

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF KING

RAMON ANEL,)	
Plaintiff,)	
v.)	Cause No. 14-2-10378-6 KNT
FRANCISCAN MEDICAL GROUP, a)	
Washington Corporation;)	
FRANCISCAN HEALTH SYSTEM, a)	
Washington Corporation; and)	
CATHOLIC HEALTH INITIATIVES,)	
a Colorado Corporation,)	
Defendants.)	

SUMMARY JUDGMENT HEARING

August 21, 2015

The Honorable Judge Richard McDermott Presiding

TRANSCRIBED BY:	Reed Jackson Watkins
	Court-Approved Transcription
	206.624.3005

1 A P P E A R A N C E S

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2 August 21, 2015

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4 THE COURT: Thank you all. Please be seated. I thought
5 maybe we could start a little bit earlier if everybody is
6 ready. We'd have a little bit more time that way I think.

7 So I have a roster, so let me call roll here. And then I
8 need to make some notes to myself, because I want to know who
9 everybody is.

10 So Mr. Blankenship?

11 MR. BLANKENSHIP: Yes, Your Honor.

12 THE COURT: Thank you. Mr. Woods?

13 MR. WOODS: Yes, Your Honor.

14 THE COURT: Thank you. And your client?

15 MR. WOODS: Dr. Anel, Dr. Ramon Anel.

16 THE COURT: And how do I say your last name, sir?

17 DR. ANEL: It's An-yell, it's like A-N-Y-E-L-L, Anyel.

18 THE COURT: Anyel. Okay. I'll remember. Thank you.

19 DR. ANEL: Thank you, sir.

20 THE COURT: And then counsel table over here. Mr. Madden?

21 MR. MADDEN: Good morning, Your Honor.

22 THE COURT: Good morning.

23 MR. MADDEN: I'm local counsel and with me here are these
24 two gentleman from the Colorado bar who have been admitted
25 pro hac vice.

1 THE COURT: All right. And Mr. Churas, is it?

2 MR. MADDEN: No, that's my colleague. She's not here.

3 THE COURT: Oh, Ms. Churas, I'm sorry. Please don't tell
4 her I said that. She'll be upset with me.

5 All right. Mr. Gallagher? Gallaher?

6 MR. GALLAGHER: Gallagher actually, Your Honor.

7 THE COURT: Gallagher?

8 MR. GALLAGHER: Sean Gallagher.

9 THE COURT: Oh, come on. Where's that?

10 MR. GALLAGHER: Well, if it was March 17th, it would be
11 Gallaher.

12 THE COURT: That's true. It would be. Thank you, sir.
13 And Mr. Murray?

14 MR. MURRAY: Yes, Your Honor. Good morning.

15 THE COURT: All right. Thank you. All right.
16 Is there anyone else here that I should know about?

17 MR. BLANKENSHIP: Eric Goldsworthy is also an attorney who
18 is going to be involved in the case as well, Your Honor.

19 THE COURT: Does he work with you, sir?

20 MR. BLANKENSHIP: Yes, he does.

21 THE COURT: All right. And your last name, sir?

22 MR. GOLDSWORTHY: Goldsworthy, G-O-L-D-S-W-O-R-T-H-Y.

23 THE COURT: First name, sir?

24 MR. GOLDSWORTHY: Richard.

25 THE COURT: Good first name. Remember that,

1 Mr. Blankenship.

2 MR. BLANKENSHIP: Your Honor, I don't even know where we
3 did that. But to the extent we did, I apologize.

4 THE COURT: You can blame Mr. Woods. That's okay.

5 MR. WOODS: No, he can't.

6 THE COURT: He's young. Anybody else that you want me to
7 know? All right. Thank you.

8 Gentlemen, you have furnished me with enough reading
9 material to sink a small cruiser. So and I've tried my very
10 best to get it all organized and summarized.

11 I have a couple of things that we can do right out of the
12 chute. First, the plaintiff's motion to seal exhibits to the
13 Declaration of Mr. Blankenship in Support of the Plaintiff's
14 Motion for Summary Judgment was not opposed, therefore, it's
15 granted. Mr. Blankenship, if you have an order, I'll sign
16 when we're done. Okay?

17 MR. BLANKENSHIP: Yes, Your Honor.

18 THE COURT: All right. I'd like to next take a look at the
19 Motion to Strike the Jury Demand or Compel Arbitration. And
20 I can do that one right out of the chute. I don't want to
21 spend a lot of time on it, gentlemen. It seems to me that
22 all of the constitutional issues concerning that validity of
23 the original agreement to compel arbitration, or for
24 arbitration in lieu of a jury trial are, the same exact
25 contract with that clause in it, is before the State Supreme

1 Court; isn't that right?

2 MR. BLANKENSHIP: Yes, Your Honor.

3 THE COURT: In a companion case, well, it's not a companion
4 case, but it's a case that is similar, at least the same
5 defendant. Correct? And the State Supreme Court's going to
6 rule whether this is a legal and binding clause or not. And
7 the Court of Appeals ruled that it was, and reversed the
8 trial judge, who said that it was unconstitutional.

9 Isn't that about where we're at right now?

10 MR. BLANKENSHIP: We are, but the Court has not taken
11 review yet, Your Honor.

12 THE COURT: Have they accepted review? They haven't.

13 MR. BLANKENSHIP: They have not accepted review and we're
14 prepared to argue it in the sense that because of collateral
15 estoppel, this is technically separate parties and so I think
16 that you could still hear it and rule upon it, Your Honor.

17 THE COURT: And what is the defense, which one of you
18 gentlemen wants to address that issue?

19 MR. GALLAGHER: Your Honor, I'm going to be addressing this
20 motion and then Mr. Murray will be addressing the other
21 motions.

22 THE COURT: Okay. So, Mr. Gallagher, do you agree with the
23 current status that Mr. Blankenship has just outlined, that
24 the Court hasn't decided whether they're going to accept it
25 or not. Right now the Court of Appeals just made a ruling,

1 they've appealed. Don't know where they are yet.

2 MR. GALLAGHER: That's correct, Your Honor.

3 THE COURT: All right. So there's a two-fold issue: one
4 is whether or not the language of the agreement itself is
5 constitutional, which is what the Court of Appeals ruled.
6 Secondly, the issue of whether or not it's been waived in
7 this case basically. Correct?

8 MR. BLANKENSHIP: That's correct, Your Honor.

9 Unconscionable and a waiver.

10 THE COURT: I don't believe at this point in time that I
11 can address the issue of constitutionality because there has
12 been a ruling from the Court of Appeals on this very issue.
13 Whether I agree or disagree with that ruling, I think I'm
14 bound by that ruling.

15 So at this point in time the only thing that I can address
16 is whether or not it has been waived. And that'll be my
17 feeling. I think that hopefully the State Supreme Court will
18 take this issue on. I read over your brief very carefully
19 and think that there are some really interesting issues that
20 should be addressed by the State Supreme Court, it seems to
21 me.

22 But I think that given my ability to rule as a trial judge,
23 I'm bound by a ruling that appears to be on all fours with
24 this particular contract by the Court of Appeals until that
25 ruling is changed.

1 So I'm not going to address the issue of its
2 constitutionality. I'll reserve a ruling on that until
3 there's a final appellate decision. All right?

