I called this
2 guy that I knew that he had told me of two different places
3 that he could get me a place to work, to do lab work,
4 because he was aware of my situation as far as needing a
5 place to work and so forth. And he wasn't a friend, he was
6 an acquaintance from chemical sales. He and I met, I don't
7 ...
8 Q: Can you just tell me where you went?
9 A: All I know is he and I met somewhere, I don't
10 remember. I cannot call where we met but it was for him for
11 the purpose, he couldn't go with me to tell me how to get to
12 Chemurgy and all that. And we met for a period of time, I
13 don't know how long, and when I left him I went looking for
14 Chemurgy and to see if the folks were there and all this
15 and I was going to go ahead and introduce myself and see if
16 what their schedule was the balance of the week and I was
17 going to go ahead and just break that ice and get in with
18 those guys.
19 Q: So you went to Chemurgy about 4:30 p.m.?
20 A: No, it would have been before then. Maybe. I
21 probably was leaving there about that time. I don't
22 remember. Because it probably took me, I don't know, 30 or
23 45 minutes of driving.
24 Q: You didn't see anybody at Chemurgy, did you?
25 A: No.

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1 ESC transcript March 28, 2008, page 171. "Question. And
2 you stayed there for about 30 minutes." "Claimant." That's
3 you. "My guess is 30 minutes." "Question. Pardon me?"
4 "My guess is 30 minutes." "Question. Thirty?" "Claimant.
5 An estimate, from memory, an estimate."
6 A: Okay.
7 Q: Do you agree with 30 minutes?
8 A: About 30 minutes because I don't know, I didn't
9 keep a record of it. I would say, probably now I would
10 change that to at least 30 minutes because of what I did.
11 Because I was fairly, it was a time when I was concerned
12 about getting in and finishing the project. I'll put it
13 that way.
14 Q: And you agree with me that Wade Wallace, based on
15 your phone call, expected you to be at Hexion?
16 MR. STEWART: Object to the form.
17 A: Yes.
18 Q: What did you do when you left Hexion?
19 A: What I did after Hexion was probably, in my mind
20 anyway, it was like I was at a loss. I had tried to get
21 this project done. And let me say this, I've never
22 mentioned this before, but in the back of my mind, I knew
23 that there were places other than Hexion and I chose Hexion
24 because they were close. I could have just as easily gone
25 to Rohm and Haas or somewhere else or to one of these new

1 Q: And the guy you met, was it Dean Roberts?
2 A: Dean Roberts.
3 Q: So on July the 3rd you went to Hexion for about 30
4 minutes and you went to Chemurgy but didn't speak to
5 anybody.
6 A: That's correct.
7 Q: And how long do you claim you were at Chemurgy?
8 A: I'm going to guess and say it probably took, for
9 me to find the place, between 30 minutes to an hour maybe.
10 Q: How long did you actually stay on the premises
11 there?
12 A: There was no sign of anybody there.
13 Q: Did you telephone Wade Wallace and tell him you
14 couldn't get into Hexion and you were going to go somewhere
15 else?
16 A: No, I did not.
17 Q: Did you instruct a Hexion employee to bring
18 sulfuric acid to you at the Tietex plant?
19 A: No, I did not.
20 Q: Did a Hexion employee bring you sulfuric acid at
21 the Tietex plant?
22 A: I was told he did.
23 Q: And that was George Henderson?
24 A: Yes.
25 Q: And did you, in fact, want sulfuric acid, you have

40 (Pages 157 to 160)

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1 some need for it?
2 A: The sulfuric acid would have been used, had I been
3 able to get into Chemurgy, it would have been used as —
4 Like I said, I didn't feel welcome at Hexion, and if I could
5 just get the chemical then I was going to go, if they were
6 open at the end of the week, I was going to go over and
7 finish the project. I did not tell Hexion to bring any
8 acid, period. What I told Hexion was, if you will get some
9 acid together — and if I remember correctly, I'll pick it
10 up, leave it at the guard house or something. I don't
11 remember the details exactly, but I can come back by and get
12 it. They got a guard house that stays open. And I don't
13 remember the details.
14 Q: It would have been against Tietex's procedure to
15 have George Henderson bring you a beaker of sulfuric acid,
16 wouldn't it?
17 A: Well, again, going back to earlier, those are the
18 kind of procedures I would have put together. And it
19 depends on how he brought it and how it was — it would
20 have had to have been wrapped properly, MSDS. It had to be
21 a safe container and so forth. It wasn't a beaker, by the
22 way. I was told later, I talked with George and he said it
23 was a sealed container that was proper for acid.
24 Q: And Wade Wallace told you that he had been trying
25 to get in touch with you all day on July the 3rd, didn't he?

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1 A: No.
2 Q: And didn't Wade Wallace finally reach you on your
3 cell phone about 3 in the afternoon?
4 A: No.
5 Q: When did he reach you?
6 A: First of all, I would object to the finally
7 because I'm confident I had my cell phone on the whole time,
8 and I received a phone call from him between 4:30 and 5
9 o'clock. He wanted to know where I was.
10 Q: Did you tell him that you had been at Hexion?
11 A: I told him exactly what had happened, which is
12 what we've already talked about.
13 Q: Did you tell Wade Wallace that you had been to
14 Hexion?
15 A: Yes.
16 Q: Did Wade Wallace tell you he knew you hadn't been
17 at Hexion?
18 A: I don't — No, he didn't say that to me when we
19 were talking on the phone.
20 Q: Did Mr. Wallace tell you he knew you hadn't been
21 at Hexion because George Henderson, the lab manager from
22 Hexion, had brought sulfuric acid to the Tietex plant
23 looking for you?
24 A: I don't know that we discussed that or not. I
25 don't recall discussing that in our phone call. May I —

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1 Just a key part of that phone call was, he gets in touch
2 with me, wants to know where I am. And I tell him, I give
3 him, I spend time telling him the events, and then he says,
4 "Well, I'm putting you on administrative suspension. I
5 don't want you back in the plant until when I'm back from
6 vacation on July 8th, whatever, July 18 or something.
7 Q: Will you agree with me that it would look
8 suspicious to a reasonable person for them to have an
9 employee who was supposed to be at Hexion, and then a Hexion
10 lab manager shows up at Tietex looking for him?
11 MR. STEWART: Object to the form.
12 A: I would say no.
13 Q: You don't think that looks suspicious?
14 A: Not under the circumstances. I mean, if a
15 person's looking for something, trying to create something,
16 yes.
17 Q: All right. You tell Wallace you're going to be
18 at Hexion. Henderson shows up at Tietex looking for you.
19 He's from Hexion. Now, don't you think that looks
20 suspicious?
21 A: What time did Mr. Henderson, may I ask what time
22 he came?
23 Q: I don't know.
24 A: See, that's the key. Wade Wallace said he came
25 right after lunch when, in fact, George Henderson came at

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1 the end of the day when he was on his way home from work.
2 And all he announced was Gary Harris had come by and needed
3 acid, left a message, left a message he needed acid.
4 Q: Well, didn't you say that the call to you was
5 between 4:30 and 5:30?
6 A: Yes.
7 Q: Well, that would have been consistent with the
8 time that you say Henderson went by there, right, at the end
9 of the day?
10 A: Yeah, but inconsistent with when Wade said he came
11 by. Wade said he came by like 1:30.
12 Q: But Henderson asked the people at Tietex where you
13 were, and they said, well, he's supposed to be at Hexion.
14 A: I don't believe he, I don't believe he asked that
15 question.
16 Q: You don't believe who asked what question?
17 A: I don't think George Henderson asked where I was.
18 All he was doing, he knew that I was going to come back at
19 some point and pick up acid, and he decides — that's the
20 way George is — as a courtesy he decided, well, on my way
21 home I'll just drop this acid off to Gary and he won't have
22 to pick it up. And he didn't call me or anything and say he
23 was going to do that.
24 Q: Well, for all Wade Wallace knew you could have
25 been fishing or cutting the grass or anything else other

41 (Pages 161 to 164)

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1 than working, right?

2 A: That's true.

3 Q: And wouldn't it have been reasonable for Wallace

4 to expect you to call him and say, look, my plans have

5 changed. I can't go in to Hexion. I'm going to make other

6 arrangements?

7 MR. STEWART: Object to the form.

8 A: I think that's one of those marginal questions

9 that could go either way. I mean, I'll agree but then again

10 I think I could give a reason that it's okay.

11 Q: During this conversation did Wade Wallace ever

12 say, well, tell me where you've been all day?

13 A: Well, when he called me he wanted to know where I

14 was, and I explained to him about what had transpired and, I

15 mean, just right on top of that — we probably talked no

16 more than, I want to say three minutes. He said, "Well, I'm

17 going to put you on administrative leave or suspension,"

18 whatever it's called, "and I don't want you back in here."

19 Now, the other part that I had a problem with there, why did

20 he not want me to come on back in right then and talk with

21 him. Why did he ban me then? I mean, that still bothers me

22 and I don't understand that.

23 Q: Did you hang up on Wade Wallace?

24 A: No.

25 Q: Did the telephone get disconnected?

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1 A: No, we were talking and it was after he had told

2 me all that and everything, and I don't know if it's where I

3 was driving or what, but we got cut off.

4 Q: Do you know what Wade Wallace did to investigate?

5 A: No, I don't.

6 Q: Do you know who he talked to?

7 A: Oh, I do. I think he called both those fellows,

8 George Henderson and Dean Roberts. Word was he called them.

9 Q: Do you know if he talked to anyone else?

10 A: Not to my knowledge.

11 Q: Do you know the content of Wallace's conversation

12 with Henderson?

13 A: No, but I will say this, that it was pretty strong

14 according to what George said. George said he felt it to be

15 highly unprofessional, the way it was handled because it

16 made me look kind of, maybe something I didn't need to be

17 made to look like.

18 Q: Well, what do you claim that Wade Wallace said to

19 George Henderson that you object to?

20 A: I can't recall that, I'm sorry.

21 Q: So you don't have any evidence that Wade Wallace

22 said anything to George Henderson that would have been

23 defamatory towards you. It was just unprofessional, is that

24 what you're saying?

25 A: Probably more so unprofessional, yeah, if I had to

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1 say one or the other.

2 Q: And what you know about that conversation you

3 learned from who, Wade Wallace or George Henderson?

4 A: From George. George actually called me about it.

5 Q: And does Dean Roberts work for Spartan Chemical?

6 A: He works for — he did, I'm not sure. I haven't

7 talked with him in a long time, but he was with Spartan

8 Chemical at the time.

9 Q: And you said that you have some information that

10 Wallace called Roberts.

11 A: Right, yeah, Dean and Wade Wallace were reasonably

12 close and they had a, I mean, I don't know if it was a

13 friendship relationship but they were pretty close.

14 Q: Do you know what Wade Wallace said in that

15 conversation?

16 A: I don't.

17 Q: So you don't have any claims that Wade Wallace

18 made any remarks about you to Dean Roberts that were

19 defamatory.

20 MR. STEWART: Object to the form.

21 A: I don't know. I don't know of any right now, no.

22 Q: Now, your employment was terminated on July 19,

23 2007, for unsatisfactory performance, correct?

24 A: Yes.

25 Q: Do you know who made the decision to terminate

Page 168

1 your employment?

2 A: No.

3 Q: Do you know how old David Wilson is?

4 A: No.

5 Q: Do you know how old Wade Wallace is?

6 A: When I went to work for him, I think he was 33.

7 Q: Do you know how old Martin Wildeman is?

8 A: Well, I think he was like around 30, 31 in '94, so

9 do the math, whatever that is, mid-forties?

10 Q: How about Reed Cunningham, do you know how old he

11 is?

12 A: I do not know.

13 Q: How about Mark Isbell?

14 A: Mark is, I'd say he's somewhere mid to upper

15 forties, I don't know.

16 Q: And then you're just basing your best guess on how

17 these gentlemen appear?

18 A: I mean, there's a lot of stuff out there that I

19 could go by, but I'm just giving you an off-the-cuff general

20 answer based on trying to answer.

21 Q: Reed and David's about as old as you are.

22 A: I doubt that.

23 Q: Close.

24 A: I doubt that.

25 (Defendant's Exhibit 22 was marked for identification.)

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1 performed any of the duties that you once performed? 2 A: Yes. 3 Q: Which ones? 4 A: For certain she, she tried to deal with chemical 5 vendors and get chemicals less costly. She tried to change 6 formulations, get them done differently, less costly, that 7 kind of thing, which was an area specific to me and what I 8 did. 9 Q: Anything other than those two that you claim that 10 she did that you once did? 11 A: When I say I have information, it has to do with 12 actual documents. I don't have anything here or like that, 13 but documents that actually show that she did that, I don't 14 have any documents that show anything else. 15 Q: Have you produced those in Discovery? 16 A: I think so, yes, yes, yes. 17 Q: Do you claim that Ms. Guzman had some sort of 18 personal relationship with Mark Isbell before she was hired 19 by Tietex? 20 A: I am the last person that's going to blame anyone 21 or accuse anyone like that. I'm not, no. I would not, 22 without knowing, and I don't know whether I'd do anything 23 then, because I think that's wrong. I would not do that. 24 I've been down that way before and I know what it's like. 25 Q: This is attachment 9 to the EEOC, page 312. This	1 the course of some conversation right after I was terminated 2 and he was telling me about this, and I didn't know about it 3 until he told me about it — and he said Wade Wallace was 4 highly bothered because Mark hired her without actually 5 getting his blessings or whatever. I'm not sure exactly, 6 but I'm not — it looks, it's in that category of looking a 7 certain way you might say, but I, as far as, I mean, who 8 knows, a friend or whatever. I don't know, and I'm not 9 claiming anything there. 10 Q: I want to make sure I understand. You say that 11 the reasons for your termination were a pretext, meaning 12 they were not true, correct? That's what you say. 13 A: Yes. 14 Q: Now, you say that they were not true because you 15 think you were doing a good job and that you, in fact, had 16 done a good job on the two projects, C237 and T602, correct? 17 A: No, I wouldn't say that. 18 Q: What would you say? 19 A: I wouldn't say I did a good job. I'd say I tried 20 to and I was prevented from really accomplishing what needed 21 to be accomplished there. No, I'm not claiming that I did a 22 good job and the next thing you know I'm terminated, no. 23 Q: Well, that's why I'm just trying to clarify. And 24 you're saying that it wasn't appropriate to terminate you 25 for not being at Hexion when you said you would be because
Page 194	Page 196
1 is written by you. It says, "In June, Patricia Guzman would 2 go to work at Terry's Tap Room, a local Spartanburg beer 3 bar, owned by R.J. Rockers Brewery, in which Mark Isbell of 4 Tietex, Wade Wallace's boss, has had a long-standing 5 interest. In June, Mark Isbell goes to the Tietex owner, 6 Martin Wildeman, and attempts to convince him that Gary 7 Harris needs to be terminated because he failed in two 8 projects, T602 and C237. After Gary Harris was terminated, 9 Guzman was hired as the Tietex chemist by Mark Isbell." Now 10 ... 11 MR. STEWART: What are you reading from? I missed 12 it, excuse me. 13 MR. SUGGS: 312. 14 Q: That's what you told the EEOC. 15 A: That's true, and I agree with it. And I didn't 16 say it because I was making something up. 17 Q: Well, are you claiming that Mark Isbell wanted you 18 gone so his friend, Patricia Guzman, could be hired? 19 A: No, I'm not claiming that. 20 Q: Okay, what are you ... 21 A: It could have happened. 22 Q: What are you saying? 23 A: With regard to that, what am I saying? I think 24 that one can look at it and gather what they want from it, 25 but I was told by David Wilson that — and this was during	1 the sign-in sheet shows you were there, right? 2 A: Absolutely. 3 Q: Any other reasons that you claim that the points 4 that Tietex makes for your termination were phoney? 5 MR. STEWART: Object to the form. 6 A: Just real quickly, looking back, hindsight 20/20, 7 I'm convinced that the day I went to work for Wade Wallace 8 there's no question my days, in my mind the days were 9 numbered. The one hurdle they had to overcome because 10 Martin Wildeman knew that I could potentially do some things 11 for the company that were important. And even though over 12 the years he hadn't been in on a lot of stuff I had done, 13 because I had a supervisor always between me and Martin for 14 the most part, but in the final analysis, it was a big 15 hurdle for those guys to convince Martin that I should be 16 terminated. 17 Q: Why do you claim Wade Wallace wanted to get rid of 18 you? 19 A: I don't think Wade did, necessarily. 20 Q: Well, who do you claim did? 21 A: I would have to say Mark Isbell. 22 Q: But you didn't work for Mark. 23 A: Indirectly I did. 24 Q: Who did Wade report to? 25 A: Mark Isbell. And the day I went to work for Wade

Page 249	Page 251
1 Q: You mean how many depositions we're going to take 2 and so forth. 3 A: Yes. 4 Q: Now, there are a number of documents that we got 5 from the EEOC that you gave the EEOC, but when it came time 6 to respond to our Request for Production, we didn't get 7 those documents from you. Do you know why? 8 A: No. 9 Q: You don't know why you would have given the EEOC 10 documents you didn't give to us? 11 A: I guess, you know, are you saying that if I gave 12 EEOC a document at any time that I was supposed to give it 13 to other people? 14 Q: Well, here's the deal. We made a Freedom of 15 Information Act to the EEOC to give us everything in their 16 file on you, and they did that. And it contained documents 17 that when it came time for, when we compared what we got 18 from the EEOC with what we got from you, we got things from 19 the EEOC that we didn't get from you. 20 A: But you did get them. 21 Q: From the EEOC, not from you. 22 A: Well, you know, I'm obviously not an attorney and 23 I don't really — I'm sure there's something there I don't 24 understand, okay? I'm sorry. 25 Q: Well, I just want to make sure that we've gotten	1 this before, I think, in the hearing — but I have a 2 document that shows where I purchased chemicals on the 3 morning of July 3 from Lowe's. It spells out chemicals, it 4 spells out the time that I checked out and all that. Is 5 that the kind of thing we're talking about? 6 Q: Yeah. 7 A: Okay. 8 Q: Absolutely. 9 A: Anything I got like that I'll give to my attorney. 10 I've got, I mean, I'd love to share it. 11 MR. STEWART: I'll look over it and try to get it 12 to you in an expedited fashion. 13 A: One quick question, if I have, like, for example, 14 going back to February of '07 following a visit to my office 15 by Mr. Wallace, and I made a series of notes and comments 16 and dated it, and that kind of thing, would that be 17 considered a document that you would want? 18 Q: Uh-huh (affirmative response), absolutely. Look 19 at these. This is Tietex 266 to 272, and show them to your 20 lawyer so he can see them, too. And 274, 275, and 277, 278. 21 A: Yes, sir. 22 Q: Now, do those documents have anything to do with 23 your lawsuit? 24 A: I suspect what this has to do with is simply 25 demonstrating that, in fact, I did have something to do with
Page 250	Page 252
1 all there is to have, that you don't have other documents 2 like these recordings that you told us about that we haven't 3 gotten yet. 4 A: In other words, any documents that may show up 5 that I have at some point, at a deposition or whatever, 6 which this is the, you know, this is really the, I guess the 7 first time we've met like this other than ESC ... 8 Q: Right. If the document is relevant to your case. 9 A: So in other words, I can give you all my 10 documents. I would love to. 11 Q: Okay, well, that's what we want. Do you have 12 documents you haven't given your lawyer yet? 13 A: Yes. I've got plenty of documents. 14 Q: That are relevant to this case? 15 A: I don't know. Some of them are and — I'm not 16 the expert there. But there's like all this accumulated 17 crap I got. 18 Q: Can we have an agreement that you will give those 19 documents to your lawyer and if he decides they're relevant, 20 he can give them to us? 21 A: If that's the way you want to do it, yes. 22 MR. SUGGS: Do you agree with that? 23 MR. STEWART: I agree with that, yes. 24 A: That said, that said, one of the key documents 25 that I have is a document that shows — and I've mentioned	1 the environmental at Tietex because I got a call from Mark 2 Delledone and I made notes on what he said. This was, this 3 ended up being a crude way of investigating and not meeting 4 somewhere like at Tietex, but we did it by phone. And one 5 of the things that he said — and I've got notes about five 6 or six different things he said about Tietex — he said 7 Tietex claims that you did not have any employees reporting 8 to you or has had none reporting to you and he said Tietex 9 also complains that you haven't had anything significant to 10 do with the EPA OSHA stuff at Tietex. And so this would be, 11 you know, this is something I kept. These are records I 12 gathered and then I produced quarterly reports for EPA and 13 that kind of thing. That's all that is, just to show in 14 fact — and let me say this. What I have in that area 15 versus what I produced is very, very limited because most of 16 the stuff that I had in forms of memos and documents and 17 things were left at Tietex. 18 Q: Well, 266 is a document on Tietex letterhead, 19 right? 20 A: That's correct, yes. 21 Q: Signed by you as Gary Harris, Senior Research 22 Chemist. 23 A: Yes. 24 Q: This is Tietex document, isn't it? 25 A: A Tietex document?

63 (Pages 249 to 252)

Page 293	Page 295
1 MR. SUGGS: Object to the form, leading. 2 Q: Do you have a reason as to your beliefs? 3 A: Well, as I said before, and part of this was 4 hindsight because I went into the situation in spite of any 5 negatives when I started reporting to Wade, in spite of 6 knowing my qualifications versus his, I went in with an open 7 mind and ready and willing to give him 110 percent and do 8 everything possible to make it a good situation. But after 9 those first instances where he, like on around February 5 or 10 6, after I'd been with him for less than a week he comes in 11 and just unloads on me when no one else is around, and then 12 out in public he's Mr. nice guy when everyone else is 13 around. And then he did that again later. I knew then that 14 this would not, nothing that I had to do with Tietex going 15 forward was going to pass because I was out, I would soon be 16 out the door. I mean ... 17 Q: Let me stop you. That's not a good question to 18 ask. Why do you think they did not want your C237 project 19 to make this stuff internally succeed? Why? 20 A: I don't know. 21 Q: Do you have any ideas? 22 A: Well, first of all, I know Mark Isbell — a lot 23 of this is hindsight — resented me highly. And if you 24 look back, I can now look back and see all the pieces of the 25 puzzle and being a technician and a highly technical person,	1 Q: Let me ask you this. Last time you heard or you 2 knew, how much were they getting the product from Noveon 3 for? 4 MR. SUGGS: Object to the form, requires 5 speculation and an answer based totally on hearsay. 6 Q: You can answer. 7 A: I remember something to the tune of the mid 8 seventies based on a friend of mine who he and I had a 9 conversation and he was, and we'd spent some time together, 10 and he was still working at Tietex at the time. 11 Q: What was the name of the ... 12 MR. SUGGS: Whoa, whoa, whoa. Move to strike. 13 Speculation, hearsay. 14 Q: What was the name of the salesperson from Noveon 15 that Wade Wallace dealt with? 16 A: Lisa Bowes. 17 Q: If you will, tell me how many inaccuracies you see 18 in this memo, Defendant's Exhibit Number 18, as it relates 19 to the T602 formula. 20 A: The second trial as well as the third trial is a 21 correct statement. They were unsuccessful. But, okay, they 22 were unsuccessful. The test results that he, of course, he 23 generalizes a lot and he doesn't, he basically is highly 24 misleading as to what really happened. He doesn't spell out 25 that the second trial was a failure because of a significant
Page 294	Page 296
1 that's easy for me to take the pieces now after getting away 2 from the situation and becoming very objective, for me to 3 look back and put all the pieces together and see that the 4 guy just hated me 5 Q: Let me ask ... 6 A: ... and I was an adversary ... 7 Q: Let me ask ... 8 A: ... in his opinion. 9 Q: ... about Noveon now. Does Tietex still get this 10 formula that they listed at .885 cents per pound at the time 11 of this memo from Noveon? 12 MR. SUGGS: Object to the form in that there's no 13 basis for this witness's answer to that question. 14 Q: You can answer. To the best of your knowledge. 15 A: I would learn that they dropped the price further 16 and, as I said before, it was my understanding that 17 ultimately they lowered the price and gave the product 18 another name. I don't, in my opinion, based on some stuff I 19 saw, I don't think they really came up with another product. 20 They simply just lowered the price. At this time I don't, I 21 haven't kept up with what's going on over there, so I don't 22 know what they're doing now. I don't know if they're buying 23 from Noveon or whomever. I don't, you know, and if you'd 24 have asked me probably a year ago, I couldn't have told you 25 because I haven't really ...	1 machine problem with regard to a bar being bent and this was 2 overlooked by the machine operator as well as the technician 3 that was overseeing the trial. And they ran the allotted 4 yardage with a bent bar causing uneven distribution of the 5 finish, and therefore an unsuccessful trial. And he does 6 not say in here that his boss, Mark Isbell, is directly 7 responsible that the third trial was unsuccessful in that he 8 chose to at the last minute move the trial to a machine 9 totally different from the machine that the trial was and 10 the mix was made for, and all the adjustments and everything 11 that were already learned that needed to be made from the 12 early trial, first trial, that we didn't get to try in the 13 second trial because the bar, and we had them tried but we 14 didn't get good results because of the bent bar, we couldn't 15 assay or whatever any accomplishments that were made with 16 these changed settings to fine tune. And finally in the 17 third trial, and the — one thing I'll add, the reason Mark 18 Isbell changed to the other machine, in my opinion, either 19 he was highly ignorant and incompetent or it was malicious 20 in order to undermine the trial. It's one of the two, 21 there's no other option. He just didn't know what he was 22 doing, or if he did, he was highly malicious. That said, he 23 already at the point in time he made that decision had made 24 another decision that we weren't going to go forward with 25 any more attempts to foam finish that product anyway because

74 (Pages 293 to 296)

Page 337	Page 339
1 Tietex who has stepped in and fulfilled the responsibilities 2 you had before you got terminated? 3 MR. SUGGS: Object to the form, leading. 4 A: Probably some of the things were split off 5 because, I mean, like some of the things I was doing and the 6 volume of the things I was doing, in particular before Wade 7 Wallace, there's no way that a person unless they were 8 highly dedicated and working 80 hours a week could do them. 9 I suspect she's got part of them, a key part of them, and 10 other folks — and I suspect a lot of them have been let 11 go, like the key things of maintaining formulas and all. 12 It's sort of like you've got a car and if you don't maintain 13 it, you can still drive it. 14 Q: Let me ask you this. 15 MR. SUGGS: Whoa, whoa, whoa, whoa. Move to 16 strike, speculation, lack of foundation. 17 Q: Do you know if Ms. Guzman is allowed to use the 18 primary laboratory? 19 A: I would suspect so, but I cannot say anything 20 about Tietex in that area because I haven't been there and I 21 don't know. 22 Q: You testified yesterday that you don't know if 23 Wade Wallace wanted to get rid of you or not. Is that 24 correct? Do you remember that? 25 A: That would be, as I said, I think I would have	1 Q: Who's it to? 2 A: Gary Harris. 3 Q: And who's copied on it? 4 A: David Wilson, Mark Isbell. 5 Q: Have you seen any documents at any point in time 6 that have been written by Ms. Guzman that went out to 7 vendors? 8 A: Yes. 9 Q: What did she describe her position as in those 10 documents? 11 A: It was twofold. One of those was chemist. 12 Q: And is that fairly similar to the position you 13 held prior to being terminated? 14 A: Very similar in what the document involved as to 15 why it was sent was directly what I was doing. There was 16 no way around it, it was exactly one of the areas I 17 covered. 18 MR. SUGGS: Move to strike, lack of foundation. 19 Q: You were shown some documents today. I don't 20 recall the exhibit numbers, I don't know that I need to. 21 But you were shown by Mr. Suggs. They were reports, I guess 22 statements, written statements by you to DHEC and to OSHA. 23 Do you recall those? 24 A: Yes, I do. 25 Q: Okay. I believe the one to the DHEC occurred in
Page 338	Page 340
1 felt it would be more Mark Isbell working through Wade 2 Wallace. But I certainly am not going to in any way, shape 3 or form condone anything that Wade Wallace did that I feel 4 was wrong and highly negative. It's the last thing I want 5 to do. 6 Q: That's fine. That's beyond my question. 7 A: Okay. 8 Q: You don't know what Wade Wallace was thinking or 9 trying to do, is that fair? 10 A: Fair. 11 Q: Do you believe you were treated fairly by Mr. 12 Wallace? 13 A: Absolutely not. 14 Q: Was he the person responsible for the written 15 report, which I believe is labeled as Defendant's Exhibit 16 Number 18, which talks about your last key projects and 17 called them failures? 18 A: That was prompted by Mark Isbell and he simply put 19 it together. 20 MR. SUGGS: Object to the form, speculation, lack 21 of foundation, move to strike. 22 Q: Let's take a look at it, Defendant's Exhibit 23 Number 18. That's the report I'm referring to. Who's it 24 by? 25 A: Wade Wallace.	1 early 2002, does that sound right? 2 MR. SUGGS: Incorrect. Not 2002. 3 MR. STEWART: Can we go off the record for a 4 second? 5 (Off the record.) 6 Examination Resumed by Mr. Stewart: 7 Q: Defendant's Exhibit Number 30 that you were 8 provided today by Mr. Suggs appears to be a written 9 statement to you to DHEC which has a date on it of July 31, 10 2007, is that right? 11 A: That's right. 12 Q: I think you were asked if you provided DHEC with 13 any statements prior to that date regarding violations. Do 14 you remember that? 15 A: I remember that, yes. 16 Q: What was your answer? 17 A: I think I said I'd made a visit but didn't recall 18 any written correspondence. 19 Q: And so you didn't provide any written 20 correspondence when you were an employee there, is that 21 right? 22 MR. SUGGS: Object to the form. 23 A: Based on memory, I don't recall doing it. 24 Q: Do you know if that's because you didn't want to 25 be retaliated against?

TIETEX
000228

TIETEX

TIETEX CORPORATION
3010 North Blackstock Road, P.O. Box 6218
Spartanburg, SC 29304
803 574-0500 FAX 803 574-9440

CONFIDENTIAL

June 14, 1994

Mr. Gary Harris
309 Fox Run Drive
Galax, Virginia 24333

Dear Gary:

We are pleased to offer you the position of Senior Research Chemist in our Printing and Finishing Department. This position reports to Dave Hughston, Plant Manager, Printing and Finishing.

The purpose of this letter is to provide you with a summary of the offer, as follows:

1. Your base salary will be \$55,000 per year. As an exempt employee, you will be paid monthly, and paychecks are issued on the 25th of each month. For information, we provide direct payroll deposit. To begin the direct deposit process, you will need to provide us with a deposit slip for your banking account.
2. We have provided you with handouts which outline our fringe benefits package. Each of these will be explained in greater detail to you on your first day of employment. In the meantime, however, if you have any questions, please let me know.
3. We will provide you with certain relocation-related benefits. These include:
 - a) We will pay all costs associated with the move of your household goods, clothing, furniture, etc. from Galax, Virginia to Spartanburg, South Carolina.
 - b) We will provide reasonable temporary housing for you for a period of up to sixty days. This will consist of a furnished apartment plus utilities.
 - c) We will pay you the equivalent of one month's salary (\$4,583.33 gross amount) for incidental relocation-related expenses. Payment

*DPW
9/19/94*

*extend
30 additional
days at Tietex
expenses to
Oct. 15, 1994*

*Advised Gary of conversation w/
Amber @ Kimberlane. To extend
leave 1 more month @ Tietex
expense. He's to provide Amber w/
more info re...*

ROA 000429

Mr. Gary Harris
June 14, 1994
Page 2

will be made on your request following the closing of the purchase of your Spartanburg residence or the lease of an apartment by you as your permanent address.

- d) We will pay up to \$5,000 toward closing costs associated with the purchase of your Spartanburg residence. (This does not apply to rental of property.) This benefit will be available to you for a period of up to twelve months following the date of your employment.
- e) Any other requests for assistance during the pre-relocation period must be reviewed and approved in advance.
- f) All items listed above which relate to relocation shall be handled in accordance with all applicable state and federal tax laws. You are encouraged to consult with your tax advisor to make the necessary plans.

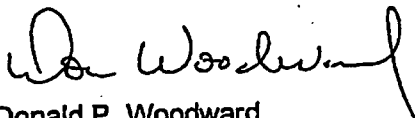
We remind you that on the first day you report to work you will need to bring with you certain documents which will be used for form I-9 purposes. Suggested documents are a valid driver's license and a birth certificate or social security card.

This letter summarizes our offer. Nothing herein should be construed as a contract of employment or as a promise of any specific terms for any determined period of time.

We have enjoyed meeting with you and hope that you will accept our offer to join Tietex. We will be available to help you get settled in Spartanburg and to help you in any way as you begin your career with us.

Sincerely,

TIETEX CORPORATION



Donald P. Woodward
Human Resources Manager

TIETEX
000229

ROA 000430

DATE: 7-13-94

TIETEX CORPORATION

NAME Gary G. Harris
First Middle Last
ADDRESS Timberlane Apts. # 316
106 Kensington Drive
Spartanburg SC 29301
City State Zip
PHONE 587-8959
JOB TITLE Senior Research Chemist
Salaried X
Non-Exempt
Hourly
DEPT. 08 EMP. NUMBER 3335
HIRE DATE 7-13-94
SOC. SEC. NO.
SEX M MARITAL STATUS M
DATE OF BIRTH
JOB CODE — JOB SERV. DATE 7-13-94

SALARY
ANNUAL RATE \$55,000.00
WEEKLY RATE
HOURLY RATE — SHIFT 1

*DIRECT DEPOSIT
(*attach authorization agreement)

TAX DATA
FEDERAL TAX -2-
STATE TAX -2-
ADD'L. TAX 0

	<u>AMOUNT</u>	<u>AMOUNT</u>
GROUP INSURANCE	<u>Eligible 60 days from H.D.</u>	MISC. <u>—</u>
LIFE INSURANCE	<u>" " " "</u>	
401(K)	<u>After 3 months of service</u>	
UNITED WAY	<u>0</u>	
SAVINGS	<u>0</u>	



EMPLOYEE SIGNATURE Gary G. Harris DATE July 13, 1994
PERSONNEL Crystal H. Connors

TIETEX
000215

COPY TO PAYROLL 7/18/94
DPW 7/18/94

ROA 000431

Attachment # 3 for EEOC

Tietex Statement that: Gary Harris made phone Calls In the Middle of the Night....

This is from where that came: I had already been to the Tietex owner, Martin Wildeman, regarding what was happening, how grossly I was being treated. I was deeply concerned for my job. Although I knew in my heart that I was being terminated, my mind could not accept that. Stress was beginning to cause great difficulty in my sleeping at night.

My wife and I are very close and when I have problems, she has problems. I was starting to really get concerned for her.

One night I woke up about 3:00 a.m... with the bad problems at work on my mind. I immediately called and left a message for Martin Wildeman (obviously, I knew he would not be at work; why, I could have even waited to place the call at 7:30 a.m. when I knew that he still would not be there to answer. The call was simply a message to announce a serious problem that I was having that was being caused by highly irresponsible management at Tietex and I wanted to further discuss the matter ASAP!

Since the Tietex lawyer, Fred Suggs, is not just the Tietex lawyer but has a business relationship with the owner, Martin Wildeman, as well, it stands to reason that the owner is probably going to see the lawyer quite often and is probably going to tell the lawyer everything (negative) that he can about me. In fact, some of what I heard from Tietex during Employment Security Commission hearings could have come only from the Tietex Owner in whom I have confided about some issues.

I went to the Tietex owner many times about many crucial issues that truly needed his attention. It is fair to say that the Tietex owner never did anything to help me, he either typically "stuck his head in the sand" and I suppose figured that the problem would go away or he even worse went to the "foxes guarding the hen houses" and "ratted" on me.

In fact, everyone that I ever spoke with regarding the owner's *handling or not handling* said that he needed to be more "hands on" that he "turned his head" to far too many significant problem issues and areas.

They said that he would *never* go against his top manager. That is a fine approach if one has a reliable, competent top manager in place (not the case at Tietex). Otherwise, it can be an approach that is devastating to the company. I feel confidently (my strongest of opinions) that the records will show that poor management over a period of about 8-9 years caused great harm to Tietex.

GH
4/24/08

TIETEX
000263



ROA 000432

Wallace, Wade

From: Wallace, Wade
Sent: Monday, February 05, 2007 1:42 PM
To: Harris, Gary
Cc: Wilson, David; Isbell, Mark
Subject: RE: Acceptable work areas

Thanks. I got your voice mail this morning where you mentioned that your original thoughts on wearing a mask may have been wrong and that it may still not be enough protection. I spoke with David Wilson and we do not want to take any chances with your health. Please do not enter the lab under any circumstances, even if you are wearing a mask. Give me a the list of items you need and I will have them relocated without any need for you to go up there.

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

From: Harris, Gary
Sent: Monday, February 05, 2007 10:18 AM
To: Wallace, Wade
Cc: Wilson, David; Isbell, Mark
Subject: RE: Acceptable work areas

Wade:

As I stated in a phone message earlier today, I am working on a list of needed equipment, etc. for the new work area. This is a very important undertaking and I want to be sure that it is handled correctly and thoroughly in the beginning on my part.
I hope to have this completed by the end of the week.

Gary 2/5/07

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

From: Wallace, Wade
Sent: Friday, February 02, 2007 11:53 AM
To: Harris, Gary
Cc: Wilson, David; Isbell, Mark
Subject: Acceptable work areas

Gary,

I received your voicemail this morning. As we discussed yesterday we will do whatever is necessary to shield you from any further exposure to an environment(s) that might negatively affect your health. As David Wilson directed please do not enter the lab or any other work areas that Jake occupies unless it is an approved exception (see next paragraph). In addition, we will protect your new work areas from any potential exposure by directing Jake not to enter those areas. You have set up a temporary work place in the office/lab in the compounding area so this area will be protected. Also, you are free to utilize or permanently relocate your work area to the color shop area and this area will be protected as well. Both of these locations have ample countertop and sink space for laboratory bench work. If there are any tools, supplies, or equipment in the lab that you need for your work, please make a list and I will have them moved to your new work area.

As we discussed by phone today there may be exceptions to entering the lab in order to perform your job duties. One specific example is that your project work will require you to witness testing on the bench burn apparatus. It is neither practical or economical to relocate the bench burn testing outside of the lab due to the smoke venting and ambient room conditioning needed. Therefore you will need to enter the lab to do so. In these situations always wear proper respiratory protection in the form of a mask with sufficient coverage and filtration to keep out any potential irritants. You have indicated that you have tried this approach and feel it will work fine for periods of limited exposure. If you encounter any more job functions where it is not practical or economical to move the equipment, please let me know and we will consider the same procedure for these situations.

Thanks for you cooperation,



ATTACHMENT B

TIETEX
000329

ROA 000433

Wallace, Wade

From: Wallace, Wade
it: Friday, February 09, 2007 8:58 AM
to: Wilson, David
Cc: Isbell, Mark
Subject: Gary Harris

Per our conversation, I'd like to document the discussion I had with Gary Harris on Wed 2/7/07.

Gary called me mid afternoon on Wed and stated that at that moment his personal and emotional problems had overwhelmed him and he was confused, disoriented, and could not function. He did not know what to do. I immediately went out to his office to discuss his problem in person. He explained that his personal life over the last year has made him so fragile emotionally that sometimes he has episodes like the one he was experiencing. As we talked he felt better and mentioned that the project work I had assigned him would help keep his mind off his personal problems.

I took that opportunity to remind Gary that Tietex is committed to our employees well being and that at any time we would support him if he felt he needed to utilize EAP. He said that that was not necessary and that he could work through it. I also asked him to be open with me if in any case this personal problem interfered with his ability to perform his job as we would need to sit down with HR to find a resolution.

When I left him he assured me that he was OK and thanked me for my support and patience.



TIETEX
000331

ATTACHMENT D

ROA 000434

Wallace, Wade

From: Wallace, Wade
At: Thursday, February 22, 2007 4:16 PM
To: Wilson, David; Isbell, Mark
Subject: Voicemails from Gary this week

Gary left voicemail messages for both me and Martin one morning this week at 3am. Martin forwarded me the one he received. Both messages consisted of him complaining about his inability to sleep due to being distraught over "all that's been going on."

The first thing that was bothering him this week have been that his work area has been moved from the lab and he is still not set up to easily do his bench work. I have covered this with him several times and he has asked for a lab pad coater and a vented hood. I have committed to both but he must understand it will take some time to locate, acquire, and install the equipment. In the meantime he is to make do with the pad in the beam dye area and/or seek chemical tech resource time from Robert Culbreth in the lab (coordinating with Jake). Robert is qualified and trained to do this and can help if Gary needs something done on the pad in the lab since he cannot go up there.

The second thing bothering him is his responsibilities regarding environmental reporting. He has a report due March 1 and is concerned about having to do it due to his project work. I have reviewed his project work and it does not consume all of his time. Unless he convinces me otherwise, I see no reason that his projects would interfere with his ability to get this report done on time. I made this clear to him. Although his environmental reporting duties have not changed, he does not think this should continue to be his responsibility. Regardless I have made it clear to him that it still is his responsibility and must be done.

I will update Martin as he was confused by Gary's email. I will also encourage Gary to bring his problems to me first since I am his immediate manager.



TIETEX
000332

ATTACHMENT E

ROA 000435

Wallace, Wade

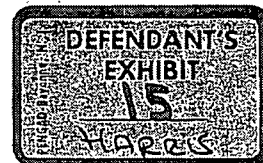
From: Wallace, Wade
it: Thursday, February 22, 2007 4:04 PM
to: Harris, Gary
Subject: Environmental reporting

Gary,

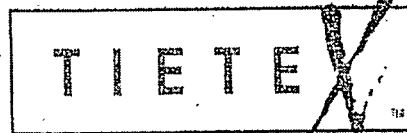
You left me a voicemail this week expressing concerns over the upcoming environmental report(s) due March 1st. As we discussed when you transitioned into the Development/Improvement department, your environmental reporting duties have remained unchanged. There is a possibility that we could transition these duties to the engineering department at a later date. However, this may take some time and you will need to continue with it until it happens.

You expressed concern about getting it done. Please be sure to complete this on time. If you have difficulty managing this task and your project work, please see me tomorrow when I am back in the office so that I may understand the situation better.

Thanks,



TIETEX
000333



To: David Wilson
From: Wade Wallace
CC: Mark Isbell, Gary Harris
Date: March 5, 2007
Subject: Gary Harris' Transition

During the last thirty days as Gary Harris has transitioned into his new role, several issues relating to his work have been identified. In the best interest of Tietex and Gary, these issues were discussed with him today so that he can improve upon them. Here are the points we discussed.

- He becomes emotional and overly vocal over a problem before researching the situation and makes statements and accusations without research or data.
- He is not honoring the chain of command by informing senior management with complaints and problems before covering them with his immediate manager.
- He harbors negativity over past grievances with management and continues to be negative towards the current management culture.
- He complains about his ownership of environmental reporting.

As we discussed these issues are not sustainable and it is mandatory that Gary make significant progress towards resolving these issues within the next 30 days.



ATTACHMENT F

TIETEX
000334

ROA 000437

T I E T E X

To: Gary Harris
From: Wade Wallace
CC: David Wilson, Mark Isbell
Date: June 18, 2007
Subject: Gary Harris Work Performance



During the last ninety days some issues relating to Gary Harris' project work have been identified. In the best interest of Tietex and Gary, these issues were discussed with him today so that he can improve upon them. Here are the points we discussed.

Of Gary's multiple duties two projects were identified ninety days ago as priorities and he was instructed to give them his most thorough and diligent focus. The first project was the development and qualification of a Tietex coating compound formula as a replacement for the current coating used on C237. Gary actually began work on this project prior to his reporting to me. His lab coating work began in December 2006 so the project has been ongoing for over six months. The second project was to develop a finish formula change and process to enable T602 to be finished with the parabolic applicator instead of a pad application. The project was assigned and work began ninety days ago.

Although the first project has been on going for six months no significant progress has been made toward completion. This project was initiated solely by Gary and he convinced senior management that it was completely feasible in order to gain support. He committed to developing a compound that would cost between \$0.60 and \$0.62 per pound verses the current product which cost \$0.885 per pound. Despite months of lab work in house and at four different chemical supplier locations and numerous production trials he has been unsuccessful in creating a viable product. The formulation which Gary developed has proven to be much more complicated to reproduce commercially than initially promised. Gary exercised poor judgement by making claims and commitments that he could not deliver. This project was included in corporate financial improvement goals. Due to the failure of this project I have personally had to begin parallel project work with other suppliers to develop a suitable replacement to achieve the financial commitment of the project.

The scope of the second project to develop a finish formula and process for parabolic application of T602 was a technical challenge. However, Gary informed me that lab samples were promising and recommended a production trial. Although I was not presented the actual numerical results of the first production trial Gary assured me that the results were comparable to

ATTACHMENT H

T I E T E X
000336

ROA 000438

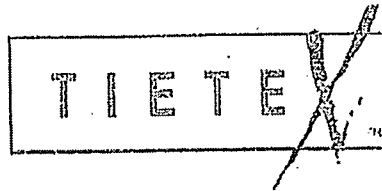
TIETEX

the current product. From this I approved a scale up run for statistical qualification. The second trial, as well as a third were unsuccessful. These subsequent failures concerned me and I personally recalled samples from the first trial that Gary assured me was a success. I witnessed them being tested and found that the product from that initial trial did not perform comparable. By this I can conclude that Gary did not conduct adequate scientific and numerical analysis of the first trial. This negligence was costly in that two subsequent production trials could have avoided. In addition, this negligence in applying the proper scientific analysis is unacceptable in the work of a Sr. Research Chemist.

Obviously the two issues regarding the C237 project failure and poor analytical practices demonstrated in the T602 project are not sustainable. It is mandatory that Gary make significant progress towards resolving the problems with the C237 project and improving on his analytical practices within the next 30 days.

TIETEX
000337

ROA 000439



To: David Wilson
From: Wade Wallace
CC: Mark Isbell
Date: July 18, 2007
Subject: Gary Harris Work Performance

Despite efforts to counsel Gary Harris we continue to have issues with his work practices and performance. These issues are listed in the following paragraphs. On this basis I am recommending that we terminate his employment immediately.

In February 2007 he was reprimanded for the following issues:

- He becomes emotional and overly vocal over a problem before researching the situation and makes statements and accusations without research or data.
- He is not honoring the chain of command by informing senior management with complaints and problems before covering them with his immediate manager.
- He harbors negativity over past grievances with management and continues to be negative towards the current management culture.
- He complains about his ownership of environmental reporting.

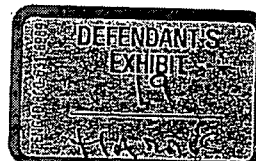
With the exception of the environmental reporting he continues to have these issues.

In April 2007 he was instructed not to come in and work in the chemical lab areas at nights or on weekends for safety reasons. Gate records and management observation indicate that he has continued to do this.

In June 2007 he was reprimanded for the two following issues and given a thirty-day deadline for resolution. It was made completely clear that failure to complete this task and resolve this issue would jeopardize his employment.

- Failure to complete the project to replace the current C237 coating compound with formula of his design.
- Not conducting and reporting adequate scientific and numerical analysis to substantiate lab and plant trials.

He has not demonstrated any effort to complete the C237 project. Despite the deadline to complete the project within four weeks he took two vacation days the first week, five the second week, and was planning to take five days the fourth week. This would have accounted for more than 50% absenteeism during this time and no effort to complete the project as instructed. None of these days were approved in advance. He left messages the day of the vacation without any





advance notice despite my request that he have them pre-approved. In addition he has not submitted to me any scientific data on any of his other projects.

I recently found out that also in June that Gary missed an important trip to visit a customer and did not inform me. He was scheduled to fly to Indiana on June 14 to visit with United Shade and return on June 15. On the way there he suffered a headache and returned to SC a day early and did not see the customer. He never informed me of this and while I thought he was in Indiana.

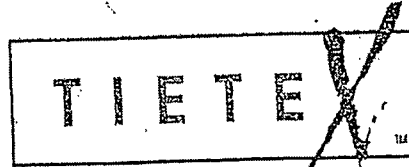
In July 2007, prior to the end of his thirty-day deadline several more issues have arisen.

- Only July 3, 2007 he did not show up for work and left me a message that he would be at Hexion in Greenville all day. He did not get permission for this trip. Later I found out directly from the Hexion representative that he did not show up. Although he did see another supplier in Greenville briefly, he has no been able to adequately account to me his whereabouts for the entire day.
- Also on this day he instructed the Hexion representative to deliver sulfuric acid to him at the plant without an MSDS. This is in direct violation of company policy.

In the last three months he has also demonstrated other poor work habits that are affecting his work performance.

- Does not return calls or emails consistently. His co-workers consistently complain of this as it affects their ability to complete their tasks that are contingent on his work.
- Does not keep consistent work hours and often cannot be physically located at the facility. Gate entries indicate an erratic pattern of coming and going that is not approved in advance.

In light of the continued problems with Gary's work practices and performance I am recommending that we terminate his employment at Tietex. Gary has been counseled about these issues, but at this point I have lost confidence in his ability to perform his job in a satisfactory manner.



To: David Wilson
From: Wade Wallace
CC: Mark Isbell
Date: July 18, 2007
Subject: Gary Harris Work Performance



Despite efforts to counsel Gary Harris we continue to have issues with his work practices and performance. These issues are listed in the following paragraphs. On this basis I am recommending that we terminate his employment immediately.

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- He harbors negativity over past grievances with management and continues to be negative towards the current management culture.
- He complains about his ownership of environmental reporting.

With the exception of the environmental reporting he continues to have these issues.

In April 2007 he was instructed not to come in and work in the chemical lab areas at nights or on weekends for safety reasons. Gate records and management observation indicate that he has continued to do this.

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He has not demonstrated any effort to complete the C237 project. Despite the deadline to complete the project within four weeks he took two vacation days the first week, five the second week, and was planning to take five days the fourth week. This would have accounted for more than 50% absenteeism during this time and no effort to complete the project as instructed. None of these days were approved in advance. He left messages the day of the vacation without any

ATTACHMENT I

TIETEX
000338

ROA 000442

T I E T E

advance notice despite my request that he have them pre-approved. In addition he has not submitted to me any scientific data on any of his other projects.

I recently found out that also in June that Gary missed an important trip to visit a customer did not inform me. He was scheduled to fly to Indiana on June 14 to visit with United Sh return on June 15. On the way there he suffered a headache and returned to SC a day early did not see the customer. He never informed me of this and while I thought he was in In

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- Also on this day he instructed the Hexion representative to deliver sulfuric acid to the plant without an MSDS. This is in direct violation of company policy.

In the last three months he has also demonstrated other poor work habits that are affecting work performance.

- Does not return calls or emails consistently. His co-workers consistently complain as it affects their ability to complete their tasks that are contingent on his work.
- Does not keep consistent work hours and often cannot be physically located at the facility. Gate entries indicate an erratic pattern of coming and going that is not planned in advance.

In light of the continued problems with Gary's work practices and performance I am recommending that we terminate his employment at Tietex. Gary has been counseled on these issues, but at this point I have lost confidence in his ability to perform his job in a satisfactory manner.

TIETEX
000339

ROA 000443

Wallace, Wade

From: Wallace, Wade
Sent: Monday, June 25, 2007 8:03 AM
To: Harris, Gary
Subject: RE: Vacation

Gary,
I do not have a problem with you taking vacation this week. However, in the future please try to communicate this kind of time off further in advance.

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

From: Harris, Gary
Sent: Saturday, June 23, 2007 9:47 AM
To: Wallace, Wade
Subject: Vacation

Wade:

As a result of an important situation, I need week of June 25 for vacation. There are several key work related issues that need attention which I will arrange to cover.

Thanks,
Gary

*Left Voice mail on morning of June 19 to
be out June 19 + 20.*

*Left Voice mail on afternoon of July 3 before
he was suspended indicating he would take
vacation entire week of June 9 - 13.*



ATTACHMENT J

TIETEX
000340

ROA 000444

2007

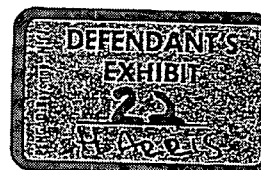
VISITORS REGISTER

VISITORS REGISTER

ADDRESS	TIME	REMARKS	DATE	VISITOR'S NAME	ADDRESS	TIME	REMARKS
Woodhull/Am Center 6/11/07			6/20	Gary Harris	Tietz	8:40	
United Way			6/25	John Harris	Tietz	3:00	
Children's Advocacy			6/26	John Harris	Tietz	11:30	
Hercules Hoagland - NL			6/27	GARY HARRIS	Tietz	10:40	
Colonias			6/28	Donna Rodriguez	Chambers	10:40	
Spain Co	9:00		6/28	Donna Rodriguez	Lawrence	11:15	
Regency	10:05		6/28	Gary Harris	Chambers	10:40	
Engelberg	11:00		6/28	Bob Schroder	Truman	10:40	
IKS	11:00		6/28	James Winston	Truman	10:40	
	2:35		6/28	Donna Rodriguez	Spain Co	8:15	
	out		6/28	GARY HARRIS	Spangon	8:50	
Rebel	6/14		6/28	J. Mally	IKS	11:30	
TROY	6/14		6/28	C. Al Smith	Spangon	3:00	
KEL	11:30		6/28	S. Fujisawa	Control. Glass Tefel Inc.	10:00	
Ameyachin, uls	7:00		6/28			10:40	



ATTACHMENT K



TIETEX
000342



TIETEX INTERNATIONAL, LTD.
3010 North Blackstock Road, P.O. Box 6218
Spartanburg, SC 29304
(864) 574-0500 FAX (864) 574-9440

* Paid → 7/31/07
Do not owe 1.32 Hr. Vacation
✓ R Jolley

EMPLOYEE TERMINATION

Effective Date 7-19-07 Employee No. _____ Employee Name GARY PHAMIS
W/E Date _____ Hire Date 7-13-94 Social Security No. _____
Termination Date 7-19-07 Dept. No. 55 Shift D Department PRODUCT DEV & PROCESS IMP.
Rehire: Yes _____ No _____ Termination Type (V/L/M) I ✓ V = VOLUNTARY L = LAYOFF
Comments GARY IS NOT CONSIDERED TO BE A GOOD MATCH FOR TIETEX'S NEEDS. ✓ I = INVOLUNTARY M = MEDICAL (LTD)
Supervisor N/A Date _____
Dept. Mgr. Approval _____ Date _____
Plant Mgr. Approval _____ Date _____
HR Approval David H. W. Date 7-19-07

CHECKLIST

A. ID Card <u>✓</u>	F. Payroll Deductions	L. Vacation Years Service <u>13</u>
B. Uniforms <u>N/A</u>	1. <u>N/A</u>	1. Hours Taken <u>88</u>
C. Keys/Tools/Equipment <u>✓ (3)</u>	2. <u>N/A</u>	2. Hours Accrued <u>89.32</u>
D. Manuals/Guides	G. Garnishments <u>N/A</u>	3. Hours Vacation Due <u>*0 (1.32)</u>
1. Policy Manual <u>N/A</u>	H. Computer Access <u>✓ (54)</u>	M. 401K _____
2. <u>N/A</u>	I. Voice Mail <u>✓</u>	N. Pension _____
E. Audit Cards	J. Tuition, Classes, etc. <u>N/A</u>	O. Insurance/COBRA <u>✓</u>
1. <u>N/A</u>	K. Miscellaneous <u>N/A</u>	P. Co. Agreement <u>✓</u>

Reason for Leaving

AFTER EVALUATING COUNSELING GARY CONCERNING HIS UNSATISFACTORY WORK PERFORMANCE, THE COMPANY HAS LOST CONFIDENCE IN GARY'S ABILITY

Comments

Exit Interview By

David H. W.

Date 7-19-07

ROA 000446

SOUTH CAROLINA EMPLOYMENT SECURITY COMMISSION

631 Hampton Street
Post Office Box 995
Columbia, South Carolina 29202

Date: March 28, 2008

NOTICE OF HEARING BEFORE THE COMMISSION

CLAIMANT:

APPEAL NO 13018
HARRIS GARY G
473 CRESTHAVEN DRIVE
BOILING SPRINGS SC 29316

CLAIMANT'S SSN:

LIABLE EMPLOYER:

APPEAL NO 13018
TIETEX INTERNATIONAL LTD
P O BOX 6218
SPARTANBURG SC 29304

SEPARATING EMPLOYER:

A hearing has been scheduled in this matter for Thursday, April 10, 2008 at 10:20 a.m. All hearings are held at the offices of the Commission.

SOUTH CAROLINA EMPLOYMENT SECURITY COMMISSION
C. LEM HARPER, SR., CENTRAL OFFICE ANNEX BUILDING
631 HAMPTON STREET, ROOM 350, COLUMBIA, SC

The Commission acts as a Board of Review, and hearings are heard solely on the record, no further evidence is admissible. Parties may appear in person or be represented by counsel. Parties may also submit written argument that deals with the record. Failure to appear may result in your interests considered abandoned.

Commission Appeals Unit
Legal Department
(803) 737-2668
(803) 737-0124 FAX

cc: Claimant
Claimant Attorney - Richard Stewart, Esquire
Liable Employer
Separating Employer
Employer Attorney - Fred Suggs, Esquire
Local Office - Spartanburg
File



ROA 000447

SOUTH CAROLINA EMPLOYMENT SECURITY COMMISSION

Columbia, South Carolina

Transcript of Testimony

Before

Natasha Pauling, Administrative Hearing Officer

Gary G. Harris) **CLAIMANT**
473 Cresthaven Drive)
Boiling Springs, SC 29316)
Claimant SSN: xxx-xx-7868)

Tietex International, LTD) **LIABLE EMPLOYER**
PO Box 6218)
Spartanburg, SC 29304)

PLACE OF HEARING:

SC Employment Security Commission
440 South Church Street
Spartanburg, South Carolina

DATE OF HEARING:

February 5, 2008

APPEARANCES:

For Claimant:

In Person
Attorney

For Employer:

Attorney
Two Witnesses

TESTIFYING WITNESSES

CLAIMANT:

Gary G. Harris

Richard Stewart, Esq.

EMPLOYER WITNESSES:

David Wilson, Human Resources Director

Wade Wallace, Director of Sales and Marketing

Fred Suggs, Esq.