4 The second issue, however, is one of waiver. And I know
5 that originally there was a note that the defense made in
6 early April, I think it was on the 7th of April as I recall,
7 for a motion to transfer this to arbitration. And then the
8 matter was continued at the request of both and I signed an
9 order on I think the 24th of April mistakenly, indicating
10 that the matter would be switched to arbitration.

11 And then saw an email from defense counsel indicating that
12 they were surprised that I had signed that order, because
13 they had already sent an email to me asking me to strike the
14 hearing because they were going to move the matter to July
15 for summary judgments and a bunch of other motions.

16 Is that right so far? Am I pretty much historically --

17 MR. GALLAGHER: Your Honor --

18 THE COURT: And so then I signed another order indicating
19 that the one that I had previously signed was vacated. And
20 so is that historically correct?

21 MR. GALLAGHER: Your Honor, that's right --

22 THE COURT: Mr. Murray, you can address that issue, too.
23 We're just housekeeping right now so I can set the stage.

24 MR. GALLAGHER: He's going to feed it to me and I'll speak
25 for Mr. Murray. Our recollection is the reason that we

1 renoted hearing was because Mr. Blankenship had a family
2 vacation and we were in some discussions about whether we
3 could resolve this informally with opposing counsel and we
4 agreed to defer ultimately the noting and the briefing on
5 this until a later date. The hope was that we would have a
6 hearing on all of the pending motions in July, but we
7 couldn't get it scheduled until August.

8 THE COURT: Right. Thank you, sir. Mr. Blankenship,
9 what's your recollection?

10 MR. BLANKENSHIP: My recollection is yes, it was served
11 while I was on vacation, the Friday before I left. And
12 Counsel agreed to reschedule it. I don't believe we had any
13 control or demand that it be noted out as far as it was noted
14 out, but that could have been partially because Counsel was
15 out of town.

16 So yes it was noted then. It wasn't noted as a dispositive
17 motion. It was noted right before I went on vacation and we
18 were -- so we agreed to make it a dispositive motion. And
19 that's kind of how it went down.

20 But the fact that it ended up in August wasn't necessarily
21 a plan between me and opposing counsel.

22 THE COURT: Your argument is that they waived their rights
23 to arbitration by filing all of these summary judgment
24 motions and by litigating this matter in the manner in which
25 they have.

1 Can you elaborate on that argument for me?

2 MR. BLANKENSHIP: Certainly, Your Honor.

3 THE COURT: I'm not asking you to address the argument of
4 the claims involving Dr. Anel after he left the Franciscan
5 Group. I don't believe, and you can address this, but my
6 initial feeling is that the arbitration agreement doesn't
7 apply to his actions once he has been terminated in terms of
8 whether it's arbitration or a jury trial.

9 And so I, if you have something different, if I missed
10 something, let me know. But I went back and looked at
11 everything and looked at the wording, and it's pretty clear
12 to me that it applies to employees and once he's no longer an
13 employee, and you argue that he wasn't an employee, but we
14 can talk about that in a different context.

15 But for purposes of whether or not an agreement to compel
16 arbitration in lieu of a jury trial or a judge trial is in
17 effect, it doesn't apply once he's no longer there. So the
18 additional issues that they have raised about how he was
19 treated after he left and the causes of action that they have
20 filed and we're litigating by way of summary judgment today,
21 aren't governed by this agreement.

22 So as far as I'm concerned, if you have something
23 different, let me know, so we can at least narrow the issues.

24 Now let's talk about the issues where when he was clearly
25 working for the Franciscan Group, and I'll call them the

1 "Franciscan Group," although there are a number of different
2 entities. I understand he was paid out of one in Colorado,
3 but there are three different entities basically that had a
4 part in some of this. But let's just call them the
5 "Franciscan Group," for now, okay.

6 MR. BLANKENSHIP: We'll do that, Your Honor.

7 THE COURT: So tell me why the Franciscan Group has waived
8 their -- by litigating has waived his requirement that he
9 participate in arbitration?

10 MR. BLANKENSHIP: Well, Your Honor, we're relying on the
11 waiver principles from Washington law. And the defendants
12 clearly and unambiguously waived the right to arbitration by
13 litigating this case for nearly a year and a half.

14 THE COURT: They're going to argue that the case was
15 pending before the Court of Appeals. They already had a
16 judge rule in King County against them, so they were just
17 protecting their backside by litigating, because that's the
18 ruling that they had. And when the Court of Appeals made
19 their ruling on March 15th of this year, then they're going
20 to argue that, well then they can go ahead and make a motion
21 to arbitrate.

22 I mean, you can see that one coming. How do you respond to
23 that?

24 MR. BLANKENSHIP: Well, the way I'd respond to that is even
25 to this day they have not moved to stay or compel

1 arbitration. The primary relief in their motion is to strike
2 the jury trial. The alternative relief is arbitration.

3 So basically a party waives a right to arbitrate if it
4 elects to litigate instead of arbitrate. Even the motion on
5 its face basically shows and the waiver cases dictate that if
6 the defendant or the employer here shows a preference towards
7 litigation instead of arbitration, they've waived it. And it
8 couldn't be any more the case when we've done all this
9 briefing on the summary judgment and essentially they've
10 asked this Court to fully adjudicate the case on the merits.

11 Unlike any other Washington case that we have seen, even
12 after hearing from the Court of Appeals, they continued to
13 litigate for 45 days or close to that before they filed the
14 motion to compel or to strike the jury trial.

15 So basically right here, if you look at the River House
16 case, we only need to show that as the events unfolded, the
17 party's conduct reached a point where it was inconsistent
18 with any other intention but to forego the right to
19 arbitration. And I think we're here. We're here where the
20 defendants have asked the jury trial to be stricken without a
21 basis.

22 And in arguing for arbitration as the River House case
23 states, the party arguing for waiver is not required to show
24 that it's adversary has never mentioned arbitration or even
25 equivocated the process to be followed. It just has to show,

1 Your Honor, that they have been inconsistent with a desire
2 to arbitrate.

3 And as Counsel said, we even discussed negotiating
4 something to get out of arbitration. But this case has been
5 litigated by the parties and the defendants have chosen to
6 actually have you fully adjudicate and dismiss this case on
7 the merits. And they can't forum shop and say, "In the
8 alternative, well, we want you to compel arbitration if we
9 don't like your ruling, or if you don't strike the jury
10 demand." I mean, we are here litigating in Superior Court.

11 So the fact that the defendants have litigated like they
12 have is pure forum shopping. It's completely --

13 THE COURT: Just a second, Mr. Blankenship. Ramona, would
14 you check and make sure that we're picking him up? If not,
15 he just needs to move a little closer.

16 Keep speaking, sir. I just want to make sure that you're
17 being picked up on our audio system. It just dawned on me
18 that you might be just kind of in the dark area.

19 Is he being picked up?

20 MR. BLANKENSHIP: How about this, Your Honor?

21 THE COURT: Well, you'll be picked up there. But why don't
22 you bring the podium just a little bit more forward? I think
23 that the speakers will all pick you up.

24 First of all, stay right where you were and tell a sentence
25 or two so she can decide if she can hear you.

1 MR. BLANKENSHIP: Testing one, two, three. Testing.

2 Testing one, two, three.

3 THE CLERK: It's picking him up.

4 MR. BLANKENSHIP: They asked for a bench trial.

5 THE COURT: Is it okay?

6 THE CLERK: Yes.

7 THE COURT: All right. Move back about a foot and you'll
8 be okay.

9 MR. BLANKENSHIP: Okay.

10 THE COURT: Perfect right there. Go ahead. Thank you.

11 MR. BLANKENSHIP: So, Your Honor, in this motion they asked
12 for a bench trial in superior court. That is exactly showing
13 a preference to litigate. And in addition to filing four
14 summary judgments, they have asked for a bench trial, not an
15 arbitration. That's the motion that's before you.

16 What could be more clearly evidenced as a desire to
17 litigate in superior court than asking for the Court to
18 litigate in superior court just without a jury?

19 THE COURT: Okay. Hold that thought. I want to hear from
20 Mr. Gallagher.

21 MR. GALLAGHER: Thank you, Your Honor. May I just speak
22 from here?

23 THE COURT: You may. You can even be seated.

24 MR. GALLAGHER: All right. Thank you.

25 Your Honor, this is absolutely not forum shopping. We've

1 asked the Court in the first instance to enforce the
2 arbitration provisions in the employment agreement and that
3 would require transfer to an arbitrator.

4 You know, in the alternative we asked for the Court to
5 strike the jury demand. But if the Court gives full effect
6 to the Court of Appeals decision in the Romney case, then the
7 appropriate thing for the Court to do would be to compel
8 arbitration.

9 We've also in our briefing suggested to the Court that the
10 threshold issue before the Court is this arbitration issue,
11 and if the Court grants arbitration as a threshold issue, it
12 would not be necessary or even appropriate for the Court then
13 to reach the summary judgment motions.

14 So we would suggest that this threshold issue is the issue
15 the Court should rule on first, and if the Court is inclined
16 to compel arbitration, then it would not be necessary to
17 reach the other claims. That would be appropriate for the
18 arbitrator.

19 THE COURT: All right. Thank you, sir. Your response?

20 MR. BLANKENSHIP: Your Honor, in April they asked for a
21 bench trial and they've continued to ask for a bench trial.
22 And this concept, which is one line in the conclusion of
23 their reply should be stricken where they ask this Court to
24 basically go ahead and compel arbitration and not rule on the
25 motions.

1 That was not in their motion. That was not once did the
2 summary judgments even mention the arbitration agreement.
3 And it should be stricken. And as we put in our brief, you
4 can't raise new issues in reply.

5 So they're even here asking for that relief properly. It's
6 not okay to basically do what I think happened here, Your
7 Honor, is realize that this is a pretty good case and that
8 there's exposure, so now we want to arbitrate. And it
9 happened to some extent when -- and let me tell you what
10 happened after the Romney decision.

11 They served written discovery on February 24, 2015.
12 Plaintiff filed his jury demand on this court on February
13 26th without objections. Plaintiff filed a second amended
14 complaint with this court on March 9th. Defendants filed
15 their answers to the second amended complaint on March 16th.
16 The parties entered into a stipulated protective order in
17 this court on March 17th.

18 THE COURT: And I apologize. The decision came in on
19 February 17th. I misspoke when I said March 15th before. I
20 remember now it was February 17th of this year when the Court
21 of Appeals decision came down.

22 So please go ahead. I do apologize for misstating the
23 date.

24 MR. BLANKENSHIP: So after February 16th --

25 THE COURT: Seventeenth.

1 MR. BLANKENSHIP: Seventeenth when the decision came down,
2 we did all these things plus the parties entered into a
3 stipulated protective order with this court on March 17th.

4 Plaintiff deposed Kurt Schley on March 17th. Plaintiff
5 deposed Dana James on March 18th. This is the president of
6 the hospital. This is the clinic manager. Plaintiff deposed
7 Dean Field, the former FMG president and the head of
8 nephrology on March 18th. And on March 19th, Plaintiff
9 served his first requests for admission on March 19th, which
10 Defendants answered on April 20th. Plaintiff deposed Marla
11 Fredericks on March 20, 2015.

12 So, I mean, that is, we've already disclosed experts, at
13 least our side has, prior to this. And so we've got a case
14 where we took or defended 15 depositions and we stipulated to
15 a continuance and agreed to a trial date. And now they've
16 filed four summary judgment motions, each separately.

17 And at no point did the defendants move to stay the
18 proceedings so the Court can rule on any motion to compel
19 arbitration. They could have asked the Court to stay the
20 proceedings until the Court of Appeals ruled. Merely a stay
21 would have been possible. And Defendants have litigated and
22 are continuing to litigate this case in court. They want a
23 bench trial.

24 And what they've put in the one line in reply of conclusion
25 saying the Court shouldn't rule on the summary judgment is I

1 think a little bit disingenuous after we basically have moved
2 on issues like affirmative defenses and they haven't come up
3 with evidence. They now want us to what, start over with
4 respect to summary judgment.

5 MR. WOODS: Your Honor, if I may approach to hand up in
6 rebuttal to opposing counsel's claim that they asked for
7 arbitration or in the alternative to strike the jury demand
8 and have a bench trial, let me just pass up their original
9 motion. You can look. The motion itself, the caption says
10 the opposite, and on page one it says the opposite. It's
11 simply disingenuous.

12 THE COURT: Well, Counsel, I believe that I'm looking at
13 that. I actually have that pleading right here in front of
14 me, right here, looking at it. Thank you.

15 MR. WOODS: Thank you, Your Honor.

16 THE COURT: Okay.

17 MR. WOODS: So they can't flip on it.

18 THE COURT: Thank you, Mr. Woods. And please keep us all
19 honest and make sure that you continue to do that. But okay,
20 I don't need any more argument.

21 I'm going to rule as follows. I don't think you're forum
22 shopping. You've been assigned to me and that's the way it
23 is. But I do think that you can't have it both ways. I
24 think when you make a request and it's your request that you
25 want a judge trial or, in the alternative it said, the

1 defendants request this matter be submitted to arbitration.
2 Arbitration's either an exclusive remedy or it isn't. And
3 you've waived it.

4 So I think you've waived your right to arbitrate and I'll
5 rule that way.

6 I'll reserve ruling on the constitutionality, because I
7 think I'm covered by the Court of Appeals decision on that
8 issue, unless there's a different appellate ruling. So I'm
9 not going to rule on that.

10 The third issue becomes whether or not the plaintiff is
11 entitled to a jury trial or a judge trial. And I'll rule
12 today on that, but I want to hear some of the other arguments
13 first. And then I'll come back to that at the very end. I
14 have some, I made some notes on that issue. So we'll talk
15 about that in a little bit.

16 But I believe that by requesting the either/or, you've
17 waived it. And the Court of Appeals may think I'm wrong, but
18 I don't think so. Because you're claiming on the one hand
19 before the Court of Appeals that arbitration was the
20 exclusive remedy. And then you can't have it both ways. So
21 you've waived. All right. So much for that.

22 Now let's talk about the summary judgment motions. And
23 Mr. Blankenship, you have made a number of motions. And the
24 defense has made a number of motions. And I've read them all
25 over. And a lot of the evidence is the same for several

1 different motions, although there is clearly different
2 tactics and different statements.