1 daughter and she said, "Gosh, he invented everything at Tietex" and this is the
2 most incredible thing I ever seen. And they said, "not one time did he ask how she
3 was." That turned out to be a huge hospital bill and so I'm thinking, you know ...
4 I don't know. Maybe I shouldn't say that. It ... it's all a mess in that time and
5 when he tried to get me to move down to the plant, I said, "Jake, all of my stuff is
6 up here. There is nothing down there for me to work with." And at this time, I
7 was kind of, you know, nerve-wise, kind of a wreck because of what my wife went
8 through. He said, "No, you need to move down there." So, I forgot why I
9 prohibited ... I ran into the owner and I literally ran into him somewhere in ... and
10 I told him, "if they want me to move down there" and he said, "That doesn't make
11 any sense to me." So I went back and so I ... I stayed up there. And Jake, at that
12 time, had moved up there, but several months later he literally moved up.

13 HEARING OFFICER: Okay.

14 CLAIMANT: But I mean this is just ... it could go on and on and
15 stuff like that. I wouldn't want to inconvenience you with nothing else, so. I can
16 say that concerning new procedures regarding chemicals and all, initially, in the
17 beginning, when we did the ... what we call a "QAF Program" for describing how
18 we need things, I actually wrote and signed off how we bring in chemicals and off.
19 So, I was very familiar with how we did it. And so, you know, if I'm in there ...
20 I'm aware of a ... so I taught it, I very much understood. In fact, when Mr. Wilson
21 came to work for us, we had had this [INAUDIBLE] that had been involved in ...
22 in ... in the safety area and whatever. And it was his responsibility to do the
23 MS/DS codes and weed out ... that responsibility became Mr. Wilson's when he
24 ... he came in at Tietex, I think he said "2005" and our tab kept him maybe two
25 hours to get the MS/DS notes from a mess to at least workable. And in his hands
26 ... we had stumbled upon that. I just say that the March 5th get together was sort of
27 like the February occurrence when Mr. Wallace came into the office and ... and it
28 what was awesome, it was out of the blue, he really stoned at me verbally, but in
29 ... in a way that was really mean. But March 5th, was the situation where Mr.
30 Wallace called me and said, "Gary, you will come to my office at this time for a
31 30-day review." And I go to his office and he says, "We need to go down to Mr.
32 Wilson's office" and we went to his office ... of Mr. Wilson and conduct this
33 meeting so he ... he'd be a part of it. And then when we get down there, it's like
34 all this stuff. And by the way, this is how my employer was: That day, I had the

Attachment C
Excerpts and Exhibits
from Second
Deposition of Gary
Harris

Transcript of the Testimony of

Gary G. Harris

Date: March 14, 2013

In the Matter of:

Gary G. Harris v. Tietex International, Ltd.

2011-CP-42-5538

Irveta J. Shouse / GWC
PO Box 9177
Greenville, SC 29604
Phone: 864-233-2341
Email: Irvetaj@aol.com

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1 A: They did not rehear it if that's what you mean. 2 They refused to rehear it. 3 Q: So that the decision of the District Court stood. 4 A: That's correct. 5 Q: And the District Court refused or I should say 6 declined, the District Court declined to rule on your State 7 claims of breach of contract, breach of contract accompanied 8 by fraud, and defamation, correct? 9 A: That was my understanding. 10 Q: And there was no claim in your previous lawsuit 11 filed in 2008 for intentional infliction of emotional 12 distress, correct? 13 A: I do not recall. 14 Q: You don't recall whether there was or not? 15 A: I do not recall that. It may have been. I 16 haven't looked at these documents in a while. 17 Q: Okay. All right. Let's go back to Exhibit 1. 18 A: Okay. 19 Q: And show me any claim in that Complaint for 20 intentional inflection of emotional distress. 21 A: Are you telling me it's not in there? 22 Q: Yes, sir. 23 A: Okay, then I'm going to concur with you and not 24 even waste our time. 25 Q: All right.	1 don't know if he did it in Greenville or in Spartanburg. 2 (Defendant's Exhibit 17 was marked for identification). 3 Q: Let me show you Exhibit 17 and invite your 4 attention to the second paragraph which says, "WHEREAS, THE 5 RELEASOR ..." 6 A: Uh-huh (affirmative response). 7 Q: And then it refers to Gary Harris versus Jerry 8 Campbell, Pioneer Chemicals. And it talks about being filed 9 in the Court of Common Pleas for Spartanburg County. See 10 that? 11 A: Yes. 12 Q: And it says "venue later transferred to Greenville 13 County." See that? 14 A: Yes. 15 Q: And you settled that lawsuit with Jerry Campbell 16 and Pioneer Chemicals for \$9,000? 17 A: I settled it for — I don't want to waste our 18 time here today, but just to get away from it, I settled it 19 for an amount of money he owed me, outright owed me. 20 Q: Look at paragraph 1. 21 A: Okay. 22 Q: Now, that paragraph recites a figure of \$9,000. 23 Is that what you settled for? 24 A: You're talking about \$9,000 on this? 25 Q: Yeah, on Exhibit 17, paragraph 1 on the first
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1 (Defendant's Exhibit 4 was marked for identification). 2 Q: I'll show you what's been marked as Exhibit 4. 3 And that's the Complaint in Spartanburg County, South 4 Carolina, that you filed pro se on October 21, 2011, isn't 5 it? 6 A: Yes. 7 (Defendant's Exhibit 5 was marked for identification). 8 Q: And Exhibit 5 is the Amended Complaint filed in 9 Spartanburg County that Mr. Lazenby filed for you, right? 10 A: Yes. 11 Q: Now, in your pro se Complaint, which is Exhibit 4, 12 you didn't allege intentional infliction of emotional 13 distress, did you? 14 A: No. 15 Q: But it is raised in the Amended Complaint that Mr. 16 Lazenby filed for you, isn't it? 17 A: Yes. 18 Q: Now, you brought suit against Pioneer Chemical, 19 right? 20 A: I did, yes. 21 Q: And you sued Pioneer Chemical in Circuit Court in 22 Spartanburg County, correct? 23 A: I really don't recall where that was filed. I 24 know that attorney David Alford, it was his idea, in 25 essence, to do it. We were into another situation and I	1 page. 2 A: I don't, maybe I'm overlooking something. I don't 3 see \$9,000 on that. 4 Q: Let me show you. 5 A: You said paragraph 1, that's paragraph ... 6 Q: Paragraph numbered 1. 7 A: Oh, okay. Yes. It says \$9,000. 8 Q: And that's what you settled for? 9 A: That's correct. 10 (Defendant's Exhibit 20 was marked for identification). 11 Q: I'll show you what's been marked as Exhibit 20. 12 You brought a FINRA claim against Wachovia and Jeremy Bishop 13 in May 2009? 14 A: Yes. 15 Q: And FINRA is the Financial Industry Regulatory 16 Authority? 17 A: It has to do with regulating the securities 18 industry, and I'm not sure about what the letters mean. 19 Q: And your case was arbitrated? 20 A: It turned out that way. 21 Q: And the Arbitrator ruled for Wachovia? 22 A: I would say mostly. 23 Q: The Arbitrator assessed hearing fees against you 24 in the amount of \$1,575? 25 A: There were hearing fees. I don't recall that

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1 litigation with Tietex, have you been sued? 2 A: Not to my knowledge. I'm having to think about it 3 a little bit because the questions are, you know, it's 4 somewhat broad and I have to kind of, well, is that being 5 sued or is it not. But I don't recall of anything that 6 would be considered a lawsuit against me. 7 Q: Okay. I don't mean any disrespect by this 8 question, but since the earlier deposition that you gave, 9 have you been arrested? 10 A: Not to my knowledge. 11 Q: Have you been convicted of a crime? 12 A: No. 13 Q: Since your earlier deposition, have you had any 14 major physical illnesses or injuries? 15 A: I mean, I've got things that I probably should see 16 a doctor for, but I haven't been to the doctor since I think 17 the last time was 2008. I've got some problems that 18 definitely need attention, but for obvious reasons I could 19 go into, they'll just have to keep needing attention. 20 Q: Do you have any physical limitations? 21 A: Again, that's a broad question. I apologize for 22 taking it that way. I think what you mean is, relative to 23 what I think you mean, I don't. But, I mean, I've got like 24 a major hernia. Does that matter? 25 Q: Does it limit what you can do?	1 A: Okay. 2 Q: That's it, the one that bears the signature, the 3 next page down. 4 A: Oh, okay. 5 Q: Do you recognize your signature and the date, 20th 6 of January 2012? 7 A: Yes. 8 Q: Now, take a look at Exhibit 4. 9 A: Okay. 10 Q: Now, in your pro se Complaint, which is Exhibit 4, 11 you allege that certain communications were defamatory. And 12 one of those was the February 9, 2007, e-mail from Wade 13 Wallace to David Wilson. And that's in your Complaint at 14 paragraphs 19 and 38. 15 A: Okay. 16 Q: In this lawsuit, do you claim that e-mail was 17 defamatory? 18 A: I definitely think it was. For a third party 19 reading that and believing it, would have to be. It showed 20 a definite, to me, it's my thinking on that, it showed a 21 definite disregard for a person's stability mentally and 22 that kind of thing. I mean, the memo was so farce and 23 whatever. 24 Q: Is your answer yes? 25 A: Ask me again, please.
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1 A: I don't let it. 2 Q: And so you haven't seen a doctor since 2008? 3 A: I'm thinking that it was, I remember I had a 4 situation that I felt like I couldn't handle myself and it 5 looked like a serious eye infection or something and that 6 was the last time I recall going to the doctor. 7 Q: Do you know when that was? 8 A: I think it was the summer of 2008. 9 Q: Are you taking any medications now? 10 A: No. 11 Q: When you gave your deposition in the Federal 12 lawsuit that you brought against Tietex and were put under 13 oath, did you tell the truth? 14 A: My deposition? 15 Q: Yeah. 16 A: Yes. 17 (Defendant's Exhibit 8 was marked for identification). 18 Q: I'll show you what's been marked as Exhibit 8. Do 19 you recognize Exhibit 8 as your Responses to Tietex's First 20 Interrogatories in this case that was submitted January 20, 21 2012? 22 A: I mean, that's what it appears to be without 23 reading all through it. 24 Q: All right. The pages aren't numbered, but look if 25 you will at the last page before the Certificate of Service.	1 Q: In this lawsuit, do you claim that the February 9, 2 2007, e-mail from Wade Wallace to David Wilson was 3 defamatory? 4 A: Yes. 5 Q: Now, let's do it that way. I'm not going to cut 6 you off, but if you'll give me a yes and if you want to 7 continue and explain, I'm not going to cut you off. Okay. 8 A: Okay. 9 Q: But it's going to be clearer. Now, the March 5, 10 2007, memo from Wade Wallace to David Wilson with a carbon 11 copy to Mark Isbell and you is referenced in your Complaint, 12 Exhibit 4, at paragraph 20 and at paragraph 39. 13 A: I remember that. Okay. 14 Q: Do you claim in this lawsuit that the March 5, 15 2007, memo from Wallace to Wilson was defamatory? 16 A: Yes. 17 Q: The June 18, 2007, memo from Wallace to you with a 18 cc: to David Wilson and Mark Isbell is mentioned in your 19 Complaint, Exhibit 4, at paragraphs 26, 27, 28, and 40. Do 20 you claim in this lawsuit that the June 18, 2007, memo was 21 defamatory? 22 A: Yes. 23 Q: All right. July 18, 2007, memo from Wade Wallace 24 to David Wilson with a carbon copy to Mark Isbell is 25 mentioned in your pro se Complaint, Exhibit 4, at paragraph

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1 41. Do you claim the July 18, 2007, memo from Wallace to
2 Wilson was defamatory?
3 A: Yes.
4 Q: In your Complaint at paragraph 36, you refer to
5 "rumors in the industry" that you were terminated from
6 Tietex for falsifying a test report. Do you claim that
7 those rumors in the industry were defamatory?
8 A: Yes.
9 Q: All right. That's a claim in this lawsuit?
10 A: Yes.
11 Q: In your Complaint, Exhibit 4, paragraphs 35 and
12 42, you refer to your ban from the premises on July 3, 2007,
13 by Wade Wallace. Do you claim in this lawsuit that ban from
14 the premises was defamatory?
15 A: Yes.
16 Q: All right. These are the only written or verbal
17 statements or actions that you are claiming are defamatory?
18 MR. LAZENBY: Object to the form of the question.
19 A: That includes whatever may be, but without,
20 obviously, not having the time to expand on that here --
21 There's another issue that was just right on the tip of my
22 tongue that you didn't mention. There was the issue of
23 being banned on July 3, which I say was defamatory. Also,
24 and I don't recall exactly what you said there, the detailed
25 wording, but the fact that I was banned from going to the

1 laboratory building in itself, I'm considering that
2 defamatory, very much so. When I was banned from going to
3 the lab building on February 1, 2007, when I was assigned to
4 report to Wade Wallace.
5 Q: Okay. In addition to the list of items that we
6 went through and you said were issues in this lawsuit, you
7 would add to that your banning from the laboratory during
8 the time that you worked for Tietex?
9 A: That's correct.
10 Q: Is there anything else that you claim was
11 defamatory that's an issue in this lawsuit?
12 A: As far as what's in that what you've got there?
13 Q: No, what we're going to litigate in this case.
14 I'm asking you what your claims are. That's what we're here
15 for.
16 A: I don't think there's something off the cuff I
17 want to start speculating on that may be out there that I've
18 overlooked.
19 MR. SUGGS: All right, counselor. You want to get
20 your witness to answer the question.
21 MR. LAZENBY: I think he's answered the question.
22 MR. SUGGS: I don't think he's answered it at all.
23 Q: Mr. Harris, I'm asking you right now, do you have
24 any other claims of defamation other than what we've gone
25 through? If you do, I want to know what they are.

1 A: I may have, but they don't come to mind right now.
2 I cannot -- We can sit here for a week and I can probably
3 come up with a bunch of stuff that should have been
4 mentioned that's going to be possible. But I will just
5 simply say this, I reserve the right to anything that has
6 happened that's not on there since the time to be, you know,
7 be able to include that as defamation. But to sit here
8 today and say that what you've listed is the only
9 considerations as far as defamation go and that's going to
10 be it, I don't think that's proper. I can't sit here and
11 under the whatever, the duress of what we're doing and start
12 trying to think and, you know, speculate on it. We don't
13 have the time.
14 Q: I've got all the time there is. If you've got any
15 other claim, let's hear it right now.
16 MR. LAZENBY: I'm going to object to the form.
17 A: Well, right now, being, you know, a poor amount of
18 sleep and everything, there's just not a lot coming to mind
19 in that area. I mean, I can start thinking, but gain, it's
20 going to be things that, well, probably that or probably not
21 that type thing. But I'm not -- In other words, let me
22 just word it this way. I'm not hiding anything from you.
23 I'm being open with you on the question. And right now
24 there's just nothing that I can add.
25 MR. LAZENBY: Can we take a short break?

1 MR. SUGGS: Sure.
2 (Off the Record)
3 Examination Resumed by Mr. Suggs:
4 (Defendant's Exhibit 9 was marked for identification).
5 Q: Mr. Harris, I'm going to give you Exhibit 9, which
6 are your Answers to Tietex's First Interrogatories in the
7 United States District Court suit that was filed back in
8 September 2009.
9 (Defendant's Exhibit 10 was marked for identification).
10 Q: And then I'm going to give you Exhibit 10, which
11 are your Responses to Tietex's First Request to Admit that
12 was submitted in this lawsuit.
13 A: Okay.
14 Q: Now, you claimed in your Federal lawsuit, which
15 was the earlier lawsuit, that the March 5, 2007, memo and
16 the June 8, 2007, memo -- I'm sorry -- June 18, March 5,
17 2007, memo, June 18, 2007, memo and the rumors about the
18 reason for your termination were defamatory, correct?
19 A: Without looking, I'll agree with that. Yeah, it
20 sounds truthful.
21 Q: All right. And you also claimed in your Federal
22 lawsuit that statements Wade Wallace made to George
23 Henderson and Dean Roberts on July 3, 2007, were defamatory,
24 correct?
25 A: Based on what I was told, yes.

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1 Q: Now, you're not making that claim in this lawsuit 2 are you? 3 A: No. 4 Q: Now, in your earlier United States District Court 5 lawsuit, you didn't claim that the February 9, 2007, e-mail 6 was defamatory, correct? 7 A: I don't recall doing that, no. 8 Q: So the claim about the February 9, 2007, e-mail 9 being defamatory is a new claim made for the first time in 10 this lawsuit, correct? 11 A: Yes, and if I may add to that. That's not that it 12 should have not been part of the first one. 13 Q: Okay. 14 A: It was an oversight or a mistake or whatever on 15 the part of my representation. 16 Q: Okay. And in your earlier lawsuit in Federal 17 Court, you didn't claim that the July 18, 2007, memo from 18 Wallace to Wilson was defamatory, did you? 19 A: For the same reason that I just said to the 20 previous question. The same reasons, no, I did not. 21 Q: So that your claim that the July 18, 2007, memo 22 was defamatory is a claim being made for the first time in 23 this lawsuit? 24 A: That's correct. 25 Q: And in your earlier Federal lawsuit, you didn't	1 this point in time here that referenced emotional stress and 2 all had actually occurred mostly six months to a year 3 earlier that was referenced. It was done in a way to make 4 it appear, I don't know if it was made to appear that way, 5 but it did appear in the testimony that it was going on at 6 this time and, actually, the biggest issues I had with 7 stress had to do with work related and my wife's 8 hospitalization related issues that all occurred back in the 9 spring of 2006 primarily. And then as time wore on, that 10 gradually, you know, improved or whatever, went away. 11 Q: Well, in your conversation with Mr. Wallace that 12 led to Wade Wallace preparing this memorandum dated February 13 9, 2007, you said to Mr. Wallace, "Look, Wade, I've got 14 enough stress as it is," correct? 15 A: That was probably something to the effect of 16 testimony. But I think, also, if you look, you will see 17 that — And he references February 7, he references my 18 calling him to come down, that I was having troubles. When, 19 in fact, the real story was he came to my office that 20 morning and asked me, the leading question was, "Have you 21 done these two assignments that I requested you get done?" 22 I hadn't even had time to do them. And I said, "Well, no, 23 Wade, I haven't had time. I've been working on" And 24 that led to an explosion. And so this memo, I don't know 25 when this memo was done. According to this, it was done two
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1 claim that your ban from the premises on July 3, 2007, was 2 defamatory, did you? 3 A: No, not that I recall. I don't think so. 4 Q: So being banned from the premises is a new claim 5 being made for the first time in this lawsuit? 6 A: As far as I know, yes. 7 Q: And you didn't claim in your earlier lawsuit that 8 being banned from the laboratory was defamatory, did you? 9 A: As far as I know, that's correct. 10 Q: And that's being made for the first time in this 11 lawsuit. 12 A: As far as I know, yes. 13 (Defendant's Exhibit 13 was marked for identification). 14 Q: Mr. Harris, you have before you Exhibit 13? 15 A: Yes. 16 Q: And that's the February 9, 2007, e-mail from Wade 17 Wallace to David Wilson? 18 A: Yes. 19 Q: And in your prior deposition, you talked about 20 stress and emotional issues around the time this memorandum 21 dated February 9, 2007, was written, didn't you? 22 A: There were questions asked of me, in your records 23 in our under oath deposition and previous testimony, there 24 were questions that were asked regarding that. And if you 25 can go back and look at my deposition, you'll see that at	1 days later and I never saw it until we started having our, 2 after I was terminated later is when this shows up and I 3 never was copied on it. So all this showed up, and I'm 4 starting to ramble a little bit, but in the conversation I 5 had with Mr. Wallace, in essence, it was after he was really 6 verbally abusing me and "We can find another chemist," and 7 all that kind of talk. Which is the way he typically 8 operated if nobody was around to hear it. And it was, 9 "Look, Wade, you don't have to talk to me like that." You 10 know, I'd never been talked about, no one in my life had 11 ever had reason to even talk like that to me. And it was 12 incredible. It was amazing. And I think I might have 13 said this before, but if there were any doubt about my 14 going to be terminated, it was removed that day. And I'd 15 only been reporting to him for, well, in essence, less than 16 a week. 17 Q: In the course of this conversation that you were 18 having with Mr. Wallace that led to the February 9, 2007, 19 memo, you admit that you said, "Look, Wade, I've got enough 20 stress as it is." 21 A: I think I said that, yes. 22 Q: And you admitted that in 2006, which was the year 23 prior to this e-mail, your wife was ill and you had stress 24 and sleep issues arising from her illness, correct? 25 A: The sleep issues, actually, arose directly from

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1 work stress, the way I was done after I went back to Tietex 2 from her situation. I was, obviously, as anyone would be, 3 very concerned about my wife and what she went through. 4 That's pretty normal stuff that we can deal with. But when 5 you throw in work stress, a place you're giving 60 and 70 6 hours a week into it, it becomes a different ball game. 7 Q: All right. I'm going to read from your 8 deposition, page 106, line 18. 9 MR. LAZENBY: Hold on. Let me get there so he can 10 read along. 11 Q: Ready? 12 MR. LAZENBY: He's there, yes. 13 Q: Okay. All right. Line 18, you with me? 14 A: Yes. 15 Q: "Question: Was it 2006 that your wife was ill?" 16 "Answer "That's correct." 17 A: Yes. 18 Q: Question, "Did that take a toll on you nerve wise 19 and make you kind of a wreck?" 20 Answer "I got into a major sleeping problem caused 21 mainly by stress and it did not happen until I 22 went back to work and the way I was done after I 23 got back to work." 24 That was your prior testimony, right? 25 A: Yes.	1 Q: So you admitted in your prior deposition and to 2 the Employment Security Commission that around the time that 3 this memorandum that Wade Wallace wrote on February 9, 2007, 4 that you were emotional due to personal stresses. 5 MR. LAZENBY: Object to the form. 6 A: No, I don't agree with that. I think that any 7 references I made to emotional stress that had to do with my 8 wife had to have been talking about 2006 and, in particular, 9 early in 2006. That was what I intended to have said. 10 Q: And you claim Mr. Wallace came to your office and 11 asked you if projects had been completed and you told him, 12 no, that they had not been completed. And then you assert 13 that when you told Mr. Wallace that they hadn't been 14 completed, that he verbally abused and threatened you that 15 if they were not completed by a certain date, your 16 employment would be terminated? 17 A: He told me something to the effect, "If you don't 18 have those done by like Friday, we'll find another chemist." 19 Q: Did that mean to you your employment would be 20 terminated? 21 A: Yes. 22 Q: So Wade Wallace was warning you that you had to 23 complete your projects timely or your job was in jeopardy? 24 MR. LAZENBY: Object to the form. 25 A: Those two particular projects he wanted, for some
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1 Q: And you told the South Carolina Employment 2 Security Commission that you were a nervous wreck, correct, 3 because of what your wife went through. 4 MR. LAZENBY: Object to the form. 5 A: I think it's very broad and general. It could be 6 for a lot of reasons, that happened to be part of it. I 7 don't recall what I told them. But I would say that, I 8 mean, someone could make a statement like that. That could 9 be a very opinionated statement. 10 Q: All right. This is the Employment Security 11 Commission transcript, February 5, 2008, see that? 12 A: Uh-huh (affirmative response). 13 Q: This is your testimony on page 55, that runs over 14 from prior pages starting on 152. Just read what's 15 highlighted there, please, sir. 16 A: You want me to read it? 17 Q: Yes. 18 (Reviewing document). 19 A: "Answer: And at this time I was kind of, you 20 know, nerve wise, kind of a wreck because of what 21 my wife went through." 22 Q: That's what you told the Employment Security 23 Commission under oath, right? 24 A: Yeah. Taking that out of context, out of that 25 total picture there, that was said.	1 reason, done and done right away. He wanted me to drop 2 everything else. 3 Q: Was Mr. Wallace warning you that you had to 4 complete these projects in a timely fashion or your job was 5 in jeopardy? 6 MR. LAZENBY: Object to the form. 7 A: Those two projects, yes. May I add, those two 8 projects had nothing to do with, they in particular had to 9 my moving two areas of my responsibility to another employee 10 so I would no longer — It was something Tietex needed 11 done that he didn't want me being the person they had to 12 depend on. He wanted me to move those two assignments to 13 another area to someone else so that if something happened 14 to me, I assume, later, you know. This is looking back at 15 it later. That they wouldn't have to worry about knowing 16 how to do that stuff. It was too, just to procedural 17 projects that only I could do. 18 Q: Wade Wallace was your supervisor, right? 19 A: That's correct. 20 Q: And it was Mr. Wallace's job to make sure that you 21 completed assigned projects in a timely fashion, wasn't it? 22 A: That would be true. 23 Q: And warning you to finish projects on time is not 24 abusing or harassing, is it? 25 A: No. That in itself, no.

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1 guess when did he show up at your office, I think it was 2 probably early in the morning. Because if he came to see 3 me, typically, it was early in the morning just to come 4 around and see what was going on. And he would come in and 5 just say hey or that kind of thing. And so I would have had 6 to have said that what really happened happened early in the 7 morning. So you disagree on who initiated the conversation 8 and the time of day, right? 9 A: I disagree not so much with the time of day as who 10 initiated the conversation and what was said, what really 11 took place in that conversation. 12 Q: And you say during the conversation that his 13 primary focus was these projects that hadn't been completed? 14 A: They weren't — Let me just say this. They were 15 more, I would put them — I see a project as something 16 kind of big. It was more of an assignment. 17 Q: These assignments that hadn't been completed. 18 A: Okay. 19 Q: All right. Is there anything else about the memo, 20 which is Exhibit 13, that you claim is incorrect? 21 A: I mean, I think I've pretty well covered it by 22 just saying generally, this doesn't represent what happened 23 that morning or that afternoon or whenever. It is not 24 representative of what took place. 25 Q: Well, did you tell Mr. Wallace that the	1 to show that this e-mail, which is marked Exhibit 13, was 2 ever seen by anyone other than Wade Wallace and David Wilson 3 except for this litigation, do you? 4 A: No, I don't. 5 Q: And that February 9, 2007, e-mail that's dated 6 Exhibit 13, was an internal Tietex communication between two 7 Tietex managerial employees, right? 8 A: Yes. 9 Q: One of them was Wade Wallace, who was your 10 supervisor, correct? 11 A: That's correct. 12 Q: And the other one was David Wilson who was the 13 Human Resource Manager? 14 A: Yes. 15 Q: So both Wallace and Wilson had legitimate business 16 need to know about and discuss personal and emotional 17 problems that you might have been facing that would have 18 impacted your job performance or suggested that it would be 19 prudent to refer you to EAP, correct? 20 MR. LAZENBY: Object to the form. 21 A: In the big picture, yes, that certainly should 22 have been proper or would have been. 23 Q: Well, if you were under stress in performing your 24 job duties, that would be a legitimate issue for your 25 supervisor and HR to discuss, wouldn't it?
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1 assignments hadn't been completed in part because of your 2 personal and emotional issues? 3 A: No. 4 Q: During the course of the conversation, did Mr. 5 Wallace suggest that you go to Tietex's EAP? 6 A: No. 7 Q: Is there any part of this memo, which is Exhibit 8 13, that you agree was said? 9 MR. LAZENBY: You can take your time and look at 10 the entire document. 11 A: Okay. 12 (Reviewing document). 13 A: I can't recall specifically everything, but my 14 answer is, no, I don't agree with any of that. What I'm 15 basing it on is, like I said, I cannot recall February 7, 16 2007, but I can look at those things that are said there and 17 know whether or not I would have said them. I mean, whether 18 they fit or not. And my answer is no. I think all of it is 19 totally representative of what took place, totally non- 20 representative of what took place. 21 Q: So your opinion is that what Mr. Wallace wrote in 22 Exhibit 13 is not representative of what was said? 23 MR. LAZENBY: Object to the form. 24 A: That's correct. 25 Q: You don't have any evidence or other information	1 A: Normally, yes. 2 Q: And your struggles with anxiety, depression, 3 insomnia, and stress had previously resulted in you missing 4 work time, right? 5 MR. LAZENBY: Object to the form. 6 A: I had no depression. I've never had any 7 depression. 8 Q: Well, these mental and emotional issues resulted 9 in you taking a two week medical leave, right? 10 MR. LAZENBY: Object to the form. 11 A: I was approved for that, and I only took a few 12 days. 13 Q: You didn't take two weeks? 14 A: No. 15 Q: Were you approved for two weeks? 16 A: Yes. Well, I believe it was two weeks based on 17 memory. But I only took a few days and realized that I 18 think I was kind of addicted to work. 19 Q: Look back at Exhibit 11, page 185. 20 A: Okay. 21 Q: Entry for 4/7/2006, second to the last sentence in 22 that block, "After discussion, will give two weeks medical 23 leave of absence from work to taper off his Klonopin 24 gradually over a two week period." See that? 25 A: Yes.

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1 Q: And is it your claim that you were approved by the 2 doctor for two weeks of medical leave after having been 3 treated for anxiety and depression and insomnia, but you 4 didn't take it? 5 A: I took, I don't remember how many days, but it was 6 less than a week. And as far as, I mean, I'm just trying 7 to, you know, think and remember some of this as we talk and 8 you ask questions. But my problem that I conveyed to the 9 doctor had to do with work stress primarily and I do not 10 recall going to him asking for time off. It's my opinion, 11 based on memory, that he wanted to know if I thought that 12 would do me some good or whatever. I may be wrong. It 13 could have been — I do not recall, in other words, 14 going to him. I was going to him just for my problem with 15 sleep primarily. The sleep was very difficult and, of 16 course, anxiety, stress, to me that's the same thing. 17 But, in essence, that's it. I did not take the full two 18 weeks. 19 Q: Are you suggesting that you didn't go to him 20 asking for two weeks off, that the doctor recommended you 21 take two weeks off? 22 A: I cannot recall the conversation we had. But my 23 memory is that we were talking about options and that's 24 something that I don't even know that I would have been 25 aware of as something as a remedy or potential help. Again,	1 it says. But not being an attorney, I'm just simply saying 2 that the stuff in here that really represents what we've 3 already talked about that I disagree with. 4 Q: And the Magistrate Judge found that Mr. Wallace 5 offered you assistance through the Employee Assistance 6 Program, didn't he? 7 A: For what I just said, I mean, I cannot, I mean, 8 there are things in here that I know to be wrong, and I 9 cannot ... 10 Q: Well, look, it's fine with me if you say, yes, he 11 found that but I disagree with him. 12 A: Okay. I'll just say yes and know that I probably 13 disagree with it. 14 Q: Okay. 15 A: I'll just say yes. (Defendant's Exhibit 16 was marked for identification). 16 Q: I'll show you what's been marked as Exhibit 16, 17 and that's the March 5, 2007, memo from Wade Wallace to 18 David Wilson with a copy to Mark Isbell and you, correct? 19 A: That is correct. 20 Q: And you see the handwriting at the bottom, it 21 says, "Discussed with Gary on 3/5/2007"? 22 A: Yes. 23 Q: And that signature, do you recognize as David 24 Wilson's? 25
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1 I'm not going to sit here and just pure speculation, because 2 I cannot recall what we talked about. But that would be my 3 thinking, that he was looking to help me and may have come 4 up with that as a suggestion. 5 Q: All right. Your lawyers got those in a nice stack 6 for you, so find Exhibit 2 if you will. 7 A: Okay. 8 Q: And turn if you will to page 4. 9 A: Okay. 10 Q: And Exhibit 2 is the Magistrate Judge's Order and 11 Report, isn't it? 12 A: It is. 13 Q: And if you will look with me on page 4 at that 14 paragraph that begins, "On February 7, 2007," just read that 15 to yourself. 16 (Reviewing document). 17 A: Okay. 18 Q: The Magistrate Judge found that you told Wade 19 Wallace that you were overwhelmed by personal emotional 20 problems, that your wife was ill during this period of time, 21 and that you were stressed, sleepless, and a wreck due to 22 your wife's illness, didn't he? 23 A: For the record, I disagree with a lot of what's in 24 here. And I, to say that he found that, I don't know. I'm 25 not a lawyer. That's what it says. What you read is what	1 A: It appears. I don't know his signature, but that 2 does say David something, W. 3 Q: Do you remember discussing this memorandum which 4 is marked Exhibit 16 with Mr. Wilson? 5 A: I do not. 6 Q: But you don't deny that he discussed it with you? 7 A: I recall discussing something with him regarding 8 some issues and, in essence, his telling me, if you want to 9 keep your job, I would recommend you just go do it and keep 10 your mouth shut. And that may have been after this if, in 11 fact, and apparently I did discuss it with him. But since 12 the — Now, what I'm taking this to mean, Mr. Suggs, is 13 that he and Wade Wallace discussed it with me and then it 14 was on 3/5 that we discussed it. And then I requested that 15 Wade Wallace send me an e-mail to document all these things 16 so I would know what I needed to improve on. So I think I'm 17 responsible for the e-mail having been sent. 18 Q: Well, now, when you say e-mail, you mean Exhibit 19 16, right? 20 A: That is correct. 21 Q: So you admit that Exhibit 16 was prepared at your 22 request to document the meeting regarding Tietex's 30-day 23 review of your progress after you were transferred to Wade 24 Wallace's supervision? 25 A: Yes.

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1 admitted that you had failed to return voicemails and 2 e-mails, but you said that your failure was not malicious or 3 intentional, correct? 4 A: It was normal. 5 Q: Sir? 6 A: It was normal. You know, it was like a situation 7 where I didn't do it. 8 Q: You agree that you said that earlier? 9 A: I would think I would have. 10 Q: And in your earlier deposition, you admitted that 11 you didn't contest the first three bullets on Exhibit 16 12 during the meeting, but you said in your opinion, the points 13 were not true, correct? 14 A: During the course of our meeting, I recall having 15 ... 16 Q: Hold on a minute. I said I wouldn't interrupt 17 you, but give me a yes or no and then go on your ... 18 A: Yes. I mean, no, I did not directly contest them 19 during the meeting. You're right. 20 Q: Okay. Did you want to say something else? 21 A: I was just going to simply say, I was sick that 22 day. I actually had what I believe was the flu and I 23 didn't feel like contesting anything or I may have. 24 Q: All right. And you admitted that at times you 25 went directly to Mr. Martin Wildeman rather than using the	1 A: Yes. 2 MR. LAZENBY: Fred, when we get to a good stopping 3 point, can we just take another short break? 4 MR. SUGGS: Sure. I'll ask a few more questions, 5 but if you say let's do it now, that's fine. I've just got 6 a few more in this line to ask. 7 MR. LAZENBY: Sure, that's fine. 8 Q: You admitted it was not appropriate for you to 9 complain to Mr. Wildeman about having to do the 10 environmental reporting, correct? 11 A: I would have thought that would have, had I done 12 that, that would have been not appropriate. 13 Q: Are you claiming you didn't do it? 14 A: I'm claiming I didn't do it. 15 Q: Sir? 16 A: Yes, I'm claiming I did not complain to him about 17 having to do, nor did I complain in the true sense to anyone 18 about having to do the environmental reporting, Mr. 19 Wildeman, Mr. Wallace. 20 Q: And you admit that the only folks in the meeting 21 about Exhibit 16, which is the March 5, 2007, memorandum, 22 were you, Mr. Wallace, and Mr. Wilson, right? 23 A: That's correct. 24 Q: And this was an internal Tietex communication 25 between Tietex management employees?
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1 chain of command, correct? 2 A: Well, there were times when I went to Mr. 3 Wildeman. In my training and all at Tietex, there was no 4 chain of command. That was the normal Tietex. People 5 all the time went directly to my technicians and bypassed 6 me, which included Wade Wallace, and told them what they 7 wanted done. On the other hand, my technicians went to 8 whomever they wanted to, whether it be Mr. Wildeman or 9 personnel or to Wade Wallace or whomever. They didn't tell 10 me, they would go do it. That's just the way things were at 11 Tietex. 12 Q: But you admit that you did go directly to Mr. 13 Wildeman? 14 A: I don't recall going directly to him. I recall 15 leaving a phone message wanting to meet with him. But 16 mostly those, any encounters I had with Mr. Wildeman 17 generally were coincidental. 18 Q: Look at your prior deposition, page 116, line 16. 19 A: Okay. 20 Q: "Question: But you admit going directly to Mr. 21 Wildeman? 22 Answer: I don't remember enough about any 23 specific circumstances. I do know that I did that 24 some ..." 25 Did I read that correctly?	1 A: Yes. 2 Q: And the e-mail was between your supervisor, Mr. 3 Wallace, and David Wilson who was the Human Resource 4 Manager, correct? 5 A: As far as I know. 6 Q: And Mark Isbell was Wade Wallace's boss? 7 A: That's correct. 8 Q: So all three of these individuals were management 9 employees at Tietex who had a legitimate business need to 10 discuss the issues listed in Exhibit 16, weren't they? 11 MR. LAZENBY: Object to the form. 12 A: I as a manager would have never handled it like 13 that. I would have, in private. If I had these kind of 14 problems, I wouldn't wait till 30 days were up. Each 15 accusation by itself is a major problem. I would have, had 16 I had a major problem with the people that reported to me, 17 it would have been in private and head-to-head and I would 18 have never gone and for some reason spread it in and around 19 that this stuff happened and it didn't. 20 Q: Well, all three of the individuals, Wallace, 21 Isbell, and Wilson were managerial employees at Tietex, 22 right? 23 A: That's correct. 24 Q: And if you had issues with your supervisor or with 25 the Company, they had a legitimate reason to discuss those

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1 talked a little bit before June 18 about could we get into 2 that. And on June 18, I mean, it was like do this, and then 3 the next thing, I get this June 18, what I call a final 4 written warning. And then the next thing I know, Mr. 5 Wallace wants me to do the triblend. So for this to say 6 that I ignored the C237, I was doing exactly what Mr. 7 Wallace had asked me to do, which was start on and 8 prioritize the triblend project. That's exactly what he 9 told me. 10 Q: All right. You admit you failed to visit a 11 customer in Indiana and did not tell Mr. Wallace about you 12 not meeting with that customer, correct? 13 A: I will just say yes, but may I add to that? 14 Q: Sure. 15 A: I did not recall whether or not I had told Mr. 16 Wallace about having to abort the trip. But I left it in 17 the hands of Steve Acker who was with me. And I almost can 18 say without, it's a knowing without knowing, that I said, 19 "Would you call Mr. Wallace and tell him what has happened, 20 that I've got to fly back?" So I would have thought that 21 Mr. Acker would have handled that for me. Anyway, with that 22 said, I'm still looking for an itinerary which will show 23 that Wade Wallace and Steve Acker got together and planned 24 this trip for me to play golf. Fly up, on the same morning 25 that I would fly up, be picked up by Steve Acker. We would	1 A: Okay, I have. 2 Q: All right. And the Magistrate Judge credited Mr. 3 Wallace that the plaintiff never told Mr. Wallace he had not 4 met with the customer in Indiana, correct? 5 A: That's what it says, yes. 6 Q: And you admit you were supposed to go to Hexion, 7 but claim you couldn't get in? 8 A: No, July 2 and 3, if I wanted to go to Hexion, it 9 was up to me. It wasn't like I was supposed to. I was on 10 vacation July 2 and 3. That's never been a big issue, but 11 it should have been. 12 Q: Well, you admit that you told Mr. Wallace that you 13 were going to Hexion? 14 A: Out of pure courtesy, not that I had to. 15 Q: And that you went there, you claim, but you 16 couldn't get in? 17 A: That's correct. 18 Q: And you admit you didn't do any work at Hexion? 19 A: No. I mean, yes, I admit I didn't do any work at 20 Hexion that day. 21 MR. LAZENBY: I'm going to object to the form. I 22 don't know what day you're referring to. 23 A: July 3. 24 Q: We're referring to ... 25 A: July 3.
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1 have lunch, go play golf with a customer, and then he would 2 take me back to the airport. Now, that was really strange 3 to me on June 14 with all this negative going on that it's 4 okay for me to fly and play golf. But I am confident had 5 that trip not been aborted and I had gone and played golf, 6 then what we would have been looking at today would have 7 been a report where Gary Harris claimed he was going to 8 visit a customer and told me he was going to do that and 9 instead he was going to play golf. That was orchestrated, 10 in my estimation, to really add to all the other. And it 11 was, it was a, it just happened, thank God, that, I mean, I 12 thought I was having a hemorrhage or something in my brain 13 on the airplane. It was tremendous. And, ultimately, 14 breaking out in sweat. And discussed this with Mr. Acker 15 after the first landing when before I flew on to where he 16 was. And it was his and I decision that it was best I 17 didn't continue the trip. 18 Q: Turn with me, please, to Exhibit 2, page 7. 19 A: Okay. 20 Q: And come down to the last full paragraph, which is 21 the paragraph before "On the evening of Monday, July 2 ..." 22 A: Okay. 23 Q: Got it. Read that to yourself. 24 A: You're talking about the Indiana thing? 25 Q: Yeah.	1 Q: ... July 3, 2007. Correct, Mr. Harris? 2 A: That's correct. 3 Q: So you admit you didn't do any work at Hexion on 4 July 3, 2007? 5 A: That's correct. 6 Q: And you admit you told Mr. Wallace you were going 7 to Hexion as soon as you took care of an ant problem at your 8 home? 9 A: Out of pure courtesy, yes. 10 Q: And you admit that when you couldn't get in 11 Hexion, you left? 12 A: After some time of trying to get in, I left a 13 message for one of the technicians and then I left. 14 Q: And you admit there was no one who saw you at 15 Hexion who could substantiate you being there? 16 A: As far as I know. 17 Q: And you admit you were only at Hexion for about 30 18 minutes? 19 A: Thirty or 45, I don't remember exactly. I'd say 20 30 to 45. 21 Q: Look at your deposition at page 158. 22 A: Okay. 23 Q: All right. This actually starts at 157, last 24 line. 25 A: Uh-huh (affirmative response).

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1 Q: 157, the last line. You there? 2 A: Yes. 3 Q: Okay. 4 "Question: All right. Let me invite your 5 attention to the ESC transcript March 28, 2008, 6 page 171. 'Question. And you stayed there for 7 about 30 minutes.' 'Claimant.' That's you. 'My 8 guess is 30 minutes.' 'Question. Pardon me?' 9 'My guess is 30 minutes.' 'Question. Thirty?' 10 'Claimant. An estimate, from memory, an 11 estimate.' 12 Answer: Okay. 13 Question: Do you agree with 30 minutes? 14 Answer: About 30 minutes because I don't know, I 15 didn't keep a record of it. I would say, probably 16 now I would change that to at least 30 minutes 17 because of what I did." 18 A: Okay. That's consistent. 19 Q: And you admit that Mr. Wallace expected you to be 20 at Hexlon? 21 A: No. Wait a minute. Let me just say that he was 22 aware that at some point I was going to be going to Hexlon. 23 I was on vacation. I had no intention, I had no intention 24 of going to Hexlon, finishing a project, and going back to 25 Tietex.	1 where I was as if I were at work, but I wasn't. And I let 2 him know that I was going to Hexlon. And there was no 3 reason in our scheme of things and the way we had arranged 4 things, there was no reason that when I couldn't get in at 5 Hexlon that I would need to call him and just every little 6 detail. 7 Q: Pick up your deposition, please, and turn to page 8 160. 9 A: Okay. 10 Q: Line 13. 11 "Question: Did you telephone Wade Wallace and 12 tell him you couldn't get into Hexlon and you were 13 going to go somewhere else? 14 Answer: No, I did not." 15 Did I read that correctly? 16 A: Yes. 17 Q: And you admit that when Wallace telephoned you on 18 your cell phone to ask where you had been and you explained 19 that at that point Mr. Wallace suspended your employment? 20 A: Yes. 21 Q: And he suspended your employment with pay, 22 correct? 23 A: I would later find out, yes. 24 Q: And Exhibit 19 was an internal Tietex 25 communication between Tietex managerial employees, right?
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1 Q: Then look at your deposition, page 158. 2 A: Okay. 3 Q: Line 14. 4 "Question: And you agree with me that Wade 5 Wallace, based on your phone call, expected you to 6 be at Hexlon? 7 Answer: Yes." Did I read that correctly? 8 A: "Object to the form." Yes, that's what it says. 9 But ... 10 Q: Did I read it correctly? 11 A: You did. You know, that's an opinion. 12 Q: And you claim that you tried to get into work 13 somewhere else but admitted you never notified Mr. Wallace 14 that you were not going to be at Hexlon? 15 A: That was not in our way of doing things. I was 16 required to keep a cell phone on when I was not at Tietex. 17 Q: You claim that you tried to get into work 18 somewhere else but you admit that you never told Mr. Wallace 19 that you were not going to be at Hexlon, correct? 20 A: I had not — Let me just answer it this way, 21 because I think that's a difficult way of, the way it's 22 worded is difficult. I had told Mr. Wallace, again, out of 23 courtesy, just to let him know what I was doing, something I 24 did not need to do. I was on vacation. I was coming off of 25 vacation to help him out. And I was just letting him know	1 A: Yes. 2 Q: Wade Wallace who was your supervisor and David 3 Wilson who was the Human Resource Manager? 4 A: Yes. 5 Q: And a copy to Mark Isbell who was Wade Wallace's 6 supervisor and in your chain of command? 7 A: Yes. 8 Q: And this was a recommendation for termination, 9 right? 10 A: Yes. 11 Q: Exhibit 19 recommended that your employment be 12 ended, right? 13 A: That's correct, yes. 14 Q: So Mr. Wilson in Human Resources would have had a 15 need to know that, right? 16 A: Yes. 17 Q: And Mark Isbell, who was Wade Wallace's boss would 18 have had a need to know that Wade Wallace was recommending 19 that one of his employee's employment be ended, right? 20 A: In a normal situation, yes. 21 MR. SUGGS: This is probably a good time to take a 22 break if you're ready. 23 MR. LAZENBY: Sure, that's fine. 24 (Off the Record) 25 Examination Resumed by Mr. Suggs:

25 (Pages 97 to 100)

1 was not telling the truth and could not be relied on. In
2 summary judgement, it's very important. If there's any
3 conflicts with whether someone is not telling the truth,
4 that comes in question. That's what that was all about. It
5 wasn't a matter of showing whether it happened in May of
6 February, it was about showing somebody not telling the
7 truth.
8 Q: Okay.
9 A: If he said this one time and he said that the
10 other time.
11 Q: Look back at the paragraph we looked at previously
12 on page 14 of Exhibit 2.
13 A: Okay.
14 Q: And you can see the citation in the middle of that
15 paragraph to Exhibits 16, 18, and 19. See that?
16 A: Yes.
17 Q: And then read the sentence to yourself that is
18 right before that citation to those exhibits.
19 (Reviewing document).
20 A: I think I've read what you asked me to.
21 Q: Okay. The Magistrate Judge found that Tietex had
22 legitimate reasons for terminating your employment based on
23 the employment deficiencies noted in Exhibits 16, 18, and
24 19, correct?
25 A: That's correct.

1 Q: And let's go to Exhibit 3 and go to the bottom of
2 page 3.
3 A: Okay.
4 Q: And look at page 3 through page 5.
5 (Reviewing document).
6 A: Okay.
7 Q: And the District Court in reviewing the evidence
8 and the Magistrate's Report found as fact that the
9 performance deficiencies cited by Tietex, which are listed
10 in the memoranda in Exhibits 16, 18, and 19 were true,
11 right?
12 A: Yeah, they concurred with the Magistrate Judge,
13 yes.
14 Q: Right. Okay. Now, let me invite your attention
15 to your claim about rumors in the industry.
16 A: Okay.
17 Q: Are you with me? And you claim it was reported to
18 you that a former Tietex employee who had previously worked
19 in sales for Tietex told you there were rumors about you in
20 the market, right?
21 A: Yes.
22 Q: And you don't recall the name of this former
23 Tietex sales employee?
24 A: Yes.
25 Q: Yes, you don't?

1 A: I do.
2 Q: You do. Who is that?
3 A: Ann Weaver.
4 Q: Who?
5 A: Ann Weaver.
6 Q: Who is she?
7 A: All I know her as is Ron Weaver's wife and both of
8 them worked at Tietex and they eventually got married. She
9 was Ann someone else.
10 Q: Does she still work at Tietex?
11 A: No.
12 Q: Where does she work now?
13 A: I don't know.
14 Q: Do you have any contact information on her?
15 A: No.
16 Q: Tell me what you claim Ann Weaver said.
17 A: She told me that there were things being said and
18 she thought I ought to know about them. And I didn't really
19 pursue it that much. She said, "I'm just going to tell you
20 that. There's been some things spread out there about you.
21 You need to know about them." And I said, "Do you think the
22 Tietex folks ..." She wasn't at Tietex then. I said, "Do
23 you think any of the sales folks at Tietex would know?" She
24 said, "It might be that. It might be that they would, they
25 should. They're apparently involved in it."

1 Q: Okay. Did Ann Weaver tell you what was being
2 said?
3 A: No.
4 Q: She just said generally there were rumors?
5 A: She said some bad — I don't remember exactly.
6 But it was obviously negative what she implied to me, or
7 actually said was that it was negative stuff, general stuff.
8 And I'm not the kind of person to start digging for details
9 and I didn't really pursue it with her. I didn't ask her
10 for much.
11 Q: When did you have this conversation with Ann
12 Weaver?
13 A: I don't remember. It would have been, obviously,
14 after I was terminated. And it could have been, I mean,
15 maybe somewhere there's some where I was asked this same
16 kind of a question, there may be some record when it was.
17 But my thinking right now just based purely on memory is
18 that it was probably in the fall of 2007. It could have
19 been 2008 sometime, but it wasn't that long, not that far
20 out from my termination.
21 Q: Where did the conversation with Ann Weaver take
22 place?
23 A: It would have been probably by telephone.
24 Q: Who called whom?
25 A: I do not recall the reason why I was talking with

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1 her. There was several times we talked with each other, by 2 the way, because at that time I was trying to restart a 3 career and I knew Ann fairly closely. 4 Q: At the time of the conversation with you, who did 5 Ann Weaver work for? 6 A: I don't know. I don't remember. Oh, at the time. 7 Oh, you were saying now while ago. At the time, I believe 8 it's something like Clama, Lava, Clama. I know there's a 9 Lava and there's a Clama, but it was either Lava or Clama. 10 Q: If I set out to find Ann Weaver, where would I 11 start looking? 12 A: Probably go to Pam. I mean, if I were you, Pam, 13 I'm sure, she knows a lot of people who's worked at Tietex 14 and the sales folks. She could trace it down for you. I 15 mean, I'm being serious. 16 Q: When's the last time you talked to Ann Weaver? 17 A: Probably three years. Let me see. At least three 18 years ago. 19 Q: When did it occur to you that Ann Weaver was the 20 person who reported these rumors in the industry? 21 A: That she reported them? 22 Q: Yes. 23 A: In other words, saying when did we first talk? 24 Q: No, no. When I took your deposition in the 25 Federal case, I asked you who it was that told you about	1 time, I would not have told you. There's absolutely no 2 reason why I wouldn't have mentioned that. So, you know, 3 I'd need to go do some digging now to figure out when I 4 first learned it was Ann Weaver. 5 Q: At the time you had the conversation ... 6 A: But I ... I'm sorry. 7 Q: At the time you had the conversation with Ann 8 Weaver, what was she doing? What was her job? 9 A: She was in sales, mattress fabric sales. 10 Q: But you're not sure of the name of her employer? 11 A: Not right now, no, absolutely not. That's been, 12 like I said, three plus years since I talked with her. 13 Q: Okay. As a result of Ann Weaver telling you about 14 rumors in the market, you telephoned Tietex employee Jimmy 15 Fleming who worked in Tietex's color shop? 16 A: No. At that time Jimmy Fleming was in sales when 17 I made the phone call. 18 Q: Look at page 216 of your deposition, line 13. 19 A: Okay. 20 Q: "Question: Tell me who Jimmy Fleming is. 21 Answer: He's a young fellow that was working in 22 the color shop, just various jobs in the color 23 shop ..." 24 Is that ... 25 A: Yes. Please, can I ask you to read the rest of it
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1 these rumors and you said you didn't know. 2 A: Well, maybe I didn't at the time. I was still in 3 a lot of — If I told you that, I meant it. 4 Q: And I'm asking you now when did it occur to you 5 that it was Ann Weaver? 6 A: Well, I know it was Ann Weaver. I mean, it didn't 7 occur to me. I know it and it's just a matter of when did 8 it happen. Did it happen before July of 2009 or after? But 9 at the time, if I in fact said what you said I said there, I 10 meant it. If I'd have known it was Ann Weaver when you 11 asked me the question, you would have gotten her name. 12 There's no reason not to give it to you. 13 Q: Look at page 217 of your deposition. 14 A: Okay. 15 Q: All right. We'll just start at the top. This is 16 part of your answer. 17 "— and I'm not 100 percent sure about the person 18 that told me, but they did work at Tietex and 19 they're out in the sales force, and they said they 20 had heard a rumor about me out in the market. 21 Question: You don't know the name of this person? 22 Answer: The one that alerted me first, I don't 23 recall." 24 A: Well, I'll just tell you right now, there's 25 absolutely no reason had I known it was Ann Weaver at that	1 and you'll see what I'm talking about. 2 Q: "... right before I left there he ended up getting 3 some sort of a degree from, I don't know if it was 4 a community college or what but once he got that 5 he was given a job in ticking sales, working in 6 the sales marketing area for ticking fabrics. 7 Fairly young fellow." 8 A: Yes. 9 Q: So where did he work? 10 A: He was in sales at the point in time I was 11 terminated and he was going into sales pretty much right 12 about that time. So by the time I was calling him on the 13 phone whenever it was later, he was actually out there in 14 the sales force. And I knew Jimmy. He and I had a fairly 15 close relationship. 16 Q: Okay. As a result of your conversation with Ann 17 Weaver, you called Jimmy Fleming? 18 A: I called him because I had his cell phone number 19 and I knew him and I knew he would tell me the truth. 20 Q: Is it true that you called him as a result of your 21 conversation with Ann Weaver? 22 A: Yes. 23 Q: And Jimmy Fleming told you that a ticking 24 manufacturer's representative in Texas asked him if it were 25 true your employment had been terminated for preparing a

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1 false testing report. 2 A: Yes. 3 Q: And you don't know the name of the person who 4 allegedly asked Fleming if your employment had been 5 terminated at Tietex for falsifying test results, do you? 6 A: I do not and did not pursue getting it. I 7 intentionally did not pursue getting that information. 8 Q: And you don't know for what company that person 9 worked? 10 A: I do not. I can't sit here and say I know exactly 11 where the person works. But it was like a knowing without 12 knowing. I just didn't bother pursuing it. I didn't, for a 13 lot of reasons, I didn't want to start opening a can of 14 worms and digging in and scaring people off and all that. I 15 had all I needed and wanted. 16 Q: You've never spoken to this unknown person? 17 A: Not at this time, no. 18 Q: Do you know what Jimmy Fleming told this unknown 19 person about whether Tietex had terminated your employment 20 for falsifying test results? 21 A: I cannot sit here and say that we brought that up. 22 The only thing I can remember about ... 23 Q: Is the answer yes or no? Do you know what Jimmy 24 Fleming told him in answer to his questions? 25 A: No.	1 Q: All right. Well, back when you gave your 2 deposition in the Federal case, you said that you thought 3 that Fleming said Kenny Parrish was present. 4 A: And I think it today. You know, I mean, just 5 simply saying ... 6 Q: What evidence do you have that Parrish was there? 7 A: Based on what Jimmy Fleming told me. 8 Q: Did you ever talk to Kenny Parrish? 9 A: Not specifically about that. 10 Q: Now, when do you claim this conversation occurred? 11 A: I can't, because I'm not sure. I'm just simply 12 saying, obviously, it had to have been after I was 13 terminated. And if were putting out a guess, it would have 14 ranged some time between the fall of 2007 on up into 15 possibly some time in 2008. 16 Q: Could it have been summer of 2007? 17 A: No, it had to have been after I was terminated to 18 have made sense that I would have been told all this in a 19 phone call and then that Ann Weaver would have called me or 20 I called her, whatever, that we talked. Because at the time 21 we talked, I was actually trying to restart a career. 22 Q: So just so we're clear, I'm talking about when 23 Jimmy Fleming's conversation with the ticking manufacturer's 24 representative occurred. Do you know when that was? 25 A: No.
1 Q: Now go ahead. 2 A: He did, I don't know if I asked him this, I 3 probably did. Was there anyone else there that heard that 4 from Tietex? And he said Kenny Parrish knew about it. So 5 both he and Kenny Parrish knew about it. 6 Q: Did he say definitely that Kenny Parrish was 7 present? 8 A: Yes. They were together. In fact — Well, let 9 me just say, I gathered from what we discussed in that phone 10 conversation that Kenny Parrish was with him that particular 11 moment when that occurred. 12 Q: All right. Turn with me to page 217 of your 13 deposition. 14 A: Okay. 15 Q: Line 22. 16 "Question: And you don't know the name of this 17 person that was talking to Fleming? 18 Answer: No, I do not. He would if he remembers. 19 And anyway it was, and anyway once I was told what 20 I was told, and I asked him if anybody else was 21 there and I think he mentioned that Kenny Parrish, 22 who worked at Tietex at the time was also present 23 there on that particular assignment." 24 A: I mean, I agree that you've read what I'm reading, 25 yeah.	1 Q: And you don't have any evidence that any 2 representative of Tietex made any statements to this unknown 3 named ticking manufacturer representative about you, do you? 4 A: Not at this time, no. 5 Q: Do you have any evidence that any representative 6 of Tietex made any statement to anyone in the industry about 7 the reasons for your termination? 8 A: Only that I have evidence, not evidence but — 9 Well, I guess you could call it evidence that may have 10 occurred, but to say that I have evidence that absolutely 11 that occurred, I don't. 12 Q: Now, when you refer to your ban from the premises 13 on July 3, 2007, you're talking about Wade Wallace 14 suspending you until he returned from vacation, correct? 15 A: Yes. 16 Q: And I think you said earlier you were suspended 17 with pay. 18 A: That's what happened. 19 Q: And that was on the day, that suspension was on 20 the day that you had told Mr. Wallace you were going to be 21 working at Hexion, correct? 22 A: That was the day that I was going to be doing work 23 at Hexion, July 3. 24 Q: And Wade Wallace telephoned you on July 3 to learn 25 where you had been because he had information that you were

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1 not at Hexion, right?
2 MR. LAZENBY: Object to the form.
3 A: I will say yes, but I'd like to add something to
4 that. In real life when this happened, and this is my
5 speaking today when I know a lot more than I knew in 2009.
6 I've forgotten information, obviously, with the passage of
7 time, but I've also been able to become less subjective to
8 the matter. And it's pretty clear to me today that what
9 happened on July 3 was that Wade Wallace expected, based on
10 our miscommunication, my thinking that he was going on
11 vacation on, leaving the last day being the 6th, and his
12 knowing that it was the 3rd and assuming I knew that, he
13 expected me back in there with information from Hexion
14 toward the end of the day on the 3rd. And I have no problem
15 with understanding that he wanted me back in there so he
16 could terminate me before he went on vacation. And so what
17 happened, everything is calm. None of this other stuff
18 that's in these reports about July 3 that he said happened.
19 Later after the fact, he's trying to make it look like I
20 disappeared for the whole day. But, actually, he did not
21 get alarmed at all about anything on July 3 until George
22 Henderson showed up between 4 and 4:30 with sulfuric acid.
23 And then, and I can just imagine that Mr. Wallace is
24 thinking, he'll be back in here by 5 o'clock and we'll take
25 care of things. And all at once he gets notice that somehow

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1 somehow George Henderson has come by with something for me
2 and then, of course, that's when everything starts, after 4
3 o'clock. Up until then, he had no reason to be not calm and
4 ready to do whatever he was going to do. So that really got
5 him highly concerned that, man, he's not going to be around
6 here for me today. So he starts doing all this stuff. He
7 calls me like 4 whatever, 4:40 or whatever, and gets me on
8 the phone. My cell phone has been on all afternoon. He
9 calls me and he says, "Gary, will you come to my office?"
10 And I said, "Wade, I'm not there." I said, "I'm on my way
11 to Hexion to pick up some acid." Then he flew off the
12 handle like he can do and started, "What do you mean you're
13 not here," and all this. And he said, "I tell you what, I'm
14 putting you on suspension and I don't want you back in here
15 until I'm back from vacation." And there may have been a
16 few more little comments in there thrown in. He asked me to
17 explain something but he flew off the handle. And then we
18 were on the phone and I was driving going out kind of, I
19 guess, where you could get cut off. And then the next thing
20 you know, we don't have a connection. But, anyway, that was
21 the phone call. That was the essence of the phone call that
22 was made to me.
23 Q: In this telephone call that you described between
24 you and Wade Wallace on July 3 where Wallace telephone you
25 to find out where you had been, no one was on the phone

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1 other than you and Wallace, right?
2 A: On our phone call?
3 Q: Yeah.
4 A: That's correct.
5 Q: And it was during that call that Wallace told you
6 you were suspended, correct?
7 A: That's correct.
8 Q: Do you know if Wade Wallace told anyone at Tietex
9 that you were suspended?
10 A: I don't know that for a fact, but based on what
11 happened later, at some point he told some other people I
12 would learn later.
13 Q: Do you know if Wade Wallace told anyone outside of
14 Tietex that you were suspended?
15 A: I later learned from the Textile Rubber plant
16 manager that he had passed that information along.
17 Q: Textile Rubber plant manager. Who is that?
18 A: In Charlotte. I can't recall his name right now,
19 but he's the guy that headed it up at the time.
20 Q: And he's in Charlotte?
21 A: Yes. And it was reported to me that Wade Wallace
22 had told him. I was actually still involved with Textile
23 Rubber and he called and told them I was suspended.
24 Q: Who reported that to you?
25 A: I'd have to look. I think it may have -- I

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1 don't know. It may have been George Henderson. Because
2 George had a very close relationship with them and George
3 was working with me. I was directed to go to Textile Rubber
4 by Wade Wallace and, ultimately, George Henderson got
5 involved with me because he sold some of the key products to
6 Textile Rubber that I needed to change over to for my
7 successful formula. In going to Textile Rubber, another
8 story, I had to totally try to reformulate because they only
9 had certain ingredients they would use. And I believe it
10 was George Henderson that ultimately let me know of that
11 phone call. I'm trying to think of the guy's name as we
12 speak. But he was telling me that this guy told, had been
13 called by Wade Wallace and told this information.
14 Q: What information do you have to establish that
15 Wade Wallace told this unknown named person from Textile
16 Rubber that you had been suspended?
17 A: Well, I would have, somewhere I would have
18 knowledge or access to the actual person. I'm just saying
19 today, I believe it was George Henderson. It's logical
20 based on the connections I had with Textile Rubber and who
21 all was involved.
22 Q: You believe that George Henderson told you that
23 this unknown named Textile Rubber person told Henderson that
24 Wade Wallace had told the person from Textile Rubber that
25 you had been suspended?