3 So I've got your original summary judgment motion here and
4 your reply. And you are requesting four things it's my
5 understanding. First of all, you're requesting that the
6 defendant, FMG, should be held liable as a matter of law for
7 the tort of wrongful discharge of Dr. Anel. Two, you're
8 asking that the defendants, you're asking for me to rule that
9 the defendants willfully withheld wages of Dr. Anel. Third,
10 you are asking me to rule that Dr. Anel is not required to
11 seek or accept employment greater than 50 miles from his Gig
12 Harbor residence. And fourth, you're asking me to dismiss
13 some of the affirmative defenses pled by the defendants and
14 in specific, numbers one, three, five, six, seven, eight,
15 nine, and fifteen.

16 I would tend to argue and I would like to, if the defense
17 has a response to this, please let me know. But there's a
18 case that you cited that ruled in another matter that there
19 was a 75-mile boundary that the terminated employee was not
20 required to seek or accept employment greater than 75 miles
21 from his residence. And that'll be my ruling in this case,
22 75 miles.

23 MR. BLANKENSHIP: Thank you, Your Honor.

24 THE COURT: So I'll grant your motion in part. I'll change
25 the mileage.

1 MR. BLANKENSHIP: Thank you, Your Honor.

2 THE COURT: If they have something different, but I believe
3 that case is right on point and I believe that case should
4 govern my ruling. I've looked at the case and I think it is
5 consistent. So I don't need to hear any argument about that.

6 But now the first, second affirmative defenses. And some
7 of the affirmative defenses I think are some of the same
8 defenses pled or moved for by the defense in their motions
9 for summary judgment. At least we can talk about it then I
10 suppose.

11 But why don't you talk to me about why you think FMG should
12 be held liable as a matter of law for the tort of wrongful
13 discharge of Dr. Anel? And why don't you also tell me about
14 why you think I should rule that the defendants willfully
15 withheld wages from Dr. Anel.

16 MR. BLANKENSHIP: I can do that, Your Honor. May I address
17 some litigation issues just in general as well?

18 THE COURT: Yes. Yes.

19 MR. BLANKENSHIP: May I approach?

20 THE COURT: Yes.

21 MR. BLANKENSHIP: I'm going to hand you the --

22 THE COURT: Do they have a copy of what you're handing me?

23 MR. BLANKENSHIP: I'm going to hand them a copy as well.

24 This is the pattern instruction for mitigation. And we
25 briefed this specifically with mitigation. But the

1 defendants' mitigation affirmative defense should just be
2 stricken because under Burnside and Hennings Center World
3 Com, which makes actually even -- under those cases you must,
4 it's the burden of proof for the defendant and they have to
5 show that there were openings in comparable positions
6 available for the plaintiff elsewhere after he was
7 terminated.

8 And what that requires is actual jobs that he could have
9 applied for that are substantially equivalent. And that
10 means that they have to show that it's the same type of job,
11 a nephrology job. And they haven't presented any evidence
12 whatsoever --

13 THE COURT: Do you think they have to show that he had
14 director positions available to him?

15 MR. BLANKENSHIP: They haven't shown any of that. They
16 haven't presented any --

17 THE COURT: No, do you define the same or similar job as a
18 job not only as a staff nephrologist, but also as a director
19 of a nephrology department or clinic?

20 MR. BLANKENSHIP: I think yes, that would be substantially
21 equivalent. And they haven't even presented any evidence of
22 any open jobs outside, especially outside of the 75 miles.
23 And they're opposition to our motion in general is based on a
24 argument. And they argued about mitigation. And they cited
25 to Dr. Anel's deposition, but nowhere did they show --

1 THE COURT: You mean inside the 75 miles? I think you --

2 MR. BLANKENSHIP: Inside the 75 miles.

3 THE COURT: Yes.

4 MR. BLANKENSHIP: Thank you, Your Honor. But nowhere have
5 they presented the open positions, which is required in the
6 pattern instruction. They need to show that there were
7 openings in comparable positions available for plaintiff
8 elsewhere after Defendant terminated him.

9 And the second part is they have to show that Plaintiff
10 used reasonable care and diligence in seeking those openings.
11 But the case law says you don't have to even look for work,
12 because it's their affirmative defense. And there are cases
13 that we've cited where people didn't look at all and actually
14 the Labriella case is an example of that exactly, where they
15 could not find that, where they didn't meet their burden of
16 proof showing that there was an actual job that he qualified
17 for.

18 And you know Burnside basically states, "To satisfy its
19 burden defendant must show there were suitable positions
20 available and that Plaintiff failed to use reasonable care
21 and diligence in seeking them." They can't meet the first
22 prong or the second prong. I mean, Dr. Anel's gone beyond
23 what he has to do in mitigation. He's flown all over the
24 country to try to find other work. But they can't show a
25 comparable job within the 75 miles. There's not a single job

1 they've pointed out.

2 And the way it's supposed to be done and I've tried cases
3 where it's done is they actually show the open positions and
4 say, "This was one he didn't even apply for and he was
5 available for it."

6 And the point of the summary judgment is to eliminate these
7 issues at trial. They've had plenty of time on that issue
8 and they have no evidence of mitigation, period, within that
9 75 mile range. And the jury shouldn't, the time to come up
10 for it is now, not between now and trial.

11 THE COURT: And which affirmative defense is that number?

12 MR. BLANKENSHIP: That's mitigation.

13 THE COURT: I'm sorry. Failure to mitigate. All right.

14 MR. BLANKENSHIP: Yes, Your Honor. And it's right there in
15 the instruction and if you even look at the comments with the
16 cases, it cites Burnside and these cases that we cite.

17 THE COURT: All right. Thank you. Go ahead and address
18 your summary judgment motions.

19 MR. BLANKENSHIP: Sure. All right, Your Honor, typically
20 when we move for summary judgment in a wrongful discharge
21 case, we typically move on adequacy and jeopardy. Because
22 those are important issues. And jeopardy and clarity. And
23 those are important issues for the Court to rule as a matter
24 of law that there's clarity and jeopardy.

25 Here the defendants did not oppose clarity, because they

1 couldn't. There's a clear public policy to pay employees
2 wages for work they did. In the Hume case, the Supreme Court
3 looking at adequacy and jeopardy and all of the Gardener
4 elements, concluded that if you fire someone for requesting
5 wages, that is a legitimate, bona fide wrongful discharge.
6 And that's the clarity element.

7 And that doesn't require us to evaluate the employer's
8 conduct at all. It simply identifies the policy at stake.
9 So as a matter of law, with the cases that we cite with
10 respect to Hume, and the citations to this important public
11 policy, which is contained in 49.52 and 49.48, prove that
12 we've met the clarity element.

13 The jeopardy element, which they also didn't oppose, is
14 also established as a matter of law. And especially here --
15 they didn't oppose this, but here they admit that Dr. Anel
16 reasonably believed that he was requesting wages and that he
17 was owed compensation. And that is good enough under a
18 number of cases, like *Ellis v. City of Seattle*, where
19 somebody thought the fire alarm wasn't working and they fired
20 him for it and he was wrong. *Danny v. Laidlaw* is another
21 recent Supreme Court case.

22 So Dr. Anel engaged in conduct directly relating to the
23 Washington public policy by protesting defendants'
24 withholding of earned wages. And so the first prong, it's
25 undisputed that Anel protested against Defendants' illegal

1 withholding of wages. Whether or not it's true or not true,
2 and we believe it very much is, he engaged in conduct that
3 directly relates to the public policy in this case.

4 Defendants have admitted that Dr. Anel reasonably believed
5 he was owed wages and that he protested not being paid. Dean
6 Field, the decision maker who personally fired Dr. Anel,
7 acknowledged in writing that he understood Anel's valid
8 "frustration about 22 months of service without compensation"
9 and said defendants would have to work to "re-earn Anel's
10 trust after failing to pay him for so long."

11 Field admitted in his deposition that Dr. Anel fought for
12 wages and that "he believed" that they were owed to him.
13 President Schley, who thought Anel had the personality of a
14 whistleblower, also admitted that Anel fought back when
15 Defendants questioned the hours he had billed. And that
16 Dr. Anel would explain how he had actually performed all the
17 work on the timesheets. Oh, and insist on being paid for his
18 work.

19 These are all undisputed in the record. Dr. Gill testified
20 that Dr. Anel fought for wages of others. And he said that
21 he and Dr. Anel discussed the unpaid wages and that Dr. Anel
22 clearly said he believed it was illegal for Defendants to
23 withhold those wages. And in fact, Dr. Gill said that he was
24 too afraid to challenge Defendants when they illegally
25 underpaid him for two months after seeing what happened to

1 Dr. Anel. And that there was an atmosphere of fear, that's
2 his words. And then he felt like he was "walking on
3 eggshells." His words.

4 So Dr. Anel very much opposed this wrongful withholding of
5 wages. And Defendants can't deny it.

6 And also as a matter of law, other enforcement mechanisms
7 are inadequate. And they haven't shown otherwise. Hume
8 established this, plus there are no effective measures to
9 promote this policy. None of the Washington wage statutes
10 provide for back pay, front pay, injunctive relief, emotional
11 distress, or compensatory damages.

12 And for the most part the statute merely allows employees
13 to collect only wages they rightfully earned and attorney's
14 fees. And in some cases double damages.

15 Moreover, Chapters 49.48 and RCW 49.52 do not include any
16 anti-retaliation provisions. So even that statute fails to
17 afford the employee of any relief. It just sanctions the
18 employer. And that doesn't do anything for the employee.
19 And what that means is Dr. Anel is necessary for enforcement.
20 Recognition of the importance of employees by the Supreme
21 Court is broad and in the Burlington case, where the Supreme
22 Court holds and our Supreme Court has held similarly, Title
23 VII depends on the cooperation of employees willing to file
24 complaints and act as witnesses. They are the vanguard. He
25 was the vanguard. He was a director, he did his job, and he

1 objected to wages and they fired him for it.

2 And although they didn't get into the issue of adequacy,
3 the Supreme Court has shown, and Roberts v. Dudley is a very
4 good example of this, that in that case with respect to
5 employer with less than the statutory eight employees, the
6 Supreme Court in Roberts v. Dudley properly said that "the
7 plaintiff had properly stated a cause of action for the tort
8 of wrongful discharge for reporting sexual harassment and
9 subsequently suffering retaliation, despite the fact the
10 Washington law against discrimination is significantly
11 broader than the wrongful discharge."

12 Plus the WLED contains the anti-retaliation provisions with
13 comprehension damages. And there's none of that here.
14 Moreover, Smith v. Bates Technical College, in a wrongful
15 discharge case, the Court indicated that it saw, "No
16 justified reason," to deny Plaintiff, "The opportunity to
17 recover damages for emotional distress, thereby immunizing
18 the alleged tortious conduct of wrongful error simply because
19 her administrative and contractual remedies may partially
20 compensate her wrongful discharge."

21 So that's a case where there was even a statute in place
22 that just didn't have adequate remedies. Here we have no
23 discharge remedies, but one of the strongest states in the
24 union as far as employee rights, a long, proud history.

25 The Cutney case certainly did not overrule any prior

1 Supreme Court holdings and that case was a very different
2 case where it involved WISHA as the public policy, which was
3 stipulated. And it has an anti-retaliation provision that
4 includes significant remedies. And it requires the
5 Department of Labor to investigate and they're required to
6 bring suit if they find that there is a claim.

7 So and the employee can also independently bring suit. So
8 this wouldn't apply in Cutney, but most importantly, the
9 court's decision in 2013, June, right about when we took
10 these cases basically -- at least the other Franciscan case,
11 Peel came down and stated that Cutney is not inconsistent
12 with past Supreme Court wrongful discharge holdings.

13 So it's improper to view Cutney as the court said, "As
14 overruling anything." So Hume is still in effect.

15 So the clarity element is a pure question of law and the
16 jeopardy element is uncontested. So the Court at a minimum
17 should find that there's a clear public policy and
18 terminating Dr. Anel jeopardized that policy.

19 But causation here, unlike many cases --

20 THE COURT: What are the facts that you think are not in
21 dispute to show that Dr. Anel was terminated because his
22 wages had been withheld? I mean, they say in their response
23 that -- I pulled it up here because I wanted to ask you,
24 "Plaintiff argues that Dr. Field testified that Plaintiff was
25 fired because he wouldn't let go of the unpaid wages.

1 Dr. Field's testimony" -- and this is on page five of their
2 response, "Dr. Field's testimony that Plaintiff wouldn't let
3 go about compensation was not an admission that Plaintiff was
4 fired for a protected activity. When Dr. Field met with the
5 plaintiff in October 2013 to give him notice of his
6 termination, issues about compensation may have been one of
7 the examples discussed with the plaintiff."

8 And then they talk about -- I know it's page 184 of Field's
9 deposition. I know that it's toward the end of his
10 deposition. And your argument in your response or reply was
11 that he was given an opportunity to reverse himself. But we
12 really need to take a look at the beginning of his
13 deposition.

14 But isn't that an issue of fact? I'm struggling with this,
15 whether or not it's an issue of fact. I'm struggling with
16 that very thing. I'm not really struggling with the jeopardy
17 and clarity issues, because quite frankly my initial reading
18 and their response was consistent with your position.

19 But don't we have an issue of fact here as to why he was
20 fired?

21 MR. BLANKENSHIP: I don't think we do, Your Honor.

22 THE COURT: Why?

23 MR. BLANKENSHIP: Well, number one, no reasonable jury
24 could find otherwise. The fact finder need only find that
25 the protected activities were a substantial --

1 THE COURT: If there is a reasonable jury. It might just
2 be a reasonable judge.

3 MR. BLANKENSHIP: Or reasonable judge, which is what we
4 have here.

5 THE COURT: Sorry, I just had to throw that out there.

6 MR. BLANKENSHIP: No, I know. And so basically under
7 Mackay versus Acorn Custom Cabinetry, it's clear that --
8 first of all, let me just address (inaudible) before I get
9 there. They argue this. I mean, their whole response brief
10 is argument. You don't have a declaration from Dean Field
11 saying, "What I meant to say here was." I mean, you know --

12 THE COURT: We do have inconsistent portions of depositions
13 though. I went back and looked at some of those. And it
14 seems to me that some of that is somewhat inconsistent. And
15 I think you'd have to agree with that.