32 (Pages 125 to 128)

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1 A: Yes. I've got the name now if you want it. Les 2 Davis. Is that okay? Les Davis, Textile Rubber. 3 Q: It was true that you had been suspended. 4 A: That's true. 5 Q: Do you have any information that Wade Wallace told 6 Les Davis at Textile Rubber anything other than the bare 7 fact that you had been suspended? 8 A: The only information I have is like second hand 9 what George Henderson told me. And as far as giving you any 10 details on what George told me, I don't know exactly. I'm 11 just saying the essence of it was that Wade Wallace told Les 12 Davis that you had been suspended or something to that 13 effect. That's based on memory. And I cannot sit here and 14 give you details on that. 15 Q: That's what you remember? 16 A: That's what I remember, yes. 17 Q: Do you have any evidence or information that 18 anyone outside of Tietex other than Les Davis and George 19 Henderson knew you had been suspended? 20 A: Well, all of my connections knew I had been 21 suspended. 22 Q: I'm sorry? 23 A: The people that I knew that I spoke with 24 frequently or dealt with, they knew I had been suspended. 25 Q: Is that because you told them?	1 A: I'm sure I do, but I cannot, I mean, I'm not in a 2 position today to start naming specifics, but I'm absolutely 3 sure of that that I do. 4 Q: Do you have any new witnesses or documents to 5 support your contention that the statements made in your 6 performance reviews and warnings were not true? 7 A: When you say "new," other than what you already 8 have? 9 Q: Yeah. 10 A: I would say yes to that. 11 Q: Who and what? 12 A: Well, just the first thing that comes to mind is 13 I've got an affidavit that's been taken but never, I mean, 14 been done but never been used. 15 Q: From whom? 16 A: I've got one from Van Johnson. 17 Q: Have you given that to your lawyer? 18 A: This is very recent. I haven't had an 19 opportunity. This was just done recently. 20 Q: So you claim you've got an affidavit from Van 21 Johnson that you haven't given to your lawyer? 22 A: I've got an affidavit from Van Johnson and I 23 haven't, I have not yet given it. It's just fairly recent. 24 And, also, I haven't made a decision to use it or not. I'll 25 be glad to give it to him and do whatever, but at this point
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1 A: Partly and who knows. I think there's probably 2 situations, I'd have to go back and dig, but situations 3 where people were aware, even more so than the suspension, 4 was being banned from the lab as far as that kind of thing 5 being a negative matter for me. Once I was banned from the 6 lab, and that was something that was learned, and all the 7 people that I dealt with out in the industry started shying 8 away from me and didn't want to have anything to do with me, 9 in essence, because ultimately they were looking out after 10 themselves and their business and they felt like I was a 11 negative. 12 Q: Okay. Is it fair to say that you disagree with 13 the statements that Wade Wallace made in the memoranda that 14 we've been examining about your performance? 15 A: Totally. I totally disagree with what he said 16 about my performance. 17 Q: And your disagreement is based on your own 18 subjective view of how you performed, correct? 19 A: No. No. It's based on my view, my objective view 20 as a manager and my understanding of Wade Wallace as a non- 21 technical person and not having a clue about how someone 22 technical is supposed to do things. 23 Q: All right. Since you gave your deposition in your 24 Federal lawsuit, have you any additional information 25 supporting your view that your performance was adequate?	1 in time, it's been something, I really haven't even 2 discussed it with him much, you know. I've mentioned a few 3 things ... 4 MR. LAZENBY: Don't go into what we discussed. 5 A: Okay. I'm just saying — Okay. I'm just saying 6 that I've got an affidavit. It was done. There's nothing 7 wrong with it, and it may or may not come into play. 8 Q: Who else do you have affidavits from? 9 A: As far as not being given to my representation, I 10 don't know of, right now I'm not sure that I have any, any 11 more. I mean, I say that by saying I know there's 12 affidavits, but I'm not sure which ones I have, which ones 13 I've decided to use, which ones I've turned over. As far as 14 I know, the one from Van Johnson is so recent and all. When 15 I say recent, it hasn't been that long ago. I don't 16 remember the date on it, but it was the most recent one and 17 I just haven't — For reasons I cannot go into here, I 18 haven't decided whether I want to even use it or not. 19 Q: Where is this affidavit? 20 A: Probably at the house. 21 Q: Is it in your automobile? 22 A: It wouldn't be. 23 Q: I'm sorry? 24 A: It wouldn't be in my automobile. 25 Q: What does it say?

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1 Q: Anybody else? 2 MR. LAZENBY: Larry what? 3 A: Starkey. 4 Q: Lisa Boaz who works, I don't know where she works 5 now. I believe she's with another chemical company. 6 Q: Anybody else? 7 A: Where I'm having to produce actual names, you 8 know, I mean, formal names, I don't have any more names 9 right now. There are definitely a couple of other areas 10 that I believe if I had the names, I would give them to 11 you. 12 Q: Have you talked to Larry Starkey about what he 13 knows? 14 A: Across the board, I have not, and this is mostly 15 intentional, I have not pursued getting details from the 16 folks once I had what I wanted or near about. 17 Q: Mr. Harris, have you talked to Larry Starkey about 18 what he knows about the alleged defamatory rumors, yes or 19 no? 20 A: No. I have talked with Larry Starkey, though, but 21 not about what you said. I want to qualify that. 22 Q: Have you talked to Jerry Daniels about the 23 allegedly defamatory rumors? 24 A: No. 25 Q: Have you talked to Lisa Boaz about the allegedly	1 Q: You state in response to Interrogatory 12, 2 "Clearly by legal definition, all written correspondence by 3 Wallace referenced in 9 or 10 were published. The Plaintiff 4 relies on the legal definition." What's the legal 5 definition of published in the context of a defamation case? 6 A: Well, at the point in time this was written, I was 7 representing myself and it's been more than a year ago and 8 there's no way I can sit here and even come close. 9 Q: Is your answer I don't know? 10 A: My answer right now would be a don't remember. 11 Obviously, that information was pertinent at the time I did 12 that. 13 Q: How does the definition of published apply to 14 documents that are circulated within a business to a limited 15 number of managerial employees? 16 MR. LAZENBY: I'm going to object to the form of 17 the question. 18 A: I'm not going to speculate on that. But it was 19 very clear, as I say. 20 Q: Is your answer you don't know? 21 A: My answer is I don't remember. 22 (Defendant's Exhibit 6 was marked for identification). 23 Q: You recognize Defendant's Exhibit 6 dated June 14, 24 1994, as the Offer Letter that you received from Tietex? 25 A: Yes.
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1 defamatory rumors? 2 A: That's a broad question. Again, I'm just going to 3 say no because I haven't gotten into details where to me, to 4 answer your question with a yes, but I haven't gotten into 5 some significant details. 6 Q: You have Exhibit 8 before you? 7 A: Yes. 8 Q: Turn to your Answer to Interrogatory 12. It's on 9 the 19th page. You didn't bother to number the pages, so it 10 may be somewhat difficult for you to find, but it's closer 11 to the back than it is to the front. 12 MR. LAZENBY: Did you say what number it responds 13 to? 14 Q: Twelve. 15 A: Okay. I guess that's it. 16 Q: You got it? 17 A: Yes. 18 Q: It doesn't look like it to me. 19 A: Okay. Maybe it's the wrong one. 20 Q: First of all, do you have Exhibit 8? 21 A: Yes. You said 19? 22 Q: Twelve. 23 A: Oh, 12. I'm sorry. You said 19th page and at 24 what number. Okay, I was just looking for Item 19. I got 25 you.	1 (Defendant's Exhibit 7 was marked for identification). 2 Q: And do you recognize Exhibit 7 as an Intake Form 3 for when you first started to work at Tietex that's dated 4 July 13, 1994? 5 A: Yes. 6 Q: And it says your service date is July 13, 1994, 7 right? 8 A: Yes. 9 Q: Take your deposition, please, and turn to page 60. 10 A: Okay. 11 Q: Line 3. 12 A: Okay. 13 Q: "Now, if you will look, please, at Exhibit 6, the 14 second page, which is Bates Numbered 229 ..." 15 A: Okay. 16 Q: So that's the same document you have before you 17 now, which is Bates Numbered 229. 18 "Do you see the bold underlined language ..." 19 A: Yes. 20 Q: "... that's two paragraphs above Mr. Woodward's 21 signature?" 22 A: Yes. 23 Q: "Answer: Yes." 24 A: Yes. 25 Q: "It says, This letter summarizes our offer.

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1 Nothing herein should be construed as a contract of 2 employment or as a promise of any specific terms for any 3 determined period of time." Did I read that correctly? 4 Answer: Yes." 5 A: Yes. 6 Q: Line 14. 7 "Question: So under the terms of your offer, you 8 were employed at will, correct?" 9 A: Yes. 10 Q: Line 20. 11 "Okay. Yes." 12 Line 21. 13 "And your employment could be terminated any time 14 for any reason, correct?" 15 A: Yes. 16 Q: "Answer: May I add to that? 17 Question: Sure. Well, give me a yes or no and 18 then qualify it." And you said, "Yes." Qualified 19 it and then said "But I was aware of Tietex being 20 an at will employer." 21 Correct? 22 A: Yes. 23 Q: Line 18, page 61. 24 "Question: And you knew that you could quit 25 Tietex if you wanted to for whatever reason	1 "Question: Do you have a copy of that Handbook? 2 Answer: No. I actually, I'm not sure what year 3 it was, it was around 2005, '6, along in there, 4 there was a call for the manuals to be turned in 5 so they could revise, and I never got a revised 6 copy." 7 Did I read that correctly? 8 A: Yes. 9 Q: Page 64, line 9. 10 "Question: So would it be fair to say that as of 11 today, as we're talking, you don't know what 12 policies were in the Handbook? 13 Answer: I do know there was a policy in there 14 that had to do with termination and the steps that 15 were to be taken. I can't cite them or anything, 16 but I knew they were like written warning, verbal 17 warnings, and then written warnings and then 18 termination. I knew that was in there. 19 Question: All right. Other than that, you don't 20 know what was in the Handbook? 21 Answer: I mean, I couldn't specifically tell you. 22 I mean, we could sit here and talk and can tell 23 you the kind of things that were in there, but I 24 couldn't tell you a page number or anything. 25 Question: All right. Well, it would be fair to
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1 whenever, correct? 2 Answer: Yes." 3 A: Yes. 4 Q: Line 22, page 61, middle of the line. 5 "... but you didn't have any kind of written 6 Contract of Employment when you were hired, did 7 you? 8 Answer: Nothing formal that I know of." 9 25, that's the last line on page 61, the middle of the 10 line. 11 "... during the time that you worked for Tietex, 12 nobody ever gave you a written Contract of 13 Employment to sign, did they? 14 Answer: No." 15 Q: Do you have any information today that you didn't 16 have in July 2009 that would change your answers from when 17 you gave this deposition? 18 A: I don't know if it's represented in here, but my 19 answer then, I would have probably tried to steer in the 20 direction of the promises that were made to me which led to 21 my taking the job in the first place. 22 Q: Would your answers to these specific questions be 23 different today? 24 A: No. 25 Q: Let's look at page 63, line 15.	1 say then, that you don't know what policies in the handbook 2 that you would contend today created a Contract of 3 Employment? 4 Answer: Yeah, I don't really feel like I could 5 answer that question, so I'll just say I don't 6 know the answer. 7 Question: You don't know. It's fair. Look, you 8 can say yes, you can say no, you can say yes and 9 no and qualify it, and you can say I don't know. 10 Answer: I'll say I don't know then. 11 Question: So you don't know what in the Handbook 12 that you would base your contract claims on? 13 Answer: I don't know, I mean, I've got my 14 thinking but I don't think it's, again, I don't 15 think it's — The answer would be, no, I'm not 16 sure. No, I'm not able to put my finger on 17 something right now, but I have my thinking on it. 18 I don't know. 19 Question: Okay. Now, there is a breach of 20 contract claim in your Complaint which we just 21 talked about. Then there is a second claim that's 22 breach of contract accompanied by a fraudulent 23 act. What do you claim that Tietex did that was 24 fraudulent? 25 Answer: I'm not exactly sure where that is right

1 now. I'll say I'm not sure right now."
2 Did I read that correctly?
3 A: Yes.
4 MR. LAZENBY: I just want to object to the form,
5 that there were several objections in within there that you
6 skipped over.
7 Q: That's fine. I skipped over them. I confess.
8 MR. LAZENBY: Well, it is what it is.
9 Q: The document speaks for itself.
10 MR. LAZENBY: Right.
11 Q: Would your answers to those questions that I just
12 read to you be any different today than they were in 2009
13 when you gave those answers?
14 MR. LAZENBY: Object to the form.
15 A: In essence, in other words, the actual being what
16 I would say would probably be essentially the same.
17 Q: You were never bullied when you worked for Tietex,
18 were you?
19 MR. LAZENBY: Object to the form.
20 A: Well, you've got to get into the definition. But
21 the closest thing I would ever, I mean, obviously — well,
22 not obviously, but the way I was treated by everyone else at
23 Tietex in that area was pretty what you would expect. But I
24 would certainly look at what Wade Wallace did to me and the
25 way he did it. In the position that he was in because he

1 had control over me, was bullying me around, you know,
2 because he could or whatever.
3 Q: You claim you were bullied when you worked at
4 Tietex by Wade Wallace?
5 A: If you want to call it that. I think we've got to
6 get into what that means. But I'm not going to expand on
7 what we first said and then convert it into, yes, I was
8 bullied. Because without knowing what we are talking about
9 in terms of definition. I was pushed around and shown high
10 disrespect. Treated like an animal. If had to put it in
11 terms, I was treated like an animal.
12 Q: Mr. Harris, how about turn to Exhibit 5, page 8.
13 A: Okay.
14 Q: Paragraph 44. This is your claim. "Defendant
15 employee agents, with full knowledge and forethought, using
16 their position of power and authority over Plaintiff, sought
17 to bully Plaintiff to achieve their own ends, knowing the
18 emotional damage they would and did inflict upon Plaintiff."
19 So that's your claim.
20 A: Now, are you reading 45?
21 Q: 44.
22 A: I'm sorry. I mean, I think it's well written.
23 Q: You claim you were bullied by Wade Wallace?
24 A: If we're not going to do a definition, yes. In
25 other words, I'm leaving to my interpretation of being

1 bullied, I will definitely say yes without question.
2 Q: All right. How do you claim you were bullied?
3 A: Anytime, like on February 7, when he had the
4 opportunity with nobody else around, he was two different
5 people in private with me versus out in the middle. Mr.
6 nice guy out in the public and all this. Behind closed
7 doors, different ball game. The threats and the threatening
8 tone of voice. You know, I cannot recall all the language
9 and the way it was said and the tone of voice. It was just
10 incredibly abusive. And then in the final analysis, you
11 know, the end of it would always be get your act in order or
12 we'll find another chemist to hire. In essence, that would
13 be the kind of, those kind of encounters would end up with
14 that kind of a comment.
15 Q: So these were threats that you were going to get
16 fired if you didn't do your job?
17 MR. LAZENBY: Object to the form.
18 A: I mean, as to the reason for them, that was the
19 way they came off to me. As to the reason behind them, I
20 can't sit here and say what his motives were.
21 Q: All right. Were all the threats threats about
22 what was going to happen to you if you didn't do your job?
23 A: Yes or no, no.
24 Q: No?
25 A: My answer to that question the way you asked it is

1 no.
2 Q: All right. What were the other threats other than
3 threats that you were going to get fired if you didn't do
4 your job?
5 A: Well, again, you're getting in if you didn't do
6 your job, which, I mean, how broad is that. It had to do
7 with things like specifics like getting those assignments
8 done. That would be one of them. I cannot sit here —
9 I'm just going to stop right now and say that to sit here
10 and just throw stuff out that happens to come to mind.
11 There were other, there were other things said other than
12 get those assignments done or you're out of here type
13 thing.
14 Q: As we sit here today, can you relate any of them?
15 A: Relate?
16 Q: Yeah, tell me any of them, any of the threats that
17 Wallace made other than threats that you were going to get
18 terminated if you didn't do your job.
19 A: It wasn't so much the wordage as it was — That
20 was important and it was abusive, but it was his mannerisms.
21 Q: All right. Don't characterize as abusive, tell me
22 what was said.
23 A: I'm not going to — I can get that information,
24 but I'm not going to sit here today and guess exactly and
25 bring back something very important.

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1 Q: Where are you going to get that information? 2 A: I would have it somewhere. 3 Q: What do you mean? 4 A: I'm sure with all the stuff I've got, that 5 somewhere along the way, we would have that. Probably from 6 previous testimony. 7 Q: Do you have any documents you haven't given to 8 your lawyer? 9 A: Not that I consider — Other than that affidavit 10 that could be important. I'm not aware of anything right 11 now. Now, there's plenty of documents I haven't given him 12 that at this point in time I don't consider part of the case 13 going forward. They could become that. See, when Mr. 14 Wallace banned me and the term I used, confiscated by four 15 filing cabinets and a bunch of boxes in both desks, it was 16 three months before I got probably half of what I had in 17 those back and it was all personal. So I did have 18 documents. So I do have documents, in other words. 19 Q: All right. Is it true that today you can't tell 20 me about any threat that Wade Wallace made to you other 21 than a threat that you were going to lose your job if you 22 didn't do the projects that he assigned correctly and on 23 time? 24 A: Well, I can give you an in essence account of it. 25 Do you want me to give you an essence what he said to me or	1 another chemist." He walks out and slams the door. 2 Q: And you claim that's an ... 3 A: That's, in essence, what happened. 4 Q: And you are giving that as an illustration of 5 being bullied by Wade Wallace and you claim that happened on 6 February 7, 2009, correct? 7 A: That kind of thing, exact kind of thing happened 8 on the 7th. 9 Q: All right. And that's recorded, at least Mr. 10 Wallace's opinion of how the conversation went, is recorded 11 in Exhibit 13, which is dated February 9, 2007, correct? 12 A: Yes. 13 Q: Is that the only incidence of bullying that you 14 have? 15 A: Without thinking back of the whole scenario that 16 spring, I would have to rate March 5 and what happened there 17 as in the same category. 18 Q: And the conversation on March 5 was recorded in 19 the memorandum marked Exhibit 16, correct? 20 MR. LAZENBY: Object to the form. 21 A: Yes. 22 Q: Correct? 23 A: Yes. 24 Q: You're going to have to answer verbally so she can 25 take it down.
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1 just — I can't sit here and verbatim and tell you what he 2 said. 3 Q: Tell me the best you can. 4 A: He comes into the office and says, "Mr. Harris." 5 And this is in essence, okay. These are not word for 6 word. 7 Q: Is this on February 7? 8 A: This is on February 7. This is that particular 9 day. 10 Q: I'm sorry? 11 A: This is that particular day. It's not March 5, 12 which is another day, it's February. And he comes in and, 13 basically, wants to know, "How you doing? Have you done 14 those two projects you were supposed to get that I wanted 15 you to get for I believe it was Jake Butts and get them to 16 him?" And I said, "No, Wade. In fact, I just, I've been 17 working on this, I've been working on that, all these other 18 things that I need to do and you've wanted me to do and all 19 that." "What do you mean you haven't got those? What do 20 you think this is around here?" He said, "I'm getting tired 21 of this. How long is it going to be before you get those? 22 You know, we're going get tired of this kind of crazy 23 thing." I'm not going to throw in the profanity. And then, 24 "I'll tell you what, you better have those and you better 25 have those by Friday or we're going to be looking for	1 A: I'm sorry? 2 Q: You have to answer verbally so she can take it 3 down. 4 A: Oh, okay. Yes. I'm sorry. 5 Q: Tell me why you claim that the conversation that 6 you had with Wade Wallace on March 5, 2009, was bullying of 7 you by Mr. Wallace? 8 A: First I would say that it was probably more 9 intimidation than bullying. I consider bullying as much 10 stronger and harsh and unnecessary. And I think it was 11 toned down because of the presence of David Wilson. There 12 was certainly not this arrogant, high level arrogant 13 threatening like tone of voice and all that. The things 14 that were said there was I'm sitting in there. Mr. Wilson 15 was sitting away and I was sitting across from Wade, and Mr. 16 Wilson was off to the side. And he starts in with all these 17 things in a very boastful manner and arrogant, really 18 arrogant tone of voice about all these things that I've not 19 done. And I'm sitting there and I can't believe it. First 20 of all, as I said earlier, I was half sick with the flu or 21 something. And I'm sitting there and just, you know, I 22 mean, what's going on here? And I actually looked over for 23 Mr. Wilson as if I wanted, you know, are you kidding me? 24 Can I have some help? And I think, I don't remember any 25 comments, but I think I made some comments to Mr. Wilson

38 (Pages 149 to 152)

Irveta J. Shouse / GWC
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ROA 000471

1 about this. In the final analysis, after all of that, my
2 comment was, "Wade, would you do me a favor? You're telling
3 me this is stuff I've done and I need to shape up on. Would
4 you please send me an e-mail so I can be sure to know what I
5 need to do to correct it." He said, "Be glad to." But
6 before I said that to him, he had already said, "You've got
7 30 days to shape up or we're going to be looking for another
8 chemist." And it was done in a tone of voice that was
9 pretty hateful.

10 Q: The entire conversation on March 5, 2009, occurred
11 in the presence of David Wilson and it was all work related,
12 correct?

13 A: It was, what he told me I had to do was work
14 related.

15 Q: Correct.

16 A: Well, it had to do with my job. It had to do with
17 what he, not my job directly, but my character, conducting
18 myself properly and all that. It had to do with my job in
19 general, if that's what you mean.

20 Q: Are there any other incidents of bullying other
21 than the incident that you related that you claim happened
22 on February 7 and the incident on March 5, 2009?

23 A: The whole spring, once all that happened and a
24 long the way the entire spring, I mean, you can look back at
25 everything you've got and you'll see that there's a lot that

1 didn't happen. For some reason, there's nothing, not a
2 whole lot showing up in April and May. But I do remember,
3 and I cannot here today sit here and tell you dates or
4 anything, but I do remember there was a time or two after
5 all that and before June 18 that there was an encounter or
6 two but I cannot sit here today and give you dates or
7 information on it.

8 Q: So the only two events that you can tell me about
9 today that were incidents of bullying occurred on February
10 7, 2009, and March 5, 2009. Is that correct?

11 MR. LAZENBY: Object to the form.

12 A: Maybe we can throw in July 3.

13 MR. LAZENBY: I think you said 2009. Did you mean
14 2007?

15 Q: I said 2007?

16 MR. LAZENBY: You said 2009.

17 Q: I meant 2007. Thank you. I wrote 2009. So the
18 only two events I asked you about were February 7, 2007, and
19 March 5, 2007, and your response was, "Well, we can throw in
20 July 3."

21 A: Yeah, I would consider what he did when he called
22 on the phone totally unnecessary and uncalled for. And he
23 really got carried away when he found out I was not there in
24 the plant.

25 Q: Tell me what Mr. Wallace said to you on July 3

1 that's recorded in Exhibit 19 that you claim is bullying.

2 A: Again, it was more his tone of voice and yelling
3 type tone of voice. And, you know, "I'm banning you from,
4 I'm banning you from Tietex property until I get back from
5 my vacation." And, you know, that is one thing to say, but
6 to scream it and just really in the questions he's asking,
7 asking them in a hateful manner. Just very disrespectful.

8 Q: And all of this conversation on July 3 that you
9 claim was evidence of bullying arose from his inquiries
10 about where you had been that day, correct?

11 A: No. I'll say no to that and say it really arose
12 from the fact I was not in the plant.

13 Q: That's what really ticked him off. And he
14 thought, he said, "Gary, you come to my office." And then,
15 "What do you mean you're not here?" And then na, na, na. I
16 said, "Well, wait a minute. Wait a minute." And I started
17 trying to tell him what's happened. I'd been to Hexion and
18 this happened. I'm trying to get the project done that he
19 wanted done so I can get the information to him Thursday, on
20 and on and on. And it's somewhere along the way I'm the one
21 that throws in all this quick talk and everything and
22 explanation trying to explain, that I throw in where I've
23 been. So it's after I've said all that that he, you know,
24 says I'm banning you from Tietex. In a hateful, very
25 hateful way, "I'm banning you from Tietex property. I do

1 not want you back on the property until I'm back from my
2 vacation." Something to that effect.

3 Q: You've given me three incidents of bullying. The
4 incident that you claim occurred on February 7, which is
5 recorded in Exhibit 13; the incident that occurred on March
6 5, 2007, which is also recorded in one of the exhibits; and
7 the incident on July 3, 2009, which is recorded in Exhibit
8 19. Any other incidences that you claim were bullying?

9 A: Not at this moment I don't have any to offer.

10 Q: And the March 5 was Exhibit 16. Now, with respect
11 to February 7, 2007, where did this alleged bullying occur?

12 A: In a small little, I always describe it as a
13 little dungeon like office in the very back of the Tietex
14 main plant facility, just right off of the Compounding
15 Department.

16 Q: And the only folks present were you and Mr.
17 Wallace?

18 A: In that room.

19 Q: Was somebody nearby?

20 A: Ricky Miller would have been outside the door
21 there somewhere working.

22 Q: Any information that Miller heard the exchange
23 between you and Wallace?

24 A: Not to my knowledge.

25 Q: After your meeting with Mr. Wallace in February of

Page 157 1 2007, did you discuss the event with anybody? 2 A: While I was still employed? 3 Q: Yeah. 4 A: That probably, I can't --- Let me just say that, 5 as I've said before and it's in other documentation, I went 6 to see David Wilson early on after something like February 7 7 happened and that could have, that could actually have 8 predated, preceded anything that happened regarding the 9 March 5 meeting and the resulting memo. But at some point I 10 met with --- If I had to say, I met with David Wilson after 11 that February 7 encounter and that was when I was told by 12 him, I mean, I went to him because what happened was 13 uncalled for. I mean, it was gross. And at one point early 14 on when I was in with Wade Wallace, I went to David Wilson 15 to just say, "Look, you know, this is not necessary. I 16 mean, I'm a human being. You know, I want to be treated 17 like one." And in essence what he told me was, and I 18 realized then I could forget it. There was no help. 19 Something was up. He says to me, in essence again, I don't 20 remember exactly the wordage. But he said, basically, "You 21 know, I'd advise you to go, just go do your job and keep 22 your mouth shut if you want to keep your job." Something to 23 that effect is what David Wilson told me. 24 Q: Did you complain about the conversation in 25 February with Wade Wallace to anyone other than Mr. Wilson?	Page 159 1 resolve that issue. And I found out it had to do with 2 medication. As far as trying to address the stress and all 3 that, the medication only made it worse. 4 Q: With respect to the March 5, 2007, encounter with 5 Mr. Wallace, that occurred in Mr. Wilson's office? 6 A: March 5 was in Mr. Wilson's office. 7 Q: Was anybody else present? 8 A: No. 9 Q: Did you complain to anyone about that meeting and 10 the resulting memo which is Exhibit 16? 11 MR. LAZENBY: Object to the form. 12 A: I don't recall. I mean, I cannot recall that. 13 Q: Did you discuss that meeting with Mr. Wallace and 14 Mr. Wilson with anyone who had not been present at the 15 meeting? 16 A: I don't recall, no. I mean, I'd have to answer 17 no, I don't recall. 18 Q: Did you get any medical treatment as a result of 19 your March 5, 2007, meeting with Mr. Wilson and Mr. Wallace? 20 A: I would say no and for the same reasons, I would 21 not have. In late '06 I swore off of ever going back on any 22 kind of medication for helping stress and sleep and there's 23 no way I'd ever go back there. 24 Q: And with respect to the July 3, 2009, phone call, 25 you already said that ...
Page 158 1 A: I don't think so. I don't recall that. 2 Q: Did you receive any medical treatment as a result 3 of this conversation with Wade Wallace in February of 2007? 4 A: I would think not. If I may, the answer is no to 5 that. But I will say this about at the point in time this 6 happened and, actually, when it did happen, before this 7 February 7 incident actually took place, there was a 8 tremendous change that came over me regarding the job 9 situation. It was like I went from hoping things would be 10 corrected at Tietex, mainly by the ownership. I went from 11 hoping that, you know, this guy's going to right the ship 12 and things are going to be what they need to be. There was 13 a lot of negative went on there for years and it hurt the 14 Company. So I'm waiting, it's like I'm going down this 15 rapid river or something approaching a waterfall and I'm 16 hoping something happens before I go over the waterfall. 17 Well, when I was demoted and put under Wade Wallace, I went 18 over the waterfall. And, in essence, it was almost like a 19 relief that, you know, it's like you could quit wondering 20 now, you know what's going to happen. You don't have to 21 worry about what's going to happen anymore. And so as far 22 as any doctor visits and all that --- The important thing 23 there is this as far as that medication. Just to answer 24 your question about medicine. The second time around with a 25 sleep bout, I realized what was causing it and was able to	Page 160 1 A: July 7. I mean, I'm sorry, 2007? 2 Q: Yes. Thank you. You already said that the only 3 two on the line were you and Mr. Wallace, right? 4 A: Yes. 5 Q: Did you complain to anyone about how Mr. Wallace 6 spoke to you during that telephone conversation? 7 A: I never had a chance. 8 Q: Did you get any medical treatment as a result of 9 that telephone call? 10 A: No. 11 Q: All right. Now, your Complaint also claims that 12 you were intimidated. Would your evidence or is your 13 evidence of intimidation any different from that which you 14 have given me about being bullied? 15 A: I just put a tone, a tremendous tone of, I don't 16 want to use that word here on the recording, but it was just 17 an incredible arrogance that existed that I would call what 18 you're saying. 19 Q: Listen to my question. I'm going to let you tell 20 me whatever it is you want to tell me, but there's no sense 21 in me having you repeat if the evidence is the same. And 22 I'm just asking if the evidence of what you claim was 23 intimidation is the same evidence that you just gave me 24 about being bullied? If it's the same say yes. If it's 25 different, tell me what's different.

Page 217	Page 219
1 wife. He was a very different person. He was like doing 2 things that somebody else was driving him to do, that it 3 wasn't his idea. Things like I need for you to move down in 4 the plant. 5 Q: Did you ever hear your ... 6 MR. SUGGS: Pardon me a minute. I want to make 7 sure I understand. March, April, and May of what year? 8 Q: 2006 9 MR. SUGGS: 2006, okay. 10 Q: Did you ever hear your superiors discussing the 11 amount of medical bills that Tietex had to pay because of 12 your wife? 13 A: I never heard that discussed. 14 Q: Did you see a memo to that effect? 15 A: No, I don't recall seeing a memo. But I do recall 16 somewhere along the way, and without remembering exactly, 17 Jake Butts seemed to be very much interested in that area. 18 Q: Did you get the impression that your wife's 19 medical bills was a reason for them trying to get rid of 20 you? 21 MR. SUGGS: I object to the impression. 22 A: I would say that being an older employee with an 23 older spouse that, generally, that was a take on the way 24 things were going at Tietex, I would think that anything 25 like that that would enable a company to cut costs would be	1 he raise his voice? 2 A: I would say there were times when he raised his 3 voice. Again, there was another person in there and he was 4 more controlled than he would have been had we been alone. 5 Q: I'm sorry, I meant to go in chronological order 6 and start with February 7. On February 7 when y'all were 7 alone, did he raise his voice? 8 A: Big time. 9 Q: How would you characterize it? 10 A: Just what I did earlier where, I guess, gave an 11 example in essence of what came out of him. 12 Q: Would you characterize it as yelling at you? 13 A: Oh, absolutely. 14 Q: Screaming at you? 15 A: Yelling, screaming, just all over me. 16 Q: Did he use profanity? 17 A: I don't recall that specifically. I won't say he 18 did not, because at the time it was happening, I wasn't 19 trying to figure out is he cursing me or not. I don't 20 recall the wordage except I know what he was saying and the 21 essence of what he was saying. But for me to throw a curse 22 word in would probably be acceptable as to what I believe 23 happened. 24 Q: Was that the first time that he had ever yelled 25 at you?
Page 218	Page 220
1 a consideration. I mean, if you look at, just real quickly, 2 what I did early on in my career enabled Tietex to hire more 3 employees. It created business. 4 Q: I just want to talk about this ... 5 A: That's what I'm going to get to. What was 6 happening then in the time frame you're talking about was 7 causing Tietex --- Things like eliminating employees in 8 order to report a profit. Just purely getting rid of 9 employees off a machine so processing improvement could 10 say, "Look how much money we saved the company." Those kind 11 of things which would include, you know, getting rid of 12 people because of high medical bills if they're potentially 13 going to cause the company, were all the kinds of things 14 that were done. Not that they were the right thing to do 15 for the Company, but it was so somebody could make it look 16 like the Company was doing better than it was. 17 Q: And you had stress and anxiety in 2006 caused by 18 your work that you sought medical treatment for? 19 MR. SUGGS: Object to the form, leading. 20 A: All of the issues that I had in 2006 that had to 21 do with going to the doctor I would relate specifically to 22 the way I was done in my job. 23 Q: I want to talk about your encounters with Wade 24 Wallace. I believe you mentioned there were three different 25 incidents, February 7, March 5, and July 3. On March 5, did	1 A: Yes. 2 Q: Was that shocking to you? 3 MR. SUGGS: Object to the form, leading. 4 A: I mean, I had only been reporting to him for six 5 or seven days. 6 Q: I'm sorry, I didn't hear your answer. Was that 7 shocking to you? 8 MR. SUGGS: Leading. 9 A: Oh, it was a big surprise. It was incredibly. 10 I'd never in my life been done like that. 11 Q: That's what I was going to ask you next. Has 12 anybody at Tietex ever yelled at you before? 13 A: Not only not at Tietex, I'd never been treated 14 like that by anyone anywhere and even my parents in my 15 entire life. 16 Q: Have you ever yelled at any of your employees? 17 A: Never. 18 Q: Is yelling at an employee at work something that 19 you would consider acceptable at Tietex? 20 A: I wouldn't consider it acceptable anywhere. 21 Q: Do you think Tietex would consider it acceptable? 22 A: At the time, I mean, I would characterize Tietex, 23 In all the places I've ever worked, as very unprofessional, 24 very mismanaged, and a place that probably should have been 25 shut down because of the laws that were broken.

55 (Pages 217 to 220)

1 Q: And still, no one had ever yelled at you before
2 Mr. Wallace?
3 A: Never, nowhere.
4 Q: I think you mentioned that he also slammed the
5 door.
6 MR. SUGGS: Object to the form, leading.
7 Q: Did he slam the door?
8 A: I think he did. I mean, I'm trying to remember
9 that particular day. Yeah, I think he went out and slammed
10 the door.
11 Q: Did he do anything else during the meeting or
12 during the incident that was physical in nature?
13 A: Not like, you know, like threatened with his fist
14 or something? No, he would never. I don't think he would
15 have done that.
16 Q: So did you feel physically intimidated? Did he
17 ever stand up?
18 MR. SUGGS: Objection, leading.
19 A: I never felt physically intimidated by Wade
20 Wallace. It was a matter of, I mean, if I'd wanted to like
21 have a physical battle with Wade Wallace and that was the
22 only issue, that would have never been an issue and I never
23 would have had no problem with it. It was a matter of,
24 actually, knowing I couldn't do that. You know, I've got
25 to take this. I've got to take this treatment. I can't

1 jump the guy, I'd definitely be out the door. But that was
2 never an issue as far as his physically threatening me. He
3 would know better than that.
4 Q: Is there anything else about the mannerisms of the
5 incident that you haven't discussed here today?
6 A: As far as Wade Wallace?
7 Q: Yes.
8 A: There was something I was going to say that eludes
9 me right now. It's something we didn't get into while ago
10 but came up. You triggered it but I've lost it again.
11 Q: And did you complain to David Wilson about this
12 initial incident with Mr. Wallace?
13 A: As I've already testified earlier, I'll probably
14 just leave it at that. I believe I did and the response I
15 got was, you know, basically, I just needed to go do my job
16 and keep my mouth shut and everything would work out or I
17 might lose my job if I kept pushing stuff like that. I
18 don't know that there's anything else there. I think I've
19 already testified to that.
20 Q: Did you believe that was an acceptable response?
21 A: I just saw David Wilson as part of whatever was
22 going on and that I was like, I wasn't surprised necessarily
23 by it. David Wilson was new at Tietex. He was what he had
24 been told. He'd only been there since like 2005, '6, along
25 in that time frame, and he had no clue of what had gone on

1 before that. So he came into a situation and I think he was
2 pretty well man handled and controlled as to the way he was
3 doing. That doesn't excuse it though.
4 Q: When were you banned from the lab building?
5 MR. SUGGS: Object to the form, leading.
6 A: I was banned from the lab building pretty much the
7 day I started reporting to Wade Wallace on February 1, 2007.
8 Q: What was the reason given to you for why you were
9 banned from the lab building?
10 A: My health.
11 Q: Do you believe that to be truthful?
12 A: I know it's not truthful.
13 Q: What do you believe the reason was for being
14 banned from the lab?
15 A: So I couldn't, in essence, so I couldn't really do
16 the work. It was just a nice little opening that for that
17 to take place and this stuff on the surface looked
18 reasonable. Yeah, we can do that and make it very difficult
19 for him. But it was really to put me in a situation where I
20 would have a very difficult time getting work done.
21 Q: Tell me about the, I want to talk about the C237
22 compound. But let me ask a specific question. How did it
23 come about the issue of your trying to develop a less costly
24 version of that?
25 A: I was actually in the technical building one day

1 and Mark Wildeman came in and came to me and told me, in
2 essence, he opened with, "Gary, we've got a serious problem
3 and I want to ask for your help." And he went on to tell
4 me Tietex had good business in the C237 type fabrics
5 programs and there were others other than C237. He said,
6 "We've got really good business." He said, "But we're not
7 making any money and we've got competition coming at us with
8 lower prices and we simply cannot lower prices."
9 Q: C237 is a fire retardant?
10 A: It's a fire retardant fabric for the mattress
11 industry.
12 Q: And how was Tietex obtaining C237?
13 A: The product consisted of a fabric made by Tietex
14 that was back coated with a compound that came from Novion.
15 And together that was, once that compound was back coated
16 onto the fabric, that was the final product that after
17 inspection and all would ultimately go to the customer.
18 Q: Did you tell upper management that you could
19 develop a similar compound?
20 A: What I was asked. I mean, I did not go out and in
21 any way shape or form broadcast that, "Hey, look, we're
22 paying too much money. I can do better for us." That was
23 the way things were presented at one time before. But the
24 essence of it was Martin Wildeman came to me and asked me
25 that question. "Is there any way ..." After he did the

DATE: 7-13-94

TIETEX CORPORATION

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HIRE DATE 7-13-94

SOC. SEC. NO
SEX M MARITAL STATUS M
DATE OF BIRTH
JOB CODE — JOB SERV. DATE
7-13-94

SALARY
ANNUAL RATE \$55,000.00
WEEKLY RATE
HOURLY RATE SHIFT 1
*DIRECT DEPOSIT
(*attach authorization agreement)

TAX DATA
FEDERAL TAX -2-
STATE TAX -2-
ADD'L. TAX 0

DEDUCTIONS
AMOUNT
GROUP INSURANCE Eligible 60 days from H.D. MISC.
LIFE INSURANCE " " " " "
401(K) After 3 months of service
UNITED WAY 0
SAVINGS 0



EMPLOYEE SIGNATURE Gary G. Harris DATE July 13, 1994

PERSONNEL Cynthia H. Connors

TIETEX
000215

COPY TO PAYROLL 7/18/94
DPW 7/18/94

ROA 000476

Wallace, Wade

From: Wallace, Wade
Sent: Friday, February 09, 2007 8:58 AM
To: Wilson, David
Cc: Isbell, Mark
Subject: Gary Harris

Per our conversation, I'd like to document the discussion I had with Gary Harris on Wed 2/7/07.

Gary called me mid afternoon on Wed and stated that at that moment his personal and emotional problems had overwhelmed him and he was confused, disoriented, and could not function. He did not know what to do. I immediately went out to his office to discuss his problem in person. He explained that his personal life over the last year has made him so fragile emotionally that sometimes he has episodes like the one he was experiencing. As we talked he felt better and mentioned that the project work I had assigned him would be help keep his mind off his personal problems.

I took that opportunity to remind Gary that Tietex is committed to our employees well being and that at any time we would support him if he felt he needed to utilize EAP. He said that that was not necessary and that he could work through it. I also asked him to be open with me if in any case this personal problem interfered with his ability to perform his job as we would need to sit down with HR to find a resolution.

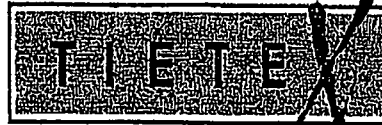
When I left him he assured me that he was OK and thanked me for my support and patience.



TIETEX - SC
000012

ATTACHMENT D

ROA 000477



To: David Wilson
From: Wade Wallace
CC: Mark Isbell, Gary Harris
Date: March 5, 2007
Subject: Gary Harris' Transition

During the last thirty days as Gary Harris has transitioned into his new role, several issues relating to his work have been identified. In the best interest of Tietex and Gary, these issues were discussed with him today so that he can improve upon them. Here are the points we discussed.

- He becomes emotional and overly vocal over a problem before researching the situation and makes statements and accusations without research or data.
- He is not honoring the chain of command by informing senior management with complaints and problems before covering them with his immediate manager.
- He harbors negativity over past grievances with management and continues to be negative towards the current management culture.
- He complains about his ownership of environmental reporting.

As we discussed these issues are not sustainable and it is mandatory that Gary make significant progress towards resolving these issues within the next 30 days.

*DISCUSSED W/ GARY ON 3-5-07
David A. W.*



TIETEX - SC
000169

ROA 000478



To: Gary Harris
From: Wade Wallace
CC: David Wilson, Mark Isbell
Date: June 18, 2007
Subject: Gary Harris Work Performance

During the last ninety days some issues relating to Gary Harris' project work have been identified. In the best interest of Tietex and Gary, these issues were discussed with him today so that he can improve upon them. Here are the points we discussed.

Of Gary's multiple duties two projects were identified ninety days ago as priorities and he was instructed to give them his most thorough and diligent focus. The first project was the development and qualification of a Tietex coating compound formula as a replacement for the current coating used on C237. Gary actually began work on this project prior to his reporting to me. His lab coating work began in December 2006 so the project has been ongoing for over six months. The second project was to develop a finish formula change and process to enable T602 to be finished with the parabolic applicator instead of a pad application. The project was assigned and work began ninety days ago.

Although the first project has been on going for six months no significant progress has been made toward completion. This project was initiated solely by Gary and he convinced senior management that it was completely feasible in order to gain support. He committed to developing a compound that would cost between \$0.60 and \$0.62 per pound verses the current product which cost \$0.885 per pound. Despite months of lab work in house and at four different chemical supplier locations and numerous production trials he has been unsuccessful in creating a viable product. The formulation which Gary developed has proven to be much more complicated to reproduce commercially than initially promised. Gary exercised poor judgement by making claims and commitments that he could not deliver. This project was included in corporate financial improvement goals. Due to the failure of this project I have personally had to begin parallel project work with other suppliers to develop a suitable replacement to achieve the financial commitment of the project.

The scope of the second project to develop a finish formula and process for parabolic application of T602 was a technical challenge. However, Gary informed me that lab samples were promising and recommended a production trial. Although I was not presented the actual numerical results of the first production trial Gary assured me that the results were comparable to



TIETEX - SC
000170

ROA 000479



the current product. From this I approved a scale up run for statistical qualification. The second trial, as well as a third were unsuccessful. These subsequent failures concerned me and I personally recalled samples from the first trial that Gary assured me was a success. I witnessed them being tested and found that the product from that initial trial did not perform comparable. By this I can conclude that Gary did not conduct adequate scientific and numerical analysis of the first trial. This negligence was costly in that two subsequent production trials could have avoided. In addition, this negligence in applying the proper scientific analysis is unacceptable in the work of a Sr. Research Chemist.

Obviously the two issues regarding the C237 project failure and poor analytical practices demonstrated in the T602 project are not sustainable. It is mandatory that Gary make significant progress towards resolving the problems with the C237 project and improving on his analytical practices within the next 30 days.

*I have read this
Gary Harris
6/18/07*

TIETEX - SC
000171

ROA 000480



To: David Wilson
From: Wade Wallace
CC: Mark Isbell
Date: July 18, 2007
Subject: Gary Harris Work Performance



Despite efforts to counsel Gary Harris we continue to have issues with his work practices and performance. These issues are listed in the following paragraphs. On this basis I am recommending that we terminate his employment immediately.

In February 2007 he was reprimanded for the following issues:

- He becomes emotional and overly vocal over a problem before researching the situation and makes statements and accusations without research or data.
- He is not honoring the chain of command by informing senior management with complaints and problems before covering them with his immediate manager.
- He harbors negativity over past grievances with management and continues to be negative towards the current management culture.
- He complains about his ownership of environmental reporting.

With the exception or the environmental reporting he continues to have these issues.

In April 2007 he was instructed not to come in and work in the chemical lab areas at nights or on weekends for safety reasons. Gate records and management observation indicate that he has continued to do this.

In June 2007 he was reprimanded for the two following issues and given a thirty-day deadline for resolution. It was made completely clear that failure to complete this task and resolve this issue would jeopardize his employment.

- Failure to complete the project to replace the current C237 coating compound with formula of his design.
- Not conducting and reporting adequate scientific and numerical analysis to substantiate lab and plant trials.

He has not demonstrated any effort to complete the C237 project. Despite the deadline to complete the project within four weeks he took two vacation days the first week, five the second week, and was planning to take five days the fourth week. This would have accounted for more than 50% absenteeism during this time and no effort to complete the project as instructed. None of these days were approved in advance. He left messages the day of the vacation without any

ATTACHMENT I

TIETEX - SC
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ROA 000481



advance notice despite my request that he have them pre-approved. In addition he has not submitted to me any scientific data on any of his other projects.

I recently found out that also in June that Gary missed an important trip to visit a customer and did not inform me. He was scheduled to fly to Indiana on June 14 to visit with United Shade and return on June 15. On the way there he suffered a headache and returned to SC a day early and did not see the customer. He never informed me of this and while I thought he was in Indiana.

In July 2007, prior to the end of his thirty-day deadline several more issues have arisen.

- Only July 3, 2007 he did not show up for work and left me a message that he would be at Hexion in Greenville all day. He did not get permission for this trip. Later I found out directly from the Hexion representative that he did not show up. Although he did see another supplier in Greenville briefly, he has no been able to adequately account to me his whereabouts for the entire day.
- Also on this day he instructed the Hexion representative to deliver sulfuric acid to him at the plant without an MSDS. This is in direct violation of company policy.

In the last three months he has also demonstrated other poor work habits that are affecting his work performance.

- Does not return calls or emails consistently. His co-workers consistently complain of this as it affects their ability to complete their tasks that are contingent on his work.
- Does not keep consistent work hours and often cannot be physically located at the facility. Gate entries indicate an erratic pattern of coming and going that is not approved in advance.

In light of the continued problems with Gary's work practices and performance I am recommending that we terminate his employment at Tietex. Gary has been counseled about these issues, but at this point I have lost confidence in his ability to perform his job in a satisfactory manner.

TIETEX - SC

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ROA 000482

Attachment D Affidavit of Pamela Griffin

IN THE COURT OF COMMON PLEAS

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C. A. No.: 2011-CP-42-4538

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1. I, Pamela Griffin, am of majority age, competent to testify, and make this Affidavit based on personal knowledge of facts I know to be true and correct.
2. I have been employed with Tietex International, LTD, ("Tietex") since December 3, 1990. I currently hold the position of Human Resources Manager and have held that position since January 1, 2008. Prior to holding the position of Human Resources Manager, I held the position of Employee Relations/Benefits Manager.
3. Tietex has never had an employee handbook.
4. I have read the above statement and declare under penalty of perjury that the foregoing is true and correct.

Pamela Griffin
Pamela Griffin

Sworn to and subscribed before me
This 30th day of April, 2013

Lynn W. Bishop
Notary Public for South Carolina

My Commission Expires: MY COMMISSION EXPIRES MARCH 19, 2020

Attachment E
Exhibit 1 to the
Second Deposition of
Wade Wallace

EXHIBIT 1

Deposition of Wade Wallace

Harris v. Tietex International Ltd.

In the Court of Common Pleas for Spartanburg County

C.A. No: 2011-CP-42-4538

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
SPARTANBURG DIVISION

Gary G. Harris,

Plaintiff,

v.

Tietex International, LTD,

Defendant.

C. A. No.: 7:08-cv-3020-HFF-WMC

DECLARATION OF WADE WALLACE

1. I, Wade Wallace, am of majority age, competent to testify, and make this Declaration based on personal knowledge of facts I know to be true and correct.
2. I have been employed with Tietex International, LTD ("Tietex"), since April 2000. I currently hold the position of Vice President of Sales and Marketing and have held that position since June 2008.
3. From February 1, 2007, until his employment was terminated, Gary Harris was under my supervision. At that time, my position was Product Development and Improvement Manager. I reported to Mark Isbell, Vice President of Operations.
4. Immediately before reporting to me, Harris was supervised by Jake Butts, Quality Assurance/Lab/Environmental Manager.
5. David Wilson, Human Resources Manager, and Mark Isbell, Vice President of Operations, in January 2007, asked me if I would consider supervising Harris. Harris was going to be relocated to the plant and was going to be providing more assistance working on projects that would give return on investment and cost savings. Harris had requested the opportunity to use his skills to assist Tietex on more significant projects.

~~XXXXXXXXXX~~

EX-1

6. Another reason for relocating Harris was to remove him from the lab area due to Harris' complaints about a negative impact on his health. Harris had complained about a mold smell that he attributed to Jake Butts' clothing and to the furniture which had been moved into Jake Butts' relocated office. Harris was removed from the supervision of Butts and placed under my supervision, partly as a result of these complaints.
7. Butts had had difficulty keeping up with Harris' whereabouts and work hours when he supervised him. Harris would often work after hours, on weekends, and at times when the plant was not operational, or when no one else was at the plant. Harris also came and went as he pleased and was hard to keep up with. For these reasons, Butts relocated his office to the laboratory area, where Harris' office was also located. Butts told me he would be able to supervise Harris more effectively from the new location.
8. I was aware of Butts' former difficulties with Harris when I began supervising him. Before beginning to supervise Harris, I talked with Jake Butts about Harris' work habits, his strengths, and any opportunities for improvement. Butts had concerns that Harris was difficult to manage. Harris was inconsistent about returning phone calls, attending meetings, and in his work hours. Harris was poor at delivering a project within the requested time frame.
9. When I began supervising Harris, I told him my expectations. I knew about his wife's medical problems during the last year and told Harris I was sensitive to these issues. I also told Harris I understood that he had some health problems from working in the lab. Harris related that he had felt underappreciated in the past at Tietex. I told Harris that I could not do anything about the past, but that he had a clean slate going forward, and he

was being given the opportunity to work on projects that would utilize his capabilities and give him an "opportunity to shine." (Appeal p. 62).

10. I personally told Gary Harris that, for safety reasons, he should not do any work, other than office work, when the plant was not operational. The reason for this was because it was a safety risk for anyone to be working alone while using chemicals and laboratory equipment.
11. I personally told Gary Harris that he was accountable to me for his whereabouts during the workday. I expected Harris to keep me informed when he was working at a location other than at Tietex. I expected Harris to be available by cell phone during work hours if he was not at the plant. If Harris told me of his plans, and those plans changed, I told Harris I expected him to keep me updated on any changes so he could be located, if needed. Harris was aware of these expectations.
12. Because of Harris' complaints about the mold smell, a hygienist was hired by Tietex to perform testing in the laboratory areas. Tests were conducted in all four areas of the laboratory building: the office area, wet lab, physical testing, and wet lab extension. The testing found no evidence of mold. The testing showed that the air in the lab was cleaner than the outside air. The laboratory building is located in a separate building from the plant.
13. Tietex wanted to protect Harris from any possible exposure to substances which were harmful to him and attempted to accommodate his need for lab access. Harris was offered the option of wearing a mask when working in the lab, but Harris ultimately concluded that would afford him adequate protection. Harris offered to sign a waiver,

but Tietex did not believe Harris should compromise his health if he believed exposure to the lab area adversely impacted his health.

14. Ultimately, Harris was told not to use the lab, due to his health, but was offered other accommodations. Harris and I went through the two secondary labs located in the plant: the dying and finishing lab and the coating lab. Harris confirmed that everything he needed, for the most part, was located within those two labs, and he would be able to perform his work in those two areas with a few supplies. I asked Harris for a list of supplies he would need, but Harris never provided a list. I followed up with Harris about a month later. Harris said he was still working on the list, and confirmed he was able to get the work done.
15. Harris asked for a vented hood and a pad coater. I told him to prepare a purchase order, which I would be glad to sign, and would get him those items. Harris never completed a purchase order. It was Harris' responsibility to choose and order the equipment he needed, but he never did. Tietex did purchase several thousand dollars worth of equipment for Harris, but did so without the purchase orders Harris was to prepare.
16. Harris was also given the option to coordinate with Robert Culbreath, a chemical tech, who could perform work for Harris in the main lab.
17. Tietex provided Harris with an alternative work area because Tietex wanted to protect Harris' health.
18. On February 7, 2007, Harris called me on the telephone in my office and told me that his personal and emotional problems had overwhelmed him and he was confused, disoriented, and could not function. Harris said he did not know what to do. I immediately went to Harris' office to discuss these issues with him in person. Harris

said his personal life over the past year had made him fragile emotionally, and he sometimes had episodes like the one he was experiencing. He specifically mentioned that his wife's illness and near death continued to affect him emotionally. As we talked, Harris said he felt better. I mentioned that the project work I assigned him could help keep his mind off these personal issues. I reminded Harris that he could seek help through the EAP, but he declined. I told Harris that he could come to me if a personal problem was interfering with his job, and we would work with Human Resources to find a solution. Harris assured me that he was okay and thanked me for my support and patience.