16 MR. BLANKENSHIP: I think if -- I don't think that what
17 they cited to shows anything other than if they're frustrated
18 with his demands for wages, that would still be firing him
19 for his wages. But you've got to look at the weight of the
20 other evidence here, and that's why --

21 THE COURT: Well, they would argue that he's incompetent
22 and that's why they fired him. He wasn't, didn't do what he
23 was supposed to do or whatever. And they argue Stark and the
24 federal rules and everything. But we can talk about that
25 later, that's a different issue.

1 Let's talk about whether or not there is an issue of fact
2 as to why he was fired.

3 MR. BLANKENSHIP: I don't think there is. I mean,
4 undisputed admission by a party deponent when Dr. Anel says
5 that when he protested the nonpayment of wages by trying to
6 resign, President Spare threatened to fire him. And Dean
7 Field suggested the firing because he wasn't "understanding
8 why he couldn't be compensated the way he believed he should
9 be."

10 I mean, that's -- and you know and then Scribner is the
11 other case that came down recently, like Mackay, that said
12 you only need to find one reason among the other reasons.
13 What if we put it in these terms. What if we --

14 THE COURT: What is the one reason you think that you have?

15 MR. BLANKENSHIP: What's that?

16 THE COURT: What's the strongest reason that you have?

17 MR. BLANKENSHIP: That they fired --

18 THE COURT: To be consistent with the Scribner case?

19 MR. BLANKENSHIP: Would be that they admitted firing him
20 because, you know, he was talking about his compensation, he
21 didn't understand why he couldn't be compensated the way he
22 believed he is. Kurt Schley testified that they did, in
23 fact, fire Dr. Anel because of disputes with timesheets.

24 I mean, you know, how many of these people have to say it
25 before it becomes obvious? Dean Field fired Dr. Anel, told

1 Anel that he was being fired because defense executives were
2 upset that Dr. Anel couldn't let go of the wage dispute. I
3 mean, I mean, let's put it in terms, let's say it was because
4 he was Chinese, you know. He kept complaining about being
5 treated differently for being Chinese. And he just couldn't
6 let go over not being treated differently because he was
7 Chinese.

8 If you put it in terms like race discrimination or race
9 retaliation, it becomes real clear that we have an admission
10 that a substantial factor, which is what the test is under
11 Mackay for wrongful discharge, a substantial factor here was
12 him requesting wages. There might be other factors and the
13 jury instruction says under substantial factor that it
14 doesn't have to be the main reason or even the only reason.
15 It just has to play a part in the decision. Clearly it
16 played a part in their decision.

17 THE COURT: Okay. I've got your argument. Let me hear
18 from the defense. I want them to address your first two
19 requests, and that is that the defendants should be held
20 liable as a matter of law for the tort of wrongful discharge
21 of Dr. Anel. And the defendants willfully withheld wages
22 from the plaintiff. You didn't really address that,
23 Mr. Blankenship, but your pleadings certainly did plenty.

24 And I think that there's been enough admission from the
25 defense. I'd like to hear what you have to say about that.

1 And I want to make sure that you're Mr. Murray, right?

2 MR. MURRAY: Yes, Your Honor.

3 THE COURT: All right. Thank you, sir.

4 MR. MURRAY: Thank you.

5 Your Honor, just to --

6 THE COURT: Excuse me just a minute.

7 MR. MURRAY: Sure. Thank you.

8 THE COURT: Go ahead.

9 MR. MURRAY: If I may address the issue of causation, Your
10 Honor. On the issue of causation, I agree that the testimony
11 is not favorable for the plaintiff's position that there is
12 no issue in dispute about causation.

13 THE COURT: I didn't say it was unfavorable. I just
14 wondered if there was an issue of fact. That's all I said.

15 MR. MURRAY: Sure. As Your Honor knows, on summary
16 judgment, any issues of fact should be viewed with a
17 favorable light towards the nonmoving party. Dean Field's
18 testimony about the let go statement was anything but clear.
19 It was extremely vague and there is no direct admission
20 anywhere in any of the record evidence that anyone from
21 Franciscan fired Dr. Anel for his protesting of wages. There
22 is no scintilla of actual record evidence that supports that.

23 What Mr. Blankenship failed to admit in any of his
24 presentation was what the real overriding justification,
25 which we have set out in our brief, was. Under federal law,

1 Stark lobby and the kickback statute, the put more
2 regulations --

3 THE COURT: Isn't that a issue or the subject of another
4 summary judgment later on?

5 MR. MURRAY: It is, and I think it also helps explain some
6 of these issues. Physician compensation in the United States
7 is one of the most highly regulated aspects of healthcare. A
8 physician has to be paid fair market value. If they're paid
9 anything beyond that, the hospitals can find themselves at
10 risk of violating the statutes, which have serious sanctions
11 that can dovetail --

12 THE COURT: Isn't that about referrals, though? Aren't we
13 talking about a federal law to protect Medicare and Medicaid
14 from fraud, what they're trying to do is make sure the
15 physicians don't refer patients to a healthcare facility
16 where they're basically going to get a cutback or some kind
17 of extra compensation and, therefore, be able to milk
18 Medicare?

19 I mean, isn't that what that's all about? And I remember
20 the old Medicare scandals that came out years ago.

21 MR. MURRAY: Sure.

22 THE COURT: And they tried to change that so it wouldn't
23 happen. And isn't that the reason for that law? And is
24 there any evidence to indicate that that was the case with
25 Dr. Anel? I didn't see any evidence. I mean, I'll get right

1 down to the nitty gritty of that. It seemed to me those
2 arguments were somewhat specious.

3 MR. MURRAY: Okay. Let me address the Stark applicability.

4 So Stark and the anti-kickback statute are designed to
5 prevent abuse in the Medicare system. Dialysis, it's
6 undisputed it is a highly Medicare heavy paid system.
7 Dialysis patients are usually on Medicare.

8 THE COURT: Well, it's usually older people and I agree.
9 It's usually, it's very federally funded heavy.

10 MR. MURRAY: Sure. So when a physician has any sort of
11 financial relationship with a healthcare entity, such as
12 Dr. Anel with any of the Franciscan entities, and that entity
13 is enrolled in Medicare, which is the case here, those
14 regulations and laws automatically apply.

15 If \$1 is paid to a physician that is beyond their market
16 value, or which includes any compensation for services that
17 are unverifiable, they find themselves to be exposed to the
18 Stark law. That is why there is direct guidance from the
19 Department of Health and Human Services to have verifiable
20 services on timesheets.

21 Submitting a timesheet, logging however many hours you log,
22 isn't enough. They have to be verifiable services. That is
23 why it's undisputed that in this case there were checks and
24 balances to assure that the reported services were verifiable
25 and that compensation would be appropriate.

1 In a very small percentage of the hours that were reported
2 by Dr. Anel, there were some write-offs and that goes to his
3 unpaid wage claim, saying, "You inappropriately wrote down
4 some time," I think it was about 42 and change hours over the
5 course of his entire directorships.

6 One of the major issues was he was withholding timesheets.
7 The statement earlier about the 22 --

8 THE COURT: Isn't a fact that he only withheld that once,
9 and isn't it a fact that he turned them in actually within a
10 reasonable period of time close to the deadline that they
11 were due and it was only on one occasion, like, the 12th of
12 the month or something?

13 I mean, I read over all of that and I went back and looked
14 at it again, and isn't it just one time and isn't it he said
15 it was in protest of the Franciscan Group withholding his
16 wages? That's what he's arguing.