19. I was never verbally abusive to Harris, never berated him, and never confronted him in a hostile manner. Although I clearly articulated my expectations to Harris, I never did so in a manner that was unprofessional or derogatory.
20. On February 22, 2007, Harris left separate voice mail messages for Martin Wildeman and me at approximately 3:00 a.m., complaining about his inability to sleep because of "all that's been going on."
21. Harris would often leave me voice mail messages at times when he knew I would not be at work, or would not be available to answer the phone. I believe that Harris did so in order to avoid speaking with me directly.
22. Harris complained repeatedly about his environmental reporting duties. Harris had time to do the environmental reporting and was expected to complete these tasks on time.
23. I asked Wallace to come to me directly with any work-related issues before going to Martin Wildeman, the owner of Tietex.

24. Harris had complained repeatedly to me, Mark Isbell, and David Wilson, that the company was poorly managed, and the current leadership was crooked and would run the company out of business. These derogatory comments about management were inappropriate. Harris would make these sorts of vague derogatory statements with no factual basis or evidence to back them up.
25. I created the memorandum dated March 5, 2007, documenting issues with Harris' performance, which I discussed with him in a meeting on the same day. I sent a copy of this memorandum to Harris, at his request, and also to David Wilson and Mark Isbell. I did not distribute this document to anyone else, inside or outside of Tietex. The comments made in the memorandum were my honest, objective assessment of performance issues that had been identified with Harris. Harris did not protest any of the items in the memorandum as being false or inaccurate. A true and correct copy of the March 5, 2007, memorandum is attached as Exhibit A.
26. On June 18, 2007, I discussed Harris' poor performance with him. I documented the discussion in a memorandum to Harris, with a copy to David Wilson and Mark Isbell. I did not distribute this document to anyone else, inside or outside of Tietex. The comments made in the memorandum were my honest, objective assessment of performance issues that had been identified with Harris. A true and correct copy of the June 18, 2007, memorandum is attached as Exhibit B.
27. The C237 project was projected to save Tietex one and a half million dollars in costs, which was put into Tietex's financial projections. I told Harris that this was his primary project. The C237 compound proved much more complicated to produce commercially than Harris had initially promised. I began to work independently to produce an

alternative to Harris' project because it appeared Harris would be unable to achieve the cost savings for Tietex that he had predicted. I worked with the vendor that had been supplying the materials, because I was familiar with them and they were already producing a viable product. The vendor produced a viable product within thirty days, that not only met the projected savings, but exceeded it. The annualized savings were in excess of two million dollars.

28. Plant production trials are very expensive and are only conducted if laboratory production is successful.

29. The T602 project was estimated to save Tietex about \$600,000 per year. Harris told me that the lab samples for the T602 project were promising and recommended a production trial. I relied on Harris' recommendation for a plant trial. Harris told me the results of the first plant trial warranted a second trial. I did not see the trial results myself at that time, but relied on Harris' representation. Based on Harris' representation, a second plant trial was conducted, but was unsuccessful, due to equipment failure. A third trial was conducted. Harris told me that the third trial was perfect from a production standpoint. Harris got the product tested, and, this time, I asked to see the laboratory test data. When, after repeated requests, Harris failed to provide the test data to me, I retrieved some of the material from both the first and third trials, had them tested, and found both materials failed the test. I would not have recommended the plant trials continue if I had seen the data or been given accurate information by Harris about the results of the first laboratory trial, which failed.

30. Although there were passing data on several individual samples on the first small scale up test, the criteria is 100% passage, so it was a failure. Mixed results are not sufficient to warrant further trials.
31. When asked for an explanation about why he said the earlier tests had passed, Harris simply said, "I thought they passed."
32. Due to the issues on the C237 and T602 projects, I told Harris, on June 18, 2007, that he needed to improve his performance within thirty days or face further discipline, up to termination from employment.
33. Harris continued to show poor judgment after his warning on June 18, 2007. Harris made no effort to complete the C237 project. Harris began taking multiple days of vacation immediately after being given the warning on June 18, 2007. Harris often took these vacation days on short notice. Sometimes, Harris did not notify me he was taking a vacation day until the day before he took it. This was contrary to policy and practice, which was to give sufficient notice before taking vacation days.
34. Harris left me a message on June 19, 2007, not asking for vacation, but telling me he was taking vacation on June 19 and June 20. Harris sent me an e-mail on June 23, 2007, stating he needed the entire week of June 25 off for vacation. On July 3, 2007, Harris left me a voice mail, stating he wanted to take the entire week of July 9 through July 13, off. I mistakenly made a reference to this date as June 9 through 13 in a hand-written note on the printed copy of an e-mail dated June 25, 2007.
35. Harris continued to work in the chemical lab areas at nights and on the weekends, even after being directed not to do so. Harris continued to work inconsistent and erratic hours. It continued to be difficult to locate Harris during regular work hours.

36. Harris' co-workers complained to me that he did not return calls or e-mails consistently, which disrupted their work.
37. Harris was scheduled to fly to Indiana on June 14, to visit a customer, and was to return on June 15. After flying to his destination, Harris returned home without seeing the customer. Harris never told me that he had not met with the customer in Indiana, as planned, or that he had returned from his trip without accomplishing any work.
38. On the morning of July 3, 2007, I arrived at work around 7:30 a.m., and had a voice mail from Gary Harris. Harris said he had an ant problem at his home and would not be at work.
39. At around 9:00 a.m., Harris left me another voice mail, saying he had resolved the ant problem and was going to go to Hexion to work on a project. This project had nothing to do with the C237 project, which Harris had been told was a priority. Harris was supposed to be working toward completing the C237 project after his June 18, warning.
40. I had told Harris in the past that if he needed to work with other vendors outside of Tietex, that was fine, but I needed a few days' notice of his plans for scheduling purposes. However, Harris was not diligent about giving me advance notice. Harris would often call the morning of his visit to a vendor and tell me he would be working outside of Tietex.
41. I assumed from Harris' voice mail that he would be working at Hexion for most of the day.
42. Sometime in the afternoon of July 3, 2007, a Hexion employee, George Henderson, brought sulfuric acid to Tietex for Harris. This was against Tietex policy. There was no MS/DS sheet on record, and Harris was aware that this was against policy. The

receptionist alerted me that Henderson had brought the sulfuric acid for delivery to Harris.

43. I spoke with Henderson and asked him if he had seen Gary Harris that day. Henderson said he had not seen Harris. I asked Henderson if he had spoken with Harris that day. Henderson said Harris left him a voice mail saying he needed some sulfuric acid urgently because he planned to do some work with it in the lab on July 4. This was troubling because Harris had been told not to do work in the lab when no one was present, and the plant was to be closed on July 4. Henderson said Harris asked him to bring the sulfuric acid to Tietex and leave it for him at the front desk. I asked Henderson if he knew where Harris was, but Henderson did not.

44. I was suspicious that Harris was not where he had told me he would be working that day. I attempted to reach Harris on his cell phone several times, without success. When I finally reached Harris on his cell phone in the late afternoon, I asked him where he had been that day. Harris told me he had been to Hexion. I told Harris that Henderson had been to Tietex and told me Harris was not at Hexion that day. Harris then revised his statement, saying he had gone to Hexion, but had been unable to get in or find anyone, so he left. I asked Harris again where he had been all day. Harris said he had gone to Spartan Chemical and was there for about an hour. I told Harris he had only accounted for a little over an hour of the whole day and asked him to explain where he had been the rest of the day, but Harris could not. Harris simply said, "I can't tell you."

45. I was scheduled to be off for vacation beginning the next day, so I told Harris he was suspended with pay until I returned from vacation. While I was telling Harris that he was suspended, the call was disconnected. I thought Harris had hung up on me. I tried

to call Harris back, but could not reach him. I spoke with David Wilson about all that transpired. Since we could not reach Harris by telephone, a voice mail message was left for him, reiterating that he was suspended with pay, and he was not to return to work until contacted by Tietex.

46. I called Dean Roberts to investigate Harris' claim that he had been to Spartan Chemical. Roberts confirmed that Harris had dropped by, unannounced, and spent about an hour there, talking with them about their capabilities as a supplier.
47. Harris could not account for his whereabouts for the remainder of July 3, other than the short time he spent at Hexion around 1:30 p.m., and the hour spent at Spartan Chemical. Since Harris left a voice mail at 9:00 a.m., saying he had resolved his ant problem, he failed to account for his whereabouts for most of the day. I could only confirm Harris' accounting for a little over an hour of his time between 9:00 a.m., when he left a voice mail for me that he would be at Hexion, and 4:00 p.m., when I was able to reach him on his cell phone.
48. After my investigation, I concluded that Harris was not working at Hexion, as he told me he would be, that Harris had not informed me that his plans had changed, and that Harris was evasive and refused to account for his whereabouts for most of the day of July 3. The events of July 3, as well as the events that occurred previously, made me lose confidence in Harris' abilities to perform his duties and be a reliable employee.
49. The decision to terminate Harris' employment was made on my recommendation, and was made by myself; David Wilson, Human Resources Director; Martin Wildeman, Owner; Reed Cunningham, President; and Mark Isbell, Vice President of Manufacturing.

50. Harris' employment was terminated based on multiple factors, outlined in the memoranda of March 5, June 18, and July 18, 2007, including the events of July 3.
51. I did not distribute the memorandum of July 18, 2007, to anyone inside or outside of Tietex, other than Mark Isbell and David Wilson. The comments made in the memorandum were my honest, objective assessment of performance issues that had been identified with Harris. A true and correct copy of the June 18, 2007, memorandum is attached as Exhibit C.
52. No one was hired to replace Gary Harris. Harris' position was eliminated and the duties assigned to various other positions. Patricia Guzman was hired to handle the Environmental and Lab duties that were previously a part of Harris' former supervisor, Jake Butts', duties. Guzman performed only a few of the general chemical duties that had previously been a portion of Harris' job. Guzman did not replace Harris.
53. Harris never complained to me about age discrimination. I never heard from anyone else at Tietex that Harris had mentioned age discrimination during his employment with Tietex.
54. I have read the above statement and declare under penalty of perjury that the foregoing is true and correct.

Executed this 18th day of September, 2009.


Wade Wallace

Attachment F

Lowe's Receipt



LOWE'S HOME CENTERS, INC.
170 RAINBOW LAKE ROAD
SPARTANBURG, SC 29316
(864)573-2771

-SALE-

SALES #: S1986ND1 4231 07-03-07

232219 3B OUTDOOR ANT KILLER ORA	19.94
2 @ 6.97	
250039 ORTHO MAX ANT & ROACH	3.94
2 @ 1.97	
94578 TERRO ANT KILLER 1 OZ.	2.47

SUBTOTAL:	20.35
TAX 38779 :	1.22
INVOICE 14386 TOTAL:	21.57

BALANCE DUE: 21.57

CASH : 22.00
CHANGE : 0.43

1986 TERMINAL: 14 07/03/07 07:36:30

OF ITEMS PURCHASED: 5
EXCLUDES FEES, SERVICES AND SPECIAL ORDER ITEMS



THANK YOU FOR SHOPPING LOWE'S
RECEIPT REQUIRED FOR CASH REFUND.
CHECK PURCHASE REFUNDS REQUIRE
15 DAY WAIT PERIOD FOR CASH BACK.
STORE MGR: EARL WIGFALL

HAVE A COMMENT OR FEEDBACK?
LET US KNOW AT
WWW.LOWES.COM/FEEDBACK

STORE CODE: 19860-70307-14386

Plaintiff Exhibit # 1 - (2011-CP-42-5538)-01/15/2012

HARRIS - SC
000014

ROA 000500

STATE OF SOUTH CAROLINA

COUNTY OF SPARTANBURG

Gary G. Harris,

Plaintiff,

v.

Tietex International, Ltd.,

Defendant.

IN THE COURT OF COMMON PLEAS

C. A. No.: 2011-CP-42-4538

**DEFENDANT'S RESPONSE IN OPPOSITION TO PLAINTIFF'S MOTION TO
COMPEL ENTRY UPON AND INSPECTION OF PREMISES**

COMES NOW Defendant Tietex International, Ltd. ("Tietex"), and submits this Response in Opposition to Plaintiff Gary G. Harris's ("Harris") Motion to Compel Entry Upon and Inspection of Premises ("Motion to Compel"). Harris never made a formal request under Rule 34, SCRCP, for entry upon or inspection of Tietex's facilities. In the absence of a formal request under Rule 34, Harris's Motion to Compel is both premature and improper. Harris's Motion to Compel should be denied accordingly, with Tietex awarded the reasonable expenses (including attorneys' fees) it has incurred in opposing the Motion.

A. Relevant Facts and Procedural History.

The following timeline summarizes the entirety of the parties' communications regarding Harris's desire to enter upon and inspect Tietex's facilities, and clearly evidences the absence of a formal request under Rule 34:

1. On November 18, 2013, Harris's counsel sent Tietex's counsel a letter in which he stated, "I would like to conduct a site visit of the Tietex facility as soon as possible. Please let me know whether you will agree to this, or whether I need to file a Motion. Also, please let me

know with whom in your office we need to schedule this site visit. I would like access to the entire facility and grounds during this site visit.” (Exhibit 1.¹) This letter does not contain any mention of or reference to Rule 34, SCRCF. Neither was this letter accompanied by a certificate of service or any other indication that Harris was making a request or that Tietex had a duty to respond under Rule 34.

2. Within 10 minutes of the e-mail from Harris’s counsel, Tietex’s counsel responded and inquired as to the purpose and scope of the desired visit: “For what purpose? Do you plan to have anyone accompany you?” (Exhibit 2.)

3. In response to the questions from Tietex’s counsel, Harris’s counsel sent 2 e-mails: (1) “Just Mr. Harris, Attorney Goforth, and I will attend. The purpose is to assist in my prosecution of Mr. Harris’ claims.” (*id.*); and (2) “Also, Id’ like to take photos for use as trial exhibits.” (Exhibit 3.) Again, Harris’s counsel’s e-mails made no mention of Rule 34.

4. Due to the vague nature of Harris’s counsel’s response regarding the purpose of the desired visit, Tietex’s counsel asked for clarification: “Pls [sic] be more specific than ‘to assist in my prosecution of Mr. Harris’ claims.’” (Exhibit 4.)

5. In the final e-mail communication from November 18, Harris’s counsel noted as follows: “Our claims involve several significant events that occurred in the plant and the separate lab area. I need to see Mr. Harris’ old office, the lab, and his new office to better understand and prosecute our claims. I also want to see the grounds and the proximity to the highway. I don’t know that I can be any more specific without revealing my mental impressions and my trial

¹ The substance of the documents Tietex attaches as Exhibits are generally identical to the exhibits Harris attached to his Motion to Compel. However, Tietex is attaching clean copies of these documents due to several of Harris’s exhibits being difficult to follow and incomplete.

strategy. I also want to take photos as I mentioned, and I will agree that all photos will be treated as confidential.” (*Id.*) Yet again, Harris’s counsel did not reference Rule 34 in any way.

6. On November 20, 2013, Harris’s counsel sent the following e-mail to Tietex’s counsel: “Please advise whether Tietex will voluntarily agree to our site visit so we can work out any limitations in scope or time or otherwise address any concerns you may have. If your client is not inclined to agree I shall be forced to file an appropriate motion.” (**Exhibit 5.**) Here, Harris’s counsel makes clear that he has not yet made any formal request under Rule 34, as he asks whether Tietex will voluntarily agree to the desired site visit. There is nothing voluntary about the duty to respond to a formal request under Rule 34.

7. Approximately 30 minutes after receiving the November 20 e-mail from Harris’s counsel, Tietex’s counsel responded that he was “Waiting to hear” from Tietex as to whether it would voluntarily agree to allow the site visit based on Harris’s informal request. (*Id.*)

8. On Thursday, December 12, 2013—three weeks after the last e-mail exchange—Harris’s counsel sent Tietex’s counsel a letter regarding the scheduling of two Tietex representatives’ depositions. (**Exhibit 6.**) At the conclusion of this letter, Harris’s counsel noted, “Please also let me hear back from you concerning my request to visit the Tietex facility.” (*Id.*)

9. Tietex’s counsel responded to Harris’s counsel in less than 15 minutes using his mobile device: “Alan, I am out of the office for the remainder of this week. Next week I will attempt to confer with Tietex representatives then contact you.” (**Exhibit 7.**)

10. Between December 12 and December 17, Tietex’s counsel and Harris’s counsel were able to reach agreement on the scheduling of the depositions at issue. Tietex’s counsel sent Harris’s counsel the following e-mail on December 17: “Depos [sic] are set. I am not authorized

to make an informal agreement for entry onto Tietex's property. You must make a formal Rule 34 request for the Company's consideration. (*Id.* (emphasis added).)

11. On December 23, Harris's counsel responded as follows to the December 17 e-mail from Tietex's counsel: "I served you with written correspondence on November 18, 2013, requesting a site visit. I believe this correspondence complies with Rule 34. We will file a motion to compel today, December 23 unless we hear back from you agreeing to a date and time for the site visit." (*Id.* (emphasis added).) This December 23 e-mail was the first time that Harris's counsel had ever mentioned Rule 34, and he only did so upon Tietex's counsel notifying him that Tietex would not voluntarily agree to the informally requested site visit and that he must make a formal request under Rule 34.

12. Tietex's counsel responded succinctly within 5 minutes: "I disagree that your informal request is proper under the Rules." (*Id.*)

13. On December 23, 2013, Harris filed his Motion to Compel without ever serving a formal request under Rule 34.

B. Legal Arguments and Authorities.

Rule 37(a)(2), SCRCp—the sole authority on which Harris can base his Motion to Compel—makes clear that a party can only seek relief thereunder in the following circumstance: "[I]f a party, in response to a request for inspection submitted under Rule 34, fails to respond that inspection will be permitted as requested or fails to permit inspection as requested." (Emphasis added). The plain language of this Rule makes clear that Harris's Motion to Compel is both premature and improper, as there has never been "a request for inspection submitted under Rule 34" in this case.

While no South Carolina appellate court appears to have addressed this issue, numerous federal courts have done so under the analogous Federal Rules 34 and 37. Federal courts throughout the country have repeatedly held that a party cannot invoke Rule 37 and seek an order compelling production or inspection under Rule 34 if there has never been a formal request under Rule 34. See, e.g., *Petrucelli v. Bohringer and Ratzinger*, 46 F.3d 1298, 1311 (3d Cir. 1995) (“[The plaintiff] never forwarded interrogatories, nor a request for production of documents, to [the defendant]. Thus, pursuant to Rule 37, the prerequisite for compelling discovery was never fulfilled.”); *Texas Democratic Party v. Dallas County*, No. 3-08-cv-2117-p, 2010 WL 5141352, *1 (N.D. Tex. Dec. 9, 2010) (“It is axiomatic that a court may not compel the production of documents under Rule 37 unless the party seeking such an order has served a proper discovery request on the opposing party.”); *Patterson v. Kim*, No. 1:08-cv-873, 2009 WL 1911819, *2 (W.D. Mich. July 1, 2009) (“While defendants’ informal discovery request may be expeditious, and as such beneficial to all, federal courts have denied motions to compel the production of documents where the movant failed to make a formal discovery request for the documents.”); *James v. Wash Depot Holdings, Inc.*, 240 F.R.D. 693, 695 (S.D. Fla. 2006) (“[C]ourts have denied motions to compel the production of documents where the movant failed to make a formal discovery request. . . . Rule 37 does not authorize a court to compel documents or a release to obtain them based on an informal discovery request.”); *Sithon Maritime Co. v. Mansion*, No. Civ. A. 96-2262-EEO, 1998 WL 182785, *2 (D. Kan. Apr. 10, 1998) (“The Federal Rules of Civil Procedure provide necessary boundaries and requirements for formal discovery. Parties must comply with such requirements in order to resort to the provisions of [Rule 37], governing motions to compel. Informal requests for production lie outside the boundaries of the discovery rules.”); *Ledbetter v. United States*, No. 3:96-cv-678x, 1996 WL

739036, *1 (N.D. Tex. Dec. 18, 1996) (“[I]t would be premature to grant the plaintiff’s Motion to Compel in the absence of a formal discovery request served upon the proper parties. . . . [A] motion to compel pursuant to the enforcement provisions of Rule 37 clearly contemplates that the parties have relied on the formal discovery rules.”).

Numerous federal courts have also made clear that letters are not formal requests under Rule 34 on which a motion to compel can be based. *See, e.g., Texas Democratic Party*, 2010 WL 5141352, at *1-2 (denying plaintiffs’ motion to compel and holding that plaintiffs’ letters to defendants requesting production of relevant billing records were nothing more than “informal discovery request[s]” to which defendants had no duty to respond or object); *Patterson*, 2009 WL 1911819, at *2 (denying motion to compel and noting as follows: “[T]here is no outstanding discovery directed to plaintiff. Defendants’ . . . letter was an informal request to release medical records; it was not a request for production pursuant to [Rule 34]”); *James*, 240 F.R.D. at 694 (“Nothing in the record reflects that Defendant has sought Plaintiff’s unemployment compensation records through a formal Request for Production pursuant to Rule 34 Rather, in a . . . letter to Plaintiff’s counsel, Defendant’s counsel merely informally requested that Plaintiff execute a release for such records.”); *Suid v. Cigna Corp.*, 203 F.R.D. 227, 228 (D.V.I. 2001) (denying Plaintiff’s motion to compel because the Plaintiff’s counsel’s letters to Defendant’s counsel requesting various documents did not “create any basis for relief under Rule 37(a)”; *Sithon Maritime Co.*, 1998 WL 182785, at *2 (“The court will not consider the letter [requesting production of various documents] as a formal request for production of documents.”). Accordingly, none of the communications between Harris’s counsel and Tietex’s counsel are a formal Rule 34 request on which Harris can base his Motion to Compel.

In *Sithon Maritime*, the United States District Court of Kansas clearly articulated the distinction between formal and informal discovery in holding that such an informal discovery request as Harris's is insufficient to support a motion to compel:

The Federal Rules of Civil Procedure provide necessary boundaries and requirements for formal discovery. Parties must comply with such requirements in order to resort to the provisions of [Rule 37], governing motions to compel. Informal requests for production lie outside the boundaries of the discovery rules. Formal requests may be filed under some circumstances, not letter requests. Formal requests require certificates of conferring and service. Letters do not. Formal requests certify representations of counsel under [Rule 11]. Letters do not. Formal requests clearly implicate the duties of opposing parties to respond, pursuant to [Rule 34]. Letters do not. Formal requests may occasion sanctions. Letters usually do not. To treat correspondence between counsel as formal requests for production under Rule 34 would create confusion and chaos in discovery. [Rule 37] permits a party to move to compel production of documents "if a party, in response to a request for inspection submitted under Rule 34, fails to respond." An evasive or incomplete response is a failure to respond, within the meaning of Rule 37(a)(2)(B). Fed.R.Civ.P. 37(a)(3).

[Rule 34(a)] establishes the permissible scope of production. [Rule 34(b)] establishes the procedure for submitting the request and for responding to it. The letter . . . does not meet the requirements of Rule 34. Plaintiff did not "serve" the letter upon [defendant] as contemplated by the Rule. See Fed.R.Civ.P. 34(a). The letter does not give [the defendant] thirty days in which to provide a written response. See Fed.R.Civ.P. 34(b). Plaintiff cannot properly move to compel production of documents sought in an informal letter requesting production. Although both informal investigation and formal discovery have their proper place in the litigation arena, the Federal Rules of Civil Procedure address only formal discovery.

Sithon Maritime, 1998 WL 182785, at *2 (emphasis added).

Like the plaintiff's letter in *Sithon Maritime* requesting production of documents, the letters and e-mails from Harris's counsel to Tietex's counsel: (1) contained no certificate of service; (2) contained no certification under Rule 11; (3) did not implicate Tietex's duty to respond or object; (4) were not "served" on Tietex as contemplated by Rules 26(g) and 34; and

(5) did not give Tietex 30 days in which to provide a written response as is clearly required by Rule 34(b). Additionally, none of Harris's letters or e-mails "specif[ied] a reasonable time, place, and manner of making the inspection and performing the related acts"—a black letter requirement of a Rule 34 request. Instead, Harris's counsel simply sent a letter requesting an informal and voluntary agreement and threatened a motion to compel if Tietex was not willing to agree. As the Court in *Sithon Maritime* aptly noted, "To treat [such] correspondence between counsel as formal requests for production under Rule 34 would create confusion and chaos in discovery." *Id.*

Because Harris has never submitted a request under Rule 34, his Motion to Compel is both premature and improper. Harris's Motion to Compel should be denied accordingly. Because there is no basis for Harris's Motion to Compel, Tietex is entitled under Rule 37(a)(4) to recover the reasonable attorneys' fees it has incurred in opposing Harris's Motion:

If the motion [to compel] is denied, the court shall, after opportunity for hearing, require the moving party or the attorney advising the motion or both of them to pay to the party or deponent who opposed the motion the reasonable expenses incurred in opposing the motion, including attorney's fees, unless the court finds that the making of the motion was substantially justified or that other circumstances make an award of expenses unjust.

Rule 37(a)(4), SCRPC (emphasis added). Harris cannot make any showing of substantial justification for making his Motion to Compel, as he jumped the gun and filed his Motion without even attempting to follow the Rules of Civil Procedure. While Harris accuses Tietex in his Motion as "perpetuat[ing] a pattern of delay in this case," Harris is the one who is unnecessarily wasting both the Court's and Tietex's time by filing this unjustified and baseless Motion.

C. Conclusion.

Harris's counsel could have easily avoided the filing of this Motion (and likely could have accomplished the site visit he desires) if he would have simply followed the suggestion of Tietex's counsel on December 17: "I am not authorized to make an informal agreement for entry onto Tietex's property. You must make a formal Rule 34 request for the Company's consideration." (Exhibit 7 (emphasis added).) Harris's counsel chose not to follow that suggestion and resorted to the present Motion to Compel, notwithstanding his inability to resort to Rule 37 in the absence of a formal Rule 34 request. Therefore, the Court should deny Harris's Motion to Compel as premature and improper and award Tietex the attorneys' fees it has incurred in opposing the Motion.

Dated this 7th day of January, 2014.

Respectfully submitted,

By: Fred W. Suggs, Jr.
Fred W. Suggs, Jr. (SC Bar # 5423)
Lucas J. Asper (SC Bar # 77902)

OGLETREE, DEAKINS, NASH,
SMOAK & STEWART, P.C.
300 North Main Street (29601)
Post Office Box 2757
Greenville, South Carolina 29602
Telephone: (864) 271-1300
Facsimile: (864) 235-4754
Fred.Suggs@ODNSS.com
Lucas.Aasper@ODNSS.com

Attorneys for Defendant Tietex International, Ltd.

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF SPARTANBURG

Gary G. Harris,

Plaintiff,

v.

C. A. No.: 2011-CP-42-4538

Tietex International, Ltd.,

Defendant.

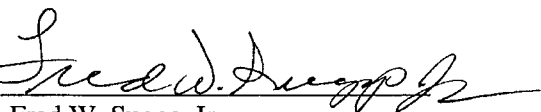
CERTIFICATE OF SERVICE

I certify that on the 7th day of January, 2014, a true and correct copy of the above **DEFENDANT'S RESPONSE IN OPPOSITION TO PLAINTIFF'S MOTION TO COMPEL ENTRY UPON AND INSPECTION OF PREMISES** was served by Email to:

D. Alan Lazenby, Esq.
alan@lazenbylawfirm.com

and that on the 8th day of January, 2014, a true and correct copy of the above **DEFENDANT'S RESPONSE IN OPPOSITION TO PLAINTIFF'S MOTION TO COMPEL ENTRY UPON AND INSPECTION OF PREMISES** will be served by hand delivering a copy to Plaintiff's counsel, D. Alan Lazenby, Esq.

By:


Fred W. Suggs, Jr.

16757806.1

Exhibit 1

Suggs, Fred

From: Jessica Holmen <jessica@lazenbylawfirm.com>
Sent: Monday, November 18, 2013 4:12 PM
To: Suggs, Fred; Suggs, Fred
Cc: Childress, Sherl M; Alan Lazenby; Gary Harris
Subject: Harris v. Tietex - Site Visit
Attachments: Suggs from DAL re site visit 11.18.13.pdf

Mr. Suggs,

Please see attached correspondence from Attorney Lazenby.

All the best,

--

Jessica Holmen
Paralegal
Lazenby Law Firm, LLC
P.O. Box 6099 (29304)
340 E Main St, Suite 240
Spartanburg, SC 29302
jessica@lazenbylawfirm.com
Office: 864-804-5050
Fax: 864-804-5051

LAZENBY LAW FIRM, LLC

ATTORNEYS AT LAW

D. ALAN LAZENBY
GINGER D. GOFORTH

POST OFFICE BOX 6099 (29304)
340 E. MAIN ST., SUITE 240
SPARTANBURG, SC 29302
PHONE: 864-804-5050
FAX: 864-804-5051

November 18, 2013

VIA EMAIL & US MAIL

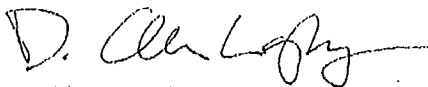
Fred Suggs, Jr. Esq.
Ogletree Deakins Nash Smoak & Stewart, PC
PO Box 2757
Greenville, SC 29602

Re: *Harris v. Tietex International Ltd.*
In the Court of Common Pleas for Spartanburg County
C.A. No: 2011-CP-42-4538

Dear Fred:

I would like to conduct a site visit of the Tietex facility as soon as possible. Please let me know whether you will agree to this, or whether I need to file a Motion. Also, please let me know with whom in your office we need to schedule this site visit. I would like access to the entire facility and grounds during this site visit.

Very truly yours,



D. Alan Lazenby
alan@lazenbylawfirm.com

DAL:jeh

ROA 000513

Exhibit 2

Suggs, Fred

From: Alan Lazenby <alan@lazenbylawfirm.com>
Sent: Monday, November 18, 2013 4:24 PM
To: Suggs, Fred
Subject: Re: Harris v. Tietex - Site Visit

Just Mr. Harris, Attorney Goforth, and I will attend. The purpose is to assist in my prosecution of Mr. Harris' claims.

Alan

On Mon, Nov 18, 2013 at 4:22 PM, Suggs, Fred <Fred.Suggs@ogletreedeakins.com> wrote:

For what purpose? Do you plan to have anyone accompany you?

From: Jessica Holmen [<mailto:jessica@lazenbylawfirm.com>]
Sent: Monday, November 18, 2013 4:12 PM
To: Suggs, Fred; Suggs, Fred
Cc: Childress, Sheri M; Alan Lazenby; Gary Harris
Subject: Harris v. Tietex - Site Visit

Mr. Suggs,

Please see attached correspondence from Attorney Lazenby.

All the best,

--

Jessica Holmen
Paralegal
Lazenby Law Firm, LLC
P.O. Box 6099 (29304)
340 E Main St, Suite 240
Spartanburg, SC 29302
jessica@lazenbylawfirm.com
Office: 864-804-5050
Fax: 864-804-5051

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D. Alan Lazenby

Lazenby Law Firm, LLC

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340 E. Main Street Suite 240

Spartanburg, SC 29302

alan@lazenbylawfirm.com

Office: (864) 804-5050

Mobile: (864) 415-2753

Fax: (864) 804-5051

Exhibit 3

Suggs, Fred

From: Alan Lazenby <alan@lazenbylawfirm.com>
Sent: Monday, November 18, 2013 4:27 PM
To: Suggs, Fred
Subject: Re: Harris v. Tietex - Site Visit

Also, I'd like to take photos for use as trial exhibits.

Alan

On Mon, Nov 18, 2013 at 4:22 PM, Suggs, Fred <Fred.Suggs@ogletreedeakins.com> wrote:

For what purpose? Do you plan to have anyone accompany you?

From: Jessica Holmen [<mailto:jessica@lazenbylawfirm.com>]
Sent: Monday, November 18, 2013 4:12 PM
To: Suggs, Fred; Suggs, Fred
Cc: Childress, Sheri M; Alan Lazenby; Gary Harris
Subject: Harris v. Tietex - Site Visit

Mr. Suggs,

Please see attached correspondence from Attorney Lazenby.

All the best,

--

Jessica Holmen
Paralegal
Lazenby Law Firm, LLC
P.O. Box 6099 (29304)
340 E Main St, Suite 240
Spartanburg, SC 29302
jessica@lazenbylawfirm.com
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Spartanburg, SC 29302

alan@lazenbylawfirm.com

Office: (864) 804-5050

Mobile: (864) 415-2753

Fax: (864) 804-5051

Exhibit 4

Suggs, Fred

From: Alan Lazenby <alan@lazenbylawfirm.com>
Sent: Monday, November 18, 2013 4:36 PM
To: Suggs, Fred
Subject: Re: Harris v. Tietex - Site Visit

Our claims involve several significant events that occurred in the plant and the separate lab area. I need to see Mr. Harris' old office, the lab, and his new office to better understand and prosecute our claims. I also want to see the grounds and the proximity to the highway. I don't know that I can be any more specific without revealing my mental impressions and my trial strategy. I also want to take photos as I mentioned, and I will agree that all photos will be treated as confidential.

Alan

On Mon, Nov 18, 2013 at 4:28 PM, Suggs, Fred <Fred.Suggs@ogletreedeakins.com> wrote:

Pls be more specific than "to assist in my prosecution of Mr. Harris' claims."

From: Alan Lazenby [mailto:alan@lazenbylawfirm.com]
Sent: Monday, November 18, 2013 4:27 PM
To: Suggs, Fred
Subject: Re: Harris v. Tietex - Site Visit

Also, I'd like to take photos for use as trial exhibits.

Alan

On Mon, Nov 18, 2013 at 4:22 PM, Suggs, Fred <Fred.Suggs@ogletreedeakins.com> wrote:

For what purpose? Do you plan to have anyone accompany you?

From: Jessica Holmen [mailto:jessica@lazenbylawfirm.com]
Sent: Monday, November 18, 2013 4:12 PM
To: Suggs, Fred; Suggs, Fred
Cc: Childress, Sheri M; Alan Lazenby; Gary Harris
Subject: Harris v. Tietex - Site Visit

Mr. Suggs,

Please see attached correspondence from Attorney Lazenby.

All the best,

--

Jessica Holmen
Paralegal
Lazenby Law Firm, LLC
P.O. Box 6099 (29304)
340 E Main St, Suite 240
Spartanburg, SC 29302
jessica@lazenbylawfirm.com
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alan@lazenbylawfirm.com
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--

D. Alan Lazenby

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Spartanburg, SC 29302
alan@lazenbylawfirm.com
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Fax: (864) 804-5051

Exhibit 5

Suggs, Fred

From: Suggs, Fred
Sent: Wednesday, November 20, 2013 4:58 PM
To: 'Alan Lazenby'
Subject: RE: Harris v. Tietex - Site Visit

Waiting to hear

From: Alan Lazenby [<mailto:alan@lazenbylawfirm.com>]
Sent: Wednesday, November 20, 2013 4:23 PM
To: Jessica Holmen
Cc: Suggs, Fred; Suggs, Fred; Childress, Sheri M; Gary Harris
Subject: Re: Harris v. Tietex - Site Visit

Fred,

Please advise whether Tietex will voluntarily agree to our site visit so we can work out any limitations in scope or time or otherwise address any concerns you may have. If your client is not inclined to agree I shall be forced to file an appropriate motion.

Alan

On Mon, Nov 18, 2013 at 4:11 PM, Jessica Holmen <jessica@lazenbylawfirm.com> wrote:
Mr. Suggs,

Please see attached correspondence from Attorney Lazenby.

All the best,

--

Jessica Holmen
Paralegal
Lazenby Law Firm, LLC
P.O. Box 6099 (29304)
340 E Main St, Suite 240
Spartanburg, SC 29302
jessica@lazenbylawfirm.com
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Fax: 864-804-5051

--

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alan@lazenbylawfirm.com
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Fax: (864) 804-5051

Exhibit 6

Suggs, Fred

From: Jessica Holmen <jessica@lazenbylawfirm.com>
Sent: Thursday, December 12, 2013 4:32 PM
To: Suggs, Fred; Suggs, Fred
Cc: Alan Lazenby; Childress, Sheri M; Gary Harris
Subject: Harris v. Tietex
Attachments: Suggs from DAL re depo dates and site visit 12.12.13.pdf

Mr. Suggs,

Please see attached correspondence from Attorney Lazenby.

All the best,

--

Jessica Holmen
Paralegal
Lazenby Law Firm, LLC
P.O. Box 6099 (29304)
340 E Main St, Suite 240
Spartanburg, SC 29302
jessica@lazenbylawfirm.com
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LAZENBY LAW FIRM, LLC

ATTORNEYS AT LAW

D. ALAN LAZENBY
GINGER D. GOFORTH

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SPARTANBURG, SC 29302
PHONE: 864-804-5050
FAX: 864-804-5051

December 12, 2013

VIA EMAIL & US MAIL

Fred Suggs, Jr. Esq.
Ogletree Deakins Nash Smoak & Stewart, PC
PO Box 2757
Greenville, SC 29602

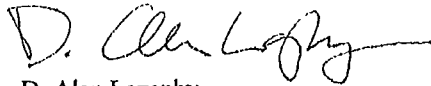
Re: Harris v. Tietex International Ltd.
In the Court of Common Pleas for Spartanburg County
C.A. No: 2011-CP-42-4538

Dear Fred:

I would like to schedule the depositions of Martin Wildeman and Reed Cunningham. Please provide available dates for these witnesses sometime within the next four (4) weeks. We can have these depositions at my office in Spartanburg or at your office in Greenville. I would like to schedule these depositions on two consecutive days, if possible. I believe I will need no more than one day per witness.

Please also let me hear back from you concerning my request to visit the Tietex facility.

Very truly yours,



D. Alan Lazenby
alan@lazenbylawfirm.com

DAL:jeh

cc: Mr. Gary Harris (via email only)

ROA 000529

Exhibit 7

Suggs, Fred

From: Suggs, Fred
Sent: Monday, December 23, 2013 11:37 AM
To: Alan Lazenby
Subject: RE: FW: Harris v. Tietex

I disagree that your informal request is proper under the Rules.

From: Alan Lazenby [<mailto:alan@lazenbylawfirm.com>]
Sent: Monday, December 23, 2013 11:32 AM
To: Suggs, Fred
Cc: Ginger Goforth
Subject: Re: FW: Harris v. Tietex

Fred,

I served you with written correspondence on November 18, 2013, requesting a site visit. I believe this correspondence complies with Rule 34. We will file a motion to compel today, December 23 unless we hear back from you agreeing to a date and time for the site visit.

Alan

On Tue, Dec 17, 2013 at 4:49 PM, Suggs, Fred <Fred.Suggs@ogletreedeakins.com> wrote:

Depos are set. I am not authorized to make an informal agreement for entry onto Tietex's property. You must make a formal Rule 34 request for the Company's consideration. Fred

From: Suggs, Fred
Sent: Thursday, December 12, 2013 4:46 PM
To: 'jessica@lazenbylawfirm.com'
Cc: 'alan@lazenbylawfirm.com'; Childress, Sherl M
Subject: Re: Harris v. Tietex

Alan, I am out of my office for the remainder of this week. Next week I will attempt to confer with Tietex representatives then contact you. Fred
Sent from my mobile device (please forgive any typos).

From: Jessica Holmen [<mailto:jessica@lazenbylawfirm.com>]
Sent: Thursday, December 12, 2013 04:32 PM
To: Suggs, Fred; Suggs, Fred
Cc: Alan Lazenby <alan@lazenbylawfirm.com>; Childress, Sherl M; Gary Harris <ggharris@windstream.net>
Subject: Harris v. Tietex

Mr. Suggs,

Please see attached correspondence from Attorney Lazenby.

All the best,

--

Jessica Holmen

Paralegal

Lazenby Law Firm, LLC

P.O. Box 6099 (29304)

340 E Main St, Suite 240

Spartanburg, SC 29302

jessica@lazenbylawfirm.com

Office: 864-804-5050

Fax: 864-804-5051

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--

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Spartanburg, SC 29302

alan@lazenbylawfirm.com

Office: (864) 804-5050

Mobile: (864) 415-2753

Fax: (864) 804-5051

1 STATE OF SOUTH CAROLINA)
2 COUNTY OF SPARTANBURG) IN THE COMMON PLEAS COURT
3
4 Gary G. Harris,)
5 Plaintiff,) TRANSCRIPT OF RECORD
6 -VS-) 2011-CP-42-4538
7 Tietex International, Ltd.,)
8 Defendant.) February 6, 2014
9) Spartanburg, South Carolina
10
11 B E F O R E:
12 HONORABLE J. DERHAM COLE, JUDGE
13
14
15 A P P E A R A N C E S:
16 DUANE ALAN LAZENBY, ESQUIRE
17 Attorney for the Plaintiff
18 LUCAS J. ASPER, ESQUIRE
19 FRED W. SUGGS, JR., ESQUIRE
20 Attorneys for the Defendant
21
22 Linda D. Moffitt
23 Circuit Court Reporter
24
25

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INDEX

Motions -- page 3.

No sworn testimony; no exhibits entered into evidence.

1 THE COURT: All right. Who wants to be heard?

2 MR. ASPER: Well, Your Honor, I believe the motion for
3 a continuance and a motion for a pretrial hearing as long
4 as we can essentially complete the pretrial hearing during
5 the procedures today -- both of Mr. Lazenby's motions are
6 moot with that understanding.

7 MR. LAZENBY: Yes, Your Honor. We discussed this
8 prior.

9 My motion is based upon the -- for a continuance is
10 based upon the inability to site visit and needing to have
11 the motion for summary judgment heard.

12 We had the site visit on Monday. We're hearing the
13 motion for summary judgment today. So the motion for a
14 continuance is moot.

15 THE COURT: Okay.

16 MR. LAZENBY: I have a motion for a -- I want to have
17 a preliminary hearing so we can address several issues
18 before trial which is scheduled to begin next Tuesday. And
19 as long as we can hear that I'm satisfied.

20 THE COURT: All right. So motion for summary judgment
21 is going to be heard first?

22 MR. ASPER: Yes, sir, Your Honor. I believe so.

23 MR. LAZENBY: That suits me, Your Honor.

24 THE COURT: Okay.

25 MR. LAZENBY: And one matter before this motion is

1 heard.

2 In preparing for trial and doing all of the things
3 that you do in preparing for trial I'm prepared to state on
4 the record that the plaintiff is withdrawing all causes of
5 action except for defamation.

6 So we're withdrawing the breach of contract and we're
7 withdrawing outrage.

8 MR. SUGGS: Breach of contract, breach of contract
9 accompanied by fraud, both of them.

10 MR. LAZENBY: Yes, sir.

11 MR. SUGGS: And intentional infliction of emotional
12 distress.

13 MR. LAZENBY: Yes. The only thing that's remaining is
14 defamation.

15 THE COURT: Does that help with the summary judgment
16 motion?

17 MR. ASPER: That gets us 75 percent of the way there,
18 Your Honor. We still have arguments related to that motion
19 obviously.

20 THE COURT: All right. Well, it's not obvious.

21 MR. ASPER: I apologize.

22 I'll hand you up. We have a notebook prepared or a
23 memo, and they're all exhibits. This is the same thing
24 that was submitted to the Court in conjunction with our
25 memo and our motion itself. Just that way you have it

1 handy and easier to flip through as we're going through
2 this, Your Honor.

3 THE COURT: Okay.

4 MR. ASPER: Just because I know you've heard several
5 motions in this case, but to give you a brief procedural
6 history this case really originated all the way back in
7 2008.

8 Mr. Harris, the plaintiff in this case, filed a
9 lawsuit in this court alleging four claims. This is just
10 for your reference. I know visually sometimes it's easier.

11 In the first action we had an A.D.E.A. claim. It's an
12 age discrimination claim, a claim for breach of contract,
13 breach of contract accompanied by fraud and defamation.

14 That case was removed to federal court based on the
15 A.D.E.A. claim. We went through discovery, through
16 extensive discovery, multiple depositions taken essentially
17 based on the exact same set of facts that we're dealing
18 with in this case.

19 Ultimately, the federal court granted summary judgment
20 on the age claim and chose not to exercise supplemental
21 jurisdiction over the state claims.

22 That decision went up to the 4th Circuit. The
23 4th Circuit affirmed the decision.

24 So as far as the merits of that case it has clearly
25 been actually litigated. And all of the underlying facts

1 are the same as what we're dealing with here.

2 The only difference in the complaint between what we
3 saw in the original case and what we have now is the
4 defamation claim has expanded. Our position is that
5 individual allegations of defamation need to be treated
6 really as individual claims because they are all so
7 specific based on the defamatory statement or the alleged
8 defamatory statement.

9 The first case involved four defamation claims. This
10 case now involves seven defamation claims. The additional
11 claim that's been added was outrage, but you've heard that
12 now that claim has been dismissed. So I'll forgo my
13 arguments related to that.

14 We filed a motion for summary judgment in this action
15 here in state court, and Judge Addy was here on the circuit
16 and heard that motion.

17 The primary focus of our motion when we made that was
18 based on the doctrine of collateral estoppel. We
19 essentially argued the federal court has made certain
20 factual determinations and legal conclusions. Those are
21 equally applicable to the claims that are before the Court
22 now.

23 We still hold that to be true, and you'll hear more
24 about that in just a minute.

25 We also argued based on the merits, but Judge Addy

1 didn't reach the merits when he issued his order. Judge
2 Addy ultimately denied our motion and found that in his
3 opinion collateral estoppel did not apply.

4 Our position is that's not the law of the case because
5 we couldn't appeal that decision. We will continue arguing
6 for the application of collateral estoppel throughout this
7 case.

8 The other part of his decision was that essentially
9 summary judgment was premature at that time. Mr. Lazenby's
10 primary argument in opposition to the merits was that he
11 had not yet had a full and fair opportunity to conduct
12 discovery.

13 He was attempting to take approximately seven
14 depositions. He had four or five depositions noticed prior
15 to that hearing that he put on hold until our motion was
16 heard. And then he had also noticed that he wanted to take
17 two executives' depositions at Tietex.

18 After the summary judgment decision -- and Judge Addy
19 granted him full ability to conduct further discovery --
20 Mr. Lazenby did notice two depositions of Morton Wildman
21 who's the owner of Tietex and Reed Cunningham who is the
22 president of Tietex. Those depositions were scheduled and
23 noticed to take place on January 16th and 17th.

24 On January 14th Mr. Lazenby's paralegal called
25 Mr. Suggs' paralegal and canceled those depositions only

1 with the explanation that they decided to go in a different
2 direction.

3 Since Judge Addy issued that ruling in October we've
4 had no discovery other than the site visit that just took
5 place on Monday and some supplemental responses that were
6 just served on us between last Wednesday and this Monday.
7 Other than that there has literally been no discovery in
8 this case.

9 And so our position is that the merits are what they
10 are and it's time to look at those merits. And we believe
11 there's only one conclusion based on the undisputed facts
12 in the record, and that is that the defamation claims fail
13 as a matter of law.

14 I'll go through each of those claims individually just
15 to try to better explain what his claims are. Like I said,
16 there are seven different claims here.

17 The crux of the first four that I'll address as far as
18 our defense really is the doctrine or the qualified
19 privilege that applies to these statements.

20 If you'll turn in tab B to the notebook and come to
21 Exhibit No. 13 it has bates No. 331 on the bottom. Are you
22 with me?

23 THE COURT: No. 331?

24 MR. ASPER: Yes, Your Honor. And I'll be happy to
25 give you my copy and work with yours since I'm already

1 there, and it'll be easy to flip to the next ones from
2 mine. You don't have to go digging.

3 THE COURT: Tab B, bates 331?

4 MR. ASPER: Yes, Your Honor. And it's Defendant's
5 Exhibit No. 13 to Harris' deposition.

6 THE COURT: Okay.

7 MR. ASPER: This is the first allegation of
8 defamation. Harris, Mr. Harris, the plaintiff in this
9 case, alleges that this e-mail constituted a defamatory
10 act.

11 What this e-mail is as is made clear in the actual
12 sender line is it's from Wade Wallace. Wade Wallace was
13 Mr. Harris' direct supervisor. The to-line, it's sent to
14 David Wilson. It's the Tietex human resources manager at
15 the time.

16 The copy on the e-mail, the carbon copy or courtesy
17 copy, is marked Isbell who was Mr. Wallace's supervisor.
18 These are all people very much on a need-to-know basis
19 about Mr. Harris' performance, and therefore the qualified
20 privilege absolutely applies to this e-mail.

21 Whether or not a situation gives rise to a qualified
22 privilege is a matter of law for the Court to decide.
23 Typically, the question of whether that privilege has been
24 abused is a question for the jury. However, if there's
25 only one reasonable conclusion as to whether or not the

1 privilege was abused, then that is also a question of law
2 that the Court can make, that the privilege stands and that
3 there is no defamation as a matter of law.

4 What this e-mail is to give you a little factual
5 background, Mr. Harris had been having some personal
6 issues. His wife was sick. He had had a problem sleeping.
7 He admitted many times in his depositions and in
8 transcripts before the employment security commission that
9 he was distraught at this time, that he was having a lot of
10 issues.

11 He went to Mr. Wallace and said he was having a hard
12 time with some of his work because of those issues. This
13 e-mail very simply is Mr. Wallace's notification or
14 documentation to human resources and his own boss that
15 these issues were going on with one of his employees. He's
16 letting them know, hey, this is what's going on in my
17 workplace.

18 There's nothing defamatory in here at all. And
19 placing aside the absence of defamatory matter and the
20 truth of these statements, there's no malice per
21 Mr. Wallace.

22 The way that Mr. Harris has attempted to show malice
23 is he has a big conspiracy theory that there was this
24 intent to get rid of him based on his age. This all goes
25 back to the age claims that the Court has already kicked on

1 summary judgment in the federal court. We can't relitigate
2 those issues here today.

3 I have a copy of the complaint that may be helpful to
4 the understanding of that issue. I'll hand that up to you
5 just so you can have that handy. And if you'll turn to
6 page three, paragraph 14, this is the first allegation in
7 the complaint regarding the alleged conspiracy or this
8 intent, malicious intent, to get rid of him. And what does
9 it say? Defendant-employee Mark Isbell conspired to
10 replace plaintiff with a much younger woman.

11 Well, the federal court specifically ruled in its
12 order that Harris was not replaced with a younger employee.
13 So that -- it's gone. That ship has sailed. And that is
14 the crux of his argument in this case.

15 You go down to paragraph No. 15 and it talks about a
16 campaign to set him up for failure based on this
17 conspiratorial intent. Well, again it relates back to the
18 age allegation.

19 MR. LAZENBY: I'm sorry. Which complaint is that?

20 MR. ASPER: This is the amended complaint. This is
21 your complaint.

22 MR. LAZENBY: This is the operative complaint.

23 MR. ASPER: Yes.

24 MR. LAZENBY: Okay.

25 MR. ASPER: If you'll turn to paragraph 23 on the next

1 page, defendant employees conspired to put false and
2 defamatory reasons for the termination of plaintiff to
3 achieve ulterior objectives. These ulterior objectives
4 again are to replace plaintiff with a younger employee, to
5 get rid of him based on his age. That issue has been
6 litigated.

7 No. 24, Defendant terminated him based upon the
8 pretextual case crafted against him. This all relates back
9 to the age claim.

10 And then finally paragraph 25, it absolutely seals the
11 deal on what this is all about. Plaintiff was replaced by
12 Patricia Guzman who is the younger employee.

13 Well, the Court's already said that he wasn't replaced
14 by Guzman. We can't relitigate that here. That's the
15 basis for Mr. Harris' argument that there is malice.

16 Well, the federal court's already told us that those
17 things aren't true, so there can't be malice. If there's
18 not malice, the privilege stands and his claim fails.

19 The next defamation claim if you'll flip to Exhibit
20 No. -- I believe it's 16. Yes, 16 on tab B. It's three or
21 four pages behind where we just were. It's an internal
22 memorandum, bates No. 334.

23 This we have walked about a month down the road in the
24 situation of Mr. Harris' separation. During the last 30
25 days we see in this because there's been a reassignment.

1 Mr. Harris previously worked for a supervisor named
2 Jake Butts. He and Mr. Butts got along fairly well, and he
3 didn't have a lot of performance issues while working for
4 Mr. Butts. But then he was replaced to where Mr. Wallace
5 was his supervisor. Their management styles were
6 different, and Mr. Wallace had different expectations for
7 him.

8 well, since -- between the time that he was
9 transitioned into this new supervisory role and the time of
10 this memo on March 5th Mr. Wallace began noticing problems
11 with Harris' performance.

12 What this memo is, it's a memo from Wade Wallace,
13 Harris' supervisor, to David Wilson. Again, that's the
14 H.R. manager copying only Mark Isbell who's Wallace's
15 supervisor and Gary Harris, the plaintiff himself. That's
16 the entirety of the publication here. And it documents
17 issues that are going on with Harris' performance.

18 Qualified privilege applies again here. Absolutely no
19 evidence of malice, because we've already litigated whether
20 or not these things are true.

21 And the federal court basing its decision in finding
22 summary judgment in Tietex's favor, they had to make two
23 conclusions: No. 1, that Harris was not performing up to
24 the reasonable legitimate expectations of Tietex. That's
25 something that absolutely was necessary to their decision.

1 No. 2, that he was not replaced with a younger employee.
2 Those two things have a lot of factual background that the
3 federal court found in order to reach those conclusions.

4 Well, a lot of those things are that Mr. Harris did
5 have issues with harboring grudges, that he did complain
6 about his ownership and environmental reporting, these very
7 bullet points, that he wasn't honoring the chain of command
8 and that wallace had problems with that.

9 Mr. wallace documented these things, many of which
10 Harris has admitted to as you'll see in our memorandum.
11 But my whole point is there's no malice. It's true. The
12 qualified privilege prevents the claim on this memo.

13 The next claim is the very next page in your notebook.
14 It's Defendant's Exhibit No. 18, bates No. 336 and 337.
15 We've moved forward in the timeline now to June 18th of
16 2007. Mr. Harris is continuing to have performance issues.
17 This memo specifically addresses issues related to two
18 projects. They're referred to as the C237 and T602
19 projects.

20 Well, stated simply, Harris had not done what wallace
21 wanted him to do on those projects, and wallace was
22 displeased with his efforts. Any supervisor has a right to
23 be displeased with his employees' efforts on any given
24 task. That's all that's documented here. The way that
25 wallace interpreted Harris' performance -- and you see in

1 the distribution that it was sent directly to the
2 plaintiff. The only copies here, H.R. and Mr. Wallace's
3 supervisor.

4 Very limited world of publication. And it's really
5 not even publication because it's a corporation speaking to
6 itself. It's not distributed even to other employees
7 within the corporation, not spoken about to other employees
8 within the corporation and certainly not published on a
9 third-party basis.

10 The final actual statement on which these claims are
11 based is the Exhibit No. 19. Just for reference if you'll
12 flip a few pages there's two copies of this exhibit in your
13 notebook, but bates Nos. 338 and 339 are the ones I'll
14 reference just for clarity on the record for the bates
15 numbers.

16 This is again one month forward after 30 days. And
17 remember that in the June memo, the one we just looked at,
18 Wallace had specifically said it is mandatory that Gary
19 make significant progress toward resolving the problems and
20 improving on his analytical practices within the next 30
21 days. Mr. Harris has testified he interpreted this memo as
22 his final written warning.

23 So we get to July 18th. Thirty days have passed.
24 There are other intervening events where Mr. Wallace can't
25 track down Mr. Harris on a day when he's supposed to be

1 working, just poor performance issues. I won't get into
2 the nitty-gritty of it because we're talking about the
3 statement here. And the statement is what forms the basis
4 for the defamation. All it does is summarize these
5 performance issues again.

6 And this one is only sent to David Wilson in H.R. and
7 copied to Mark Isbell. That's the supervisor of
8 Mr. Wallace again.

9 It's recommending Harris' termination. It's
10 summarizing performance issues and recommending
11 termination. That's what this memo is about. So the
12 qualified privilege applies. There's no malice here.
13 There's no malicious intent or conspiracy as the federal
14 court has already decided. And as a matter of law there
15 can only be one conclusion, and that's that it's simply not
16 defamatory statement.

17 The other three allegations of defamation are a little
18 bit less clear. Mr. Harris alleged that there were, quote,
19 unquote, rumors in the industry. To support this
20 allegation he's never identified an actual statement, only
21 that there are rumors in the industry about the reason for
22 his termination.

23 The sole support he's given are his unsupported
24 conclusory allegations. He's never identified even the
25 person who told him of these alleged rumors, let alone that

1 it came from someone at Tietex.

2 They're based on -- this statement's based on multiple
3 layers of hearsay inadmissible in evidence. And it just
4 can't be the basis for a defamation claim.

5 The sixth defamation claim involves what Harris refers
6 to as being suspended with pay from the plant. He calls it
7 being banned from the facility.

8 Well, on July 18th or on July 3rd after there was the
9 performance issue in which Mr. Wallace could not locate Mr.
10 Harris, could not account for his whereabouts throughout
11 the day, Mr. Wallace did, in fact, suspend him until he had
12 a chance to investigate what all was going on. But he
13 suspended him with pay.

14 The only communication was Mr. Wallace telling Mr.
15 Harris you're suspended, don't come to work until I've had
16 a chance to look through all of this.

17 Now, Mr. Harris also says in his deposition that
18 Wallace supposedly told somebody else at a third-party
19 vendor that Harris was suspended.