17 MR. MURRAY: His argument is he did it one time.

18 THE COURT: Did he do it more than once?

19 MR. MURRAY: Yes, he did --

20 THE COURT: I didn't see that in your brief or in the
21 plaintiff's brief.

22 MR. MURRAY: So the one time that he did it was he
23 submitted in lump sum 22 months of timesheets, which goes to
24 the statement earlier of why there was an issue about --

25 THE COURT: So he withheld for 22 months is what you're

1 saying?

2 MR. MURRAY: On one directorship. Now, right before he was
3 terminated in September, he was hand delivered a written
4 warning and this was for timesheets for on-call coverage. He
5 had to submit timesheets for a number of different -- for
6 compensation. Which as the hospital --

7 THE COURT: Okay. I apologize. I misunderstood.

8 MR. MURRAY: Sure.

9 THE COURT: That when he handed those in it was 22 months.
10 I know he had three different directorships, but 22 months he
11 handed in all at once; is that true?

12 MR. MURRAY: He handed 22 months of medical directorship
13 timesheets.

14 THE COURT: From one of the clinics?

15 MR. MURRAY: From one of the clinics, correct. And there's
16 a dispute over the existence of another director --

17 THE COURT: So some of them were 22 months behind, is that
18 what you're saying?

19 MR. MURRAY: I'm sorry?

20 THE COURT: Some, therefore, were 22 months behind; is that
21 correct?

22 MR. MURRAY: Yes. Yes, because there was no -- he just
23 wasn't submitting them. And then there was, he was actually
24 personally counseled by Kurt Schley in February of 2013 about
25 his untimely submission of timesheets, which is memorialized

1 in his written warning that was given to him that he
2 personally signed, where he said, "I understand these are the
3 expectations of me," in September of 2013 before he was
4 terminated.

5 In that instance, he had submitted six months' worth of on-
6 call timesheets tardy. This made it extremely difficult for
7 the hospital to go back and verify that the time that was
8 being submitted and invoiced for compensation was legitimate.
9 This is a huge compliance concern. And in some of the
10 briefing it's been suggested that Stark arguments and the
11 hospital's concerns over physician compensation is borderline
12 frivolous. Compliance issues is actually a direct quote out
13 of the written warning.

14 It's hard to imagine that a hospital is not concerned with
15 the manner in which they pay their physicians, especially
16 medical directors under various exceptions in Stark. Stark
17 requires if you're going to have a financial relationship
18 with a patient, in order for that physician to refer any
19 patients, Medicare patients, to the facility, it has to
20 follow the safe harbor. Those safe harbors include it has to
21 be fair market value for verifiable services.

22 THE COURT: All right. Let me ask you this. Do you deny
23 that the defendants willfully withheld wages from the
24 plaintiff?

25 MR. MURRAY: Yes. There is a bona fide dispute over the

1 withholding of --

2 THE COURT: No, I didn't say how much. I said the fact
3 that the defendants willfully withheld wages from the
4 plaintiff.

5 MR. MURRAY: The defendants withheld wages from the
6 plaintiff, but there's a dispute over whether they were even
7 owed, which is a threshold issue on a wage claim. He has to
8 prove that they were owed to him. And the problem with the
9 wage claim is there's a dispute that the wages that were
10 written down, the 42 hours that were written down, were
11 actually owed to him. They were marked down because they
12 couldn't be verified.

13 One of these issues was chart reviews. You know, there's a
14 significant amount of testimony about medical records that
15 weren't expected to or it wasn't something that they would go
16 on their own to do chart reviews on their own without ever
17 providing any work product. Sure, chart reviews are good to
18 make sure of the patient care quality and all of that. But
19 there was never any work product.

20 There are a number of different issues and I'm not going to
21 burden the Court by going through everything in our briefing
22 because the Court's been given a lot on paper.

23 THE COURT: Thank you. I have been. Lots of trees gave up
24 their all for this case.

25 Let me stop you here.

1 MR. MURRAY: Sure. Thank you, Your Honor.

2 THE COURT: Because I've actually I want to try and go
3 through this in an expeditious but fair way. And I think
4 I've heard enough to make rulings on some of these. And so I
5 want to do that now so that we can proceed to some of the
6 other issues.

7 So on the issue of whether or not the defendant should be
8 held liable as a matter of law for the tort of wrongful
9 discharge of Dr. Anel, I believe there are issues of fact.
10 And, therefore, I'm going to deny that motion for summary
11 judgment.

12 However, I don't know exactly why he was terminated. I
13 think that there's strong evidence to suggest he was
14 terminated in part for his continual complaining about not
15 being paid for the time. And if that is indeed a reason for
16 his termination, and it's determined to be a reason for his
17 termination by a trier of fact, then that is clearly a
18 wrongful discharge pursuant to Washington State law. I have
19 no problem at all with that.

20 So a trier of fact has to determine the exact reason for
21 his termination. If one of the reasons or if it was a factor
22 in his termination that the complaints for wages withheld,
23 that is a protected activity pretty clearly and it would then
24 constitute wrongful termination period.

25 So it's a narrow issue. It's an issue a trier of fact has

1 to determine, because I do think that there is some factual
2 dispute over the circumstances of his termination. I do
3 think there's strong evidence to suggest that that was a
4 reason. But there's also some evidence on the other side to
5 suggest that perhaps it wasn't.

6 So I want to find out or have a jury find out or whatever.
7 So we'll talk about that in a little bit. But so I'm
8 narrowing the issue there, but I'm not awarding your motion
9 for summary judgment.

10 MR. BLANKENSHIP: But, Your Honor, we did prevail on
11 clarity and jeopardy?

12 THE COURT: I'm sorry?

13 MR. BLANKENSHIP: You're finding though as a matter of law
14 that --

15 MR. WOOD: On clarity and jeopardy?

16 THE COURT: Yes. Yes.

17 MR. BLANKENSHIP: Thank you, Your Honor.

18 THE COURT: Yes.

19 MR. WOOD: Thank you.

20 THE COURT: But the reason for his discharge is still an
21 issue of fact.

22 And the second issue that the defendants willfully withheld
23 wages from the defendant [sic], yes, they did. Period. How
24 much is a different issue. I think what Counsel is arguing
25 is that they had a right to withhold them, but I think some

1 were clearly withheld. I don't know how much it was, I have
2 no idea. I certainly didn't understand from reading over the
3 briefs that 22 months were withheld, or 22 months of billing
4 was submitted all at once. That would make a difference to
5 me.

6 MR. MURRAY: Your Honor, if I may? Sorry to interrupt --

7 THE COURT: But it's clear to me from the facts, from the
8 uncontroverted facts, that there were some wages that were
9 withheld from Dr. Anel. Period. All right.

10 MR. MURRAY: I'm sorry. It is undisputed --

11 THE COURT: You can go ahead and make your record, Counsel.

12 MR. MURRAY: It is undisputed that he actually, after the
13 submission of those 22 months, was paid his contractual
14 maximum amounts for those time periods.

15 THE COURT: But he was a director of three different
16 clinics. There were a number of wages. He started
17 complaining early on. He complained for 22 months or
18 whatever about all of this. And although I think that the
19 defendant has an issue as to how much and the fact that some
20 of those were adjusted rightfully, nevertheless, I believe
21 that there is ample evidence to support a conclusion that
22 some wages were wrongfully withheld. Willfully withheld,
23 which is what I've been asked to find and what I do find.