20 This is based on what he heard from a friend named
21 George Henderson who heard it from somebody else. Multiple
22 layers of hearsay. He's never produced a witness who said
23 that this statement actually took place. Harris says it
24 took place, and that's all.

25 But ignoring those facts, it's true. Harris clearly

1 acknowledges, yes, I was suspended. If the entirety of
2 Mr. Wallace's statement, which is all Harris has
3 identified, is Gary Harris is suspended from Tietex right
4 now, that statement was 100 percent true, and truth is an
5 absolute defense to defamation.

6 The final allegation of defamation goes back to
7 February. The factual background for this is a little bit
8 confusing. Whenever there was the changeover in supervisory
9 authority the -- part of the reason for that was that the
10 former supervisor Harris worked with named Jake Butts had
11 moved with Harris into a working environment together.

12 Mr. Harris then began to complain about headaches and
13 sinus issues. And he attributed it to mold in the
14 workplace.

15 Well, it wasn't based on Tietex's actual building. It
16 was based on things that Mr. Butts had brought into the
17 workplace -- some old furniture from the house.

18 So what did Tietex naturally do? They said if you
19 can't work in there, why won't we move you over here. Well,
20 Harris said I need to be able to work in this area to do my
21 job.

22 Wallace's first reaction was why don't we try to get
23 you some of the equipment that you would need to do it
24 outside, or as an alternative you can wear a mask.

25 Harris tried wearing the mask, said it's not doing good

1 enough job. wallace ultimately said, look, if we can't
2 resolve these health issues we can't have you working in an
3 environment that's possibly detrimental to your health.

4 Harris refers to this as being banned from the
5 laboratory. Again, it's based solely on Harris' own
6 complaints about health issues from working in the lab. His
7 complaint was I offered to sign a liability waiver.

8 well, Tietex said that's not good enough because if you
9 truly are having health issues based on this condition we --
10 a liability waiver is not good enough. You can't waive
11 comp. You can't waive types of claims that Harris could
12 later raise based on working in this environment and the
13 environment hurting his health.

14 But placing aside the liability, Tietex was concerned
15 about his health. There are e-mails in the record which are
16 quoted and cited in the memorandum that we provided that
17 summarize Tietex's position on that.

18 But stated simply, none of that's defamatory. There's
19 no statement about Harris within there. It's you can't work
20 in the lab, is the closest thing to a statement there. And
21 a statement that you're unable to work in a certain part of
22 the facility just isn't defamation.

23 Part of the -- one of the elements of defamation is it
24 must be a statement about the plaintiff. Well, telling a
25 plaintiff you can't work somewhere is not a statement about

1 the plaintiff. It's just controlling his working
2 conditions. It has nothing to do with his person, with his
3 reputation. It's just not defamation.

4 One of the key aspects of the qualified-privilege
5 defense is this aspect of malice. In order to overcome or
6 show malice, because in the situation like this where there
7 is a qualified privilege the burden shifts to the plaintiff
8 to show that malice is there.

9 Typically, there's a presumption of malice in
10 private-party-defamation actions. Well, because of the
11 privilege that burden shifts to Mr. Harris to prove the
12 existence of malice. With that burden-shifting he has put
13 nothing in the record to overcome Tietex's good faith. All
14 it is is his big conspiracy theory about them wanting to get
15 rid of him. And there's just no evidence of that in the
16 record.

17 So because of all of that there's but one conclusion we
18 can reach on the undisputed facts, and that's that the
19 qualified privilege precludes all of the actual statements
20 on which Harris is relying for his defamation claims.

21 I will -- I think that sufficiently addresses the
22 defamation. So I'll wait and hear what Mr. Lazenby has to
23 say, and then I'll respond.

24 THE COURT: All right. Mr. Lazenby.

25 MR. LAZENBY: Thank you, Your Honor.

1 I apologize. I did not bring another copy of the
2 memorandum I submitted on August 29 in opposition to the
3 previous motion.

4 Could I ask the Court to see if that's in the clerk's
5 file?

6 (Pause.)

7 THE COURT: No.

8 MR. LAZENBY: Again, Your Honor, I apologize for that.

9 First of all, we disagree with the position taken by
10 Tietex. We think there is an issue of material fact.

11 Initially, we would like to note that this motion is
12 simply a rehash of a motion that's previously been heard by
13 the Court.

14 Counsel stated that my primary argument at the
15 original hearing on summary judgment was that we hadn't had
16 a chance to conduct discovery. That's false. That's
17 simply not true.

18 If you look at my memorandum and the attachments
19 thereto the section on page 12, the last paragraph, where I
20 cite to the three memoranda that form the basis of the
21 defamation claim I cite to extensive testimony in the
22 record which refutes Tietex's position with regards to
23 those memos.

24 Tietex says, well, these are -- these were good-faith,
25 fair memos, this is just documenting work performance, it's

1 completely normal.

2 Our contention is, is that they're lies. They're
3 mistruths and that those -- and we've cited in the record
4 numerous testimony that contradicts those statements in the
5 memoranda.

6 So when Judge Addy ruled, he ruled and denied the
7 motion for summary judgment. And I'd like to hand the
8 Court the order that Judge Addy signed unless you have it
9 handy.

10 THE COURT: well, I don't know if I've got it handy or
11 not. Not as handy as you have got it.

12 MR. LAZENBY: If I can preface this, Your Honor, by
13 stating that I -- the way that I see this motion I break it
14 down into two separate arguments, one, that collateral
15 estoppel applies, and then, two, there's no evidence that
16 creates a genuine issue of material fact as to malice.

17 First, if we can look at collateral estoppel, Judge
18 Addy clearly ruled on that argument. Tietex came in here
19 and made a presentation to you just like they did before in
20 front of Judge Addy. And Judge Addy found that the
21 doctrine of collateral estoppel did not apply to the
22 plaintiff's claims and goes into the table outlining why
23 those claims -- why collateral estoppel did not apply.

24 And the basic reasoning, Your Honor, is that
25 collateral estoppel is a very difficult doctrine to prove

1 and to rely upon.

2 In order to prove collateral estoppel you have to --
3 you have to prove that the issues that you're trying to
4 foreclose in the subsequent action, that those were
5 necessarily decided in the previous case. Those were that
6 they were the but-for cause of denying the motion.

7 And in this case we're dealing with an A.D.E.A. claim.
8 And in an A.D.E.A. claim the plaintiff has a burden of
9 establishing that there was -- has to establish that he met
10 the expectations of his employer, that he met the
11 subjective expectations of his employer.

12 The Court ruled -- and the order is attached to my
13 memorandum; it is attached to the defendant's memorandum --
14 that the district judge found that Mr. Harris failed to
15 carry the burden of proof. He failed to establish that he
16 met the subjective standards of his employer. That's it.
17 That is the only fact that was necessarily determined in
18 that A.D.E.A. claim.

19 The Court goes on and discusses other issues that
20 would be relevant to an A.D.E.A. claim had Mr. Harris met
21 that initial burden. But, Your Honor, everything that the
22 Court finds after that is not a finding that can be relied
23 upon and used as a basis for collateral estoppel because
24 those findings were not necessary. They weren't necessary
25 to finding there was no A.D.E.A. claim.

1 It is true that our defamation claim is based on the
2 fact that Mr. Wallace, Mr. Harris' immediate supervisor,
3 generated memos, submitted those to management and used
4 those to get Mr. Harris fired.

5 Now, if, as counsel claims, that those -- that the
6 facts had been decided that that was all done in good faith
7 and that those were true, if those had been decided the
8 Court would have dismissed the defamation claim. But the
9 Court didn't. The Court remanded the defamation claim down
10 to state court.

11 And, Your Honor, Judge Addy's ruling goes into all of
12 those reasons and makes a specific finding that because
13 only the issue of meeting the employer's expectations --
14 because that's the only issue that is determinative in the
15 case. That's the only thing that can work for collateral
16 estoppel. So they're rehashing the same argument trying to
17 get another judge to rule differently.

18 But I think if Your Honor digs into the law of age
19 discrimination and the shifting burdens that apply there
20 this is not a proper case for applying that, applying
21 collateral estoppel to those supposed findings.

22 Now, as for the facts of the defamation claim, I
23 believe I've already stated at page 12 and 13 of the
24 memorandum I supported or I submitted August 29th before
25 the first motion, I outlined several specific instances

1 where we can show those memoranda were false. They were
2 simply false.

3 Now, I think it's somewhat of a new argument that was
4 not raised initially, is this idea of malice. And I think
5 it's significant to understand how malice is proved in a
6 case such as this, which is a -- as counsel pointed out,
7 this is a private -- private-party malice. We're not
8 dealing with a public figure or anything like that.

9 There is in this case common-law presumed malice
10 because these memos that we have referred to, that counsel
11 has referred to, those memos go to the fitness of Mr.
12 Harris to do this job.

13 They call him a bad employee, say that he doesn't read
14 test results right. They say that he's not doing his job
15 properly. That in and of itself creates a common-law
16 presumption of malice.

17 Now, counsel is also right when he says that the
18 burden then shifts to the defendant to prove that there was
19 a conditional or a qualified privilege.

20 However, if that privilege is abused, then the
21 privilege doesn't apply. And we can prove malice by
22 showing that the -- that the privilege was abused.

23 In this case the privilege was abused because
24 completely false items or completely false details were put
25 in these memos, and these memos were used to get Mr. Harris

1 fired. So, and as counsel pointed out, typically it is a
2 jury question to determine whether a privilege has been
3 abused.

4 Your Honor, there's more than sufficient evidence in
5 the record to show that these memos that Mr. Wallace wrote
6 were lies. They're full of lies, and we're going to show
7 that next week.

8 It's up to a jury to determine whether that
9 conditional privilege has been abused. And if the
10 conditional privilege has been abused, then common-law
11 malice will apply. Thank you, Your Honor.

12 MR. ASPER: Just really quickly to address something
13 that I think is critical here in Judge Addy's ruling.

14 I've stated before we respectfully disagree with Judge
15 Addy's ruling that collateral estoppel does not apply. The
16 entire purpose of collateral estoppel is to prevent the
17 waste of time to relitigate issues that have already been
18 litigated. It's a long-held doctrine, and there's no
19 getting away from it.

20 While Judge Addy heard our argument, he ruled against
21 us. As I said, we respectfully disagree with that. It's
22 not the law of the case here.

23 Mr. Lazenby says we're rehashing that. We have a
24 right to because it's not the law of the case. We didn't
25 have a right to appeal that decision, and so we have a

1 right to continue raising that or else we wouldn't be doing
2 our clients a proper service in this case.

3 THE COURT: Well, you have a right to raise it, but
4 you don't have a right to just keep filing motions for
5 summary judgment to have it reheard, do you?

6 MR. ASPER: Your Honor, I would agree with that. And
7 the primary reason for renewing our motion as is made clear
8 in the introduction is not based on collateral estoppel.

9 We focused on the undisputed facts in the record in
10 this case. We didn't mention the federal court order one
11 time in our memorandum.

12 We -- in the original motion for summary judgment we
13 made many of these same arguments. But looking at Judge
14 Addy's order, he rules that the motion is denied because
15 the Court finds the doctrine of collateral estoppel does
16 not apply. That's the entire discussion of whether or
17 not --

18 THE COURT: I understand. But you're not raising the
19 issues of collateral estoppel today.

20 MR. ASPER: Well, we would argue that collateral
21 estoppel does apply. But that's not what we're relying on
22 primarily for summary judgment here. We're relying on
23 undisputed facts in the record which Judge Addy did not
24 consider at all in his order.

25 THE COURT: All right.

1 MR. ASPER: And the reason we're convinced that he
2 didn't go to the merits is because Mr. Lazenby made the
3 argument that summary judgment was premature. And Judge
4 Addy's order, the second paragraph, specifically granted --
5 or denied a motion we had filed for a protective order to
6 prevent certain depositions and granted him the right to
7 conduct those depositions.

8 Those depositions never took place, and so now we're
9 back here. We didn't find out that those motions weren't
10 going to take place until January 14th. We filed this
11 motion approximately a week and a half after that.

12 We renewed it as soon as we possibly could upon
13 learning that the discovery was done in this case. And the
14 facts are what they are.

15 Mr. Lazenby focuses on several -- or in his memorandum
16 that he's drawing your attention to, pages 12 and 13, the
17 entirety of his opposition on the merits based on these
18 defamatory statements consists of a sentence. It says
19 Harris has explicitly testified concerning the lack of
20 veracity of the contents of these memos. And then he gives
21 you a screen cite of deposition cites.

22 Well, I'm not disputing that Harris disagreed with
23 what was in those memos. But he's ignoring that Harris
24 admitted the underlying facts contained in those memos many
25 times in other places in his deposition.

1 The law is clear that a plaintiff cannot create an
2 issue of fact by contradicting his own testimony, and
3 that's what Harris did there. He disagreed with something
4 in one place in his deposition and then he acknowledged it
5 in another place. We are relying on the places in which he
6 acknowledged those facts. And he can't create an issue of
7 fact based on later denials of the same thing.

8 As far as the necessarily decided and what was decided
9 by the federal court, as you brought up and as I
10 acknowledge we're not relying primarily on collateral
11 estoppel, but that is something that we believe needs to be
12 addressed before we get things in front of the jury in this
13 case, because we believe there are numerous findings of
14 fact that the jury should not be able to hear contradicted
15 based on the things the federal court has already found.

16 Specifically, the Court found based on the
17 burden-shifting framework for an A.D.E.A. claim that Mr.
18 Harris had not met even a prima facie case. That's taking
19 all of the facts in the fav -- in a light most favorable to
20 him. And they said you can't even meet that threshold
21 burden to show you met your employer's legitimate
22 expectations. They had to reach numerous factual
23 conclusions in order to reach that ultimate conclusion.

24 There's no way to say that those facts weren't
25 necessarily decided. If you'd prefer that we didn't focus

1 on collateral estoppel at this point I'll withdraw or I
2 won't go any further on that because we'll raise it again
3 in another -- in another forum.

4 I think it's important to point out something else
5 about the malice. Even if Mr. Harris disputed whether or
6 not these things were true, that's not the law.

7 The law is whether or not Mr. Wallace had a good faith
8 belief that what he put in those memos was true. There's
9 nothing in the record to show that Mr. Wallace had anything
10 but good faith.

11 Mr. Harris disagrees with what's in the memo. And
12 this gets us to really a policy-based argument.

13 If what Mr. Harris has alleged as defamation is an
14 actionable defamation claim in this state, what does that
15 really mean? That means that every time an employer writes
16 a performance-based memo about one of its employees and
17 somehow has problems with the employees's performance and
18 puts it in writing it becomes a defamation claim that not
19 only a plaintiff can assert and that we have to spend money
20 litigating but that according to Mr. Harris can go all the
21 way to allow a jury to decide.

22 Ninety-nine times out of a hundred an employee
23 disagrees with their employer's analysis of their
24 performance. And they don't like things that are said
25 about them when they're disciplined. They don't agree with

1 those things. It's just human nature. But human nature to
2 disagree with someone else's evaluation of your performance
3 doesn't equal defamation.

4 If we allowed this type of defamation claim to go all
5 the way to the jury, we will turn the qualified privilege,
6 the claim of defamation and the civil court system in its
7 entirety on its head because there will be defamation
8 claims coming out of the woodworks all of the time. Every
9 single performance evaluation would then become an
10 actionable defamation claim. Thank you, Your Honor.

11 MR. LAZENBY: Just briefly, Your Honor.

12 I hate to knock his crate of horrors there, but what
13 we're going to prove is that the performance evaluation was
14 false and that Mr. Wallace knew it was false or should have
15 known that it was false. That's a very specific finding
16 that we're prepared to prove.

17 And one more issue if I may, Your Honor. These
18 factual issues were argued ad nauseam. They were briefed
19 and they were argued before Judge Addy. And Judge Addy did
20 not reference any factual findings in his form 4 order.

21 But if I can hand to the Court a transcript of that
22 hearing at page 22, line six, the judge references the --
23 what he calls the tyranny of the scintilla rule.

24 I'm sure circuit court judges are tired of hearing
25 about the scintilla rule, because the Supreme Court has now

1 made it such that any disputed fact or any evidence at all
2 that creates the mere scintilla -- a mere scintilla of
3 evidence is not to deny summary judgment.

4 I think it's clear from what the judge said during the
5 hearing that he was denying the motion based upon the
6 scintilla rule.

7 THE COURT: All right. Anything else?

8 All right. I'll review the memorandums that have been
9 submitted and decide the case hopefully by tomorrow.

10 MR. ASPER: Yes, Your Honor. Would you like for us --
11 we have several motions in limine that we've gone ahead and
12 prepared.

13 We'll leave it up to the Court to decide would you
14 like to hear those now, or would you prefer to wait until
15 Tuesday morning assuming we get there?

16 THE COURT: Well, how long are they going to take?

17 MR. ASPER: Several will be extremely quick. We
18 can -- we can withhold one until Tuesday. That's the more
19 complex one.

20 THE COURT: All right. Are y'all ready to hear them?

21 MR. LAZENBY: Your Honor, I haven't seen these
22 motions. I have no idea what they're going to talk about.

23 THE COURT: All right. We'll wait until Tuesday then.

24 MR. LAZENBY: Your Honor, I just have a couple of
25 issues I wanted to raise. I was hoping the Court could --

1 could help streamline these issues and help us get ready
2 for trial next week sort of like a pretrial conference.

3 THE COURT: Okay.

4 MR. LAZENBY: First of all, I would request that the
5 Court require the parties to exchange witnesses that they
6 intend to call at trial by tomorrow.

7 THE COURT: Well, that hasn't already been done?

8 MR. ASPER: Well, Your Honor, frankly, we provided
9 copies of our witnesses that we subpoenaed, the actual
10 subpoenas, in conjunction with when he served those
11 subpoenas to Mr. Lazenby.

12 The only party who has not shared his witnesses with
13 the other is Mr. Lazenby. We specifically requested copies
14 of his subpoenas, and he said I don't believe I'm required
15 to give those to you under the rules.

16 MR. LAZENBY: I just wanted to have a pretrial hearing
17 where the Court could order that we exchanges witnesses. I
18 don't know if that's all of their witnesses. I don't know
19 if they intend to call Wade Wallace or David Wilson or --

20 THE COURT: All right. Y'all exchange witness lists.
21 What else?

22 MR. LAZENBY: Your Honor, I think it's also -- would
23 be helpful to -- for us to meet on Monday and look over
24 exhibits that each side intends to introduce so that we can
25 determine whether there are any objections that we can try

1 to work out before the trial on Tuesday.

2 THE COURT: well, y'all can do that before Monday.
3 Y'all can do that tomorrow too.

4 MR. LAZENBY: Your Honor, I'm not sure I'm going to
5 have all of the exhibits pulled together that I need by
6 tomorrow.

7 THE COURT: Okay. well, y'all do it on Monday.

8 MR. LAZENBY: Thank you, Your Honor.

9 MR. ASPER: And that's fine. We have no objection to
10 that, Your Honor.

11 THE COURT: Good.

12 MR. LAZENBY: Next, Your Honor, we have a claim for
13 punitive damages, and I just want to -- and I don't think
14 there's going to be objection to this, but that any
15 evidence that relates to punitive damages, the amount of
16 punitive damages, should be bifurcated. And in the event
17 the jury finds the necessary findings that we can present
18 that evidence at a subsequent hearing.

19 I mean, otherwise I'm going to be asking their
20 president about the net worth and all of these other issues
21 going to punitive damages.

22 MR. ASPER: If those are the sole -- not knowing what
23 all issues he's talking about as leading to punitive
24 damages, that's hard to really respond to.

25 THE COURT: Usually -- usually the defense is the one

1 that wants to bifurcate it.

2 MR. ASPER: That's right, and that's where I --

3 THE COURT: Well, throw you off guard?

4 MR. ASPER: I'm a little confused as to where this is

5 coming from, Your Honor.

6 THE COURT: Well, do you object to it?

7 MR. ASPER: We don't have any objections if that's --

8 THE COURT: Okay. That sounds good to me.

9 MR. ASPER: Just to be clear, will it be based on

10 finding all of the liability clear and convincing evidence

11 that punitives are proper before we have this separate

12 hearing?

13 MR. LAZENBY: I'm saying that I'm not going to put up

14 any evidence of --

15 THE COURT: It's exclusive to punitive damage.

16 MR. LAZENBY: It's exclusive to punitive damages.

17 MR. ASPER: Right. We'll only get to that point if --

18 THE COURT: In other words, like net worth of -- net

19 worth of defendant is not appropriate to be inquired upon

20 determining liability. But it is on punitive damages.

21 So any -- any evidence that relates exclusively to the

22 appropriateness of an award of punitive damages will not be

23 discussed during the liability portion of the trial.

24 MR. ASPER: Yes, Your Honor.

25 My only question was whether we will wait on a finding

1 from the jury that there is clear and convincing evidence
2 to support a --

3 THE COURT: That would be true.

4 MR. ASPER: Okay. Yes, Your Honor.

5 THE COURT: In other words, the jury would have to
6 make a finding that it's been proven by clear and
7 convincing evidence.

8 MR. ASPER: Yes, Your Honor.

9 THE COURT: And so if so, then we'd have a separate
10 hearing to present evidence as to punitive damages award.

11 MR. LAZENBY: Two more matters, Your Honor.

12 THE COURT: Is that what -- did I understand
13 correctly?

14 MR. LAZENBY: Yes, Your Honor. I think it's all set
15 forth in the statute, so.

16 THE COURT: Okay.

17 MR. LAZENBY: Thank you, Your Honor.

18 Next, I served subpoenas, trial subpoenas, on two
19 officers of Tietex -- Wade Wallace and Martin Wildman. I
20 served those last Wednesday.

21 Mr. Suggs indicated in an e-mail that he would object
22 to those trial subpoenas. And I'm hoping we can work out
23 any issues regarding that now.

24 MR. ASPER: Our objection, Your Honor, is that just as
25 Mr. Lazenby said these were served on us last Wednesday.

1 We intended or planned to go to trial on Monday.

2 These are the owner and president of the company or
3 former president of the company who have busy schedules,
4 both of whom have conflicts for this week.

5 I'm not sure about conflicts beginning on Tuesday. We
6 honestly don't know about their availability for next week.
7 But we did intended to object to having them appear this
8 week for trial based on their availability.

9 MR. LAZENBY: And, Your Honor, I'll be happy to work
10 with them on their schedules and work their testimony in,
11 but I do think there are some matters I need to present in
12 my case in chief from those witnesses.

13 THE COURT: Have their depositions been taken?

14 MR. LAZENBY: They were -- the deposition of one has
15 been taken -- Wade Wallace. But the deposition of
16 Mr. Wildman has not been taken.

17 THE COURT: Is that the one that was scheduled for
18 January?

19 MR. LAZENBY: Yes, sir.

20 THE COURT: Why wasn't it taken?

21 MR. LAZENBY: Your Honor, unlike Tietex, we do not
22 have unlimed resources to take depositions. We looked at
23 the facts, looked at the documents. We felt like we could
24 present our testimony of Mr. Wildman without the aid of a
25 deposition.

1 THE COURT: Did you serve him with a subpoena and the
2 \$25 witness fee and his mileage?

3 MR. LAZENBY: I did, Your Honor.

4 THE COURT: And y'all object to that?

5 MR. ASPER: We objected based on appearance this week.
6 We'll need to check with him regarding availability.

7 THE COURT: Well, y'all check. Do y'all want it
8 continued if he can't come?

9 MR. ASPER: We do not want a continuance. But if he's
10 unable to appear we don't want that to be held against him
11 individually.

12 MR. LAZENBY: Your Honor, we'd like to know as soon as
13 possible. We spent a lot of time preparing for this trial
14 and are participating going forward on Tuesday.

15 THE COURT: Well, I don't think I would have to
16 mediate that. Y'all need to talk about that.

17 In other words, when y'all come to court you're not
18 supposed to be asking me what I can get y'all to talk about
19 and agree to. Y'all are supposed to talk about and agree
20 or disagree before you come here.

21 MR. LAZENBY: And, Your Honor, they made it clear that
22 they were objecting to these subpoenas, which is why I
23 brought that to your attention.

24 THE COURT: Okay.

25 MR. ASPER: And our objection was based on this week,

1 Your Honor. I honestly am unaware of their schedules for
2 next week.

3 THE COURT: All right. Well, we know we weren't going
4 to try it this week by now. So y'all haven't talked to the
5 witness?

6 MR. SUGGS: I have not.

7 THE COURT: All right. Well, I guess they'll need to
8 be here then.

9 All right. What else?

10 MR. LAZENBY: Your Honor, the only other issue I had
11 was that counsel had brought up the issue of mediation or
12 possible settlement. And I didn't know if that's something
13 the Court wanted to inquire into and see if a mediation
14 would be beneficial. We've not --

15 THE COURT: I wouldn't have the slightest idea if it
16 would be beneficial. It doesn't sound like it would be,
17 but I don't have any idea.

18 MR. LAZENBY: That's --

19 THE COURT: That's up to y'all to make that
20 determination. But mediation should have taken place a
21 long time ago.

22 MR. LAZENBY: I agree, Your Honor. It's something
23 that can be discussed in a pretrial conference, and that's
24 the reason I brought it up.

25 THE COURT: All right. Well, y'all discuss it. If

1 y'all think it's beneficial, then we'll talk about it. But
2 I don't care one way on another. Right now this case is
3 supposed to be tried this week. It's been put off until
4 week. So if y'all wanted to mediate it, y'all could have
5 done that this week I guess while you were out there on
6 that site visiting.

7 MR. LAZENBY: Your Honor, those are all the issues I
8 have.

9 MR. ASPER: I don't have anything else at this time.

10 THE COURT: All right. Thank you.

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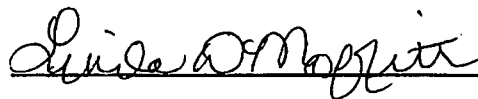
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CERTIFICATE

I, the undersigned Linda D. Moffitt, Official Court Reporter for the Seventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of all the proceedings had and evidence introduced in the trial of the captioned cause, relative to appeal, in the Common Pleas Court for Spartanburg County, South Carolina, on the 6th day of February 2014.

I do further certify that I am neither of kin, counsel nor interest to any party hereto.

March 27, 2014



Linda D. Moffitt
Circuit Court Reporter

STATE OF SOUTH CAROLINA

COURT OF COMMON PLEAS

COUNTY OF SPARTANBURG

2011-CP-42-4538

Gary G. Harris,

Plaintiff,

-VS-

Tietex International, LTD,

Defendant.

COPY

TRANSCRIPT OF RECORD

August 30, 2013
Spartanburg, South Carolina

Ordered: November 20, 2013.

Delivered: January 5, 2014

B E F O R E:

THE HONORABLE FRANK R. ADDY, JR., Presiding Judge.

A P P E A R A N C E S:

Mr. D. Alan Lazenby,, Esquire
Attorney Appearing for the Plaintiff

Mr. Frederick Suggs, Esquire
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ARGUMENTS OF COUNSEL

Mr. Suggs.....	3
Mr. Lazenby.....	9
Mr. Suggs.....	17
Mr. Lazenby.....	19
Mr. Suggs.....	20

EXHIBITS

Plaintiff's Exhibits:	Marked:	Received:
(None)		

Defendants' Exhibits:	Marked:	Received:
(None)		

Reporter's Certification.....	25

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REPORTER'S NOTES: Some of the names in this transcript are spelled phonetically.

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August 30, 2013

9:32 A.M.

(Off-the-Record Comments)

THE COURT: All right. I think that the first case up is the *Harris* vs. *Tietex* case; is that correct?

MR. ASPER: Yes, Your Honor.

THE COURT: Very good. I've received the binder — we've received the binder and information from — on the Defense motion, concerning the Defendant's motion.

And I — I believe that the Plaintiff has filed something this morning, which — or at least we got it this morning. I've not had a really good chance to review it. I know it was emailed to me, but I — I've — I really not had a chance to look through this.

So we can go forward and see where we stand. But I'm going to obviously want a chance to look at this a little bit harder.

I think we have four motions this morning: Summary judgment, a motion to compel, a motion to stay discovery, and for a protective order. Let's take up summary judgment first may I suggest.

MR. SUGGS: Yes, Your Honor. And I think some of those other motions may fall by the wayside; for example, the motion to stay discovery.

THE COURT: Yes, sir.

MR. SUGGS: Mr. Lazenby and I have a deal that we won't proceed with discovery until this motion is decided.

THE COURT: That will work out fine for me.

MR. SUGGS: But we will need some guidance —

THE COURT: Sure.

1 **MR. SUGGS:** — on certain proposed depositions. So, if
2 discovery cranks back up, we'll know where to go.

3 Your Honor, I'm Fred Suggs. And with me at counsel table is Lucas
4 Asper. We represent Tietex. And I have given Mr. Lazenby 8.5" by 11"
5 copies of these charts because his view is not direct.

6 What happened is Harris filed a lawsuit against Tietex in this court.
7 And we removed it to the United States District Court. And Judge Michelle
8 Childs had the case. And, in federal court, employment cases go first to the
9 Magistrate.

10 And, in that first action, which was the — the action that was moved —
11 removed to federal court, Mr. Harris claimed that he had been discharged
12 because of his age. So he claimed a violation of the Age Discrimination and
13 Employment Act.

14 He also claimed breach of contract, breach of contract accompanied by
15 fraud, and defamation.

16 Now, the federal Court found for summary judgement in favor of Tietex
17 on the age claim and declined to exercise supplemental jurisdiction over
18 breach of contract, breach — breach of contract accompanied by fall — by
19 fraud, and defamation.

20 Well, after summary judgment was granted, Mr. Harris filed a pro se
21 complaint in this court. Later he hired Mr. Lazenby and a amended complaint
22 was filed.

23 And it id not allege age discrimination, but it alleged the other same
24 causes of action; breach of contract, breach of contract accompanied by
25 fraud, defamation, and a new claim of intentional infliction of emotional

1 | distress or outrage.

2 | Now, all of these claims arise from the same set of facts. All of them
3 | evolved from Mr. Harris' employment and his separation from employment.

4 | Now, the district Court's ultimate finding was that Harris was not
5 | performing up to Tietex's expectations; that Tietex had a legitimate reason to
6 | terminate Harris' employment. And that Harris did not prove that any of this
7 | was protectual (phonetic).

8 | In this current lawsuit, Harris is claiming he was performing to Tietex's
9 | expectations; that Tietex told lies about him. And all the memoranda and
10 | warnings that he received were lies and protectual.

11 | And our contention is that all of those claims are barred by the doctrine
12 | of collateral estoppel. And it's not just these three ultimate findings that we're
13 | talking about, but the Magistrate judge's first nine pages of his recommended
14 | order, which are in the binder that we've presented to the Court, and which
15 | was adopted by Judge Childs in toto, make very specific findings of fact on the
16 | very same kinds of allegations that Mr. Harris is making in this case.

17 | Now, as to the defamation claims, there were claims in the prior action.
18 | And it appears that the Plaintiff has a good argument as to those claims that
19 | were previously litigated, although not decided, that the statute of limitations
20 | was tolled.

21 | But, in this case, there are new defamation claims; claims that were
22 | made for the first time in the pro se complaint and an additional claim that did
23 | not arise until Mr. Harris was deposed in this second case.

24 | Well, those defamation claims arose in February and July of 2007.

25 | The pro se complaint was filed in October, 2011. That's four plus years. And

1 we've got a two-year statute of limitations.

2 So those new claims are barred by the statute. The same with the
3 new outrage claim.

4 The latest it could be was the date of this termination. The earliest an
5 action was taken was October 21, when the pro se complaint was filed; again,
6 four years with a three-year statute.

7 We would contend that the new defamation claims and the outrage
8 claim are barred by the statute.

9 (Brief Pause)

10 MR. SUGGS: Also, those defamation claims, which were
11 brought for the first time in this case, and the intentional infliction of emotional
12 distress claim, could have been made in the first action but weren't. And
13 because they could have been made and were not made, they're barred by
14 the doctrine of res judicata.

15 So, Judge, we would contend that there isn't any discovery that the
16 Plaintiff could undertake that would allow the Plaintiff to afford the application
17 so the doctrines of collateral estoppel or issue preclusion and the claim of res
18 judicata and the bar of the statute of limitations.

19 But, if the Court will permit me, I'll talk just a little bit about the facts.
20 Breach of contract, Mr. Harris admitted in his deposition that he was employed
21 at will; that he understood he was employed at will. That he didn't have any
22 contract of employment.

23 He said that there was a handbook and that there was a progressive
24 disciplinary policy in the handbook. He didn't have the policy and could not
25 articulate what it said. But that was looking at the facts most favorable to him,

1 that was his allegation of what a contract is.

2 Well, the Court will find in the record an affidavit by Pam Griffin, who is
3 the HR manager at Tietex, who says under oath that Tietex has never had a
4 handbook.

5 And, if you look at what the district Court said in its findings of fact,
6 even if there was a handbook, and even by some stretch it was a contract,
7 there was no breach because the Court found that Tietex had good cause to
8 terminate Harris' employment.

9 And, then, if the breach of contract claim falls, the breach of contract
10 accompanied by fraud falls as well. And, then, we come to defamation.

11 Now we had a telephone hearing with Judge Couch. And, during that
12 telephone hearing, Mr. Lazenby told Judge Couch that he wasn't talking about
13 a slander; that he was talking about defamation based on written documents
14 or libel.

15 And what Mr. Harris is claiming are defamatory are documents written
16 by his supervisor, Wade Wallace, critical of his performance, which Harris
17 says is untrue, but which the district Court relied on to find that his discharge
18 was appropriate and non-discriminatory.

19 But those documents were transmitted by Mr. Wallace to Mr. Wallace's
20 boss, Mark Isbel (phonetic), and to the HR person, who was named David
21 Wilson (phonetic). And Mr. Harris confesses that he doesn't have any
22 evidence that those documents were transmitted to anyone else.

23 So based on what the district Court found the documents were true,
24 which eliminates the claim of defamation. They will also qualifiably(phonetic)
25 privileged in that they were distributed only among management and, then,

1 just a limited number of managers, the HR manager and Wade Wallace's
2 boss.

3 So there was no publication beyond the publication that was qualifiably
4 privileged.

5 And, as to the outrage claim, if you just look at the facts, what Mr.
6 Harris says is that, in talking with him about the timeliness of a project, Mr.
7 Wallace raised his voice. And that certainly doesn't qualify as outrage under
8 the law of our state.

9 I'll be happy to answer any questions the Court has.

10 **THE COURT:** Here's the — the central question I have: The
11 federal Court, in deciding not to exercise jurisdiction over the state law claims,
12 the breach of contract, et cetera, in their opinion I understand that they've
13 made certain findings of fact with regard to the age discrimination complaint
14 under the ADEA.

15 But those findings of fact are necessary to dispose of that federal
16 claim. Why couldn't they be able to pursue their cause of action in state court
17 for breach of contract when the feds didn't ultimately — or the federal courts
18 didn't ultimately address those claims?

19 **MR. SUGGS:** Judge, I will confess it would have been a lot
20 simpler had the federal Court addressed the claim. But that seems to be their
21 policy over there; they just -- they'll decide the federal claim and won't decide
22 the state law claim. But that doesn't really address the Court's question.

23 The issues that the district judge and the magistrate judge decided are
24 the very issues that Mr. Harris is attempting to use to support his claims —

25 **THE COURT:** For breach of contract.

1 **MR. SUGGS:** — for breach of contract and defamation; the
2 same set of facts, same issues.

3 And, when — when the Court says for example, "We are relying on
4 these memoranda that Mr. Harris is claiming are — now claiming are
5 defamatory," I don't know how he does that.

6 I mean, he claimed in — in the underlying federal court litigation, that
7 those memoranda were untrue; that they were lies. That they were meant to
8 frame him. And the federal Court didn't buy it. And he's making the same
9 claim here.

10 **(Brief Pause)**

11 **THE COURT:** All right. Mr. Lazenby, let me hear from you, sir,
12 please.

13 **MR. LAZENBY:** Thank you, Your Honor. And I think with regard to
14 the — to the collateral estoppel issue, you — you raise a very good point.

15 If the district Court had, in fact, found all these things, had found them,
16 there was no legitimate reason for — for Mr. Harris' complaints and that he did
17 an awful job as a matter of law and all of that, then, the Court would have
18 ruled on those matters because there's a policy in the — in the — in the court
19 system not to — not to send cases back when you have all the information to
20 adjudicate them right then and there.

21 It's significant, Your Honor, with collateral estoppel — we've — we've
22 cited a couple of cases in our — in our brief about how collateral estoppel is —
23 is to be applied; how it's to be applied judiciously. And how the — the key
24 phrase there is that it has to be absolutely necessary to the determination of
25 the underlying action.

1 It's very rare that you see collateral estoppel being used in — in
2 separate causes of action with separate elements, especially in the area of
3 law like this with the ADEA. And, although this not an ADEA case right now,
4 we have to delve into that.

5 And — and it's — it's fairly simple. In order to prove an ADEA claim,
6 you have to prove that your age was the but for cause of your termination.
7 And we would agree that, that issue is collaterally estopped.

8 We cannot allege in this case that Mr. Harris was terminated because
9 of his age. That is the only issue that is precluded from us in this case.

10 I go on to discuss in the — in our memo the additional — the additional
11 requirements the -- the Court can — or an ADEA Plaintiff can prove age
12 discrimination by direct evidence. His boss said, "I fired him because he was
13 old."

14 Or you can do it by circumstantial evidence. And it gets into the — into
15 the burden shifting analysis.

16 And, Your Honor, the — the Court applies -- the Court applies a — an
17 analysis where it determines...

18 **(Off-the-Record Discussion)**

19 **MR. LAZENBY:** "...Using circumstantial evidence in a ADEA claim
20 — and I'm reading from Page 5 of my memorandum — that — that the plaintiff
21 can establish a — a prima facie case for age discrimination if you prove that
22 he's a member of a protected class, that he suffered an adverse employment
23 action.

24 Those first two are not contested. He was over the age of 40 and he
25 was terminated.

1 The third one is that he was performing his job duties at a level that met
2 his employer's legitimate expectations at the time. And, then, four, the
3 position remained open or was filled by a similarly qualified applicant.

4 The only issue that we are concerned with here is — is Item 3, that he
5 was performing his job duties at a level that met his employer's expectations.
6 And what the Court found is that Mr. Harris did not prove that he was meeting
7 the — his employer's legitimate expectations.

8 And the Court analyzed it based upon the standpoint of the Defendant.
9 And it's — if you look at I think it's Exhibit A to the — to the Defendant's
10 memorandum, Page 14.

11 This is the — the memorandum of the magistrate judge. The third full
12 paragraph —

13 **(Brief Pause)**

14 **THE COURT:** I'm having trouble finding it. Go head and read it to
15 me and I'll — I'll keep looking here. You say it's "A"?

16 **MR. LAZENBY:** It's — it's Exhibit A to the — to the — to the
17 Defendant's binder. I think it would be "B" in our binder, Your Honor.

18 **(Brief Pause)**

19 **THE COURT:** Okay. There you go. All right. Go ahead.

20 **MR. LAZENBY:** Okay. Now the Court here is — is addressing
21 whether the — the Plaintiff has made a prima facie case.

22 The third full paragraph begins, "First, the Defendant argues the
23 Plaintiff was not performing the job at a level that met the Defendant's
24 legitimate expectations. The Court agrees. As set forth above, the Defendant
25 articulated the deficiencies in the Plaintiff's performance."

1 What's significant here, Your Honor, is that this determination is made
2 based upon the subjective view of the Defendant employer.

3 The very sentence the Court says, "the Plaintiff attempts to contradict
4 Defendant's dissatisfaction with his performance by his subjective assessment
5 of himself as a valuable, outstanding, and exemplary performer.'

6 The Court there is acknowledging that there is contradictory evidence.
7 The Defendant says he's not doing a good job; Plaintiff says that he is doing a
8 good job.

9 But, for the purposes of an ADA — ADEA claim, in this context of
10 proving a prima facie case, the Plaintiff has to — has to establish that he was
11 meeting it even with the employer's own perception.

12 And I think the last sentence of that paragraph is — is important. It
13 says "The perception of the employer is critical, not the self-assessment of the
14 Plaintiff," citing the *Hawkins vs. Texaco* (phonetic) case.

15 So, right then and there, Your Honor, we — we say that the magistrate
16 judge acknowledged that there was a contradiction of fact, but because of the
17 way that the ADEA claim is analyzed, that the Plaintiff just didn't — just didn't
18 prove it.

19 Well, that — you can't argue the converse; that the magistrate
20 necessarily found that he did an awful job; that's — that's what the Defendant
21 is trying to do in this case.

22 And — and this is exactly why collateral estoppel shouldn't apply when
23 you have different burdens of proof, different standings, and different ways of
24 proving causes of action.

25 **(Brief Pause)**

1 **MR. LAZENBY:** And also too, in an ADEA claim — or in this case,
2 the Court specifically found that the Plaintiff did not make a prima facie
3 showing. So that right then and there ends the Court's analysis.

4 That — that is all that is necessary for the magistrate judge and the
5 district Court to find that there's no ADEA claim.

6 The Court does go on and — and discuss whether there is a — whether
7 there's a — a legitimate reason for — for termination, but that's — that's dicta.
8 That's not — that's not pertinent to the decision because the Court has
9 already found that there's no prima facie case.

10 **THE COURT:** Okay. Let's move along a little bit. The
11 defamation and outrage causes of action with a two-year statute of limitations.
12 Outrage wasn't pled in the initial complaint.

13 **MR. LAZENBY:** Yes. First of all, Your Honor, this case was -- you
14 know, Counsel — you know, words and how we use them is — is really
15 important in — in politics as in law.

16 Counsel was very good at articulating, "This is a new case. "This is a
17 second case." Well, this is the same case. We've gone to the state court.
18 We — it was the Defendant —

19 **THE COURT:** Right.

20 **MR. LAZENBY:** ---that removed it.

21 **THE COURT:** Right.

22 **MR. LAZENBY:** So really it's — it's part and parcel one and the
23 same case. And — and, as Your Honor knows, amendments to — to
24 pleadings relate back to the same — well, let — let me just say this, my — my
25 position on the statute of limitations is this: The — the statute of limitations,

1 any statute of limitations that existed with regard to defamation, breach of
2 contract, breach of contract accompanied by fraudulent acts, and any claims
3 that Plaintiff had that — that arose out of the same nexus, were tolled as of
4 August 15, 2008.

5 So we're talking about a period of time I think the earliest that — that
6 Plaintiff's outrage claim arose was in February of 2007. So we talking about
7 a year and a half right there.

8 28 USC 1367(d) (phonetic) states that, "When a — a Court dismisses
9 dependent claims, that the — that the statute of limitations is tolled during the
10 pendency of that suit, including 30 days thereafter."

11 And I printed this off just to show the Court the — the under ---

12 (Documents handed up.)

13 MR. LAZENBY: And what I'm handing the Court is the mandate
14 from the Court of Appeals. Mr. Harris pro se appealed the summary judgment
15 motion or the summary judgment ruling in the district court.

16 And so the — the — the order finally dismissing his ADEA claim was not
17 decided and made final until August 3, 2011.

18 And, according to 28 USC 1367(d), the statute is tolled during that
19 federal case. It was tolled from August 15, 2008, not only up until August 3,
20 2011, but, then, 30 days thereafter.

21 And that takes us to September 2, 2011. Mr. Harris re-filed the state
22 court claims, that were dismissed by the federal court, on October 21, 2011.

23 Mr. Harris claimed that he did not get this mandate back from the
24 Court. He did not — he was not on this — this payster (phonetic) system, but
25 he went on and just filed a new case out of an abundance of caution.

1 But the point is, Your Honor, we've got the statute running for 18
2 months before suit was filed in August of 2008. We've got the statute running
3 again, for approximately seven weeks, between July — I'm sorry, between
4 September 2 and October 21 of 2011. And the filing of that suit, again, stops
5 the — the running; it tolls the running of the statute of limitations.

6 So, at the time that — that I asserted the outrage claim, only 18 months
7 and seven weeks of the statute had run.

8 That's — that's our position, Your Honor.

9 **THE COURT:** All right.

10 **MR. LAZENBY:** Has to the defamation, we contend the -- the -- the
11 defamation is not a — it's not a new claim; it's just additional evidence.
12 When -- when cases are developed, you develop the evidence.

13 I think it's significant that federal court is a notice pleading jurisdiction.
14 You don't have to plea specific facts.

15 When I got involved in the case, and filed a — a complaint in state
16 court, South Carolina, as you know, is a fact pleading state. And so I set forth
17 the facts that support the cause of action.

18 Your Honor, this is not a new claim. The de — it's the same
19 defamation claim as before. So we contend that there is no issue at all with
20 regard to the — the statute of limitations as to the defamation.

21 **THE COURT:** All right. Fair enough. I agree.

22 **MR. LAZENBY:** Outrage, my — my argument is that the — that the
23 statute for the outrage claim ran for 18 months.

24 **THE COURT:** I don't disagree.

25 **MR. LAZENBY:** Okay.

1 **THE COURT:** We're getting into the merits now. Is the only thing
2 that you've got to prove outrage that he got yelled at?

3 **MR. LAZENBY:** Okay. As far as — as far as the — the merits of the
4 case, Your Honor, I've taken one deposition in this case.

5 **THE COURT:** Okay.

6 **MR. LAZENBY:** I had to fight to get that. After I deposed the — the
7 representative for six hours and we even continued till the next day,
8 Defendant fought that; filed a motion to — to keep me from deposing him
9 again. We finally got that done.

10 I, then, noticed around five depositions. And Defendant immediately
11 filed a motion to stay discovery until this summary judgment could be heard.

12 It is clear that I have not had a full and fair opportunity to complete
13 discovery. I would simply argue that just on that record, the — the fact that —
14 the fact that — that we have not been able to complete discovery, should
15 preclude summary judgment on — on any factual issue in this case.

16 What I did in my brief, Your Honor, is cite to the testimony of — of Mr.
17 Harris. And it wasn't — it wasn't raising his voice which I think is what Counsel
18 said it was. My client described it as berating and yelling and that my client
19 was scared. And it was — it was bad conduct.

20 And — and so, substantively, we would disagree with that. But we
21 would also say we — we need more time to — to develop this. It's premature
22 to grant summary judgment on any factual basis.

23 **THE COURT:** All right. I understand your position.

24 **MR. SUGGS:** Judge, may I be heard?

25 **THE COURT:** Sure. Please.

1 **MR. SUGGS:** It's not quite true that there's only been one depo
2 in this case. For example, Wade Wallace, who was deposed on two separate
3 days, over our strenuous objection, was deposed in the first case.

4 Likewise, two of the depositions that Mr. Lazenby seeks to redo were
5 taken in the first case. And, you know, these laymen are saying, you know,
6 I've already been deposed.

7 So I — I think that's — and it's the same — Judge, we had a hearing
8 before Judge Cole, when I was trying to stress the deposition — the second
9 deposition, of what it was. And Judge Cole admonished Mr. Lazenby not to
10 re-plow the same ground.

11 And it was re-plowed for a day and a half.

12 **MR. LAZENBY:** And I disagree with that contention, of course. We
13 -- we both have our opinions on that.

14 **THE COURT:** All right.

15 **MR. SUGGS:** Judge ----

16 **THE COURT:** While we're on the subject of discovery, what kind
17 of assistance or guidance do you feel like you all need assuming for the
18 moment I were to deny the motion for summary judgment and this were to
19 continue?

20 **MR. SUGGS:** Judge, what — what we have before the Court is
21 our motion for a protective order; that the depositions of the owner, Mark
22 Waldman (phonetic), and the president, Reid Cunningham (phonetic), not be
23 taken.

24 We submitted affidavits from each of these gentlemen. The most
25 involvement that they had was approving Wade Wallace's and David Wilson's

1 recommendation that Mr. Harris be terminated, which is, of course, with the
2 standing of rules of the Plaintiff; that, you know, if anybody is going to be
3 terminated, it's going to be reviewed at the highest level.

4 And they just took under advisement what Mr. Wallace and Mr. Wilson
5 presented. They don't have any firsthand knowledge.

6 And it's — I know it's not lost on the Court that we're talking about stuff
7 that happened six years ago, 2007. And it's completely unnecessary to take
8 those depositions.

9 And I suspect that Mr. Lazenby is doing it to satisfy his client. But
10 they're not necessary to the suit or the Plaintiff's case.

11 **THE COURT:** How big is this corporation?

12 **MR. SUGGS:** Sir?

13 **THE COURT:** How big is this company, Tie — Tietex?

14 **MR. SUGGS:** They have one plant here in Spartanburg. And I
15 — I don't know how to describe their size in terms of sales. They've — they've
16 got about 300 employees here. And — and they've also got a plant in Asia.

17 Basically they're a textile company. And they make non-wovens like
18 fire retardant fabric for bedding. And —

19 **THE COURT:** I ask — I simply ask the question because I would
20 — and how many employees it has, how many folks, how many plants, how
21 big the operations are, that will determine very often how hands-on
22 management is, or at least the upper management. That's the reason I'm
23 asking the question.

24 **MR. SUGGS:** Well, you know, the owner is not involved in the
25 day-by-day management whatsoever.

1 **THE COURT:** All right.

2 **MR. SUGGS:** Now the president obviously is. But he — he was
3 not involved in the events leading up to Mr. Harris's discharge.

4 **THE COURT:** A typical hierarchical corporate structure?

5 **MR. SUGGS:** Correct.

6 **THE COURT:** Okay.

7 **MR. SUGGS:** Yes, sir.

8 **MR. LAZENBY:** Can I briefly respond? First of all, as — as to the
9 time, I — I sympathize; however a lot of this delay is because I've been fought
10 at every step of the way.

11 To amend that complaint, I had to wait six months to get a hearing to
12 amend the complaint. To depose a witness, I had to wait three months to get
13 a hearing so I could depose a witness. The delay is not the fault of the
14 Plaintiff.

15 What I think is particularly significant, Your Honor, is that in the federal
16 court case the Defendant was required to — well, all parties are required to file
17 interrogatory answers listing their witnesses.

18 **THE COURT:** Uh-huh (affirmative).

19 **MR. LAZENBY:** And, on Page 5, you will see — and — and keep in
20 mind this is the case that — that Mr. Suggs says is the same case in the
21 federal court as it is here. On Page 5, Reid Cunningham and Mark Waldman
22 are both listed as witnesses.

23 And also Mister — as far as the apex document is concerned, Mr.
24 Wallace testified that — that this decision to terminate Harris, which is the
25 basis of the lawsuit, would have been run up to Cunningham and Waldman.

1 And I think even, in the affidavit that was submitted with this motion for
2 a protective order, Cunningham and Waldman admitted that they were
3 involved in terminating Mr. Harris.

4 I — I just don't understand this — this motion, Your Honor.

5 **MR. SUGGS:** Judge, with respect to the document that he's
6 handed up, which is the Defendant's response to the 26.03 interrogatories,
7 that was one of the first documents filed in the case. And, obviously, we
8 disclosed what we knew at the time.

9 **(Brief Pause)**

10 **THE COURT:** I understand, but if — if the Defense lists them
11 witnesses and states that Waldman and Cunningham, quote "Will know about
12 Harris's employment performance, Tietex's policies and procedures, the facts
13 and circumstances surrounding Harris's termination from employment ,and
14 the distribution of duties performed by Harris after his termination," if these
15 two witnesses know all of that, then, perhaps they need to be deposed.

16 **MR. SUGGS:** Judge, I think, with the passage of time, and from
17 what I know now from listening to Mr. Wallace that their — that their firsthand
18 knowledge is extremely limited.

19 If the Court is inclined to allow Mr. Wallace [sic] to depose them, then,
20 we would ask that the Court impose a limit of no more than two hours.

21 **THE COURT:** All right. All right, it's hard for me to — to impose
22 that kind of limitation when I really don't know the extent to what they're going
23 to testify to or what they know at this point.

24 And I was with you until I was told that they were listed as witnesses by
25 the Defense in the federal litigation. So we are where we are.

1 **MR. SUGGS:** We never — we never used them. We never
2 submitted an aff — an affidavit from them. They were never deposed. We
3 listed them and — and essentially forgot about them.

4 **THE COURT:** And I — I understand parties are bound by their
5 pleadings, though, and this apparently was filed. It was Defendant's response
6 to interrogatories. It was filed; they're fair game.

7 **MR. SUGGS:** All right. Judge, I'd like to make just a couple of
8 other points.

9 **THE COURT:** Certainly. Yes, sir?

10 **MR. SUGGS:** On — on the scope of the tolling, that — we
11 disagree with Mr. Lazenby's take on the defamation claim because we've
12 cited in our memo the fact that the defamation claims have to be looked at
13 separately. It's not just one claim; it's like seven separate claims.

14 But, even if you view them like Mr. Lazenby does, the Fourth Circuit
15 mandate was filed August the 3rd. The judgment took effect on May the 31st.

16 Well, if you take the later date of file of August the 3rd, 2011, the pro se
17 complaint was filed on October the 21st, more than thirty (30) days. So they
18 don't get the statutory protection that Mr. Lazenby was arguing to the Court.

19 We would also point out that to — to say that it's the same case, for
20 purposes of relation back, is a little bit disingenuous. I mean, we do have two
21 different case numbers.

22 **(Brief Pause)**

23 **MR. SUGGS:** And I think that, when you set aside the argument
24 based on collateral estoppel and res judicata and the statute of limitations,
25 and you look at the underlying factors — I've had a brief opportunity to look at

1 Mr. Lazenby's paper and to listen to his argument.

2 And I just don't hear any genuine issue of material fact on any issue. I
3 think those facts have been decided. And that they -- if the -- if the judge -- if
4 you look at our memo, and you look at the fact section of our memo, nearly
5 everything we cite to is from the federal Court's opinion.

6 **THE COURT:** And -- and I -- I do understand that. And I
7 appreciate your position a hundred percent (100%). And, in South Carolina
8 in state court, as you're well aware, we're dealing with the tyranny of the -- the
9 scintilla rule.

10 The feds aren't under the same sort of constraints with the federal rules
11 as I feel like our courts have -- have indicated to us.

12 And, in all candor, if there are causes of action that were removed --
13 state causes of action that were removed to federal court, those causes of
14 action haven't been decided.

15 There has not been any specific -- I understand that the federal Court
16 had to make specific findings, with respect to the age discrimination
17 complaint, but I don't see where the state causes of action for breach of
18 contract, et cetera, were ever decided.

19 **MR. SUGGS:** Well, Judge, they weren't. And --

20 **THE COURT:** And I feel they should have a bite of that apple.

21 **MR. SUGGS:** What the Court says is -- and it cites *United Mine*
22 *Workers vs. Gibbs* (phonetic), which is a 1966 case, and parenthetically says,
23 "Certainly, if the federal claims are dismissed before trial, even though not as
24 substantial in the jurisdictional sense, the state claims should be dismissed as
25 well. " And that's what the Court did.

1 Now, I must confess, when I got the Court's opinion, I was disappointed
2 because I looked at the opinion and I said, you know, "A Court has made
3 every factual finding it needs to — to decide these issues, but, then, didn't do
4 it." And — and I think that's where we are.

5 All of the issues have been decided. And that's what the doctrine of
6 collateral estoppel is for.

7 **THE COURT:** And — and I — I hear you a hundred percent. I
8 read the order, but the order specifically — the order from Judge Childs
9 specifically said, "We're not deciding the state law claims." And they could
10 have.

11 **MR. SUGGS:** But I would say, Judge, it doesn't matter they
12 weren't decided because the facts were decided that Mr. Harris tries to rely on
13 to support his claims that are before this Court.

14 **THE COURT:** All right. I — I appreciate your position. And I do
15 understand. Perhaps it would have been better to keep the whole thing in
16 state court.

17 Let me look at the memorandum again and I'll get you all an order in
18 the next day or so.

19 **MR. SUGGS:** Judge, Mr. Lazenby and I are both willing, if —
20 with the Court's indulgence, to submit proposed orders.

21 **THE COURT:** That — that is fine. I feel like I have enough to at
22 least issue a Form IV. And, then, I'll contact you all instead of having each of
23 you spend your time working up an order.

24 I don't see any reason to do two orders when — when whoever wins
25 can write the order, so...

1 I don't take a lot of things under advisement, gentlemen. I usually rule
2 within a matter of days. I think I currently have two things under advisement
3 and one is a PCR from April where the attorneys wanted to get the transcript
4 on a homicide case; I gave them a chance to do that.

5 So I — I typically try to move pretty quick. You all are not going to be
6 waiting long to hear from me. I promise you that much.

7 Gentlemen, thank you all very much.

8 **MR. LAZENBY:** Thank you, Your Honor.

9 **MR. SUGGS:** Thank you, Judge.

10 **THE COURT:** Good to see you.

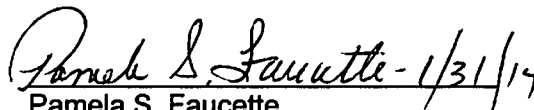
11 **(Whereupon the proceeding ended at 10:24 a.m.)**
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REPORTER'S CERTIFICATE

I, the undersigned **PAMELA FAUCETTE**, Official Court Reporter for the Seventh Judicial Circuit of the State of South Carolina, do hereby certify that I acted as the court reporter at the foregoing proceeding; that the foregoing pages, numbered 1 through 24, were transcribed by me and represent a true and accurate transcript of said proceeding to the best of my knowledge and belief.

I do further certify that I am not of counsel for or in the employment of either of the parties to this action, nor am I interested in the results of this action.

December 31, 2013


Pamela S. Faucette
Official Court Reporter
Seventh Judicial Circuit

1 Q: Correct?

2 A: Yes.

3 Q: And you interviewed, according to this letter,
4 with Martin Wildeman and the HR Manager, Don Woodward, and
5 the Printing and Finishing Manager, Dave Hughston, and then
6 John somebody. Who's John?

7 A: John Broughton.

8 Q: Spell that, please.

9 A: B-r-o-u-g-h-t-o-n.

10 Q: Who actually hired you?

11 A: John Broughton along with Dave Hughston, but John
12 was the key figure.

13 Q: And you see on this Exhibit 5, the fourth
14 paragraph where you talk about Tietex having a very clean,
15 modern facility. Do you see that?

16 A: Uh-huh (affirmative response).

17 Q: And would you agree that the facility stayed clean
18 throughout your employment?

19 A: Yes.

20 (Defendant's Exhibit 6 & 7 were marked for identification).

21 Q: I'm going to give you two together. Exhibit 6 is
22 an Offer of Employment to you and Exhibit 7 is looks like
23 your New Hire sheet. According to these documents, you
24 began working at Tietex on July 13, 1994. Any reason to
25 dispute that?

1 A: No.

2 Q: And your salary at hiring was \$55,000. Any reason
3 to dispute that?

4 A: No.

5 Q: And you were hired as a Senior Research Chemist.
6 Any reason to dispute that?

7 A: That was the job title, but it did not cover what
8 I was hired for.

9 Q: All right. And that Senior Research Chemist
10 position was in the Printing and Finishing Department of
11 Tietex, correct?

12 A: As far as the pay for that position, yes.

13 Q: As far as the what?

14 A: The pay.

15 Q: Well, it says, looking at Exhibit 6, it says in
16 that first paragraph, second line, I'm sorry, first line,
17 "We are pleased to offer you the position of Senior Research
18 Chemist in our Printing and Finishing Department." Do you
19 see that?

20 A: Yes, sir. That's what it reports to, but it
21 doesn't spell out the responsibilities were plant wide.

22 Q: Okay. So Exhibit 6 is not a job description,
23 right, it just states the name of the job?

24 A: Yes.

25 Q: And you reported to Dave Hughston, the Plant

1 Manager of Printing and Finishing?

2 A: Yes.

3 Q: Now, if you will look, please, at Exhibit 6, the
4 second page, which is Bates Numbered 229. Do you see the
5 bold underlined language that's two paragraphs above Mr.
6 Woodward's signature?

7 A: Yes.

8 MR. STEWART: Objection to form.

9 Q: It says, "This letter summarizes our offer.
10 Nothing herein should be construed as a Contract of
11 Employment or as a promise of any specific terms for any
12 determined period of time. Did I read that correctly?

13 A: Yes.

14 Q: So under the terms of your offer, you were
15 employed at will, correct?

16 MR. STEWART: Objection to form. You can answer,
17 I'm objecting for the record.

18 Q: Remember what we said, that he might object but
19 you go ahead and answer.

20 A: Okay. Yes.

21 Q: And your employment could be terminated any time
22 for any reason, correct?

23 A: May I add to that?

24 Q: Sure. Well, give me a yes or no and then qualify
25 it.

1 Q: Last name?

2 A: Panell, P-a-n-e-l-l.

3 Q: Is that a male or a female?

4 A: It's a man. And what's the girl that had so many
5 difficulties that worked with Rhonda who is another
6 technician? Kay Ward.

7 Q: So all of these employees that you just named
8 reported to you at some time or another?

9 A: Yes.

10 Q: All right. How many usually reported to you at
11 once?

12 A: I guess at a minimum over the time I was there
13 until I started reporting to Wade Wallace, maybe at any
14 given time a minimum of three or four.

15 Q: Three or four at a time?

16 A: Yeah.

17 Q: What were your normal hours of work?

18 A: Let me just say that during an approximate six,
19 seven year span, I would say that I averaged a minimum of 70
20 hours on the job site.

21 Q: I think my question wasn't clear. On the normal
22 day, what time would you go to work and what time would you
23 leave? What was your expected time to be at work?

24 A: The expected time, I believe, was 8 o'clock, and I
25 believe the expected time we could leave was 5 with an hour

1 for lunch. Most of the time, I'm talking about when I was
2 actually involved and this other stuff hadn't started, I
3 would be there 6, 6:30.

4 A: A.M.?

5 A: Uh-huh (affirmative response). And stay there for
6 as long as I needed to to get as much done as possible. It
7 wasn't unusual to stay there till 6, 6:30.

8 Q: Were there safety reasons for you to be at work
9 during regular business hours?

10 A: Since I was the key person regarding safety, are
11 you talking about chemicals and things I worked with?

12 Q: Yes.

13 A: I was the person, the person that made decisions
14 as to what was safe, what was not, maintain the MSDS books
15 for the most of the time I was there and oversaw a lot of
16 that without title, I was the one that was relied upon for
17 making those kind of decisions. And in the first, before I
18 reported to Wade Wallace, there was never one instance where
19 anyone came to me and said you shouldn't be in here on
20 Saturday or Sunday.

21 Q: Were there reasons that you shouldn't be working
22 alone with chemicals and lab equipment?

23 A: No.

24 Q: You claim it would have been safe for you to work
25 alone with chemicals and lab equipment?

1 A: No. I'm a professional in that area and I know
2 what precautions to take. It would have actually been, I
3 mean, take a scenario where I'm there and the plant's
4 running and I'm working with chemicals, which I didn't do a
5 lot of that, I mean, talking about hazardous chemicals, if
6 I'm working with hazardous chemicals which, again, did not
7 occur but fairly infrequently, I don't want, I'm not going
8 to allow anyone else to be around me because then they would
9 be, if something happened, then they would be exposed to it.
10 There's no one any safer with regard to those kind of things
11 than I. And it gets into the same area I was talking about
12 earlier about being concerned for employee health.

13 Q: All right. If you had one of these employees that
14 you named working under your supervision, would you permit
15 them to work in the lab not during business hours but work
16 back there by themselves?

17 A: Well, they did.

18 Q: Okay. Did part of your duties include working
19 with production personnel in the testing processes?

20 A: I'm sorry.

21 Q: When you were working on tests and trials and so
22 forth, things like that, did you need to work with
23 production personnel?

24 A: That's a pretty broad question. There were times
25 when I did and there were times when I didn't need to.

1 There were other things more important that I needed to be
2 doing that had to do with that trial.

3 Q: Were there times when you did not work from 8 to 5
4 or from 6 to 6 but worked irregular hours?

5 A: The only time I worked 8 to 5 was when I worked
6 for Wade Wallace.

7 Q: And why was that?

8 A: Well, the main basic reason was I was not allowed
9 to work after hours, weekends, or whatever.

10 Q: Wade Wallace was trying to keep track of you?

11 A: No, I would not classify it as that, no. There
12 was no point in that.

13 Q: Did you ever report to work at 10 p.m. at night?

14 A: Now, when you say that, the first thing that comes
15 to mind is one of the plant trials early on was going to
16 have to be done on third shift which started, say, at 11
17 o'clock and I needed to go in at 10 in order to be there for
18 the trial. Other than that, with me not being a night
19 person, there's no reason I would go in to do work at 10
20 o'clock at night. Now, I may have been in there finishing
21 up something at 8, 9, or 10, but there's no reason I'd show
22 up at 10 other than for something like a plant trial.

23 Q: Did you ever work those hours like coming in on
24 third shift before you reported to Wade Wallace?

25 A: Oh, I mean, the hours I had, again, I want to

1 Martin wasn't at work, Martin Wildeman wasn't at work at 2
2 or 3 in the morning. I left a message and told him I'd like
3 to meet with him if I could.

4 Q: So you left a message for Mr. Wildeman in the
5 middle of the night?

6 A: I don't know that it mattered when I left it,
7 because I knew he wasn't at work.

8 Q: Would it have been like 3 o'clock in the morning?

9 A: It could have been. It could have been 4, it
10 could have been 2. It was when I woke up and all was on my
11 mind was getting terminated.

12 Q: So you admit you called Mr. Wildeman like 3 or 4
13 o'clock in the morning?

14 A: No. I did not call him, I left a message on his
15 work phone knowing he was not there.

16 Q: This is Attachment 5 to your communications to the
17 EEOC.

18 MR. STEWART: Fred, can I see these before you
19 hand them over?

20 MR. SUGGS: Sure. Sure. Let me show you. Look
21 at the C part which is the last paragraph.

22 Q: See C part it says, "Tietex stated that Gary
23 Harris made phone calls and left messages in the middle of
24 the night when he knew no one would be there to answer them.
25 Of course, that's a malicious lie."

1 Q: Now, is this a document that you gave to the EEOC?

2 A: I would think so. It looks like it.

3 Q: And then if you look at Exhibit 11 and go down to
4 paragraph C, that's the paragraph that says it's a malicious
5 lie, right?

6 A: Yeah, that's correct. And may I add?

7 Q: Sure.

8 A: I had information already that in one of our
9 former hearings that it was stated in a way that I routinely
10 did that, and it included more than one person and it
11 included Wade Wallace. That's the reason I call it a
12 malicious lie because it's just not true and the person that
13 said that wasn't true.

14 Q: And who said it, Wade Wallace?

15 A: In one of our ESC Hearings, maybe the last one, it
16 was brought up. I don't know who to attribute it to.

17 Q: All right. Now, before Wade Wallace, you said
18 Jake Butts was your immediate supervisor?

19 A: Yes, sir.

20 Q: And at some time did Butts move his office from
21 the plant to the lab?

22 A: He did.

23 Q: Would that have been about June 2006?

24 A: Yes.

25 Q: Do you know why Butts moved his office from the

1 lab?

2 A: I can't say yes or no to that. I don't know.

3 Q: All right. Did you see him just about everyday?

4 A: I don't know.

5 Q: Did you see him more often than you had seen him
6 before he moved to the lab?

7 A: I would have had to have.

8 Q: Okay. That's what I thought. Did you object to
9 Jake Butts supervising you more closely after Butts moved to
10 the lab?

11 A: He never supervised me more closely.

12 Q: Now, when Butts moved to the lab, was your office
13 in the lab?

14 A: Oh, yeah. There's four sections to the technical
15 building and I was considered to be the Technical Center
16 Manager, an accredited lab area. One section was the office
17 area, another section was the wet lab, another section
18 physical testing, and another section was sort of an
19 extension of the wet lab, but it was where a real chemist
20 would work, and we had a burn room. So, yes. He,
21 obviously, moved into the office area which was huge and the
22 area I had encouraged him to move to.

23 Q: And at some point did you move your office out of
24 the lab?

25 A: Yes.

1 Q: Where did you move it to?

2 A: Now, let me qualify that and say I didn't move it
3 out of the lab, I just established another office, you might
4 say, we'll call it an office, in the main plant.

5 Q: Do you know when that was?

6 A: It was --- I'm going to take a stab at this,
7 maybe December, November, December of 2006.

8 Q: Did you continue working in the lab up until, say,
9 February 2007?

10 A: Yes.

11 Q: When do you claim you began to smell mold?

12 A: The middle of June '06. Well, whenever the
13 furniture was moved in and that would have been in June.

14 Q: And what impact do you claim that these mold
15 smells had on you?

16 A: I'm going to just, I'm going back to an area that
17 I haven't looked at in more than two years as far as
18 anything in writing, but I do remember being stopped up and,
19 occasionally, it would go on to the point if like a, sort of
20 like flu symptoms almost. But stopping up is one of the big
21 things and occasionally that might lead to like a sinus
22 headache or something, but really getting stopped up and
23 couldn't breathe very well.

24 Q: Did anyone else voice complaints about the mold
25 besides you?

1 A: I can say this about that. The technicians that
2 reported to me were very careful about anything they said.
3 They were highly concerned for their job and had they had an
4 opinion, in my mind, they would not have expressed it.

5 Q: Well, is the answer no?

6 A: I don't recall.

7 Q: You don't recall anybody else voicing a complaint
8 to you about the mold?

9 A: I do not recall that, no.

10 Q: Did you complain about the mold smells and the
11 stopping up and the flu like symptoms?

12 A: It took some time. It was not until I went to a
13 second doctor and he was asking me a lot of questions and
14 things and he's the one that led me to believe that it had
15 to do with work.

16 Q: Who is this doctor?

17 A: Weir, Dr. Weir.

18 Q: Where is he?

19 A: In Spartanburg.

20 Q: Is that W-e-i-r?

21 A: I think it is, David Weir.

22 Q: What kind of doctor is he?

23 A: Ear, nose, and throat.

24 Q: ENT. Okay. Did you complain to anybody at
25 Tietex?

1 A: After --- Oh, it became, I mean, things evolved
2 to the point, which I can't remember all the details, but
3 I'm sure that after I was convinced that that was what was
4 going on, I don't recall saying anything to anyone, but it
5 wouldn't have surprised me if hadn't have said something to
6 like a nurse or somebody. I even brought it to Jake's
7 attention, I know that.

8 Q: You did bring it to Jake's attention?

9 A: Absolutely.

10 Q: What did you say?

11 A: I don't recall what I said. I just recall that
12 well into it and after, this is after I had put up,
13 something triggered it that he said or whatever, but this
14 was after I put up an office down in the plant and I believe
15 it was after I went to an allergy specialist where they
16 stick all these things in you and they determined I was
17 allergic to mold.

18 Q: Did Tietex have a hygienist check the lab?

19 A: I was told that that occurred.

20 Q: Do you know what type of testing was performed?

21 A: I saw at some point, I forgot how, I managed to
22 get a hold of an after the fact report and, I mean, I'm a
23 strong technician and I know how to, I know how to do
24 projects, I know how to get from point A to point B in the
25 shortest time possible. Based on what I saw, it was a

1 pathetic evaluation. They spent very little time and they
2 did not concentrate on the area where the complaint was,
3 which was the office area, and they did a little bit of
4 dabbling around in several different sections of the
5 laboratory when they should have been spending their time,
6 all of it, concentrated wise in the office area.

7 Q: Do you know who performed the testing?

8 A: I do not.

9 Q: Do you know whether mold testing was performed?

10 A: No.

11 Q: No, you don't know or, no, it wasn't?

12 A: Oh, did you say where it was performed?

13 Q: Mold testing.

14 A: And where?

15 Q: Well, I just asked you if you knew whether mold
16 testing was performed?

17 A: If I remember correctly, I believe the report said
18 something to the effect that there's nothing --- In order
19 for it to have been tested for mold, it would have had to
20 have stated what it did, which was, you know, it was very
21 clear that kind of thing.

22 Q: So you believe mold testing was performed?

23 A: The paper showed it, but if I had to qualify it as
24 being performed, I would say no, being a technician.

25 Q: Do you know whether mildew testing was performed?

1 A: I do not know.

2 Q: So you claim that the testing that was done was
3 flawed, correct?

4 A: Yes.

5 Q: But you admit that the hygienist reported finding
6 no evidence of mold contamination, correct?

7 A: Yes. Yes.

8 Q: Well, and you were shown a copy of the report?

9 A: I don't remember how --- I did see a copy, but
10 I'm not sure if I had to go looking or what, but it was well
11 after it was done that I was told it had been done and it
12 may have been David Wilson. I'm not sure.

13 Q: And the hygienist said that the air in the lab was
14 cleaner than the outside air, correct?

15 A: Yeah, that's the same thing these employees in the
16 nickel bath were told, the situation I mentioned earlier.

17 Q: So you draw a parallel between the nickel bath
18 situation at --- What company was that?

19 A: Cherokee Finishing.

20 Q: At Cherokee Finishing and the mold at Tietex?

21 A: With regard to that kind of a statement. I think
22 that's really an irresponsible statement.

23 Q: But you don't have any firsthand knowledge about
24 how the hygienist's tests were conducted, right?

25 A: I do not, but I do know, also another thing I'll

1 add to this, that all the furniture was sprayed, in the
2 general area where it was was sprayed with Lysol
3 periodically and it would have had to have been on weekends
4 and after hours, so it would had to have been --- If they
5 were tested early in the week, it's a good possibility it
6 was right on top of Lysol treatment.

7 Q: And you weren't present during the test?

8 A: No, sir.

9 Q: What information do you have to support your
10 contention that the test was somehow faulty or unreliable?

11 A: The magnitude or degree of attention paid to the
12 area of complaint, which was the office area. They had so
13 much time to do testing, they had so much equipment to do it
14 with, and they, it looks like to me, from memory, it looks
15 like to me they delegated equal time to each of the four
16 sections of the laboratory rather than concentrated on that
17 one key area.

18 Q: So do you have any other information to support
19 your contention that the testing was faulty other than the
20 fact that they did not concentrate on the office?

21 A: No.

22 Q: Did you continue to complain about the mold smell
23 after the testing?

24 A: I don't recall.

25 Q: Do you claim that Jake Butts was the cause of the

1 smell?

2 A: Yes. I did have other employees concur with me
3 there. I don't recall names or anything, but regarding what
4 I envisioned, because I've seen this before and I certainly
5 don't fault Jake, but a house that's, you know, real shaded
6 or a older house, moisture problems, I've walked into houses
7 like that like looking for a house, when you're looking at
8 houses for sale, and you could smell that musty mildew.
9 And if one hangs their clothes in there, you know, it's
10 just going to, it's no way around the clothes smelling like
11 that.

12 Q: So you claim that Jake Butts wore clothes that
13 smelled like mildew?

14 A: Yes. Without question, yes. I'm not saying
15 everything he wore everyday, but many times.

16 Q: Did anybody, did you ever discuss that with
17 anybody at Tietex?

18 A: I'm sure I probably did, but not as a casual
19 thing. It would have been with maybe the plant nurse or
20 someone. And after Jake was aware of it, I wouldn't have, I
21 don't think I would have handled it unprofessionally as far
22 as going out and just, you know, making a joke of it or
23 something. I don't recall any details.

24 Q: And you claim his office furniture smelled like
25 mildew?

1 A: Yes.

2 (Defendant's Exhibit 12 was marked for identification).

3 Q: Exhibit 12 is a series of e-mails beginning at the
4 bottom with an e-mail from Wade Wallace to you and then it
5 goes on with a message from you to Wade and then from Wade
6 to you all in early February, between the 2nd and the 5th.
7 Would you take a moment to look over that, please.

8 A: Okay.

9 (Reviewing document).

10 A: Okay.

11 Q: All right. You ready?

12 A: Yes.

13 Q: And would you agree with me that Exhibit 12 shows
14 that Tietex moved you from the lab to remove you from the
15 source of mold that you were complaining about?

16 A: I would prefer using the term banned, because I
17 was already situated in the plant and they just didn't
18 want me going back up there to do work anywhere in the
19 building.

20 Q: And that was because you had complained about the
21 mold, right?

22 A: In my opinion, no.

23 Q: All right. What evidence do you have to support
24 your opinion?

25 A: Now, I cannot, I cannot say what David Wilson

1 discussed. Obviously, David was only at Tietex for a few
2 years. I think he came in 2005, so he was totally unaware
3 of what occurred before then, only what he would be told. I
4 don't know his relationship with Wade and how this, why this
5 occurred. I don't know who was the stronger person. Was
6 Wade purely doing what David Wilson required because of what
7 he had experienced in his previous employment? That's
8 possible. But it also fits very well with, you know,
9 hindsight being 20/20 and my being able to get away from the
10 situation and become more objective and not so subjective,
11 it also fits in with a lot of other things that was a
12 malicious thing. If Wade were in control of this actually
13 happening just to get me away from being able to do the work
14 because they knew that was my lifeline. They knew the
15 laboratory building and everything in there was key for me
16 to be able to do my job.

17 Q: All right. Looking at Exhibit 12 and the e-mail
18 to you from Wade Wallace, it says, "I received your voice
19 mail this morning. As we discussed yesterday, we will do
20 whatever is necessary to shield you from any further
21 exposure to an environment(s) that might negatively affect
22 your health." Do you see that?

23 A: Yes.

24 Q: And then he goes on to say, "As David Wilson
25 directed, please do not enter the lab or any other work

1 there."

2 A: Okay. So it was just a few days really, that was
3 the 2nd of February and then the 5th.

4 Q: So you were told not to enter the lab because, (A)
5 of the mildew smell which you associated with Jake Butts,
6 his clothes and his furniture, and you didn't think that
7 even a mask would be sufficient protection, correct?

8 A: There was no need for a mask. Let me just say
9 this. If a mask would keep mold spores from getting into
10 one's nose or sinuses or whatever, there was no need for a
11 mask in the other three areas of the lab, only in the office
12 area. That was a huge room with a door that closes and all
13 the other rooms were separate with closing doors.

14 Q: All right. Is it fair to say that you began
15 reporting to Wade Wallace around February 1, 2007?

16 A: I think, if I remember correctly, it was the 1st,
17 because that's come up a lot and I think it was.

18 Q: And the reason Wade Wallace became your supervisor
19 is because that you were complaining about Jake Butts and
20 not wanted to have any interaction with him because of the
21 smell you associated with him, right?

22 A: Probably not. I would say that it really stemmed
23 from a conversation I had with the owner several years
24 earlier when there was a lot of things that I was to be
25 working on and a lot of trivial stuff coming my way that

1 to him, I said, this is basically what I said, I'm
2 paraphrasing based on a very poor memory, but I said
3 something to him to the effect, I said, "Look, Wade, I've
4 got enough stress as it is and all that and all you're
5 doing now is there's no point in you talking to me," things
6 like that. You know, I don't remember the gist of it, but I
7 do know that's what this is. Then he goes back at some
8 point and creates this on the 9th, two days later, and sends
9 it. I never know about it until we start having the ESC
10 things.

11 Q: All right. Now, you see in the third line of that
12 second paragraph where it says, "He explained that his
13 personal life over the last year has made him so fragile
14 emotionally, that sometimes he has episodes like the one he
15 was experiencing." The last year in this context would have
16 been 2006, right?

17 A: That's correct.

18 Q: Was it 2006 that your wife was ill?

19 A: That's correct.

20 Q: Did that take a toll on you nerve wise and make
21 you kind of a wreck?

22 A: I got into a major sleeping problem caused mainly
23 by stress and it did not happen until I went back to work
24 and the way I was done after I got back to work.

25 Q: Would you say that your wife's condition

1 contributed to how you were feeling?

2 A: What she went through was horrific and anything
3 she goes through negative, I suffer along with her big time
4 because we're so close. But this here is not what happened
5 that day. It did not happen.

6 Q: Let me just invite your attention to page 155 of
7 the hearing before the Employment Security Commission on
8 March 28. I've got it highlighted here. It says, "At this
9 time I was kind of, you know, nerve wise kind of a wreck
10 because of what my wife went through." Do you see that?

11 A: Uh-huh (affirmative response). That's still not
12 what happened here. And, also, I will say this about that
13 transcript, I put no credence, zero credence in that because
14 of when I went back and reviewed it and I got a copy of it,
15 they didn't send me a copy, what I was attributed to saying
16 and what I really said, there were so many fallacies it was
17 unbelievable.

18 Q: Tell me what was the matter with your wife in
19 2006.

20 A: She had a colonoscopy in late '05 and the doctor
21 that did the colonoscopy did a pre-exam and said he picked
22 up on a cyst on one of her ovaries. Anyway, he does the
23 colonoscopy and I went home one day and she was frantically
24 on the phone with the doctor. I got home about six. It
25 could have been that I would have gotten there later and

1 these difficulties having to do with the colonoscopy and
2 related surgery and so forth, did the physician give you
3 medication to help you sleep and cope with her situation?

4 A: I actually, when I went back to work and realized
5 what was going on and I started having this serious sleeping
6 problem, I would literally stay up a night or two at a time.
7 I went back to the doctor. I'm not sure what the time frame
8 is relative to her being in the hospital, but I actually
9 went back to him to get his help or whatever.

10 Q: Did you seek help from the EAP as Mr. Wallace
11 suggested that you do in Exhibit 13?

12 A: No.

13 (Defendant's Exhibit 14 was marked for identification).

14 Q: All right. Have you had a chance to review
15 Exhibit 14?

16 A: I've seen all I need to see.

17 Q: Okay. Well, in the first paragraph he just talks
18 about that 3 a.m. call and how Martin Wildeman forwarded it
19 to Wade Wallace, correct?

20 A: It also says that I left Wade Wallace a phone
21 message and I doubt that seriously. I don't know why I
22 would have and don't recall it.

23 Q: Did Mr. Wallace commit to you as this e-mail says,
24 to get you a lab pad coater and vented hood?

25 A: Of course, I mean, Wade's aware of all this, so he

1 could have --- Oh, okay, so the second paragraph is not
2 necessarily related to the phone call, is that correct?

3 Q: Correct.

4 A: It wasn't mentioned in the phone call in other
5 words. I will say this about any and all equipment. There
6 were several pieces of equipment that Wade Wallace agreed to
7 purchase and, in fact, requisitions were done and they were
8 actually purchased. There were several pieces of equipment
9 in particular that I, one being a lab pad, tried my best to
10 get installed for a period of weeks and I guess months. And
11 this all started in probably maybe March. I'm not sure.
12 But there was always something wrong with where it was going
13 to go. Like the lab pad that was never installed. The burn
14 equipment was never put together. Because always someone
15 would find, no, we can't put it there, we can't put it
16 there. And I just finally arrived at the point it's not
17 going to be anywhere. But I stayed with it the entire time
18 I was there trying to get stuff installed. Anything that
19 was bought was never put in place. I'll just put it that
20 way. It was a matter of and to make things look and certain
21 way if I had to say now.

22 Q: But the equipment was purchased?

23 A: Some equipment was purchased, yes.

24 Q: And it was purchased to accommodate you because
25 you couldn't go in the lab?

1 A: That would have been the reason.

2 Q: And the third paragraph, you said you had read
3 enough, I wanted to make sure you read the third paragraph.

4 A: Yeah, but the thing there was not so much a being
5 bothered or anything. It was more taking a stand that why
6 am I, I'm down here, you've dumped all these key
7 manufacturing projects on me, why am I going to stay
8 involved with this environmental reporting which made no
9 sense. So I was really, let's get it to the guy that's
10 getting paid for it, even though I knew he couldn't do it.
11 That's what I was I was really after there. Why am I going
12 to have to do this, all these other major plant projects
13 you've given me. It didn't make sense.

14 Q: But Wade Wallace thought you had time to do it?

15 A: He did, apparently.

16 (Defendant's Exhibit 15 was marked for identification).

17 Q: Take a look, please, at Exhibit 15. And Exhibit
18 15 is just an e-mail from Wade Wallace telling you he
19 expected you to get the environmental report done on time,
20 right?

21 A: Yes.

22 Q: Was that reasonable?

23 A: For him to expect that, yes.

24 Q: And whose responsibility did you think it ought to
25 be?

1 A: The person in the job title of Environmental
2 Manager.

3 Q: Do you know who that was?

4 A: Over the period of my being there, it could have
5 been Jake Butts at that time, but Jake had it, John Knox had
6 it. There was a guy that was hired back in the early 2000s
7 that was hired specifically for that and he left the
8 company, so at that time I'm not sure who it was.

9 Q: And didn't you voice mail to Mr. Wildeman
10 protesting having to do the environmental report?

11 A: No. No. Are you talking about the one I left in
12 the middle of the night?

13 Q: Yeah, Exhibit 14. It says, basically, Wallace
14 says that Martin Wildeman forwarded your voice mail to him
15 and two things were bothering you. One was lack of
16 equipment and two was environmental reporting.

17 A: I wouldn't have --- I'm not seeing that. I'm
18 just seeing, "He was distraught over all that's been going
19 on."

20 Q: All right, look here. Exhibit 14, "Gary left
21 voice mail messages for both me and Martin one morning this
22 week ta 3 a.m. Martin forwarded me the one he received.
23 Both messages consisted of him complaining about his
24 inability to sleep due to being distraught over 'all that's
25 been going on.'" The first thing, the equipment. The

1 second thing, environmental reporting.

2 A: I think those other paragraphs are taken out of
3 context. Those were not left on any message to anyone. It
4 was a general message that I left to Martin requesting a
5 meeting with him and it wouldn't have got specific. It
6 would have mentioned the problems I was having with sleep
7 for sure.

8 Q: So you agree that it would not have been
9 appropriate for you to leave Martin Wildeman a message about
10 not wanting to do the environmental report?

11 A: I'll agree with that, yes. I mean, I don't see
12 why that would even be necessary.

13 Q: Do you recall Mr. Wallace telling you to bring
14 these issues to him before going to Mr. Wildeman?

15 A: First of all, the relationship I had with Martin,
16 most of the time when we got together was a casual encounter
17 and he would say, "Come on in here," and it would involve a
18 project or something and he'd want to know how it was going.
19 And that meeting, that spur of the moment extemporaneous
20 meeting might evolve into our getting into other stuff, how
21 is it going for you and all that, and then some stuff
22 happening like that. But we've had a relationship that, I
23 mean, it's just there. It's just the way Martin was. He
24 never, you know, he never had a problem with it and he never
25 said, you know, you need to bring this. Anything he

1 suggested I do, I did it though, if it meant bringing
2 something up with whomever, I would always do that.

3 Q: Would you ever go around Wade Wallace to talk to
4 Mr. Wildeman about work related issues?

5 A: No. No. I say that. I probably need to qualify
6 that because if there were things happening that I saw were
7 dishonest or that kind of thing, regardless of who it was,
8 Wade or whomever it might be, I'm not going to go and, I
9 mean, you do what you have to do. It's sort of like your
10 house is on fire and you need to mow the grass, you're not
11 going to cut the grass, you do what you've got to do. But,
12 basically, generally I followed the chain of command.
13 Within reason I followed it and it's just the way things
14 were at Tietex with regard to what we had evolved to as far
15 as my relationship with Martin.

16 Q: But you admit going directly to Mr. Wildeman?

17 A: I don't remember enough about any specific
18 circumstances. I do know that I did that some, but I would
19 say most of the time it had to do with like barrier fabric
20 projects and things of that nature where he was wanting to
21 know about it. It was nothing unusual for Martin to grab up
22 somebody and start talking with them about something.

23 Q: When you began reporting to Wade Wallace, what did
24 Mr. Wallace tell you about his expectations for your
25 reporting to him?

1 A: I really don't recall to be honest.

2 Q: Did Mr. Wallace tell you he expected you to let
3 him know your whereabouts?

4 A: I don't think that came up that way, because at
5 the stage of the game, you might say, I mean, that was like
6 an understood thing. It was not like kindergarten or
7 something.

8 Q: So you understood you were supposed to let Wade
9 Wallace know where you were?

10 A: Our agreement was if I were, as far as where I
11 was, that to me would mean away from the plant, and our
12 agreement was keep the cell phone on was our agreement.

13 Q: But you agree with me that it's reasonable for a
14 supervisor to want to know the whereabouts of the employees
15 under his supervision, right?

16 A: At all times.

17 (Defendant's Exhibit 16 was marked for identification).

18 Q: You have before you Exhibit 16, which is a memo
19 from Wade Wallace to David Wilson.

20 (Reviewing document).

21 Q: You got that?

22 A: Yes, sir.

23 Q: Okay. Now, it's from Wallace to Wilson with a
24 copy to you and Mark Isbell, right?

25 A: Yes.

1 Q: Do you have any evidence that this memorandum was
2 seen by anyone other than you, David Wilson, Wade Wallace,
3 and Mark Isbell?

4 A: I mean, right off the cuff, I don't know, I don't
5 know that I have an answer for that.

6 Q: Do you have any evidence that the memo, which is
7 Exhibit 16, was seen by anyone outside of Tietex or in the
8 context of this lawsuit and your claims against Tietex?

9 A: I really don't, I don't know.

10 Q: Okay. If you examine the memo, it's dated March
11 5, 2007. Did Wade Wallace have a conversation with you on
12 or about March 5 about the items listed in this memo?

13 A: Actually, I triggered this memo by requesting
14 it. And the way that happened, Mr. Wallace called me to his
15 ...

16 Q: Pardon me for interrupting and I'm going to let
17 you say whatever you want to. But my question was simply
18 did Wade Wallace have a conversation with you on March 5
19 about the items mentioned in the memo? And that's a yes or
20 no answer.

21 A: Yes.

22 Q: Okay. Now, with respect to the items listed in
23 the memo, tell me any parts of it that believe are not true?

24 A: All of it. We're talking in degrees when I say
25 that, but my assessment to make a strong statement is either

1 one of those by itself is and I disagree with all of them.

2 Q: All right. Taking the first one that you become
3 emotional and overly vocal about problems before researching
4 the situation. What evidence do you have to support your
5 contention that that statement is not true?

6 A: It's just not me. Never done it.

7 Q: All right. "Not honoring the chain of command."
8 What evidence do you have to support your contention that
9 that statement is not true?

10 A: I can't go back and recreate everything, but I'll
11 say this, I think most of the time if there was a formal get
12 together with Martin Wildeman and one where we didn't just
13 run into each other, I would have run it by Wade.

14 Q: It says in the third bullet, "He harbors
15 negativity over past grievances with management." Did you
16 have some unresolved grievances with management at the time
17 that Wade Wallace began supervising you?

18 A: I'm not sure what he's referencing there. The
19 only thing I can say about this is this stems from some
20 discussion I had with him, so with that said, I feel like
21 for him to take and broadcast it this way was certainly way
22 out of line.

23 Q: Okay. My question was, when Wallace started
24 supervising you, did you have some unresolved issues with
25 the company that existed prior to his undertaking the

1 supervision of you?

2 A: Oh, I had, I had a lot of concern about the things
3 that had been going on since 2003.

4 Q: So you had those concerns when Wallace took over?

5 A: Well, this is all, anything he said here is
6 because he and I talked about some things and not anything
7 that he gathered otherwise. We would have had to have
8 discussed it.

9 Q: What kind of things did you tell Mr. Wallace?

10 A: I don't remember. I do not remember.

11 Q: And then the last bullet is, "He complains about
12 his ownership of environmental reporting." Now, that's
13 true, isn't it?

14 A: You know, again, that falls in the category,
15 here's a guy that I'm supposed to be reporting to and he's
16 going, anything I say to him he broadcasts it. What kind of
17 manager is that?

18 Q: When you say broadcast it, he sends it to David
19 Wilson, Mark Isbell, and you?

20 A: Why would I ever say anything else to him again.
21 Like I'm just having a discussion with him about something
22 I'm concerned about and then the next thing you know, he's
23 holding it against me and threatening me, basically.

24 Q: And he told you in this memo that you needed to
25 make significant progress within 30 days, correct?

1 A: Yes.

2 Q: Did he tell you that when he sat down with you?

3 A: Without taking a lot of our time, this day was the
4 anniversary of like my 30 days or so and he calls me and
5 says, "Gary, we need to talk," to have a 30 day review. Go
6 to his office and he said, "Let's go down to David Wilson so
7 he can sit in on this." I had what seemed to be the flu
8 coming on and I felt, I mean, really, really terrible that
9 day. I do remember that. And he hits me with these things
10 here and it's purely verbal. There's no written, anything
11 written. And when I finished I said, "Wade, would you do me
12 a favor? Would you send me an e-mail covering what we just
13 talked about so I'll know what I need to improve on?" And
14 that's the e-mail that came.

15 Q: All right. Did you ever fail to attend meetings,
16 meaning that a meeting was scheduled that you were supposed
17 to be present for and you just didn't show up?

18 A: Never.

19 Q: Did you ever fail to return voice mails?

20 A: I'm sure over the years that everyone does that,
21 but it's not malicious or intentional. I never
22 intentionally ignored voice mails.

23 Q: And would that be the same for e-mails?

24 A: And same for e-mails. I'll just add this. I
25 don't spend a lot of time at the computer, didn't then.

1 (Defendant's Exhibit 17 was marked for identification).

2 Q: I'm going to give you Exhibit 17. Before we get
3 to 17. You've told me that with respect to 16, at least the
4 first three bullets were not true in your opinion. At the
5 time that you talked to Wade Wallace, did you protest that
6 these things were not true?

7 A: When we were talking in our meeting when David
8 Wilson was present?

9 Q: Yes, sir.

10 A: I'm not sure what I said. I know I didn't feel
11 like contesting anything that day, so I don't recall how I
12 handled it.

13 Q: But those present in the meeting would have been
14 you, David Wilson, Wade Wallace, and nobody else?

15 A: That's correct.

16 Q: All right. Let's take a look at Exhibit 17, which
17 is April 4, 2007, e-mail from Wade Wallace to you and it's
18 talking about working in the lab. Just let me know when
19 you've read it.

20 (Reviewing document).

21 A: Yes, I've read it.

22 Q: Did you ask if you could work in the lab if you
23 signed a waiver?

24 A: Yes.

25 Q: And you were told that Tietex thought that the

1 waiver might not be good.

2 A: Yes.

3 Q: Do you agree that Tietex was trying to protect you
4 from a negative impact to your health and from itself being
5 liable for negatively impacting your health?

6 MR. STEWART: Object to the form.

7 A: The second part I'd say yes.

8 Q: You don't agree that Tietex was trying to protect
9 you from a negative impact to your health?

10 A: I don't feel that way, no.

11 Q: What evidence do you have that supports your
12 belief that Tietex was not trying to protect your health?

13 A: We could talk a long time there on my thinking of
14 that, so I'll just, if I may, leave it at that.

15 Q: All right. Did you ask if you could work in the
16 plant on Saturday and Sunday?

17 A: Absolutely.

18 Q: And were you told that you could only work when
19 the plant was operational?

20 A: There was one time I was told that and I don't
21 remember which came first, but I was later told that I
22 couldn't go in at all unless --- I'm sorry. Okay, I just
23 confused something in my own mind. Yes, I was told if it
24 were operational, then I could go in on like a weekend or
25 whatever.

1 Q: And if the plant was down, you could go in but you
2 could only do office work, not lab bench work, right?

3 A: That was what I was going to say. One would
4 supersede the other. I was told at one time I couldn't go
5 in at all, even with the plant, I mean, if the plant were
6 not running, I couldn't go in at all.

7 Q: And that was changed to you could go in and do
8 office work.

9 A: One way. I don't know which came first. I don't
10 remember.

11 Q: But at one point you could go in and do office
12 work?

13 A: That's correct.

14 Q: And that lasted until your last day of work?

15 A: I don't know. Again, I don't know which came
16 first, that particular document or the other verbal. It
17 could have been verbal, it could have been written where I
18 couldn't go in at all unless the plant were running.

19 Q: But you understood that by Wade Wallace saying you
20 could not operate lab equipment or production equipment or
21 handling of dyes or chemicals when the plant was down and
22 there weren't any other employees there was for safety
23 reasons, right?

24 MR. STEWART: Object to the form.

25 A: Well, it could be done under that pretense but I

1 knew. I had done all those things without question and I
2 was the key person as far as all the issues of doing those
3 things and the safety issues related to them and I had done
4 so for 12 1/2 years without ever being told I couldn't come
5 in on weekends, I couldn't come in at night, I couldn't come
6 in when people weren't there. That was never an issue until
7 I started reporting to Wade Wallace.

8 Q: Do you dispute that it was for safety reasons?

9 A: For a yes or no, I'll say yes.

10 Q: All right. And what do you claim the real reason
11 was?

12 A: To keep me from doing the projects I was assigned.

13 Q: And why would Wade Wallace want to do that?

14 A: Well, we've talked about all that before in other
15 meetings and things, but it's involved.

16 Q: Tell me.

17 A: As I've said before, I mean, hindsight being 20/20
18 and I don't have a lot going for me except I do have an
19 analytical mind and I can put pieces of puzzles together and
20 it's clear to me that entire time I was working for him, it
21 was an effort to create cause so I could be terminated.

22 Q: And what evidence do you have to support your
23 belief?

24 A: All the things put together. To make me fail at
25 projects. Keep projects that were assigned and be sure I

1 failed at them, couldn't do them, and so forth.

2 Q: Do you have any evidence that any other employees
3 were allowed to work when the plant was not operational?

4 A: During my entire time at Tietex, and you could go
5 back to the records kept by the gatekeepers that when they
6 did have folks on the gates and kept records of those coming
7 in, you will see that I was --- The only other person I
8 ever saw in there, two people I ever saw in there when the
9 plant wasn't running that I remember would be Robert
10 Fontaine, a key grey mill guy, and Martin Wildeman, the
11 owner. And I was there many weekends trying to do work and
12 ...

13 Q: Do you claim you actually did lab work when the
14 plant was down before Wade Wallace became your supervisor?

15 A: I did. Again, there was a couple of years leading
16 up to that that were kind of dead years, but going back
17 before, say, 2004 and back, I did most of my lab work when
18 the plant, outside of the 8 to 5 hours, I'll put it that
19 way. Because I was so involved with running my other jobs 8
20 to 5, that I had to do these other things outside hours.

21 Q: Was the plant operational?

22 A: Most of the time not. If it were weekends, not,
23 not at all.

24 Q: But you were the only employee who did that?

25 A: For the most part. For the most part.

1 Q: Can you identify anybody else other than the two
2 you just named, Martin Wildeman and the other guy?

3 A: I would periodically see someone from information
4 services that worked in like the computers' area in to do
5 something, but otherwise, no. I mean, the other
6 manufacturing folks that were salaried and all and the
7 department managers, no, they worked normal hours.

8 (Defendant's Exhibit 18 was marked for identification).

9 Q: Well, I guess there's something I don't understand
10 and that is why couldn't you do the lab work during, say, 8
11 to 5 and if other work was to be done and needed to be done
12 after 5 o'clock, make that your office work?

13 A: The other stuff had to do with managing people and
14 running the laboratories and stuff like that, which had to
15 be done when they were there. In other words, if I went off
16 on, and we're talking about some high level projects in many
17 cases that require a good ability to concentrate and so
18 forth and might be interrupted, and any time I attempted to
19 take on something like that, if I had time to do it, between
20 regular hours ...

21 Q: Excuse me. You could have done your environmental
22 reporting and prepared those documents as office work if the
23 plant wasn't running, couldn't you?

24 MR. STEWART: Object to the form.

25 A: Most of the environmental stuff was done hours

1 wise, time wise, was done outside of the 8 to 5. Much of
2 that was done at home. Things like that, there was no
3 point, some of it was no point in going to work to do. I
4 carried it home with me.

5 Q: Take a look at Exhibit 18, please. And that has
6 to do with the C237 and T602 projects and it's dated June
7 18, 2007. See that?

8 A: Yes, sir.

9 Q: And that memo is addressed to you from Wade
10 Wallace with a copy to David Wilson and Mark Isbell just
11 like the other one, right?

12 A: Yes.

13 Q: Did you receive a copy of it about the time it was
14 written?

15 A: Yes.

16 Q: Do you have any evidence that this memorandum was
17 seen by anyone else other than the addressees?

18 A: Not offhand I don't.

19 Q: Do you have any evidence that this memorandum has
20 been seen by anyone outside of Tietex or outside the scope
21 of this lawsuit or the other claims that you have made?

22 A: I'm sure my wife has seen it.

23 Q: Because you showed it to her?

24 A: Yeah.

25 Q: Okay. Anybody else?

1 A: I don't know. I don't recall.

2 Q: You don't have any other evidence?

3 A: Not right now, no. Nothing comes to mind.

4 Q: All right. C237 was the development and
5 qualification of a Tietex coating compound formula to
6 replace the current coating formula, is that right?

7 A: It was a mattress fire barrier fabric, Tietex
8 fabric coated with a chemical compound. At the time it was
9 purchased outside and applied at Tietex and was sold to your
10 mattress manufacturers as a barrier fabric.

11 Q: Okay. And T602 was a finish formula change. Is
12 that right?

13 A: T602 was a product that I jointly came up with
14 with a guy named Zhiping Ni. He came up with the fabric.

15 Q: With who?

16 A: Z-h-i-p-i-n-g and his last name is N-i, Chinese.
17 He invented the fabric and I came up with a formula to put
18 on the fabric and it evolved into a Tietex product called
19 T602.

20 Q: Did Mr. Ni work for Tietex?

21 A: Yes.

22 Q: Okay.

23 A: And, anyway, the product was originally run on a
24 pad finish, on one pad finish, and that particular finish
25 was more suited for running window fabrics, finishing window

1 fabrics. And so we were doing this on that, a unit with the
2 goal of taking it elsewhere. Wade came to me one day and
3 wanted to know if I could create a foam finish so we could,
4 instead of running it through just an old watery pad
5 finishing and padding it on, could I create a foam finish
6 because we had, I don't know, three other machines there
7 that were equipped with foam finish units. He said, "If we
8 can do that, then we can free up this number ten range we're
9 needing for window fabrics." So ultimately, what that led
10 to was that project where I was investigating doing a foam
11 finish on T602 instead of a pad finish.

12 Q: So these two assignments were made to you?

13 A: Absolutely. These two projects no one else there
14 could have taken them on. I was the only one that could
15 have even come close to ...

16 Q: And they were priority projects?

17 A: Big time. Well, I would say that the C237 was
18 definitely big time priority.

19 Q: Were you working on 237 before you started working
20 with Wade Wallace?

21 A: I had done work on weekends and had come up with a
22 formula that would come close to but not, I hadn't gone far
23 enough with it, to replace the business that was currently
24 coming from a company called Noveon.

25 Q: Was the answer yes?

1 A: Yes. Yes.

2 Q: At the time this memo was written, which is
3 Exhibit 18, had you been working on the 237 project for
4 about six months?

5 A: Yes.

6 Q: Had you made any progress?

7 A: Oh, yeah. Had actually on January 26 ran a trial
8 that, effectively, gave us what we needed.

9 Q: And you say you initiated the project?

10 A: Not really. Martin Wildeman would be the one that
11 prompted it and I was reporting to Jake Butts at the time.
12 This would have been November, December '06 when Martin came
13 to me and --- He accosted me. He came over to me in a
14 meeting and he says, "Gary, we've got a major problem and
15 need your help." Basically what he said was, "We've got
16 this barrier business that's only going to grow. We've got
17 good volume now, we're not making any money, because we
18 can't be cost effective." And he said, "The biggest part of
19 it is this compound we're buying from Noveon and I
20 understand you've been doing some work and that you might
21 can help us come up with a cheaper compound." So that
22 started it.

23 Q: Did you tell the management of Tietex that
24 developing the C237 coating would result in significant cost
25 savings to the company?

1 A: Yes.

2 Q: And that was versus the compound that Tietex was
3 using at the time, right?

4 A: Yes.

5 Q: Did Tietex project the savings that you predicted
6 into the budget?

7 MR. STEWART: Object to the form.

8 A: No.

9 Q: Do you know?

10 A: At the time I started working on the project ---
11 On January 26, real quickly, January 26, '07, we had the
12 successful trial. I was not reporting to Wade Wallace. Six
13 days later after having the successful trial, I was
14 reporting to Wade Wallace. And the direction we were going
15 with this and the way we were going to do it was totally
16 changed.

17 Q: Now, you say you ran a successful trial before
18 reporting to Wade Wallace?

19 A: Yes.

20 Q: Were you successful in developing a compound that
21 could be produced commercially?

22 A: Yes.

23 Q: And who would be a witness to that?

24 A: Harry Sparrow.

25 Q: Say again.

1 relationship was continuing. When I started to reporting to
2 Wade in February of '07, that relationship continued and
3 since that ...

4 Q: Mr. Harris, I'm going to let you tell me whatever,
5 but I don't understand how what you're telling me relates to
6 the question about whether you know if Wade Wallace was
7 successful in his endeavor to develop a project, a product
8 like 237.

9 A: I thought I said no.

10 Q: Okay.

11 A: Then I was explaining why.

12 Q: All right. Well, do you want to give me some more
13 explanation?

14 A: Only that there is, you know, there's this stuff
15 that happened in February that shows he was, he and I both
16 were working on C237 in tandem separately.

17 Q: So you agree he was working along a parallel
18 course with you?

19 A: It was put down that way.

20 Q: But you claim he was not successful?

21 A: I'm claiming that he wasn't working on it. I'm
22 claiming that all that ultimately would happen would be
23 Noveon lowered their price and then it was passed off as an
24 advanced product or something when all they did was lower
25 their pricing.

1 Q: Okay. T602, did you tell Wade Wallace that the
2 lab samples for this project were promising?

3 A: Oh, absolutely they were promising. They were
4 well above my expectations.

5 Q: Did you recommend a production trial?

6 A: Yes.

7 Q: Who was present at that trial?

8 A: Ron Simms would have been the key figure. Ron
9 Simms oversaw all plant trials. If there was going to be a
10 plant trial in finishing, Ron would be the one to put it
11 together.

12 Q: Ron Simms. Who else?

13 A: Grady Corbin would have been the department
14 manager.

15 Q: All right. C-o-r-b-i-n?

16 A: Yes, sir.

17 Q: Who else?

18 A: That's all I can come up with right now.

19 Q: So it was you, Simms, and Corbin?

20 A: Yes.

21 Q: Wade Wallace was not present?

22 A: Wade was not --- Now, we had more than one trial.

23 Q: Well, let's talk about the production trial. Is
24 that the first trial?

25 A: I'd have to go back and review it. Now, I've got

1 good notes on all this, but I'd have to go back. I'm sorry,
2 I don't, I can't answer that, but I have good notes if I
3 need to later.

4 Q: Do you recall Wade Wallace being present?

5 A: I recall Wade Wallace dropping in and then
6 dropping out.

7 Q: So he wasn't present the whole time?

8 A: No.

9 Q: Did you tell Wade Wallace that the results of the
10 trial were comparable to the current product?

11 A: Well, we actually reviewed the results. You know,
12 there was no --- I did show him the lab results where they
13 were tested and we had some samples that were not good where
14 we put a certain amount of finish on and we had some samples
15 that comparable where we put more finish on, which led us
16 to believe, hey, we can vary the amount of finish and maybe
17 we've got something. But I had no expectations going into
18 this trial as far as it being something we'd be able to do.

19 Q: All right. I'm just reading it from the bottom of
20 page 336 of Exhibit 18. "Although I was not presented the
21 actual numerical results of the first production trial, Gary
22 assured me that the results were comparable to the current
23 product." And my question is did you give that assurance to
24 Wade Wallace that the results were comparable to the current
25 product?

1 A: No.

2 Q: What did you tell him?

3 A: I said based on the results, in effect now, this
4 is in effect, based on the results, another plant trial was
5 warranted.

6 Q: And did you do another trial?

7 A: Yes.

8 Q: Was it successful?

9 A: I think we tried two more trials and, again, I'd
10 need to go back and really read to get all the details, but
11 I believe it was the second trial when there was a bent bar
12 that was an integral part of the machinery and this would
13 have been Ron Simms' operator, something for them to pick up
14 on. You'd have to have been there and seen what I had to do
15 as my part of it to know that I couldn't have picked up on
16 it. But they ran, we only had a small amount of yardage to
17 run, and all the yardage was run with a bent bar. All the
18 finish was on one side or the other and the middle of the
19 fabric had no finish, so it was a mechanical malfunction
20 that should have been caught.

21 Q: The second trial for various reasons was not
22 successful?

23 A: That's correct.

24 Q: And how about the third trial, it wasn't
25 successful either, was it?

1 A: The third trial was a failure because of Mark
2 Isbell. We were prepared. We had the bar fixed and we were
3 prepared to run the trial on the machine we had run the
4 first two on. And the word comes to the management and
5 department level, Mark Isbell says we need to run this over
6 on number three instead of two, and two totally different
7 machines. And anyone that, you know, to know what I know, I
8 know, and Ron said right away, said, "You know, that's a
9 mistake. We can't do this," because of the variables that
10 are introduced. And there were several things that we were
11 set up to do on two that we couldn't do on three. And we,
12 essentially, had the same kind of fabric come off of that
13 trial as we did on the second one, a very uneven finish.
14 And I could go back in my notes and give you a good, clear
15 explanation of that, but I don't recall otherwise.

16 Q: Did you do anything wrong or make any mistakes
17 with regard to either the T602 or the C237 projects?

18 A: No. No. When I say that, I mean I did what I was
19 supposed to do and would have done under any circumstances.
20 And these kind of projects are highly involved and technical
21 and it's where my expertise is and I was very aware of
22 everything I needed to do and did my best to see that it was
23 done.

24 Q: But Wade Wallace told you that he thought your
25 performance on these two projects was unacceptable, correct?

1 A: One quick comment.

2 Q: Just tell me whether Wade Wallace said that or
3 not, then you can explain.

4 A: Oh, yes. May I explain now?

5 Q: Yes.

6 A: On or about June 15, 14, 15, Mark Isbell, Wade's
7 boss, went to Martin Wildeman. This is what he told him
8 pretty much. And so I didn't know about that. And then on
9 the 18th, three or four days later, I'm called to Wade's
10 office and I see this.

11 Q: "This" meaning Exhibit 18?

12 A: Yes, sir. All right. Then, and this was at a
13 time when, you know, I knew I was going to be terminated. It
14 was just a matter of when then. And, you know, it didn't
15 matter about procedure or anything, but I went to see Martin
16 and I showed him this and he said to me, he looks at it and
17 he reads it. He said, "That's the same thing that Mark
18 Isbell talked with me about back a week, a week and a half
19 ago."

20 Q: Do you think that Mark Isbell prompted Wade
21 Wallace to give you this warning to pave the way for you
22 getting fired?

23 MR. STEWART: Objection to form.

24 A: I mean, I would classify it as, you know, could be
25 a final written warning.

1 Q: But you knew that Isbell and Guzman were friends,
2 right?

3 A: That's what I was told.

4 Q: And on June 18, Wallace told you you had 30 days
5 to improve, correct?

6 A: Yes.

7 Q: Did you have any conversations with Mark Isbell
8 about either C237 or T602?

9 A: Not the I recall.

10 (Defendant's Exhibit 19 was marked for identification).

11 Q: You have before you Exhibit 19. Have I given you
12 plenty of time to read it?

13 A: I'm fine if you're going to just ask specific
14 questions because it's quite voluminous.

15 Q: Well, are you familiar with it?

16 A: Yes.

17 Q: Now, this memo is addressed like the others to
18 David Wilson from Wade Wallace to CC: Mark Isbell, so it's
19 Wilson, Wallace, and Isbell, right?

20 A: Yes.

21 Q: Now, you weren't addressed on the memo, were you?

22 A: No.

23 Q: Did you get a copy of this document on or about
24 the time that you were terminated?

25 A: I don't remember. I may have but I don't.

1 **remember.**

2 Q: Okay. Do you have any evidence that this document
3 was seen by anyone else other than perhaps you, David
4 Wilson, Wade Wallace, and Mark Isbell?

5 A: No.

6 Q: Who informed you of the termination of your
7 employment?

8 A: David Wilson.

9 Q: Were you told that you were being terminated for
10 failing to improve on the issues that had been addressed to
11 you in the two former meetings and memoranda?

12 A: Generally what I was told was it's not one
13 specific thing, but just a whole lot of things that have
14 added up.

15 Q: Well, Wade Wallace claims in the second paragraph
16 that you still had the issues that he had pointed out back
17 in March, right?

18 A: Yes, he does.

19 Q: With the exception of the environmental reporting.
20 I mean, see that at the bottom of that paragraph? He says,
21 "With the exception of the environmental reporting." So I
22 take it what he means by that is environmental reporting was
23 no longer an issue. Do you agree?

24 A: I take it that he says I wasn't complaining about
25 it.

1 on a new pad, I mean, a used pad that was being installed.
2 So that project was killed because of that decision. We're
3 not going to foam finish anyway, no need to go forward with
4 it.

5 Q: All right.

6 A: The C237, the Noveon folks had already reduced
7 their price by about, I don't know, 20 or 25 cents a pound,
8 and was further working on getting it on down. And the word
9 was rather than go to and continue on with this and have to
10 go to another vendor or whatever, let's just continue to
11 deal with folks we're used to and they'll get our price in
12 order. So that's ultimately what happened. They lowered
13 the price on down into the seventies. So the direction I
14 was going in both cases were brought to a halt.

15 Q: Let me ask you some questions about your vacation.
16 You agree that you took multiple vacation days between
17 Monday, June 18, and Wednesday, July 18, don't you?

18 A: I remember putting in for a week vacation in June.
19 I don't remember anything else. And then asking to add two
20 days to that.

21 Q: Okay. You don't dispute that you left a voice
22 mail message on the morning of Tuesday, June 19, asking to
23 be out that day, June 19, and the next day, June 20?

24 A: I don't recall that. I may have, but I don't
25 recall it.

1 Q: All right. And on Saturday, June, 23, you
2 requested a week of vacation beginning the next Monday, June
3 25, correct?

4 A: I did request a week of vacation and I followed
5 that up with a phone call requesting that I add July 2 and 3
6 to that. I was going to have seven consecutive working days
7 for vacation.

8 Q: So you left a voice mail message on the afternoon
9 of July 3 indicating that you would be taking the entire
10 week beginning Monday, July 9 through 13?

11 A: No.

12 Q: What evidence do you have to dispute that?

13 A: On the afternoon of July 3, I had received a phone
14 call and been put on administrative suspension or whatever
15 you call it.

16 Q: Before your suspension, you called in and said you
17 wanted to be off July 9 through July 13.

18 A: I don't recall that, I don't at all.

19 Q: None of these vacation days were approved in
20 advance were they?

21 MR. STEWART: Object to the form.

22 A: If advance is before the vacation, actually was
23 what happened, yes.

24 Q: Well, the day of is not before, is it?

25 A: No. No, I'm talking about like the week,

1 requested a week and the two days that followed. No, those
2 were all advanced then. Those weren't the day of.

3 Q: Well, when you call in on Saturday, which is not a
4 traditional work day, and ask for vacation beginning the
5 next Monday, that's not in advance, is it?

6 MR. STEWART: Object to the form.

7 A: And Saturday what date?

8 Q: The 23rd of June.

9 A: That was covered with an e-mail. That week of
10 vacation was covered with an e-mail.

11 Q: You agree that you were required to request
12 vacation days in advance don't you?

13 A: I think that's pretty normal and I think I was one
14 of those that followed pretty close the way we did things
15 there.

16 Q: Well, let me just be clear. You agree that you
17 were supposed to request vacation in advance, don't you?

18 A: Certainly.

19 Q: And you say that this vacation didn't interfere
20 with the projects because as far as you were concerned,
21 those projects were over on June 8, is that correct?

22 MR. STEWART: Object to the form.

23 A: The projects were over, yes.

24 Q: And you took the vacation days immediately after
25 being given a warning on June 18, which is Exhibit 19.

1 MR. STEWART: Object to the form.

2 A: That's correct.

3 Q: Now, during the period from June 18 to July 18,
4 did you submit any data to Wallace about these two projects,
5 C237 or T602?

6 A: Not that I remember.

7 Q: Now, you were scheduled to fly to Indiana on June
8 14 to visit a customer and return on the 15th, right?

9 A: If the dates are correct, yes.

10 Q: And you flew to Indiana?

11 A: I'm not sure where I flew to.

12 Q: You flew toward Indiana?

13 A: Somewhere, Detroit or somewhere. I'm trying to
14 remember, but the next leg was to go into Indiana.

15 Q: So you turned around and came home?

16 A: Yes.

17 Q: And you did not visit with the customer?

18 A: No.

19 Q: You claimed you had got a headache on the plane?

20 A: In fact, this trip was arranged by Wade Wallace
21 through the sales manager who wanted me to go and I was not
22 to visit a customer.

23 Q: Was that Steve Acker?

24 A: Yes.

25 Q: The sales manager was?

1 A: Right.

2 Q: And you were to meet Acker and the customer in
3 South Bend?

4 A: For lunch.

5 Q: I'm sorry?

6 A: He was having meetings in the morning and I was
7 going to meet them for lunch.

8 Q: And you returned to the plant without having met
9 with the customer.

10 A: That's correct.

11 Q: And you did not tell Wade Wallace that you had
12 aborted the trip.

13 A: You know, that's an area that I can't say for sure
14 anything on right now, but when I got back in, I'm confident
15 that I would have called him. But Steve Acker, when I
16 called him, I told him the situation I was having and he and
17 I together decided it best that I wait, I waited as long as
18 I could before the flight was to leave for South Bend, and
19 nothing had let up and we decided it best that I either
20 spend the night there or come on back.

21 Q: You don't have any evidence that you told Wade
22 Wallace that you had aborted this trip, do you?

23 A: I mean, I have no records of any kind in writing
24 or anything.

25 Q: And you don't recall doing it?

1 Q: All right, Roebuck. Did you leave a message for
2 Wade Wallace telling him you would be at Hexion in Roebuck
3 on July 3 and that you would be at Hexion all that day?

4 MR. STEWART: Object to the form.

5 A: No. No.

6 Q: Did you leave him a message at all?

7 A: Yes.

8 Q: What did the message say?

9 A: It said that --- Let me just real quickly say it
10 had to do with a project that I was going to work on that I
11 couldn't work on at the plant and could work on it at Hexion
12 and other places. So the message was that there was a
13 serious ant problem at my house that I encountered when I
14 got home and my wife was literally berserk with ants in two
15 or three different places coming into the house and she's
16 highly allergic to them, fire ants. Now, I don't know at
17 what point before that I had left Wade any message, but at
18 that point I left Wade a message and said, "Wade, I've got a
19 serious problem. First thing in the morning I'm going to do
20 my best to get it taken care of and as soon as I finish, I'm
21 going to go on over to Hexion and work on the project." And
22 he knows the project that I was referencing.

23 Q: What time did you leave that message?

24 A: My guess, I think it was early, in early evening
25 after I got home from work.

1 Q: On what date?

2 A: This would have been the 2nd.

3 Q: So you say you didn't leave him a message on the
4 3rd?

5 A: The 3rd is the day I was at Hexion.

6 Q: Did you ever get permission from Wade Wallace to
7 go work at Hexion?

8 A: Oh, yes.

9 Q: When?

10 A: The same permission I had to go to Rohm and Haas
11 or any ...

12 Q: Sort of standing permission in your mind?

13 A: And let him know I was going and when and cell
14 phone on.

15 Q: Did you go to Hexion?

16 A: Yes.

17 Q: What time did you get there?

18 A: I'm going to use a little wider --- Well, it
19 would have been around 12:30.

20 Q: But you didn't do any work at Hexion?

21 A: I couldn't get in.

22 MR. STEWART: Object to the form.

23 A: Couldn't get in.

24 Q: So the answer to my question is, no, you did not
25 do any work?

1 A: That day, no. No.

2 Q: What time did you leave Hexion?

3 A: I would say and, again, I'm looking back and
4 guesstimating, 1:15 to 2:00 or something like that.

5 (Defendant's Exhibit 20 was marked for identification).

6 Q: How about take a look at Exhibit 20.

7 (Reviewing document).

8 Q: Do you have any reason to dispute the entries on
9 Exhibit 20?

10 A: The thing that's written here, I don't recall.

11 Q: Which thing?

12 A: Received voice mail on the 19th.

13 Q: "Left voice mail on morning of June 19"?

14 A: Yeah, to be out 19th and 20th. I don't remember
15 that.

16 Q: Okay.

17 A: "left voice mail on afternoon of July 3 ... was
18 suspended."

19 Q: "... before he was suspended."

20 A: And without question, that's not true. I mean, it
21 makes no sense is the reason I say that. I can't imagine
22 that.

23 Q: Well, you would agree with me that June 9 through
24 13 should have been July 9 through 13, right?

25 MR. STEWART: Object to the form.

1 A: I don't know.

2 (Defendant's Exhibit 21 was marked for identification).

3 Q: Let me show you what's been marked as Exhibit 21.
4 Do you contend that this is the Hexion Visitors' Register?

5 A: Absolutely.

6 Q: How did you get it?

7 A: I got it from a girl named Pam Westmoreland. She
8 copied this for me right out of the manual.

9 Q: Out of the what?

10 A: Out of the, whatever you call it, register. I
11 call it a manual.

12 Q: What do you contend that this Visitors' Register
13 proves?

14 A: Well, it shows that I signed it.

15 Q: It says, "7/3 Gary Harris, Tietex, 1:30."

16 A: 1:30.

17 Q: Is that 1:30 p.m.?

18 A: So I guess I got there at 1:30.

19 Q: Is that 1:30 p.m.?

20 A: Yes.

21 Q: And your work day doesn't typically begin at 1:30,
22 does it?

23 A: My work day begins usually when I get up.

24 Q: So not 1:30 p.m.?

25 A: This was not a typical day. No.

1 Q: So your work day doesn't normally begin at 1:30
2 p.m., right?

3 A: When I was with Tietex, no.

4 Q: The most this document shows is that you stopped
5 by Hexion and signed in, correct?

6 MR. STEWART: Object to the form.

7 A: I mean, if you take it for what's here, yes,
8 that's true.

9 Q: And you had told Mr. Wallace that you would be at
10 Hexion all day?

11 A: I didn't say that, no.

12 Q: What did you say?

13 A: What I said earlier, I had an ant problem that had
14 to be fixed and as soon as I took care of it, I was going to
15 Hexion.

16 Q: All right.

17 A: No time given.

18 Q: And there was nobody at Hexion to let you in so
19 you left?

20 A: There were people at Hexion that I later would
21 find out that they were having a meeting that included the
22 technicians, the people I would normally call and spoken
23 with and gotten to come to the door. It included key
24 management and everything. They have several buildings and
25 that particular building, they were having a meeting and I

1 made phone calls one after another to everyone I knew there
2 over a period of time, waited and tried it again, waited and
3 tried it again.

4 Q: You couldn't get in?

5 A: Couldn't get in.

6 Q: So you left?

7 A: Yes.

8 Q: And you didn't see a living sole at Hexion?

9 A: At that time I did not know of a procedure that
10 they had ...

11 Q: Just please answer the question. Did you see a
12 living sole at Hexion?

13 A: Yes.

14 Q: Who?

15 A: I don't know their names. I saw folks at Hexion.
16 I mean, to answer your question, I saw, physically saw
17 people there, here and there, but they weren't the people I
18 was there to see. They weren't in that building.

19 Q: You didn't see anybody you knew the name of?

20 A: No.

21 Q: Or who knew you?

22 A: No.

23 Q: So this sign in sheet that's Exhibit 21 is the
24 only proof that you have that you were at Hexion?

25 A: Probably some phone calls.

1 Q: I'm sorry?

2 A: I mean, we don't have it here, but I suspect some
3 phone calls will validate I was there as well during some
4 time.

5 Q: Oh, you mean phone calls that you claim you made
6 from the lobby ...

7 A: Yeah.

8 Q: ... to the interior of the plant?

9 A: Yeah. And also some other records.

10 Q: What other records?

11 A: Phone calls.

12 Q: But there aren't any individuals who can
13 substantiate your being there?

14 A: That's correct. Not that they saw me or anything
15 like that, that's correct.

16 Q: And you admit that you were at Hexion at most for
17 about 30 minutes?

18 A: No. I mean, earlier when you asked me and, again,
19 I haven't looked at this since, what's it been, a year and a
20 half or so, but just trying to recall a time, I said 12:30,
21 getting there at 12:30 and leaving, what 1:15 to 2:00 or
22 something to that effect. Well, now that I see that I was
23 actually there at 1:30 because I forgot, probably would have
24 left more like 2:15 to 3:00 o'clock.

25 Q: All right. Let me invite your attention to the

1 ESC transcript March 28, 2008, page 171. "Question. And
2 you stayed there for about 30 minutes." "Claimant." That's
3 you. "My guess is 30 minutes." "Question. Pardon me?"
4 "My guess is 30 minutes." "Question. Thirty?" "Claimant.
5 An estimate, from memory, an estimate."

6 A: Okay.

7 Q: Do you agree with 30 minutes?

8 A: About 30 minutes because I don't know, I didn't
9 keep a record of it. I would say, probably now I would
10 change that to at least 30 minutes because of what I did.
11 Because I was fairly, it was a time when I was concerned
12 about getting in and finishing the project. I'll put it
13 that way.

14 Q: And you agree with me that Wade Wallace, based on
15 your phone call, expected you to be at Hexion?

16 MR. STEWART: Object to the form.

17 A: Yes.

18 Q: What did you do when you left Hexion?

19 A: What I did after Hexion was probably, in my mind
20 anyway, it was like I was at a loss. I had tried to get
21 this project done. And let me say this, I've never
22 mentioned this before, but in the back of my mind, I knew
23 that there were places other than Hexion and I chose Hexion
24 because they were close. I could have just as easily gone
25 to Rohm and Haas or somewhere else or to one of these new

1 places I hadn't been before. With that said, I called this
2 guy that I knew that he had told me of two different places
3 that he could get me a place to work, to do lab work,
4 because he was aware of my situation as far as needing a
5 place to work and so forth. And he wasn't a friend, he was
6 an acquaintance from chemical sales. He and I met, I don't
7 ...

8 Q: Can you just tell me where you went?

9 A: All I know is he and I met somewhere, I don't
10 remember. I cannot call where we met but it was for him for
11 the purpose, he couldn't go with me to tell me how to get to
12 Chemurgy and all that. And we met for a period of time, I
13 don't know how long, and when I left him I went looking for
14 Chemurgy and to see if the folks were there and all this
15 and I was going to go ahead and introduce myself and see if
16 what their schedule was the balance of the week and I was
17 going to go ahead and just break that ice and get in with
18 those guys.

19 Q: So you went to Chemurgy about 4:30 p.m.?

20 A: No, it would have been before then. Maybe. I
21 probably was leaving there about that time. I don't
22 remember. Because it probably took me, I don't know, 30 or
23 45 minutes of driving.

24 Q: You didn't see anybody at Chemurgy, did you?

25 A: No.

1 Q: And the guy you met, was it Dean Roberts?

2 A: Dean Roberts.

3 Q: So on July the 3rd you went to Hexion for about 30
4 minutes and you went to Chemurgy but didn't speak to
5 anybody.

6 A: That's correct.

7 Q: And how long do you claim you were at Chemurgy?

8 A: I'm going to guess and say it probably took, for
9 me to find the place, between 30 minutes to an hour maybe.

10 Q: How long did you actually stay on the premises
11 there?

12 A: There was no sign of anybody there.

13 Q: Did you telephone Wade Wallace and tell him you
14 couldn't get into Hexion and you were going to go somewhere
15 else?

16 A: No, I did not.

17 Q: Did you instruct a Hexion employee to bring
18 sulfuric acid to you at the Tietex plant?

19 A: No, I did not.

20 Q: Did a Hexion employee bring you sulfuric acid at
21 the Tietex plant?

22 A: I was told he did.

23 Q: And that was George Henderson?

24 A: Yes.

25 Q: And did you, in fact, want sulfuric acid, you have

1 A: No.

2 Q: And didn't Wade Wallace finally reach you on your
3 cell phone about 3 in the afternoon?

4 A: No.

5 Q: When did he reach you?

6 A: First of all, I would object to the finally
7 because I'm confident I had my cell phone on the whole time,
8 and I received a phone call from him between 4:30 and 5
9 o'clock. He wanted to know where I was.

10 Q: Did you tell him that you had been at Hexion?

11 A: I told him exactly what had happened, which is
12 what we've already talked about.

13 Q: Did you tell Wade Wallace that you had been to
14 Hexion?

15 A: Yes.

16 Q: Did Wade Wallace tell you he knew you hadn't been
17 at Hexion?

18 A: I don't --- No, he didn't say that to me when we
19 were talking on the phone.

20 Q: Did Mr. Wallace tell you he knew you hadn't been
21 at Hexion because George Henderson, the lab manager from
22 Hexion, had brought sulfuric acid to the Tietex plant
23 looking for you?

24 A: I don't know that we discussed that or not. I
25 don't recall discussing that in our phone call. May I ---

1 the end of the day when he was on his way home from work.

2 And all he announced was Gary Harris had come by and needed
3 acid, left a message, left a message he needed acid.

4 Q: Well, didn't you say that the call to you was
5 between 4:30 and 5:30?

6 A: Yes.

7 Q: Well, that would have been consistent with the
8 time that you say Henderson went by there, right, at the end
9 of the day?

10 A: Yeah, but inconsistent with when Wade said he came
11 by. Wade said he came by like 1:30.

12 Q: But Henderson asked the people at Tietex where you
13 were, and they said, well, he's supposed to be at Hexion.

14 A: I don't believe he, I don't believe he asked that
15 question.

16 Q: You don't believe who asked what question?

17 A: I don't think George Henderson asked where I was.
18 All he was doing, he knew that I was going to come back at
19 some point and pick up acid, and he decides --- that's the
20 way George is --- as a courtesy he decided, well, on my way
21 home I'll just drop this acid off to Gary and he won't have
22 to pick it up. And he didn't call me or anything and say he
23 was going to do that.

24 Q: Well, for all Wade Wallace knew you could have
25 been fishing or cutting the grass or anything else other

1 than working, right?

2 A: That's true.

3 Q: And wouldn't it have been reasonable for Wallace
4 to expect you to call him and say, look, my plans have
5 changed. I can't go in to Hexion. I'm going to make other
6 arrangements?

7 MR. STEWART: Object to the form.

8 A: I think that's one of those marginal questions
9 that could go either way. I mean, I'll agree but then again
10 I think I could give a reason that it's okay.

11 Q: During this conversation did Wade Wallace ever
12 say, well, tell me where you've been all day?

13 A: Well, when he called me he wanted to know where I
14 was, and I explained to him about what had transpired and, I
15 mean, just right on top of that --- we probably talked no
16 more than, I want to say three minutes. He said, "Well, I'm
17 going to put you on administrative leave or suspension,"
18 whatever it's called, "and I don't want you back in here."
19 Now, the other part that I had a problem with there, why did
20 he not want me to come on back in right then and talk with
21 him. Why did he ban me then? I mean, that still bothers me
22 and I don't understand that.

23 Q: Did you hang up on Wade Wallace?

24 A: No.

25 Q: Did the telephone get disconnected?

1 A: No, we were talking and it was after he had told
2 me all that and everything, and I don't know if it's where I
3 was driving or what, but we got cut off.

4 Q: Do you know what Wade Wallace did to investigate?

5 A: No, I don't.

6 Q: Do you know who he talked to?

7 A: Oh, I do. I think he called both those fellows,
8 George Henderson and Dean Roberts. Word was he called them.

9 Q: Do you know if he talked to anyone else?

10 A: Not to my knowledge.

11 Q: Do you know the content of Wallace's conversation
12 with Henderson?

13 A: No, but I will say this, that it was pretty strong
14 according to what George said. George said he felt it to be
15 highly unprofessional, the way it was handled because it
16 made me look kind of, maybe something I didn't need to be
17 made to look like.

18 Q: Well, what do you claim that Wade Wallace said to
19 George Henderson that you object to?

20 A: I can't recall that, I'm sorry.

21 Q: So you don't have any evidence that Wade Wallace
22 said anything to George Henderson that would have been
23 defamatory towards you. It was just unprofessional, is that
24 what you're saying?

25 A: Probably more so unprofessional, yeah, if I had to

1 say one or the other.

2 Q: And what you know about that conversation you
3 learned from who, Wade Wallace or George Henderson?

4 A: From George. George actually called me about it.

5 Q: And does Dean Roberts work for Spartan Chemical?

6 A: He works for --- he did, I'm not sure. I haven't
7 talked with him in a long time, but he was with Spartan
8 Chemical at the time.

9 Q: And you said that you have some information that
10 Wallace called Roberts.

11 A: Right, yeah, Dean and Wade Wallace were reasonably
12 close and they had a, I mean, I don't know if it was a
13 friendship relationship but they were pretty close.

14 Q: Do you know what Wade Wallace said in that
15 conversation?

16 A: I don't.

17 Q: So you don't have any claims that Wade Wallace
18 made any remarks about you to Dean Roberts that were
19 defamatory.

20 MR. STEWART: Object to the form.

21 A: I don't know. I don't know of any right now, no.

22 Q: Now, your employment was terminated on July 19,
23 2007, for unsatisfactory performance, correct?

24 A: Yes.

25 Q: Do you know who made the decision to terminate

1 the sign-in sheet shows you were there, right?

2 A: Absolutely.

3 Q: Any other reasons that you claim that the points
4 that Tietex makes for your termination were phoney?

5 MR. STEWART: Object to the form.

6 A: Just real quickly, looking back, hindsight 20/20,
7 I'm convinced that the day I went to work for Wade Wallace
8 there's no question my days, in my mind the days were
9 numbered. The one hurdle they had to overcome because
10 Martin Wildeman knew that I could potentially do some things
11 for the company that were important. And even though over
12 the years he hadn't been in on a lot of stuff I had done,
13 because I had a supervisor always between me and Martin for
14 the most part, but in the final analysis, it was a big
15 hurdle for those guys to convince Martin that I should be
16 terminated.

17 Q: Why do you claim Wade Wallace wanted to get rid of
18 you?

19 A: I don't think Wade did, necessarily.

20 Q: Well, who do you claim did?

21 A: I would have to say Mark Isbell.

22 Q: But you didn't work for Mark.

23 A: Indirectly I did.

24 Q: Who did Wade report to?

25 A: Mark Isbell. And the day I went to work for Wade

1 this before, I think, in the hearing --- but I have a
2 document that shows where I purchased chemicals on the
3 morning of July 3 from Lowe's. It spells out chemicals, it
4 spells out the time that I checked out and all that. Is
5 that the kind of thing we're talking about?

6 Q: Yeah.

7 A: Okay.

8 Q: Absolutely.

9 A: Anything I got like that I'll give to my attorney.
10 I've got, I mean, I'd love to share it.

11 MR. STEWART: I'll look over it and try to get it
12 to you in an expedited fashion.

13 A: One quick question, if I have, like, for example,
14 going back to February of '07 following a visit to my office
15 by Mr. Wallace, and I made a series of notes and comments
16 and dated it, and that kind of thing, would that be
17 considered a document that you would want?

18 Q: Uh-huh (affirmative response), absolutely. Look
19 at these. This is Tietex 266 to 272, and show them to your
20 lawyer so he can see them, too. And 274, 275, and 277, 278.

21 A: Yes, sir.

22 Q: Now, do those documents have anything to do with
23 your lawsuit?

24 A: I suspect what this has to do with is simply
25 demonstrating that, in fact, I did have something to do with

1 Q: Let me ask you this. Last time you heard or you
2 knew, how much were they getting the product from Noveon
3 for?

4 MR. SUGGS: Object to the form, requires
5 speculation and an answer based totally on hearsay.

6 Q: You can answer.

7 A: I remember something to the tune of the mid
8 seventies based on a friend of mine who he and I had a
9 conversation and he was, and we'd spent some time together,
10 and he was still working at Tietex at the time.

11 Q: What was the name of the ...

12 MR. SUGGS: Whoa, whoa, whoa. Move to strike.
13 Speculation, hearsay.

14 Q: What was the name of the salesperson from Noveon
15 that Wade Wallace dealt with?

16 A: Lisa Bowes.

17 Q: If you will, tell me how many inaccuracies you see
18 in this memo, Defendant's Exhibit Number 18, as it relates
19 to the T602 formula.

20 A: The second trial as well as the third trial is a
21 correct statement. They were unsuccessful. But, okay, they
22 were unsuccessful. The test results that he, of course, he
23 generalizes a lot and he doesn't, he basically is highly
24 misleading as to what really happened. He doesn't spell out
25 that the second trial was a failure because of a significant

1 Tietex who has stepped in and fulfilled the responsibilities
2 you had before you got terminated?

3 MR. SUGGS: Object to the form, leading.

4 A: Probably some of the things were split off
5 because, I mean, like some of the things I was doing and the
6 volume of the things I was doing, in particular before Wade
7 Wallace, there's no way that a person unless they were
8 highly dedicated and working 80 hours a week could do them.
9 I suspect she's got part of them, a key part of them, and
10 other folks --- and I suspect a lot of them have been let
11 go, like the key things of maintaining formulas and all.
12 It's sort of like you've got a car and if you don't maintain
13 it, you can still drive it.

14 Q: Let me ask you this.

15 MR. SUGGS: Whoa, whoa, whoa, whoa. Move to
16 strike, speculation, lack of foundation.

17 Q: Do you know if Ms. Guzman is allowed to use the
18 primary laboratory?

19 A: I would suspect so, but I cannot say anything
20 about Tietex in that area because I haven't been there and I
21 don't know.

22 Q: You testified yesterday that you don't know if
23 Wade Wallace wanted to get rid of you or not. Is that
24 correct? Do you remember that?

25 A: That would be, as I said, I think I would have

1 felt it would be more Mark Isbell working through Wade
2 Wallace. But I certainly am not going to in any way, shape
3 or form condone anything that Wade Wallace did that I feel
4 was wrong and highly negative. It's the last thing I want
5 to do.

6 Q: That's fine. That's beyond my question.

7 A: Okay.

8 Q: You don't know what Wade Wallace was thinking or
9 trying to do, is that fair?

10 A: Fair.

11 Q: Do you believe you were treated fairly by Mr.
12 Wallace?

13 A: Absolutely not.

14 Q: Was he the person responsible for the written
15 report, which I believe is labeled as Defendant's Exhibit
16 Number 18, which talks about your last key projects and
17 called them failures?

18 A: That was prompted by Mark Isbell and he simply put
19 it together.

20 MR. SUGGS: Object to the form, speculation, lack
21 of foundation, move to strike.

22 Q: Let's take a look at it, Defendant's Exhibit
23 Number 18. That's the report I'm referring to. Who's it
24 by?

25 A: Wade Wallace.

TIETEX
000228

TIETEX

TIETEX CORPORATION
3010 North Blackstock Road, P.O. Box 6218
Spartanburg, SC 29304
803 574-0800 FAX 803 574-9440

CONFIDENTIAL

June 14, 1994

Mr. Gary Harris
309 Fox Run Drive
Galax, Virginia 24333

Dear Gary:

We are pleased to offer you the position of Senior Research Chemist in our Printing and Finishing Department. This position reports to Dave Hughston, Plant Manager, Printing and Finishing.

The purpose of this letter is to provide you with a summary of the offer, as follows:

1. Your base salary will be \$55,000 per year. As an exempt employee, you will be paid monthly, and paychecks are issued on the 25th of each month. For information, we provide direct payroll deposit. To begin the direct deposit process, you will need to provide us with a deposit slip for your banking account.
2. We have provided you with handouts which outline our fringe benefits package. Each of these will be explained in greater detail to you on your first day of employment. In the meantime, however, if you have any questions, please let me know.

3. We will provide you with certain relocation-related benefits. These include:

- a) We will pay all costs associated with the move of your household goods, clothing, furniture, etc. from Galax, Virginia to Spartanburg, South Carolina.
- b) We will provide reasonable temporary housing for you for a period of up to sixty days. This will consist of a furnished apartment plus utilities.
- c) We will pay you the equivalent of one month's salary (\$4,583.33 gross amount) for incidental relocation-related expenses. Payment

*DPW
9/9/94*

*extend
30 additional
days at Tietex
expenses to
(Oct. 15, 1994)*

*Advised Gary of conversation w/
Amber @ Timberlane. To extend
lease 1 more month @ Timberlane
expense. He's told us. Amber at Timberlane*

10/14/94 after that date

ROA 000676

Mr. Gary Harris
June 14, 1994
Page 2

will be made on your request following the closing of the purchase of your Spartanburg residence or the lease of an apartment by you as your permanent address.

- d) We will pay up to \$5,000 toward closing costs associated with the purchase of your Spartanburg residence. (This does not apply to rental of property.) This benefit will be available to you for a period of up to twelve months following the date of your employment.
- e) Any other requests for assistance during the pre-relocation period must be reviewed and approved in advance.
- f) All items listed above which relate to relocation shall be handled in accordance with all applicable state and federal tax laws. You are encouraged to consult with your tax advisor to make the necessary plans.

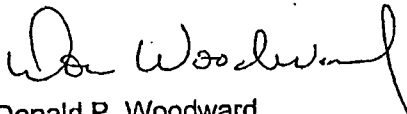
We remind you that on the first day you report to work you will need to bring with you certain documents which will be used for form I-9 purposes. Suggested documents are a valid driver's license and a birth certificate or social security card.

This letter summarizes our offer. Nothing herein should be construed as a contract of employment or as a promise of any specific terms for any determined period of time.

We have enjoyed meeting with you and hope that you will accept our offer to join Tietex. We will be available to help you get settled in Spartanburg and to help you in any way as you begin your career with us.

Sincerely,

TIETEX CORPORATION



Donald P. Woodward
Human Resources Manager

TIETEX
000229

ROA 000677

DATE: 7-13-94

TIETEX CORPORATION

Salaried X
Non-Exempt _____
Hourly _____

NAME Gary G. Harris
First Middle Last
ADDRESS Timberlane Apts. # 316
106 Kensington Drive
Spartanburg SC 29301
City State Zip
PHONE 587-8959

08 3335
DEPT. EMP. NUMBER
HIRE DATE 7-13-94

SOC. SEC. NO. _____
SEX M MARITAL STATUS M

JOB TITLE Senior Research Chemist

DATE OF BIRTH _____
JOB CODE _____ JOB SERV. DATE 7-13-94

SALARY
ANNUAL RATE \$55,000.00
WEEKLY RATE _____
HOURLY RATE _____ SHIFT 1

TAX DATA
FEDERAL TAX -2-
STATE TAX -2-
ADD'L. TAX 0

*DIRECT DEPOSIT _____
(*attach authorization agreement)

	<u>AMOUNT</u>	<u>DEDUCTIONS</u>	<u>AMOUNT</u>
GROUP INSURANCE	<u>Eligible 60 days from H.D.</u>	MISC.	<u>/</u>
LIFE INSURANCE	<u>" " " "</u>		<u>/</u>
401(K)	<u>After 3 months of service</u>		
UNITED WAY	<u>0</u>		
SAVINGS	<u>0</u>		

EMPLOYEE SIGNATURE Gary G. Harris DATE July 13, 1994
PERSONNEL Cynthia H. Connors

TIETEX
000215

COPY TO PAYROLL 7/18/94
DPW 7/18/94

ROA 000678



Wallace, Wade

From: Wallace, Wade
Sent: Monday, February 05, 2007 1:42 PM
To: Harris, Gary
Cc: Wilson, David; Isbell, Mark
Subject: RE: Acceptable work areas

Thanks. I got your voice mail this morning where you mentioned that your original thoughts on wearing a mask may have been wrong and that it may still not be enough protection. I spoke with David Wilson and we do not want to take any chances with your health. Please do not enter the lab under any circumstances, even if you are wearing a mask. Give me a list of items you need and I will have them relocated without any need for you to go up there.

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

From: Harris, Gary
Sent: Monday, February 05, 2007 10:18 AM
To: Wallace, Wade
Cc: Wilson, David; Isbell, Mark
Subject: RE: Acceptable work areas

Wade:

As I stated in a phone message earlier today, I am working on a list of needed equipment, etc. for the new work area. This is a very important undertaking and I want to be sure that it is handled correctly and thoroughly in the beginning on my part.

I hope to have this completed by the end of the week.

Gary 2/5/07

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

From: Wallace, Wade
Sent: Friday, February 02, 2007 11:53 AM
To: Harris, Gary
Cc: Wilson, David; Isbell, Mark
Subject: Acceptable work areas

Gary,

I received your voicemail this morning. As we discussed yesterday we will do whatever is necessary to shield you from any further exposure to an environment(s) that might negatively affect your health. As David Wilson directed please do not enter the lab or any other work areas that Jake occupies unless it is an approved exception (see next paragraph). In addition, we will protect your new work areas from any potential exposure by directing Jake not to enter those areas. You have set up a temporary work place in the office/lab in the compounding area so this area will be protected. Also, you are free to utilize or permanently relocate your work area to the color shop area and this area will be protected as well. Both of these locations have ample countertop and sink space for laboratory bench work. If there are any tools, supplies, or equipment in the lab that you need for your work, please make a list and I will have them moved to your new work area.

As we discussed by phone today there may be exceptions to entering the lab in order to perform your job duties. One specific example is that your project work will require you to witness testing on the bench burn apparatus. It is neither practical or economical to relocate the bench burn testing outside of the lab due to the smoke venting and ambient room conditioning needed. Therefore you will need to enter the lab to do so. In these situations always wear proper respiratory protection in the form of a mask with sufficient coverage and filtration to keep out any potential irritants. You have indicated that you have tried this approach and feel it will work fine for periods of limited exposure. If you encounter any more job functions where it is not practical or economical to move the equipment, please let me know and we will consider the same procedure for these situations.

Thanks for your cooperation,



ATTACHMENT B

TIETEX
000329

ROA 000679

Wallace, Wade

From: Wallace, Wade
At: Friday, February 09, 2007 8:58 AM
To: Wilson, David
Cc: Isbell, Mark
Subject: Gary Harris

Per our conversation, I'd like to document the discussion I had with Gary Harris on Wed 2/7/07.

Gary called me mid afternoon on Wed and stated that at that moment his personal and emotional problems had overwhelmed him and he was confused, disoriented, and could not function. He did not know what to do. I immediately went out to his office to discuss his problem in person. He explained that his personal life over the last year has made him so fragile emotionally that sometimes he has episodes like the one he was experiencing. As we talked he felt better and mentioned that the project work I had assigned him would be help keep his mind off his personal problems.

I took that opportunity to remind Gary that Tietex is committed to our employees well being and that at any time we would support him if he felt he needed to utilize EAP. He said that that was not necessary and that he could work through it. I also asked him to be open with me if in any case this personal problem interfered with his ability to perform his job as we would need to sit down with HR to find a resolution.

When I left him he assured me that he was OK and thanked me for my support and patience.



ATTACHMENT D

TIE TEX
000331

ROA 000680

Wallace, Wade

From: Wallace, Wade
it: Thursday, February 22, 2007 4:16 PM
to: Wilson, David; Isbell, Mark
Subject: Voicemails from Gary this week

Gary left voicemail messages for both me and Martin one morning this week at 3am. Martin forwarded me the one he received. Both messages consisted of him complaining about his inability to sleep due to being distraught over "all that's been going on."

The first thing that was bothering him this week have been that his work area has been moved from the lab and he is still not set up to easily do his bench work. I have covered this with him several times and he has asked for a lab pad coater and a vented hood. I have committed to both but he must understand it will take some time to locate, acquire, and install the equipment. In the meantime he is to make do with the pad in the beam dye area and/or seek chemical tech resource time from Robert Culbreth in the lab (coordinating with Jake). Robert is qualified and trained to do this and can help if Gary needs something done on the pad in the lab since he cannot go up there.

The second thing bothering him is his responsibilities regarding environmental reporting. He has a report due March 1 and is concerned about having to do it due to his project work. I have reviewed his project work and it does not consume all of his time. Unless he convinces me otherwise, I see no reason that his projects would interfere with his ability to get this report done on time. I made this clear to him. Although his environmental reporting duties have not changed, he does not think this should continue to be his responsibility. Regardless I have made it clear to him that it still is his responsibility and must be done.

I will update Martin as he was confused by Gary's email. I will also encourage Gary to bring his problems to me first since I am his immediate manager.



TIETEX
000332

ATTACHMENT E

ROA 000681

Wallace, Wade

From: Wallace, Wade
At: Thursday, February 22, 2007 4:04 PM
To: Harris, Gary
Subject: Environmental reporting

Gary,

You left me a voicemail this week expressing concerns over the upcoming environmental report(s) due March 1st. As we discussed when you transitioned into the Development/Improvement department, your environmental reporting duties have remained unchanged. There is a possibility that we could transition these duties to the engineering department at a later date. However, this may take some time and you will need to continue with it until it happens.

You expressed concern about getting it done. Please be sure to complete this on time. If you have difficulty managing this task and your project work, please see me tomorrow when I am back in the office so that I may understand the situation better.

Thanks,



TIETEX
000333



To: David Wilson
From: Wade Wallace
CC: Mark Isbell, Gary Harris
Date: March 5, 2007
Subject: Gary Harris' Transition

During the last thirty days as Gary Harris has transitioned into his new role, several issues relating to his work have been identified. In the best interest of Tietex and Gary, these issues were discussed with him today so that he can improve upon them. Here are the points we discussed.

- He becomes emotional and overly vocal over a problem before researching the situation and makes statements and accusations without research or data.
- He is not honoring the chain of command by informing senior management with complaints and problems before covering them with his immediate manager.
- He harbors negativity over past grievances with management and continues to be negative towards the current management culture.
- He complains about his ownership of environmental reporting.

As we discussed these issues are not sustainable and it is mandatory that Gary make significant progress towards resolving these issues within the next 30 days.



ATTACHMENT F

TIETEX
000334

ROA 000683

Wallace, Wade

From: Wallace, Wade
Sent: Wednesday, April 04, 2007 1:58 PM
To: Harris, Gary
Subject: Followup from yesterday

Gary,

In reference to the two questions you had yesterday I have discussed them with David and have the following answers.

1. Can you begin using the lab again if you agree to sign a waiver of liability. No. This is still unacceptable from an HR/company liability perspective since we would be allowing you to come in contact with an environment that might negatively affect your health. As previously mentioned, you may continue with acquiring and setting up equipment in the plant that you need to do your work.

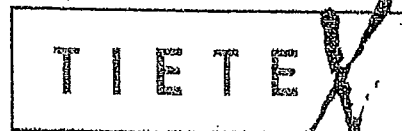
2. Can you work on Saturdays and Sundays? Yes and No. You may work in the plant anytime the plant is operational. You may come into the facility to do office work when the plant is down. However, you may not operate any lab equipment, production equipment, or handle any dyes or chemicals even in a lab setting when the plant is down and there are no other employees present. The reason for this is because of safety. If you must do lab work after the regular business hours I recommend you do this on weekday evenings while the second shift is operating.

Thanks

ATTACHMENT G

**TIETEX - SC
000016**

ROA 000684



To: Gary Harris
From: Wade Wallace
CC: David Wilson, Mark Isbell
Date: June 18, 2007
Subject: Gary Harris Work Performance



During the last ninety days some issues relating to Gary Harris' project work have been identified. In the best interest of Tietex and Gary, these issues were discussed with him today so that he can improve upon them. Here are the points we discussed.

Of Gary's multiple duties two projects were identified ninety days ago as priorities and he was instructed to give them his most thorough and diligent focus. The first project was the development and qualification of a Tietex coating compound formula as a replacement for the current coating used on C237. Gary actually began work on this project prior to his reporting to me. His lab coating work began in December 2006 so the project has been ongoing for over six months. The second project was to develop a finish formula change and process to enable T602 to be finished with the parabolic applicator instead of a pad application. The project was assigned and work began ninety days ago.

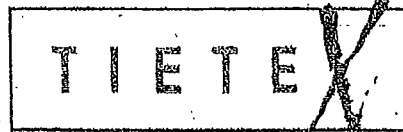
Although the first project has been on going for six months no significant progress has been made toward completion. This project was initiated solely by Gary and he convinced senior management that it was completely feasible in order to gain support. He committed to developing a compound that would cost between \$0.60 and \$0.62 per pound verses the current product which cost \$0.885 per pound. Despite months of lab work in house and at four different chemical supplier locations and numerous production trials he has been unsuccessful in creating a viable product. The formulation which Gary developed has proven to be much more complicated to reproduce commercially than initially promised. Gary exercised poor judgement by making claims and commitments that he could not deliver. This project was included in corporate financial improvement goals. Due to the failure of this project I have personally had to begin parallel project work with other suppliers to develop a suitable replacement to achieve the financial commitment of the project.

The scope of the second project to develop a finish formula and process for parabolic application of T602 was a technical challenge. However, Gary informed me that lab samples were promising and recommended a production trial. Although I was not presented the actual numerical results of the first production trial Gary assured me that the results were comparable to

ATTACHMENT H

TIETEX
000336

ROA 000685



the current product. From this I approved a scale up run for statistical qualification. The second trial, as well as a third were unsuccessful. These subsequent failures concerned me and I personally recalled samples from the first trial that Gary assured me was a success. I witnessed them being tested and found that the product from that initial trial did not perform comparable. By this I can conclude that Gary did not conduct adequate scientific and numerical analysis of the first trial. This negligence was costly in that two subsequent production trials could have avoided. In addition, this negligence in applying the proper scientific analysis is unacceptable in the work of a Sr. Research Chemist.

Obviously the two issues regarding the C237 project failure and poor analytical practices demonstrated in the T602 project are not sustainable. It is mandatory that Gary make significant progress towards resolving the problems with the C237 project and improving on his analytical practices within the next 30 days.

TIETEX
000337



To: David Wilson
From: Wade Wallace
CC: Mark Isbell
Date: July 18, 2007
Subject: Gary Harris Work Performance



Despite efforts to counsel Gary Harris we continue to have issues with his work practices and performance. These issues are listed in the following paragraphs. On this basis I am recommending that we terminate his employment immediately.

In February 2007 he was reprimanded for the following issues:

- He becomes emotional and overly vocal over a problem before researching the situation and makes statements and accusations without research or data.
- He is not honoring the chain of command by informing senior management with complaints and problems before covering them with his immediate manager.
- He harbors negativity over past grievances with management and continues to be negative towards the current management culture.
- He complains about his ownership of environmental reporting.

With the exception of the environmental reporting he continues to have these issues.

In April 2007 he was instructed not to come in and work in the chemical lab areas at nights or on weekends for safety reasons. Gate records and management observation indicate that he has continued to do this.

In June 2007 he was reprimanded for the two following issues and given a thirty-day deadline for resolution. It was made completely clear that failure to complete this task and resolve this issue would jeopardize his employment.

- Failure to complete the project to replace the current C237 coating compound with formula of his design.
- Not conducting and reporting adequate scientific and numerical analysis to substantiate lab and plant trials.

He has not demonstrated any effort to complete the C237 project. Despite the deadline to complete the project within four weeks he took two vacation days the first week, five the second week, and was planning to take five days the fourth week. This would have accounted for more than 50% absenteeism during this time and no effort to complete the project as instructed. None of these days were approved in advance. He left messages the day of the vacation without any

ATTACHMENT I

TIETEX
000338

ROA 000687

T I E T E

advance notice despite my request that he have them pre-approved. In addition he has not submitted to me any scientific data on any of his other projects.

I recently found out that also in June that Gary missed an important trip to visit a customer did not inform me. He was scheduled to fly to Indiana on June 14 to visit with United Sh return on June 15. On the way there he suffered a headache and returned to SC a day early did not see the customer. He never informed me of this and while I thought he was in In

In July 2007, prior to the end of his thirty-day deadline several more issues have arisen.

- Only July 3, 2007 he did not show up for work and left me a message that he was in Greenville all day. He did not get permission for this trip. Later I found directly from the Hexion representative that he did not show up. Although he did visit another supplier in Greenville briefly, he has not been able to adequately account for his whereabouts for the entire day.
- Also on this day he instructed the Hexion representative to deliver sulfuric acid to the plant without an MSDS. This is in direct violation of company policy.

In the last three months he has also demonstrated other poor work habits that are affecting work performance.

- Does not return calls or emails consistently. His co-workers consistently complain as it affects their ability to complete their tasks that are contingent on his work.
- Does not keep consistent work hours and often cannot be physically located at the facility. Gate entries indicate an erratic pattern of coming and going that is not announced in advance.

In light of the continued problems with Gary's work practices and performance I am recommending that we terminate his employment at Tietex. Gary has been counseled on these issues, but at this point I have lost confidence in his ability to perform his job in a satisfactory manner.

T I E T E X
000339

ROA 000688

Wallace, Wade

F : Wallace, Wade
S : Monday, June 25, 2007 8:03 AM
To: Harris, Gary
Subject: RE: Vacation

Gary,
I do not have a problem with you taking vacation this week. However, in the future please try to communicate this kind of time off further in advance.

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

From: Harris, Gary
Sent: Saturday, June 23, 2007 9:47 AM
To: Wallace, Wade
Subject: Vacation

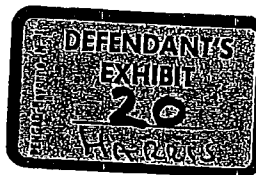
Wade:

As a result of an important situation, I need week of June 25 for vacation. There are several key work related issues that need attention which I will arrange to cover.

Thanks,
Gary

*Left Voice mail on morning of June 19 to
be out June 19 + 20.*

*Left Voice mail on afternoon of July 3 before
he was suspended indicating he would take
vacation entire week of June 9 - 13.*



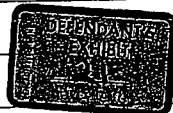
ATTACHMENT J

TIETEX
000340

ROA 000689

VISITORS REGISTER

ADDRESS	TIME	REMARKS
Woodhuff Ave Center		
1611 W		
United Way		
1000 S. 1st St.		
Harrisburg, PA		
Release		
Spa Co	9:00	
Deputy	10:05	
Register	11:00	
IRS	11:35	
	Autofit	
Rebel	6/14	
TRON	6/14	
K	11:50	
Amegachinski	7:00	



2007

VISITORS REGISTER

DATE	VISITOR'S NAME	ADDRESS	TIME	REMARKS
6/20	Gary Harris	Freeport	8:40	
6/28	Jim Harris	Freeport	8:10	
7/1	Jim Harris	Freeport	11:30	
7/1	Jim Harris	Freeport	10:00	
7/18	Dean Roberts	Charm	10:00	
7/24	Dean Roberts	Lab wall	7:15	
7/24	Dean Roberts	Charm	10:00	
7/24	Dean Roberts	Charm	10:00	
9-18	James Whitton	Spa Co	8:45	
9/17	Dean Roberts	Spa Co	8:50	
9/20	GARY HARRIS	Freeport	11:30	
11/1	D. Mally	Spa Co	3:00	
11/1	C. A. Smith	Spa Co	3:00	
11/8	S. Fujisawa	Control Glass Int'l Inc.	10:00	

ATTACHMENT K



TIETEX
000342



TIETEX INTERNATIONAL, LTD.
3010 North Blackstock Road, P.O. Box 6218
Spartanburg, SC 29304
(864) 574-0500 FAX (864) 574-9440

* Paid → 7/31/07
Do not owe 1.32 Hr. Vacation
✓ RJOL/egf

EMPLOYEE TERMINATION

Effective Date 7-19-07 Employee No. _____ Employee Name GRAY PHANIS
W/E Date _____ Hire Date 7-13-94 Social Security No. _____
Termination Date 7-19-07 Dept. No. 55 Shift D Department PRODUCT DEV & PROCESS IMP.
Rehire: Yes No Termination Type (V/L/M) I VOLUNTARY L = LAYOFF
Comments GRAY IS NOT CONSIDERED TO BE A GOOD MATCH FOR TIETEX'S NEEDS. Supervisor N/A Date _____
Dept. Mgr. Approval _____ Date _____
Plant Mgr. Approval _____ Date _____
HR Approval David H. W. Date 7-19-07

CHECKLIST

A. ID Card <u>✓</u>	F. Payroll Deductions <u>N/A</u>	L. Vacation Years Service <u>13</u>
B. Uniforms <u>N/A</u>	1. <u>N/A</u>	1. Hours Taken <u>88</u>
C. Keys/Tools/Equipment <u>✓ (3)</u>	2. <u>N/A</u>	2. Hours Accrued <u>89.32</u>
D. Manuals/Guides	G. Garnishments <u>N/A</u>	3. Hours Vacation Due <u>*0 (1.32)</u>
1. Policy Manual <u>N/A</u>	H. Computer Access <u>✓ (54)</u>	M. 401K _____
2. <u>N/A</u>	I. Voice Mail <u>✓</u>	N. Pension _____
E. Idlt Cards	J. Tuition, Classes, etc. <u>N/A</u>	O. Insurance/COBRA <u>✓</u>
1. <u>N/A</u>	K. Miscellaneous <u>N/A</u>	P. Co. Agreement <u>✓</u>

Reason for Leaving AFTER EVALUATING I COUNSEL NO GRAY CONCERNING HIS UNSATISFACTORY WORK PERFORMANCE, THE COMPANY HAS LOST CONFIDENCE IN GRAY'S ABILITY.
Comments _____ Exit Interview By David H. W. Date 7-19-07

HUMAN RESOURCE DEPT.

ROA 000691

SOUTH CAROLINA EMPLOYMENT SECURITY COMMISSION

631 Hampton Street
Post Office Box 995
Columbia, South Carolina 29202

Date: March 28, 2008

NOTICE OF HEARING BEFORE THE COMMISSION

CLAIMANT:

APPEAL NO 13018
HARRIS GARY G
473 CRESTHAVEN DRIVE
BOILING SPRINGS SC 29316

CLAIMANT'S SSN:

LIABLE EMPLOYER:

APPEAL NO 13018
TIETEX INTERNATIONAL LTD
P O BOX 6218
SPARTANBURG SC 29304

SEPARATING EMPLOYER:

A hearing has been scheduled in this matter for Thursday, April 10, 2008 at 10:20 a.m. All hearings are held at the offices of the Commission.

**SOUTH CAROLINA EMPLOYMENT SECURITY COMMISSION
C. LEM HARPER, SR., CENTRAL OFFICE ANNEX BUILDING
631 HAMPTON STREET, ROOM 350, COLUMBIA, SC**

The Commission acts as a Board of Review, and hearings are heard solely on the record, no further evidence is admissible. Parties may appear in person or be represented by counsel. Parties may also submit written argument that deals with the record. Failure to appear may result in your interests considered abandoned.

Commission Appeals Unit
Legal Department
(803) 737-2668
(803) 737-0124 FAX

cc: Claimant
Claimant Attorney - Richard Stewart, Esquire
Liable Employer
Separating Employer
Employer Attorney - Fred Suggs, Esquire
Local Office - Spartanburg
File



ROA 000692

1 **A: Okay.**

2 Q: That's it, the one that bears the signature, the
3 next page down.

4 **A: Oh, okay..**

5 Q: Do you recognize your signature and the date, 20th
6 of January 2012?

7 **A: Yes.**

8 Q: Now, take a look at Exhibit 4.

9 **A: Okay.**

10 Q: Now, in your pro se Complaint, which is Exhibit 4,
11 you allege that certain communications were defamatory. And
12 one of those was the February 9, 2007, e-mail from Wade
13 Wallace to David Wilson. And that's in your Complaint at
14 paragraphs 19 and 38.

15 **A: Okay.**

16 Q: In this lawsuit, do you claim that e-mail was
17 defamatory?

18 **A: I definitely think it was. For a third party**
19 **reading that and believing it, would have to be. It showed**
20 **a definite, to me, it's my thinking on that, it showed a**
21 **definite disregard for a person's stability mentally and**
22 **that kind of thing. I mean, the memo was so farce and**
23 **whatever.**

24 Q: Is your answer yes?

25 **A: Ask me again, please.**

1 Q: In this lawsuit, do you claim that the February 9,
2 2007, e-mail from Wade Wallace to David Wilson was
3 defamatory?

4 A: Yes.

5 Q: Now, let's do it that way. I'm not going to cut
6 you off, but if you'll give me a yes and if you want to
7 continue and explain, I'm not going to cut you off. Okay.

8 A: Okay.

9 Q: But it's going to be clearer. Now, the March 5,
10 2007, memo from Wade Wallace to David Wilson with a carbon
11 copy to Mark Isbell and you is referenced in your Complaint,
12 Exhibit 4, at paragraph 20 and at paragraph 39.

13 A: I remember that. Okay.

14 Q: Do you claim in this lawsuit that the March 5,
15 2007, memo from Wallace to Wilson was defamatory?

16 A: Yes.

17 Q: The June 18, 2007, memo from Wallace to you with a
18 cc: to David Wilson and Mark Isbell is mentioned in your
19 Complaint, Exhibit 4, at paragraphs 26, 27, 28, and 40. Do
20 you claim in this lawsuit that the June 18, 2007, memo was
21 defamatory?

22 A: Yes.

23 Q: All right. July 18, 2007, memo from Wade Wallace
24 to David Wilson with a carbon copy to Mark Isbell is
25 mentioned in your pro se Complaint, Exhibit 4, at paragraph

1 41. Do you claim the July 18, 2007, memo from Wallace to
2 Wilson was defamatory?

3 **A: Yes.**

4 Q: In your Complaint at paragraph 36, you refer to
5 "rumors in the industry" that you were terminated from
6 Tietex for falsifying a test report. Do you claim that
7 those rumors in the industry were defamatory?

8 **A: Yes.**

9 Q: All right. That's a claim in this lawsuit?

10 **A: Yes.**

11 Q: In your Complaint, Exhibit 4, paragraphs 35 and
12 42, you refer to your ban from the premises on July 3, 2007,
13 by Wade Wallace. Do you claim in this lawsuit that ban from
14 the premises was defamatory?

15 **A: Yes.**

16 Q: All right. These are the only written or verbal
17 statements or actions that you are claiming are defamatory?

18 MR. LAZENBY: Object to the form of the question.

19 **A: That includes whatever may be, but without,**
20 **obviously, not having the time to expand on that here ---**
21 **There's another issue that was just right on the tip of my**
22 **tongue that you didn't mention. There was the issue of**
23 **being banned on July 3, which I say was defamatory. Also,**
24 **and I don't recall exactly what you said there, the detailed**
25 **wording, but the fact that I was banned from going to the**

1 laboratory building in itself, I'm considering that
2 defamatory, very much so. When I was banned from going to
3 the lab building on February 1, 2007, when I was assigned to
4 report to Wade Wallace.

5 Q: Okay. In addition to the list of items that we
6 went through and you said were issues in this lawsuit, you
7 would add to that your banning from the laboratory during
8 the time that you worked for Tietex?

9 A: That's correct.

10 Q: Is there anything else that you claim was
11 defamatory that's an issue in this lawsuit?

12 A: As far as what's in that what you've got there?

13 Q: No, what we're going to litigate in this case.
14 I'm asking you what your claims are. That's what we're here
15 for.

16 A: I don't think there's something off the cuff I
17 want to start speculating on that may be out there that I've
18 overlooked.

19 MR. SUGGS: All right, counselor. You want to get
20 your witness to answer the question.

21 MR. LAZENBY: I think he's answered the question.

22 MR. SUGGS: I don't think he's answered it at all.

23 Q: Mr. Harris, I'm asking you right now, do you have
24 any other claims of defamation other than what we've gone
25 through? If you do, I want to know what they are.

1 Q: Now, you're not making that claim in this lawsuit
2 are you?

3 A: No.

4 Q: Now, in your earlier United States District Court
5 lawsuit, you didn't claim that the February 9, 2007, e-mail
6 was defamatory, correct?

7 A: I don't recall doing that, no.

8 Q: So the claim about the February 9, 2007, e-mail
9 being defamatory is a new claim made for the first time in
10 this lawsuit, correct?

11 A: Yes, and if I may add to that. That's not that it
12 should have not been part of the first one.

13 Q: Okay.

14 A: It was an oversight or a mistake or whatever on
15 the part of my representation.

16 Q: Okay. And in your earlier lawsuit in Federal
17 Court, you didn't claim that the July 18, 2007, memo from
18 Wallace to Wilson was defamatory, did you?

19 A: For the same reason that I just said to the
20 previous question. The same reasons, no, I did not.

21 Q: So that your claim that the July 18, 2007, memo
22 was defamatory is a claim being made for the first time in
23 this lawsuit?

24 A: That's correct.

25 Q: And in your earlier Federal lawsuit, you didn't

1 claim that your ban from the premises on July 3, 2007, was
2 defamatory, did you?

3 **A: No, not that I recall. I don't think so.**

4 Q: So being banned from the premises is a new claim
5 being made for the first time in this lawsuit?

6 **A: As far as I know, yes.**

7 Q: And you didn't claim in your earlier lawsuit that
8 being banned from the laboratory was defamatory, did you?

9 **A: As far as I know, that's correct.**

10 Q: And that's being made for the first time in this
11 lawsuit.

12 **A: As far as I know, yes.**

13 **(Defendant's Exhibit 13 was marked for identification).**

14 Q: Mr. Harris, you have before you Exhibit 13?

15 **A: Yes.**

16 Q: And that's the February 9, 2007, e-mail from Wade
17 Wallace to David Wilson?

18 **A: Yes.**

19 Q: And in your prior deposition, you talked about
20 stress and emotional issues around the time this memorandum
21 dated February 9, 2007, was written, didn't you?

22 **A: There were questions asked of me, in your records**
23 **in our under oath deposition and previous testimony, there**
24 **were questions that were asked regarding that. And if you**
25 **can go back and look at my deposition, you'll see that at**

1 this point in time here that referenced emotional stress and
2 all had actually occurred mostly six months to a year
3 earlier that was referenced. It was done in a way to make
4 it appear, I don't know if it was made to appear that way,
5 but it did appear in the testimony that it was going on at
6 this time and, actually, the biggest issues I had with
7 stress had to do with work related and my wife's
8 hospitalization related issues that all occurred back in the
9 spring of 2006 primarily. And then as time wore on, that
10 gradually, you know, improved or whatever, went away.

11 Q: Well, in your conversation with Mr. Wallace that
12 led to Wade Wallace preparing this memorandum dated February
13 9, 2007, you said to Mr. Wallace, "Look, Wade, I've got
14 enough stress as it is," correct?

15 A: That was probably something to the effect of
16 testimony. But I think, also, if you look, you will see
17 that --- And he references February 7, he references my
18 calling him to come down, that I was having troubles. When,
19 in fact, the real story was he came to my office that
20 morning and asked me, the leading question was, "Have you
21 done these two assignments that I requested you get done?"
22 I hadn't even had time to do them. And I said, "Well, no,
23 Wade, I haven't had time. I've been working on" And
24 that led to an explosion. And so this memo, I don't know
25 when this memo was done. According to this, it was done two

1 days later and I never saw it until we started having our,
2 after I was terminated later is when this shows up and I
3 never was copied on it. So all this showed up, and I'm
4 starting to ramble a little bit, but in the conversation I
5 had with Mr. Wallace, in essence, it was after he was really
6 verbally abusing me and "We can find another chemist," and
7 all that kind of talk. Which is the way he typically
8 operated if nobody was around to hear it. And it was,
9 "Look, Wade, you don't have to talk to me like that." You
10 know, I'd never been talked about, no one in my life had
11 ever had reason to even talk like that to me. And it was
12 incredible. It was amazing. And I think I might have
13 said this before, but if there were any doubt about my
14 going to be terminated, it was removed that day. And I'd
15 only been reporting to him for, well, in essence, less than
16 a week.

17 Q: In the course of this conversation that you were
18 having with Mr. Wallace that led to the February 9, 2007,
19 memo, you admit that you said, "Look, Wade, I've got enough
20 stress as it is."

21 A: I think I said that, yes.

22 Q: And you admitted that in 2006, which was the year
23 prior to this e-mail, your wife was ill and you had stress
24 and sleep issues arising from her illness, correct?

25 A: The sleep issues, actually, arose directly from

1 work stress, the way I was done after I went back to Tietex
2 from her situation. I was, obviously, as anyone would be,
3 very concerned about my wife and what she went through.
4 That's pretty normal stuff that we can deal with. But when
5 you throw in work stress, a place you're giving 60 and 70
6 hours a week into it, it becomes a different ball game.

7 Q: All right. I'm going to read from your
8 deposition, page 106, line 18.

9 MR. LAZENBY: Hold on. Let me get there so he can
10 read along.

11 Q: Ready?

12 MR. LAZENBY: He's there, yes.

13 Q: Okay. All right. Line 18, you with me?

14 A: Yes.

15 Q: "Question: Was it 2006 that your wife was ill?"
16 "Answer "That's correct."

17 A: Yes.

18 Q: Question, "Did that take a toll on you nerve wise
19 and make you kind of a wreck?"

20 Answer "I got into a major sleeping problem caused
21 mainly by stress and it did not happen until I
22 went back to work and the way I was done after I
23 got back to work."

24 That was your prior testimony, right?

25 A: Yes.

1 Q: And you told the South Carolina Employment
2 Security Commission that you were a nervous wreck, correct,
3 because of what your wife went through.

4 MR. LAZENBY: Object to the form.

5 A: I think it's very broad and general. It could be
6 for a lot of reasons, that happened to be part of it. I
7 don't recall what I told them. But I would say that, I
8 mean, someone could make a statement like that. That could
9 be a very opinionated statement.

10 Q: All right. This is the Employment Security
11 Commission transcript, February 5, 2008, see that?

12 A: Uh-huh (affirmative response).

13 Q: This is your testimony on page 55, that runs over
14 from prior pages starting on 152. Just read what's
15 highlighted there, please, sir.

16 A: You want me to read it?

17 Q: Yes.

18 (Reviewing document).

19 A: "Answer: And at this time I was kind of, you
20 know, nerve wise, kind of a wreck because of what
21 my wife went through."

22 Q: That's what you told the Employment Security
23 Commission under oath, right?

24 A: Yeah. Taking that out of context, out of that
25 total picture there, that was said.

1 Q: Now, do you claim that Mr. Wallace fabricated the
2 emotional issues that he references in his February 9, 2007,
3 e-mail based on information that was in your personnel file
4 about issues that you had concerning returning from a trip
5 to Thailand in 1997?

6 A: You know, on my part, I'm looking for why, why did
7 this memo come out? Because I knew it was, well, the memo
8 itself I knew was not truthful. That did not happen. So
9 I'm looking for an explanation what's going on here. And
10 the best I could come up with, well, you know, I had some
11 issues back in 1997 and surely there's stuff on file that
12 would have to do with being sent to a psychiatrist by Tietex
13 and stuff like this. And it's like for some reason. So I'm
14 purely speculating, but I agree, to answer your question,
15 yes, I agree that I would have done that, that I would have
16 related it and that's the best I could come up with. I
17 would have related it to the things that happened following
18 my visit to Thailand.

19 Q: Do you claim now that Mr. Wallace fabricated the
20 emotional issues that are listed in Exhibit 13 based on
21 information in your personnel file concerning your 1997
22 return from a trip to Thailand?

23 A: If I had to say yes or no, it would be yes. But
24 the part that you mentioned, several parts of that, I
25 definitely say yes to fabrication. As to why, I'm

1 speculating when I say it had to do with Thailand. You
2 know, had to do with what happened.

3 Q: I'm sorry. I hate to ask you to repeat, but I
4 just didn't understand you. You say you're speculating
5 about what?

6 A: To say why he did what he did. I'm saying, yes,
7 he fabricated it. He fabricated that report. That did not
8 happen. What he says there did not happen. And I'm saying
9 that the reason for it, obviously, I cannot know. But my
10 guess is it had to do with --- My answer yes or no, if I
11 had to give yes or no, is yes, it had to do with what was on
12 file regarding what happened in 1997 relative to my visit to
13 Thailand and the months that followed coming back.

14 (Defendant's Exhibit 11 was marked for identification).

15 Q: Mr. Lazenby is going to help you to get those
16 straight. Take a look at Exhibit 11. Do you recognize
17 Exhibit 11 as your medical records from Dr. Terry Johnson?

18 A: Yes.

19 Q: And if you'll look with me at page 179, you're
20 complaining about stress and anxiety, right?

21 A: 179?

22 Q: Yes.

23 A: Yes.

24 Q: 2/10/06, correct?

25 A: Yes.

1 A: I mean, he came to my office. It wasn't prompted
2 by a phone call and it had to do with to inquire were these
3 two requests that he had made done.

4 Q: You disagree with how Mr. Wallace said the
5 conversation arose, correct?

6 MR. LAZENBY: Object to the form.

7 A: I don't disagree with anything except his saying
8 that I called him, which is not truthful, and his saying
9 that he came to my office and this is what we discussed,
10 that I was having serious problems. That wasn't, is not
11 truthful. The events of what happened are just not truthful
12 in this memo. That's what I'm saying. I cannot, you know,
13 you cannot deal with that. You cannot contest it.

14 Q: I just want to make sure I understand. You
15 disagree with who called whom, right?

16 A: No one called anyone. He came to my office. He
17 just walked in the door.

18 Q: Okay. So you disagree with what he says in this
19 memo where it says, "Gary called me mid-afternoon on
20 Wednesday," and you say that's not correct?

21 A: That's incorrect.

22 Q: He just walked in your door?

23 A: He walked in the door and, in fact, it was
24 probably --- You know, I can't remember this, but I don't
25 know when it would have been. But if I were just asked to

1 guess when did he show up at your office, I think it was
2 probably early in the morning. Because if he came to see
3 me, typically, it was early in the morning just to come
4 around and see what was going on. And he would come in and
5 just say hey or that kind of thing. And so I would have had
6 to have said that what really happened happened early in the
7 morning. So you disagree on who initiated the conversation
8 and the time of day, right?

9 A: I disagree not so much with the time of day as who
10 initiated the conversation and what was said, what really
11 took place in that conversation.

12 Q: And you say during the conversation that his
13 primary focus was these projects that hadn't been completed?

14 A: They weren't --- Let me just say this. They were
15 more, I would put them --- I see a project as something
16 kind of big. It was more of an assignment.

17 Q: These assignments that hadn't been completed.

18 A: Okay.

19 Q: All right. is there anything else about the memo,
20 which is Exhibit.13, that you claim is incorrect?

21 A: I mean, I think I've pretty well covered it by
22 just saying generally, this doesn't represent what happened
23 that morning or that afternoon or whenever. It is not
24 representative of what took place.

25 Q: Well, did you tell Mr. Wallace that the

1 assignments hadn't been completed in part because of your
2 personal and emotional issues?

3 A: No.

4 Q: During the course of the conversation, did Mr.
5 Wallace suggest that you go to Tietex's EAP?

6 A: No.

7 Q: Is there any part of this memo, which is Exhibit
8 13, that you agree was said?

9 MR. LAZENBY: You can take your time and look at
10 the entire document.

11 A: Okay.

12 (Reviewing document).

13 A: I can't recall specifically everything, but my
14 answer is, no, I don't agree with any of that. What I'm
15 basing it on is, like I said, I cannot recall February 7,
16 2007, but I can look at those things that are said there and
17 know whether or not I would have said them. I mean, whether
18 they fit or not. And my answer is no. I think all of it is
19 totally representative of what took place, totally non-
20 representative of what took place.

21 Q: So your opinion is that what Mr. Wallace wrote in
22 Exhibit 13 is not representative of what was said?

23 MR. LAZENBY: Object to the form.

24 A: That's correct.

25 Q: You don't have any evidence or other information

1 to show that this e-mail, which is marked Exhibit 13, was
2 ever seen by anyone other than Wade Wallace and David Wilson
3 except for this litigation, do you?

4 **A: No, I don't.**

5 Q: And that February 9, 2007, e-mail that's dated
6 Exhibit 13, was an internal Tietex communication between two
7 Tietex managerial employees, right?

8 **A: Yes.**

9 Q: One of them was Wade Wallace, who was your
10 supervisor, correct?

11 **A: That's correct.**

12 Q: And the other one was David Wilson who was the
13 Human Resource Manager?

14 **A: Yes.**

15 Q: So both Wallace and Wilson had legitimate business
16 need to know about and discuss personal and emotional
17 problems that you might have been facing that would have
18 impacted your job performance or suggested that it would be
19 prudent to refer you to EAP, correct?

20 MR. LAZENBY: Object to the form.

21 **A: In the big picture, yes, that certainly should**
22 **have been proper or would have been.**

23 Q: Well, if you were under stress in performing your
24 job duties, that would be a legitimate issue for your
25 supervisor and HR to discuss, wouldn't it?

1 **A: Normally, yes.**

2 Q: And your struggles with anxiety, depression,
3 insomnia, and stress had previously resulted in you missing
4 work time, right?

5 MR. LAZENBY: Object to the form.

6 **A: I had no depression. I've never had any**
7 **depression.**

8 Q: Well, these mental and emotional issues resulted
9 in you taking a two week medical leave, right?

10 MR. LAZENBY: Object to the form.

11 **A: I was approved for that, and I only took a few**
12 **days.**

13 Q: You didn't take two weeks?

14 **A: No.**

15 Q: Were you approved for two weeks?

16 **A: Yes. Well, I believe it was two weeks based on**
17 **memory. But I only took a few days and realized that I**
18 **think I was kind of addicted to work.**

19 Q: Look back at Exhibit 11, page 185.

20 **A: Okay.**

21 Q: Entry for 4/7/2006, second to the last sentence in
22 that block, "After discussion, will give two weeks medical
23 leave of absence from work to taper off his Klonopin
24 gradually over a two week period." See that?

25 **A: Yes.**

1 **A:** It appears. I don't know his signature, but that
2 does say David something, W.

3 **Q:** Do you remember discussing this memorandum which
4 is marked Exhibit 16 with Mr. Wilson?

5 **A:** I do not.

6 **Q:** But you don't deny that he discussed it with you?

7 **A:** I recall discussing something with him regarding
8 some issues and, in essence, his telling me, if you want to
9 keep your job, I would recommend you just go do it and keep
10 your mouth shut. And that may have been after this if, in
11 fact, and apparently I did discuss it with him. But since
12 the --- Now, what I'm taking this to mean, Mr. Suggs, is
13 that he and Wade Wallace discussed it with me and then it
14 was on 3/5 that we discussed it. And then I requested that
15 Wade Wallace send me an e-mail to document all these things
16 so I would know what I needed to improve on. So I think I'm
17 responsible for the e-mail having been sent.

18 **Q:** Well, now, when you say e-mail, you mean Exhibit
19 16, right?

20 **A:** That is correct.

21 **Q:** So you admit that Exhibit 16 was prepared at your
22 request to document the meeting regarding Tietex's 30-day
23 review of your progress after you were transferred to Wade
24 Wallace's supervision?

25 **A:** Yes.

1 Q: And you don't know if this, you don't have any
2 evidence or information to establish that Exhibit 16 was
3 seen by anyone other than you, Wilson, Wallace, and Isbell,
4 do you?

5 A: Not that I recall.

6 Q: And you admit that you had some unresolved issues
7 with Tietex?

8 MR. LAZENBY: Object to the form.

9 A: I don't understand that question.

10 Q: Line 23, 119.

11 A: Okay.

12 Q: "Question: Okay. My question was, when Wallace
13 started supervising you, did you have some
14 unresolved issues with the company that existed
15 prior to his undertaking the supervision of you?
16 Answer: Oh, I had, I had a lot of concern about
17 the things that had been going on since 2003."

18 Did I read that correctly?

19 A: You did, yes sir.

20 Q: So at the time Exhibit 16 was prepared, you had
21 some unresolved issues with the Company, right?

22 A: I was very concerned about the way older employees
23 had been done for a number of years. This is the place I
24 had planned and hoped to retire one day.

25 Q: All right. Do you claim that any part of Exhibit

1 16 is incorrect?

2 A: You mean as far as the statements made?

3 Q: Yeah.

4 A: All of them. I mean, I disagree with all those.
5 They're just not correct.

6 Q: Well, you admitted in your earlier deposition that
7 you had objected to your environmental reporting duties and
8 admitted that environmental reporting was an issue you were
9 concerned about, correct?

10 A: If I may --- That is correct, but if I may just
11 say a couple of things. Mr. Wallace called me what was
12 supposed to be a, in my thinking, a review of my 30 days. I
13 went to his office in a good mood, reasonably good mood,
14 expecting a nice meeting. And 30 minutes later we were in
15 David Wilson's office and, again, I was being, at the end of
16 all this told, "If you want to keep your job, you need to
17 shape up. You've got 30 days to do so." So it went from
18 here I am thinking something good's going to happen and end
19 up in a very negative situation. Regarding the
20 environmental, I realized that I, I'm very slow in a lot of
21 areas that maybe five months later I realize I should have
22 done something else four months earlier, but the
23 environmental issue at Tietex was something that I had to do
24 because I was the chemist. That's just the way it is. You
25 don't go to a non-doctor for brain surgery or whatever.

1 Q: And let's go to the second full paragraph that
2 starts on March 5, 2007. I'm sorry, page 5.

3 MR. LAZENBY: Page 5, Exhibit 2?

4 Q: Right. Now, it says, "On March 5, 2007 ..."
5 That's the same date as Exhibit 16, isn't it?

6 A: That's correct.

7 Q: And the Magistrate wrote, "On March 5, 2007, Mr.
8 Wallace discussed several issues with the plaintiff
9 regarding his performance and documented the discussions
10 at the Plaintiff's request in a memorandum to David Wilson,
11 with a copy to Mark Isbell and the Plaintiff." See that?

12 A: Yes.

13 Q: Then he goes on to say, "Mr. Wallace noted the
14 Plaintiff made emotional and overly vocal accusations and
15 statements without supporting research or data, was not
16 honoring the chain of command, harbored grudges over past
17 grievances and toward the management in general, and
18 complained about ownership of environmental reporting
19 duties. The memorandum concluded with the statement 'As we
20 discussed, these issues are not sustainable and it is
21 mandatory that Gary make significant progress towards
22 resolving these issues within the next 30 days.'" Did I
23 read that correctly?

24 A: Yes, you did.

25 Q: So where Wade Wallace said that you became

1 emotional and overly vocal, that was his opinion, correct?

2 A: No. In my opinion of that, no, I don't think that
3 was his opinion. There's no one --- If you took someone
4 that as he described here and you take the extreme, I would
5 have been more on the other end. As an employee, I was
6 probably less apt to raise my voice, raise cane, make an
7 issue than the average. That totally is not true.

8 Q: Well, who wrote Exhibit 16?

9 A: Who wrote it? Wade Wallace.

10 Q: All right. Now, you say that what Mr. Wallace
11 wrote is incorrect. Is that right?

12 A: I mean, just to be frank, I think he's making it
13 up.

14 Q: All right.

15 A: I mean, for reasons that I'm not going to go into,
16 I think this is, this is all made up. It didn't happen.

17 Q: Do you agree with me that it was Wade Wallace's
18 opinion that you became overly emotional and overly vocal?

19 A: I think, no. I do not, I never gave Wade Wallace
20 a reason to think that of me.

21 Q: Okay.

22 A: So I don't think that was his opinion.

23 Q: Well, it's your opinion that it's incorrect,
24 right?

25 A: It's not true, yes.

1 supervisor had a right to be concerned about these two
2 assignments of C237 and T602?

3 **A: Certainly as my supervisor he did.**

4 Q: All right. And don't you agree that Mark Isbell
5 as Wade Wallace's boss had a legitimate reason to discuss
6 the status of these projects which the Company was counting
7 on for cost savings with Wade Wallace and David Wilson?

8 **A: For the same reasons, going back to the March 5,**
9 **memo, for the same reasons, I think he should have handled**
10 **it directly with me and in private and had me sign**
11 **something. And if he was genuinely concerned about this,**
12 **then that's the way it should have been handled. In other**
13 **words, I think that anyone at Tietex should have been**
14 **concerned about my performance as an employee there and we**
15 **can take it to anyone in the plant who had a job there.**
16 **They certainly should be concerned that I was going my job.**
17 **I do not agree that David Wilson and Mark Isbell necessarily**
18 **needed to know about this.**

19 Q: All right. It would have been okay with you if
20 Exhibit 18 had been just written from Wade Wallace to you?

21 **A: I would have preferred that. And, you know, we**
22 **could have handled the situation. You know, if that was**
23 **the intent of making things better, we could have worked it**
24 **out.**

25 Q: But if you weren't performing on a project to the

1 satisfaction of your supervisor, and a project that you said
2 earlier the failure to finish on time might put your job in
3 jeopardy, wouldn't it have been appropriate for Wade Wallace
4 to involve Human Resources?

5 **A: For the exact same reasons of what we discussed in**
6 **the March 5, this again is untruthful. I mean, I just have**
7 **to say it. This is a pretext memo and everything in here is**
8 **not for the right reasons. So with that said, I can't, you**
9 **know, to answer your question, it's got to be based on what**
10 **this is really all about. And, I mean, I agree with you**
11 **that Wade Wallace should have been concerned about my lack**
12 **of performance, absolutely, but it wasn't there. He had no**
13 **reason and was never given a reason.**

14 **Q: Okay. So you disagree with the content of the**
15 **memo?**

16 **A: Again, exactly like March 5, absolutely.**

17 **Q: All right.**

18 **A: A hundred percent.**

19 **Q: And in your opinion, the content of Exhibit 18 is**
20 **incorrect?**

21 **A: Yes.**

22 **Q: And in Wallace's opinion, since he wrote it, would**
23 **you agree that Wallace's opinion was your progress on C237**
24 **and T602 had not been satisfactory?**

25 **A: I don't think that was his opinion. I think he**

1 Q: ... July 3, 2007. Correct, Mr. Harris?

2 A: That's correct.

3 Q: So you admit you didn't do any work at Hexion on
4 July 3, 2007?

5 A: That's correct.

6 Q: And you admit you told Mr. Wallace you were going
7 to Hexion as soon as you took care of an ant problem at your
8 home?

9 A: Out of pure courtesy, yes.

10 Q: And you admit that when you couldn't get in
11 Hexion, you left?

12 A: After some time of trying to get in, I left a
13 message for one of the technicians and then I left.

14 Q: And you admit there was no one who saw you at
15 Hexion who could substantiate you being there?

16 A: As far as I know.

17 Q: And you admit you were only at Hexion for about 30
18 minutes?

19 A: Thirty or 45, I don't remember exactly. I'd say
20 30 to 45.

21 Q: Look at your deposition at page 158.

22 A: Okay.

23 Q: All right. This actually starts at 157, last
24 line.

25 A: Uh-huh (affirmative response).

1 Q: 157, the last line. You there?

2 A: Yes.

3 Q: Okay.

4 "Question: All right. Let me invite your
5 attention to the ESC transcript March 28, 2008,
6 page 171. 'Question. And you stayed there for
7 about 30 minutes.' 'Claimant.' That's you. 'My
8 guess is 30 minutes.' 'Question. Pardon me?'
9 'My guess is 30 minutes.' 'Question. Thirty?'
10 'Claimant. An estimate, from memory, an
11 estimate.'

12 Answer: Okay.

13 Question: Do you agree with 30 minutes?

14 Answer: About 30 minutes because I don't know, I
15 didn't keep a record of it. I would say, probably
16 now I would change that to at least 30 minutes
17 because of what I did."

18 A: Okay. That's consistent.

19 Q: And you admit that Mr. Wallace expected you to be
20 at Hexion?

21 A: No. Wait a minute. Let me just say that he was
22 aware that at some point I was going to be going to Hexion.
23 I was on vacation. I had no intention, I had no intention
24 of going to Hexion, finishing a project, and going back to
25 Tietex.

1 **A: Yes.**

2 Q: Wade Wallace who was your supervisor and David
3 Wilson who was the Human Resource Manager?

4 **A: Yes.**

5 Q: And a copy to Mark Isbell who was Wade Wallace's
6 supervisor and in your chain of command?

7 **A: Yes.**

8 Q: And this was a recommendation for termination,
9 right?

10 **A: Yes.**

11 Q: Exhibit 19 recommended that your employment be
12 ended, right?

13 **A: That's correct, yes.**

14 Q: So Mr. Wilson in Human Resources would have had a
15 need to know that, right?

16 **A: Yes.**

17 Q: And Mark Isbell, who was Wade Wallace's boss would
18 have had a need to know that Wade Wallace was recommending
19 that one of his employee's employment be ended, right?

20 **A: In a normal situation, yes.**

21 MR. SUGGS: This is probably a good time to take a
22 break if you're ready.

23 MR. LAZENBY: Sure, that's fine.

24 (Off the Record)

25 Examination Resumed by Mr. Suggs:

1 Q: And let's go to Exhibit 3 and go to the bottom of
2 page 3.

3 A: Okay.

4 Q: And look at page 3 through page 5.

5 (Reviewing document).

6 A: Okay.

7 Q: And the District Court in reviewing the evidence
8 and the Magistrate's Report found as fact that the
9 performance deficiencies cited by Tietex, which are listed
10 in the memoranda in Exhibits 16, 18, and 19 were true,
11 right?

12 A: Yeah, they concurred with the Magistrate Judge,
13 yes.

14 Q: Right. Okay. Now, let me invite your attention
15 to your claim about rumors in the industry.

16 A: Okay.

17 Q: Are you with me? And you claim it was reported to
18 you that a former Tietex employee who had previously worked
19 in sales for Tietex told you there were rumors about you in
20 the market, right?

21 A: Yes.

22 Q: And you don't recall the name of this former
23 Tietex sales employee?

24 A: Yes.

25 Q: Yes, you don't?

1 **A: I do.**

2 **Q: You do. Who is that?**

3 **A: Ann Weaver.**

4 **Q: Who?**

5 **A: Ann Weaver.**

6 **Q: Who is she?**

7 **A: All I know her as is Ron Weaver's wife and both of**
8 **them worked at Tietex and they eventually got married. She**
9 **was Ann someone else.**

10 **Q: Does she still work at Tietex?**

11 **A: No.**

12 **Q: Where does she work now?**

13 **A: I don't know.**

14 **Q: Do you have any contact information on her?**

15 **A: No.**

16 **Q: Tell me what you claim Ann Weaver said.**

17 **A: She told me that there were things being said and**
18 **she thought I ought to know about them. And I didn't really**
19 **pursue it that much. She said, "I'm just going to tell you**
20 **that. There's been some things spread out there about you.**
21 **You need to know about them." And I said, "Do you think the**
22 **Tietex folks ..."** She wasn't at Tietex then. I said, "Do
23 **you think any of the sales folks at Tietex would know?" She**
24 **said, "It might be that. It might be that they would, they**
25 **should. They're apparently involved in it."**

1 Q: Okay. Did Ann Weaver tell you what was being
2 said?

3 A: No.

4 Q: She just said generally there were rumors?

5 A: She said some bad --- I don't remember exactly.
6 But it was obviously negative what she implied to me, or
7 actually said was that it was negative stuff, general stuff.
8 And I'm not the kind of person to start digging for details
9 and I didn't really pursue it with her. I didn't ask her
10 for much.

11 Q: When did you have this conversation with Ann
12 Weaver?

13 A: I don't remember. It would have been, obviously,
14 after I was terminated. And it could have been, I mean,
15 maybe somewhere there's some where I was asked this same
16 kind of a question, there may be some record when it was.
17 But my thinking right now just based purely on memory is
18 that it was probably in the fall of 2007. It could have
19 been 2008 sometime, but it wasn't that long, not that far
20 out from my termination.

21 Q: Where did the conversation with Ann Weaver take
22 place?

23 A: It would have been probably by telephone.

24 Q: Who called whom?

25 A: I do not recall the reason why I was talking with

1 her. There was several times we talked with each other, by
2 the way, because at that time I was trying to restart a
3 career and I knew Ann fairly closely.

4 Q: At the time of the conversation with you, who did
5 Ann Weaver work for?

6 A: I don't know. I don't remember. Oh, at the time.
7 Oh, you were saying now while ago. At the time, I believe
8 it's something like Clama, Lava, Clama. I know there's a
9 Lava and there's a Clama, but it was either Lava or Clama.

10 Q: If I set out to find Ann Weaver, where would I
11 start looking?

12 A: Probably go to Pam. I mean, if I were you, Pam,
13 I'm sure, she knows a lot of people who's worked at Tietex
14 and the sales folks. She could trace it down for you. I
15 mean, I'm being serious.

16 Q: When's the last time you talked to Ann Weaver?

17 A: Probably three years. Let me see. At least three
18 years ago.

19 Q: When did it occur to you that Ann Weaver was the
20 person who reported these rumors in the industry?

21 A: That she reported them?

22 Q: Yes.

23 A: In other words, saying when did we first talk?

24 Q: No, no. When I took your deposition in the
25 Federal case, I asked you who it was that told you about

1 these rumors and you said you didn't know.

2 A: Well, maybe I didn't at the time. I was still in
3 a lot of --- If I told you that, I meant it.

4 Q: And I'm asking you now when did it occur to you
5 that it was Ann Weaver?

6 A: Well, I know it was Ann Weaver. I mean, it didn't
7 occur to me. I know it and it's just a matter of when did
8 it happen. Did it happen before July of 2009 or after? But
9 at the time, if I in fact said what you said I said there, I
10 meant it. If I'd have known it was Ann Weaver when you
11 asked me the question, you would have gotten her name.
12 There's no reason not to give it to you.

13 Q: Look at page 217 of your deposition.

14 A: Okay.

15 Q: All right. We'll just start at the top. This is
16 part of your answer.

17 "--- and I'm not 100 percent sure about the person
18 that told me, but they did work at Tietex and
19 they're out in the sales force, and they said they
20 had heard a rumor about me out in the market.

21 Question: You don't know the name of this person?

22 Answer: The one that alerted me first, I don't
23 recall."

24 A: Well, I'll just tell you right now, there's
25 absolutely no reason had I known it was Ann Weaver at that

1 time, I would not have told you. There's absolutely no
2 reason why I wouldn't have mentioned that. So, you know,
3 I'd need to go do some digging now to figure out when I
4 first learned it was Ann Weaver.

5 Q: At the time you had the conversation ...

6 A: But I ... I'm sorry.

7 Q: At the time you had the conversation with Ann
8 Weaver, what was she doing? What was her job?

9 A: She was in sales, mattress fabric sales.

10 Q: But you're not sure of the name of her employer?

11 A: Not right now, no, absolutely not. That's been,
12 like I said, three plus years since I talked with her.

13 Q: Okay. As a result of Ann Weaver telling you about
14 rumors in the market, you telephoned Tietex employee Jimmy
15 Fleming who worked in Tietex's color shop?

16 A: No. At that time Jimmy Fleming was in sales when
17 I made the phone call.

18 Q: Look at page 216 of your deposition, line 13.

19 A: Okay.

20 Q: "Question: Tell me who Jimmy Fleming is.

21 Answer: He's a young fellow that was working in
22 the color shop, just various jobs in the color
23 shop ..."

24 Is that ...

25 A: Yes. Please, can I ask you to read the rest of it

1 **and you'll see what I'm talking about.**

2 Q: "... right before I left there he ended up getting
3 some sort of a degree from, I don't know if it was
4 a community college or what but once he got that
5 he was given a job in ticking sales, working in
6 the sales marketing area for ticking fabrics.
7 Fairly young fellow."

8 **A: Yes.**

9 Q: So where did he work?

10 **A: He was in sales at the point in time I was**
11 **terminated and he was going into sales pretty much right**
12 **about that time. So by the time I was calling him on the**
13 **phone whenever it was later, he was actually out there in**
14 **the sales force. And I knew Jimmy. He and I had a fairly**
15 **close relationship.**

16 Q: Okay. As a result of your conversation with Ann
17 Weaver, you called Jimmy Fleming?

18 **A: I called him because I had his cell phone number**
19 **and I knew him and I knew he would tell me the truth.**

20 Q: Is it true that you called him as a result of your
21 conversation with Ann Weaver?

22 **A: Yes.**

23 Q: And Jimmy Fleming told you that a ticking
24 manufacturer's representative in Texas asked him if it were
25 true your employment had been terminated for preparing a

1 false testing report.

2 **A: Yes.**

3 Q: And you don't know the name of the person who
4 allegedly asked Fleming if your employment had been
5 terminated at Tietex for falsifying test results, do you?

6 **A: I do not and did not pursue getting it. I**
7 **intentionally did not pursue getting that information.**

8 Q: And you don't know for what company that person
9 worked?

10 **A: I do not. I can't sit here and say I know exactly**
11 **where the person works. But it was like a knowing without**
12 **knowing. I just didn't bother pursuing it. I didn't, for a**
13 **lot of reasons, I didn't want to start opening a can of**
14 **worms and digging in and scaring people off and all that. I**
15 **had all I needed and wanted.**

16 Q: You've never spoken to this unknown person?

17 **A: Not at this time, no.**

18 Q: Do you know what Jimmy Fleming told this unknown
19 person about whether Tietex had terminated your employment
20 for falsifying test results?

21 **A: I cannot sit here and say that we brought that up.**
22 **The only thing I can remember about ...**

23 Q: Is the answer yes or no? Do you know what Jimmy
24 Fleming told him in answer to his questions?

25 **A: No.**

1 Q: Now go ahead.

2 A: He did, I don't know if I asked him this, I
3 probably did. Was there anyone else there that heard that
4 from Tietex? And he said Kenny Parrish knew about it. So
5 both he and Kenny Parrish knew about it.

6 Q: Did he say definitely that Kenny Parrish was
7 present?

8 A: Yes. They were together. In fact --- Well, let
9 me just say, I gathered from what we discussed in that phone
10 conversation that Kenny Parrish was with him that particular
11 moment when that occurred.

12 Q: All right. Turn with me to page 217 of your
13 deposition.

14 A: Okay.

15 Q: Line 22.

16 "Question: And you don't know the name of this
17 person that was talking to Fleming?

18 Answer: No, I do not. He would if he remembers.
19 And anyway it was, and anyway once I was told what
20 I was told, and I asked him if anybody else was
21 there and I think he mentioned that Kenny Parrish,
22 who worked at Tietex at the time was also present
23 there on that particular assignment."

24 A: I mean, I agree that you've read what I'm reading,
25 yeah.

1 Q: All right. Well, back when you gave your
2 deposition in the Federal case, you said that you thought
3 that Fleming said Kenny Parrish was present.

4 A: And I think it today. You know, I mean, just
5 simply saying ...

6 Q: What evidence do you have that Parrish was there?

7 A: Based on what Jimmy Fleming told me.

8 Q: Did you ever talk to Kenny Parrish?

9 A: Not specifically about that.

10 Q: Now, when do you claim this conversation occurred?

11 A: I can't, because I'm not sure. I'm just simply
12 saying, obviously, it had to have been after I was
13 terminated. And if were putting out a guess, it would have
14 ranged some time between the fall of 2007 on up into
15 possibly some time in 2008.

16 Q: Could it have been summer of 2007?

17 A: No, it had to have been after I was terminated to
18 have made sense that I would have been told all this in a
19 phone call and then that Ann Weaver would have called me or
20 I called her, whatever, that we talked. Because at the time
21 we talked, I was actually trying to restart a career.

22 Q: So just so we're clear, I'm talking about when
23 Jimmy Fleming's conversation with the ticking manufacturer's
24 representative occurred. Do you know when that was?

25 A: No.

1 Q: And you don't have any evidence that any
2 representative of Tietex made any statements to this unknown
3 named ticking manufacturer representative about you, do you?

4 A: Not at this time, no.

5 Q: Do you have any evidence that any representative
6 of Tietex made any statement to anyone in the industry about
7 the reasons for your termination?

8 A: Only that I have evidence, not evidence but ---
9 Well, I guess you could call it evidence that may have
10 occurred, but to say that I have evidence that absolutely
11 that occurred, I don't.

12 Q: Now, when you refer to your ban from the premises
13 on July 3, 2007, you're talking about Wade Wallace
14 suspending you until he returned from vacation, correct?

15 A: Yes.

16 Q: And I think you said earlier you were suspended
17 with pay.

18 A: That's what happened.

19 Q: And that was on the day, that suspension was on
20 the day that you had told Mr. Wallace you were going to be
21 working at Hexion, correct?

22 A: That was the day that I was going to be doing work
23 at Hexion, July 3.

24 Q: And Wade Wallace telephoned you on July 3 to learn
25 where you had been because he had information that you were

1 not at Hexion, right?

2 MR. LAZENBY: Object to the form.

3 A: I will say yes, but I'd like to add something to
4 that. In real life when this happened, and this is my
5 speaking today when I know a lot more than I knew in 2009.
6 I've forgotten information, obviously, with the passage of
7 time, but I've also been able to become less subjective to
8 the matter. And it's pretty clear to me today that what
9 happened on July 3 was that Wade Wallace expected, based on
10 our miscommunication, my thinking that he was going on
11 vacation on, leaving the last day being the 6th, and his
12 knowing that it was the 3rd and assuming I knew that, he
13 expected me back in there with information from Hexion
14 toward the end of the day on the 3rd. And I have no problem
15 with understanding that he wanted me back in there so he
16 could terminate me before he went on vacation. And so what
17 happened, everything is calm. None of this other stuff
18 that's in these reports about July 3 that he said happened.
19 Later after the fact, he's trying to make it look like I
20 disappeared for the whole day. But, actually, he did not
21 get alarmed at all about anything on July 3 until George
22 Henderson showed up between 4 and 4:30 with sulfuric acid.
23 And then, and I can just imagine that Mr. Wallace is
24 thinking, he'll be back in here by 5 o'clock and we'll take
25 care of things. And all at once he gets notice that someday

1 somehow George Henderson has come by with something for me
2 and then, of course, that's when everything starts, after 4
3 o'clock. Up until then, he had no reason to be not calm and
4 ready to do whatever he was going to do. So that really got
5 him highly concerned that, man, he's not going to be around
6 here for me today. So he starts doing all this stuff. He
7 calls me like 4 whatever, 4:40 or whatever, and gets me on
8 the phone. My cell phone has been on all afternoon. He
9 calls me and he says, "Gary, will you come to my office?"
10 And I said, "Wade, I'm not there." I said, "I'm on my way
11 to Hexion to pick up some acid." Then he flew off the
12 handle like he can do and started, "What do you mean you're
13 not here," and all this. And he said, "I tell you what, I'm
14 putting you on suspension and I don't want you back in here
15 until I'm back from vacation." And there may have been a
16 few more little comments in there thrown in. He asked me to
17 explain something but he flew off the handle. And then we
18 were on the phone and I was driving going out kind of, I
19 guess, where you could get cut off. And then the next thing
20 you know, we don't have a connection. But, anyway, that was
21 the phone call. That was the essence of the phone call that
22 was made to me.

23 Q: In this telephone call that you described between
24 you and Wade Wallace on July 3 where Wallace telephone you
25 to find out where you had been, no one was on the phone

1 other than you and Wallace, right?

2 A: On our phone call?

3 Q: Yeah.

4 A: That's correct.

5 Q: And it was during that call that Wallace told you
6 you were suspended, correct?

7 A: That's correct.

8 Q: Do you know if Wade Wallace told anyone at Tietex
9 that you were suspended?

10 A: I don't know that for a fact, but based on what
11 happened later, at some point he told some other people I
12 would learn later.

13 Q: Do you know if Wade Wallace told anyone outside of
14 Tietex that you were suspended?

15 A: I later learned from the Textile Rubber plant
16 manager that he had passed that information along.

17 Q: Textile Rubber plant manager. Who is that?

18 A: In Charlotte. I can't recall his name right now,
19 but he's the guy that headed it up at the time.

20 Q: And he's in Charlotte?

21 A: Yes. And it was reported to me that Wade Wallace
22 had told him. I was actually still involved with Textile
23 Rubber and he called and told them I was suspended.

24 Q: Who reported that to you?

25 A: I'd have to look. I think it may have --- I

1 don't know. It may have been George Henderson. Because
2 George had a very close relationship with them and George
3 was working with me. I was directed to go to Textile Rubber
4 by Wade Wallace and, ultimately, George Henderson got
5 involved with me because he sold some of the key products to
6 Textile Rubber that I needed to change over to for my
7 successful formula. In going to Textile Rubber, another
8 story, I had to totally try to reformulate because they only
9 had certain ingredients they would use. And I believe it
10 was George Henderson that ultimately let me know of that
11 phone call. I'm trying to think of the guy's name as we
12 speak. But he was telling me that this guy told, had been
13 called by Wade Wallace and told this information.

14 Q: What information do you have to establish that
15 Wade Wallace told this unknown named person from Textile
16 Rubber that you had been suspended?

17 A: Well, I would have, somewhere I would have
18 knowledge or access to the actual person. I'm just saying
19 today, I believe it was George Henderson. It's logical
20 based on the connections I had with Textile Rubber and who
21 all was involved.

22 Q: You believe that George Henderson told you that
23 this unknown named Textile Rubber person told Henderson that
24 Wade Wallace had told the person from Textile Rubber that
25 you had been suspended?

1 **A: Yes. I've got the name now if you want it. Les**
2 **Davis. Is that okay? Les Davis, Textile Rubber.**

3 **Q: It was true that you had been suspended.**

4 **A: That's true.**

5 **Q: Do you have any information that Wade Wallace told**
6 **Les Davis at Textile Rubber anything other than the bare**
7 **fact that you had been suspended?**

8 **A: The only information I have is like second hand**
9 **what George Henderson told me. And as far as giving you any**
10 **details on what George told me, I don't know exactly. I'm**
11 **just saying the essence of it was that Wade Wallace told Les**
12 **Davis that you had been suspended or something to that**
13 **effect. That's based on memory. And I cannot sit here and**
14 **give you details on that.**

15 **Q: That's what you remember?**

16 **A: That's what I remember, yes.**

17 **Q: Do you have any evidence or information that**
18 **anyone outside or Tietex other than Les Davis and George**
19 **Henderson knew you had been suspended?**

20 **A: Well, all of my connections knew I had been**
21 **suspended.**

22 **Q: I'm sorry?**

23 **A: The people that I knew that I spoke with**
24 **frequently or dealt with, they knew I had been suspended.**

25 **Q: Is that because you told them?**

1 **A:** Partly and who knows. I think there's probably
2 situations, I'd have to go back and dig, but situations
3 where people were aware, even more so than the suspension,
4 was being banned from the lab as far as that kind of thing
5 being a negative matter for me. Once I was banned from the
6 lab, and that was something that was learned, and all the
7 people that I dealt with out in the industry started shying
8 away from me and didn't want to have anything to do with me,
9 in essence, because ultimately they were looking out after
10 themselves and their business and they felt like I was a
11 negative.

12 **Q:** Okay. Is it fair to say that you disagree with
13 the statements that Wade Wallace made in the memoranda that
14 we've been examining about your performance?

15 **A:** Totally. I totally disagree with what he said
16 about my performance.

17 **Q:** And your disagreement is based on your own
18 subjective view of how you performed, correct?

19 **A:** No. No. It's based on my view, my objective view
20 as a manager and my understanding of Wade Wallace as a non-
21 technical person and not having a clue about how someone
22 technical is supposed to do things.

23 **Q:** All right. Since you gave your deposition in your
24 Federal lawsuit, have you any additional information
25 supporting your view that your performance was adequate?

1 **(Defendant's Exhibit 7 was marked for identification).**

2 Q: And do you recognize Exhibit 7 as an Intake Form
3 for when you first started to work at Tietex that's dated
4 July 13, 1994?

5 A: **Yes.**

6 Q: And it says your service date is July 13, 1994,
7 right?

8 A: **Yes.**

9 Q: Take your deposition, please, and turn to page 60.

10 A: **Okay.**

11 Q: Line 3.

12 A: **Okay.**

13 Q: "Now, if you will look, please, at Exhibit 6, the
14 second page, which is Bates Numbered 229 ..."

15 A: **Okay.**

16 Q: So that's the same document you have before you
17 now, which is Bates Numbered 229.

18 "Do you see the bold underlined language ..."

19 A: **Yes.**

20 Q: "... that's two paragraphs above Mr. Woodward's
21 signature?"

22 A: **Yes.**

23 Q: "Answer: Yes."

24 A: **Yes.**

25 Q: "It says, This letter summarizes our offer.

1 now. I'll say I'm not sure right now."

2 Did I read that correctly?

3 A: Yes.

4 MR. LAZENBY: I just want to object to the form,
5 that there were several objections in within there that you
6 skipped over.

7 Q: That's fine. I skipped over them. I confess.

8 MR. LAZENBY: Well, it is what it is.

9 Q: The document speaks for itself.

10 MR. LAZENBY: Right.

11 Q: Would your answers to those questions that I just
12 read to you be any different today than they were in 2009
13 when you gave those answers?

14 MR. LAZENBY: Object to the form.

15 A: In essence, in other words, the actual being what
16 I would say would probably be essentially the same.

17 Q: You were never bullied when you worked for Tietex,
18 were you?

19 MR. LAZENBY: Object to the form.

20 A: Well, you've got to get into the definition. But
21 the closest thing I would ever, I mean, obviously --- well,
22 not obviously, but the way I was treated by everyone else at
23 Tietex in that area was pretty what you would expect. But I
24 would certainly look at what Wade Wallace did to me and the
25 way he did it. In the position that he was in because he

1 had control over me, was bullying me around, you know,
2 because he could or whatever.

3 Q: You claim you were bullied when you worked at
4 Tietex by Wade Wallace?

5 A: If you want to call it that. I think we've got to
6 get into what that means. But I'm not going to expand on
7 what we first said and then convert it into, yes, I was
8 bullied. Because without knowing what we are talking about
9 in terms of definition. I was pushed around and shown high
10 disrespect. Treated like an animal. If had to put it in
11 terms, I was treated like an animal.

12 Q: Mr. Harris, how about turn to Exhibit 5, page 8.

13 A: Okay.

14 Q: Paragraph 44. This is your claim. "Defendant
15 employee agents, with full knowledge and forethought, using
16 their position of power and authority over Plaintiff, sought
17 to bully Plaintiff to achieve their own ends, knowing the
18 emotional damage they would and did inflict upon Plaintiff."
19 So that's your claim.

20 A: Now, are you reading 45?

21 Q: 44.

22 A: I'm sorry. I mean, I think it's well written.

23 Q: You claim you were bullied by Wade Wallace?

24 A: If we're not going to do a definition, yes. In
25 other words, I'm leaving to my interpretation of being

1 **bullied, I will definitely say yes without question.**

2 Q: All right. How do you claim you were bullied?

3 A: Anytime, like on February 7, when he had the
4 opportunity with nobody else around, he was two different
5 people in private with me versus out in the middle. Mr.
6 nice guy out in the public and all this. Behind closed
7 doors, different ball game. The threats and the threatening
8 tone of voice. You know, I cannot recall all the language
9 and the way it was said and the tone of voice. It was just
10 incredibly abusive. And then in the final analysis, you
11 know, the end of it would always be get your act in order or
12 we'll find another chemist to hire. In essence, that would
13 be the kind of, those kind of encounters would end up with
14 that kind of a comment.

15 Q: So these were threats that you were going to get
16 fired if you didn't do your job?

17 MR. LAZENBY: Object to the form.

18 A: I mean, as to the reason for them, that was the
19 way they came off to me. As to the reason behind them, I
20 can't sit here and say what his motives were.

21 Q: All right. Were all the threats threats about
22 what was going to happen to you if you didn't do your job?

23 A: Yes or no, no.

24 Q: No?

25 A: My answer to that question the way you asked it is

1 A: I'm sorry?

2 Q: You have to answer verbally so she can take it
3 down.

4 A: Oh, okay. Yes. I'm sorry.

5 Q: Tell me why you claim that the conversation that
6 you had with Wade Wallace on March 5, 2009, was bullying of
7 you by Mr. Wallace?

8 A: First I would say that it was probably more
9 intimidation than bullying. I consider bullying as much
10 stronger and harsh and unnecessary. And I think it was
11 toned down because of the presence of David Wilson. There
12 was certainly not this arrogant, high level arrogant
13 threatening like tone of voice and all that. The things
14 that were said there was I'm sitting in there. Mr. Wilson
15 was sitting away and I was sitting across from Wade, and Mr.
16 Wilson was off to the side. And he starts in with all these
17 things in a very boastful manner and arrogant, really
18 arrogant tone of voice about all these things that I've not
19 done. And I'm sitting there and I can't believe it. First
20 of all, as I said earlier, I was half sick with the flu or
21 something. And I'm sitting there and just, you know, I
22 mean, what's going on here? And I actually looked over for
23 Mr. Wilson as if I wanted, you know, are you kidding me?
24 Can I have some help? And I think, I don't remember any
25 comments, but I think I made some comments to Mr. Wilson

1 about this. In the final analysis, after all of that, my
2 comment was, "Wade, would you do me a favor? You're telling
3 me this is stuff I've done and I need to shape up on. Would
4 you please send me an e-mail so I can be sure to know what I
5 need to do to correct it." He said, "Be glad to." But
6 before I said that to him, he had already said, "You've got
7 30 days to shape up or we're going to be looking for another
8 chemist." And it was done in a tone of voice that was
9 pretty hateful.

10 Q: The entire conversation on March 5, 2009, occurred
11 in the presence of David Wilson and it was all work related,
12 correct?

13 A: It was, what he told me I had to do was work
14 related.

15 Q: Correct.

16 A: Well, it had to do with my job. It had to do with
17 what he, not my job directly, but my character, conducting
18 myself properly and all that. It had to do with my job in
19 general, if that's what you mean.

20 Q: Are there any other incidents of bullying other
21 than the incident that you related that you claim happened
22 on February 7 and the incident on March 5, 2009?

23 A: The whole spring, once all that happened and a
24 long the way the entire spring, I mean, you can look back at
25 everything you've got and you'll see that there's a lot that

1 didn't happen. For some reason, there's nothing, not a
2 whole lot showing up in April and May. But I do remember,
3 and I cannot here today sit here and tell you dates or
4 anything, but I do remember there was a time or two after
5 all that and before June 18 that there was an encounter or
6 two but I cannot sit here today and give you dates or
7 information on it.

8 Q: So the only two events that you can tell me about
9 today that were incidents of bullying occurred on February
10 7, 2009, and March 5, 2009. Is that correct?

11 MR. LAZENBY: Object to the form.

12 A: Maybe we can throw in July 3.

13 MR. LAZENBY: I think you said 2009. Did you mean
14 2007?

15 Q: I said 2007?

16 MR. LAZENBY: You said 2009.

17 Q: I meant 2007. Thank you. I wrote 2009. So the
18 only two events I asked you about were February 7, 2007, and
19 March 5, 2007, and your response was, "Well, we can throw in
20 July 3."

21 A: Yeah, I would consider what he did when he called
22 on the phone totally unnecessary and uncalled for. And he
23 really got carried away when he found out I was not there in
24 the plant.

25 Q: Tell me what Mr. Wallace said to you on July 3

1 that's recorded in Exhibit 19 that you claim is bullying.

2 **A: Again, it was more his tone of voice and yelling**
3 **type tone of voice. And, you know, "I'm banning you from,**
4 **I'm banning you from Tietex property until I get back from**
5 **my vacation." And, you know, that is one thing to say, but**
6 **to scream it and just really in the questions he's asking,**
7 **asking them in a hateful manner. Just very disrespectful.**

8 Q: And all of this conversation on July 3 that you
9 claim was evidence of bullying arose from his inquiries
10 about where you had been that day, correct?

11 **A: No. I'll say no to that and say it really arose**
12 **from the fact I was not in the plant.**

13 Q: That's what really ticked him off. And he
14 thought, he said, "Gary, you come to my office." And then,
15 "What do you mean you're not here?" And then na, na, na. I
16 said, "Well, wait a minute. Wait a minute." And I started
17 trying to tell him what's happened. I'd been to Hexion and
18 this happened. I'm trying to get the project done that he
19 wanted done so I can get the information to him Thursday, on
20 and on and on. And it's somewhere along the way I'm the one
21 that throws in all this quick talk and everything and
22 explanation trying to explain, that I throw in where I've
23 been. So it's after I've said all that that he, you know,
24 says I'm banning you from Tietex. In a hateful, very
25 hateful way, "I'm banning you from Tietex property. I do

1 not want you back on the property until I'm back from my
2 vacation." Something to that effect.

3 Q: You've given me three incidents of bullying. The
4 incident that you claim occurred on February 7, which is
5 recorded in Exhibit 13; the incident that occurred on March
6 5, 2007, which is also recorded in one of the exhibits; and
7 the incident on July 3, 2009, which is recorded in Exhibit
8 19. Any other incidences that you claim were bullying?

9 A: **Not at this moment I don't have any to offer.**

10 Q: And the March 5 was Exhibit 16. Now, with respect
11 to February 7, 2007, where did this alleged bullying occur?

12 A: **In a small little, I always describe it as a**
13 **little dungeon like office in the very back of the Tietex**
14 **main plant facility, just right off of the Compounding**
15 **Department.**

16 Q: And the only folks present were you and Mr.
17 Wallace?

18 A: **In that room.**

19 Q: Was somebody nearby?

20 A: **Ricky Miller would have been outside the door**
21 **there somewhere working.**

22 Q: Any information that Miller heard the exchange
23 between you and Wallace?

24 A: **Not to my knowledge.**

25 Q: After your meeting with Mr. Wallace in February of

DATE: 7-13-94

TIETEX CORPORATION

Salaried X
Non-Exempt _____
Hourly _____

NAME Gary G. Harris
First Middle Last
ADDRESS Timberlane Apts. # 316
106 Kensington Drive
Spartanburg SC 29301
City State Zip
PHONE 587-8959

08 3335
DEPT. EMP. NUMBER
HIRE DATE 7-13-94

SOC. SEC. NO _____
SEX M MARITAL STATUS M

JOB TITLE Senior Research Chemist

DATE OF BIRTH _____
JOB CODE _____ JOB SERV. DATE 7-13-94

SALARY
ANNUAL RATE \$55,000.00
WEEKLY RATE _____
HOURLY RATE _____ SHIFT 1

TAX DATA
FEDERAL TAX -2-
STATE TAX -2-
ADD'L. TAX 0

*DIRECT DEPOSIT _____
(*attach authorization agreement)

DEDUCTIONS
AMOUNT
GROUP INSURANCE Eligible 60 days from H.D. MISC. _____
LIFE INSURANCE " " " " " _____
401(K) After 3 months of service _____
UNITED WAY 0 _____
SAVINGS 0 _____

AMOUNT



EMPLOYEE SIGNATURE Gary G. Harris DATE July 13, 1994

PERSONNEL Conita H. Connors

TIETEX
000215

COPY TO PAYROLL 7/18/94

DPW 7/18/94

ROA 000746

Wallace, Wade

From: Wallace, Wade
Sent: Friday, February 09, 2007 8:58 AM
To: Wilson, David
Cc: Isbell, Mark
Subject: Gary Harris

Per our conversation, I'd like to document the discussion I had with Gary Harris on Wed 2/7/07:

Gary called me mid afternoon on Wed and stated that at that moment his personal and emotional problems had overwhelmed him and he was confused, disoriented, and could not function. He did not know what to do. I immediately went out to his office to discuss his problem in person. He explained that his personal life over the last year has made him so fragile emotionally that sometimes he has episodes like the one he was experiencing. As we talked he felt better and mentioned that the project work I had assigned him would be help keep his mind off his personal problems.

I took that opportunity to remind Gary that Tietex is committed to our employees well being and that at any time we would support him if he felt he needed to utilize EAP. He said that that was not necessary and that he could work through it. I also asked him to be open with me if in any case this personal problem interfered with his ability to perform his job as we would need to sit down with HR to find a resolution.

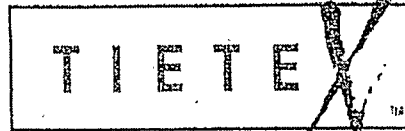
When I left him he assured me that he was OK and thanked me for my support and patience.



ATTACHMENT D

TIETEX - SC
000012

ROA 000747



To: David Wilson
From: Wade Wallace
CC: Mark Isbell, Gary Harris
Date: March 5, 2007
Subject: Gary Harris' Transition

During the last thirty days as Gary Harris has transitioned into his new role, several issues relating to his work have been identified. In the best interest of Tietex and Gary, these issues were discussed with him today so that he can improve upon them. Here are the points we discussed.

- He becomes emotional and overly vocal over a problem before researching the situation and makes statements and accusations without research or data.
- He is not honoring the chain of command by informing senior management with complaints and problems before covering them with his immediate manager.
- He harbors negativity over past grievances with management and continues to be negative towards the current management culture.
- He complains about his ownership of environmental reporting.

As we discussed these issues are not sustainable and it is mandatory that Gary make significant progress towards resolving these issues within the next 30 days.



ATTACHMENT F

TIETEX
000334

ROA 000748



To: Gary Harris
From: Wade Wallace
CC: David Wilson, Mark Isbell
Date: June 18, 2007
Subject: Gary Harris Work Performance



During the last ninety days some issues relating to Gary Harris' project work have been identified. In the best interest of Tietex and Gary, these issues were discussed with him today so that he can improve upon them. Here are the points we discussed.

Of Gary's multiple duties two projects were identified ninety days ago as priorities and he was instructed to give them his most thorough and diligent focus. The first project was the development and qualification of a Tietex coating compound formula as a replacement for the current coating used on C237. Gary actually began work on this project prior to his reporting to me. His lab coating work began in December 2006 so the project has been ongoing for over six months. The second project was to develop a finish formula change and process to enable T602 to be finished with the parabolic applicator instead of a pad application. The project was assigned and work began ninety days ago.

Although the first project has been on going for six months no significant progress has been made toward completion. This project was initiated solely by Gary and he convinced senior management that it was completely feasible in order to gain support. He committed to developing a compound that would cost between \$0.60 and \$0.62 per pound verses the current product which cost \$0.885 per pound. Despite months of lab work in house and at four different chemical supplier locations and numerous production trials he has been unsuccessful in creating a viable product. The formulation which Gary developed has proven to be much more complicated to reproduce commercially than initially promised. Gary exercised poor judgement by making claims and commitments that he could not deliver. This project was included in corporate financial improvement goals. Due to the failure of this project I have personally had to begin parallel project work with other suppliers to develop a suitable replacement to achieve the financial commitment of the project.

The scope of the second project to develop a finish formula and process for parabolic application of T602 was a technical challenge. However, Gary informed me that lab samples were promising and recommended a production trial. Although I was not presented the actual numerical results of the first production trial Gary assured me that the results were comparable to

ATTACHMENT H

TIETEX
000336

ROA 000749

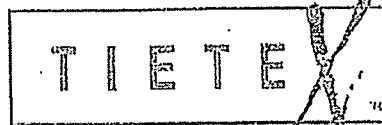
TIETEX

the current product. From this I approved a scale up run for statistical qualification. The second trial, as well as a third were unsuccessful. These subsequent failures concerned me and I personally recalled samples from the first trial that Gary assured me was a success. I witnessed them being tested and found that the product from that initial trial did not perform comparable. By this I can conclude that Gary did not conduct adequate scientific and numerical analysis of the first trial. This negligence was costly in that two subsequent production trials could have avoided. In addition, this negligence in applying the proper scientific analysis is unacceptable in the work of a Sr. Research Chemist.

Obviously the two issues regarding the C237 project failure and poor analytical practices demonstrated in the T602 project are not sustainable. It is mandatory that Gary make significant progress towards resolving the problems with the C237 project and improving on his analytical practices within the next 30 days.

TIETEX
000337

ROA 000750



To: David Wilson
From: Wade Wallace
CC: Mark Isbell
Date: July 18, 2007
Subject: Gary Harris Work Performance

Despite efforts to counsel Gary Harris we continue to have issues with his work practices and performance. These issues are listed in the following paragraphs. On this basis I am recommending that we terminate his employment immediately.

In February 2007 he was reprimanded for the following issues:

- He becomes emotional and overly vocal over a problem before researching the situation and makes statements and accusations without research or data.
- He is not honoring the chain of command by informing senior management with complaints and problems before covering them with his immediate manager.
- He harbors negativity over past grievances with management and continues to be negative towards the current management culture.
- He complains about his ownership of environmental reporting.

With the exception of the environmental reporting he continues to have these issues.

In April 2007 he was instructed not to come in and work in the chemical lab areas at nights or on weekends for safety reasons. Gate records and management observation indicate that he has continued to do this.

In June 2007 he was reprimanded for the two following issues and given a thirty-day deadline for resolution. It was made completely clear that failure to complete this task and resolve this issue would jeopardize his employment.

- Failure to complete the project to replace the current C237 coating compound with formula of his design.
- Not conducting and reporting adequate scientific and numerical analysis to substantiate lab and plant trials.

He has not demonstrated any effort to complete the C237 project. Despite the deadline to complete the project within four weeks he took two vacation days the first week, five the second week, and was planning to take five days the fourth week. This would have accounted for more than 50% absenteeism during this time and no effort to complete the project as instructed. None of these days were approved in advance. He left messages the day of the vacation without any





advance notice despite my request that he have them pre-approved. In addition he has not submitted to me any scientific data on any of his other projects.

I recently found out that also in June that Gary missed an important trip to visit a customer and did not inform me. He was scheduled to fly to Indiana on June 14 to visit with United Shade and return on June 15. On the way there he suffered a headache and returned to SC a day early and did not see the customer. He never informed me of this and while I thought he was in Indiana.

In July 2007, prior to the end of his thirty-day deadline several more issues have arisen.

- Only July 3, 2007 he did not show up for work and left me a message that he would be at Hexion in Greenville all day. He did not get permission for this trip. Later I found out directly from the Hexion representative that he did not show up. Although he did see another supplier in Greenville briefly, he has no been able to adequately account to me his whereabouts for the entire day.
- Also on this day he instructed the Hexion representative to deliver sulfuric acid to him at the plant without an MSDS. This is in direct violation of company policy.

In the last three months he has also demonstrated other poor work habits that are affecting his work performance.

- Does not return calls or emails consistently. His co-workers consistently complain of this as it affects their ability to complete their tasks that are contingent on his work.
- Does not keep consistent work hours and often cannot be physically located at the facility. Gate entries indicate an erratic pattern of coming and going that is not approved in advance.

In light of the continued problems with Gary's work practices and performance I am recommending that we terminate his employment at Tietex. Gary has been counseled about these issues, but at this point I have lost confidence in his ability to perform his job in a satisfactory manner.



To: David Wilson
From: Wade Wallace
CC: Mark Isbell, Gary Harris
Date: March 5, 2007
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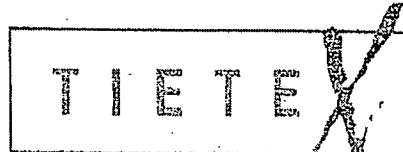
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ATTACHMENT F

TIETEX
000334

ROA 000753



To: Gary Harris
From: Wade Wallace
CC: David Wilson, Mark Isbell
Date: June 18, 2007
Subject: Gary Harris Work Performance



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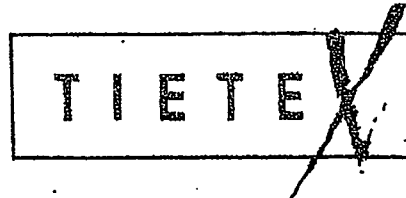
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TIETEX
000336

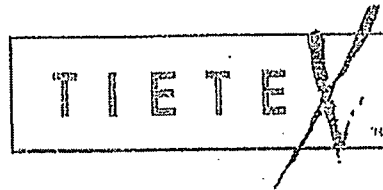
ROA 000754



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000337



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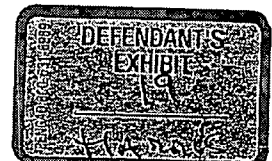
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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

J. Derham Cole, Jr., Circuit Court Judge

Case No. 2011-CP-42-4538
Appellate Case No. 2014-000902

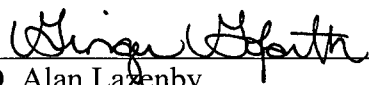
Tietex International Ltd, ... Respondent,

v.

Gary G. Harris, ... Appellant,

PROOF OF SERVICE

I, the undersigned, hereby certify the Record on Appeal in the above referenced matter was mailed, postage prepaid, to Respondent's Attorney, Fred Suggs, by sending to Ogletree Deakins Nash Smoak & Stewart PC, PO Box 2757, Greenville, SC 29602, on November 26, 2014.


D. Alan Lazenby
Ginger D. Goforth
Lazenby Law Firm, LLC
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Spartanburg, SC 29304
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Attorneys for Appellant

November 26, 2014
RECEIVED
DEC 01 2014
SC Court of Appeals