24 MR. MURRAY: And, Your Honor, if I just may make a little
25 bit more of a record?

1 THE COURT: Yes, sir.

2 MR. MURRAY: And ask for some clarification.

3 THE COURT: Absolutely.

4 MR. MURRAY: There are two prongs to his wage claim. One
5 he is arguing that he held a "quality medical directorship,"
6 which he was not paid for. The second prong is that he was
7 not paid for, which I was discussing earlier, the written
8 down hours, the 42.6 I think hours that were written down off
9 of his submitted timesheets.

10 The quality medical directorship is genuinely disputed.
11 There is no written contract involved in that. The only
12 evidence that has been presented in the briefs is Dr. Anel's
13 testimony and declaration that he was promised this other
14 position that he was never paid for.

15 And I would like the Court to please clarify its ruling on
16 the unpaid wage claim, if it was just for the 42 hours that
17 were submitted in timesheets that were marked down? Or if it
18 has anything to do with the quality directorship, because
19 that's a completely separate issue that we haven't discussed
20 yet.

21 THE COURT: All right. Thank you, Mr. Murray.

22 Mr. Blankenship, do you want to respond to that before I do?

23 MR. BLANKENSHIP: Sure. No reasonable jury could find that
24 they withheld the quality directorship information. I read
25 to you, Your Honor, Dean Field saying, "We haven't paid you

1 for 22 months. We have to regain your trust." That's
2 quality directorship money that he admitted that they owed.

3 We absolutely dispute this contract maximum. They took his
4 time --

5 THE COURT: But that's disputed. So the issue is I believe
6 that some of that money was clearly willfully withheld that
7 he was entitled to. I don't know how much.

8 MR. BLANKENSHIP: From the quality directorship --

9 THE COURT: It's in dispute. I think what I'm focused on
10 is the directorship money.

11 MR. BLANKENSHIP: Okay. And so your ruling if I understand
12 it is Dr. Anel prevails under 49.52 that wages were willfully
13 withheld and the jury will determine what the source of those
14 wages were.

15 THE COURT: Yes.

16 MR. BLANKENSHIP: Is that right?

17 THE COURT: Yes.

18 MR. BLANKENSHIP: Thank you, Your Honor.

19 MR. MURRAY: And the existence of the quality directorship?
20 Because that's --

21 THE COURT: I believe that the wages were connected to the
22 directorships. And that he was entitled to be compensated
23 something for those directorships. And that that was
24 withheld. All right?

25 And I don't think that that's really controverted. I

1 really don't. I read over as many of these depositions as I
2 could get my way through and I don't think it has been. So
3 that's what my ruling is.

4 Affirmative defenses. Let's go through the affirmative
5 defenses. I'm a lot more confused about some of those.

6 Mr. Murray, I'm going to ask you some questions about that.
7 Let me get to my notes here.

8 MR. MURRAY: Yes, Your Honor.

9 THE COURT: And, Mr. Murray, I'm going to point you to page
10 21 of the plaintiff's Motion for Partial Summary Judgment.
11 And beginning on line 11 and ending on line 15, because you
12 have that look on your face. And so I want you to understand
13 the reason for my ruling. And it's pretty well summarized
14 right there and I really want you to -- because I don't want
15 there to be any misunderstanding. And my job here is to try
16 and be as clear as I can.

17 But here and let me just quote from that Plaintiff's
18 motion, again, page 21, beginning on line 11, concluding on
19 line 15: "Here a reasonable jury must find that defendants
20 intentionally withheld wages Dr. Anel had earned, given that
21 decision makers like Schley and Fredericks admit they
22 intentionally withheld Dr. Anel's pay. Defendants even
23 signed off on Anel's timesheets, yet crossed off his time
24 without telling him and paid him reduced wages." I agree
25 with that.

1 And you made your argument. But that's basically where I'm
2 coming from. Okay?

3 Now, let's go to -- I mean, it's not okay. I know that.
4 But all right.

5 The eight affirmative defenses that Mr. Blankenship argues.
6 And maybe what I'll do is if you want to just respond from
7 the table there, so you can have everything in front of you.
8 He doesn't really lay them out as well as I would like. So I
9 want him to answer my questions and then I want you to
10 respond. Let's talk about each one really quickly. All
11 right. Thank you, sir.

12 Mr. Blankenship, the affirmative defenses which apparently
13 only took up one or two pages of your initial motion.

14 MR. BLANKENSHIP: Part of that, Your Honor, was to try to
15 stay within 24 pages, which we understood was the limit for
16 all.

17 THE COURT: Which all of you have clearly failed to do, but
18 that's okay. Creative litigation. Go ahead?

19 MR. BLANKENSHIP: I addressed the mitigation issue and I
20 don't know if you need any more from that, but I'm going to
21 let Mr. Woods address the other.

22 THE COURT: Well, I've ruled on the mitigation issue
23 already.

24 MR. BLANKENSHIP: Okay.

25 THE COURT: So and I think that the case law supports a

1 conclusion that 75 miles is the appropriate amount under the
2 situation here. And I'll stick with that ruling.

3 MR. BLANKENSHIP: And with respect to them in general not
4 having a mitigation defense because they didn't come up with
5 specific jobs under the WPIC that requires them to actually
6 show that there were specific jobs available?

7 THE COURT: Okay, I've got that argument. I want to hear
8 Mr. Murray respond.

9 MR. BLANKENSHIP: Okay.

10 THE COURT: Thank you. Mr. Murray?

11 MR. MURRAY: Yes, Your Honor.

12 THE COURT: You can sit, sir, if you like. I really
13 appreciate you're being old school. Thank you for the
14 respect. I really do appreciate that.

15 MR. MURRAY: Yes, Your Honor.

16 THE COURT: You may not feel that way about my decisions,
17 but I really do appreciate it. But just feel comfortable and
18 just tell me: what evidence do you have, what information do
19 you have that this is a proper affirmative defense?

20 MR. MURRAY: Yes, Your Honor. There's actually an
21 abundance of failure to mitigate evidence from Dr. Anel's
22 testimony. He specifically testified he stopped looking for
23 work six months ago. He just outright stopped looking for
24 employment, full-time employment, six months ago. That in
25 and of itself right there is a failure to mitigate. He

1 wasn't even looking for positions.

2 THE COURT: Was that in part because of his allegations
3 that his reputation and ability to obtain outside employment
4 was being damaged by your client? I mean, that's his
5 allegation. I'm not making a ruling whether that's true or
6 not.

7 MR. MURRAY: Sure.

8 THE COURT: I'm just telling you that that's his
9 allegation.

10 MR. MURRAY: I think that that goes to whether or not a
11 fact finder will find that there is a failure to mitigate or
12 not. At this stage, at the summary judgment stage, there's
13 sufficient evidence for this defense to be allowed to be
14 presented at trial. For evidence of it to be presented at
15 trial. Whether he can -- and which we'll carry the burden
16 on. But if he is able to defeat that at trial, so be it.
17 But at this stage, there's sufficient evidence for this to
18 proceed.

19 Your Honor pointed out a very, very insightful note. The
20 entire affirmative request for summary judgment in the motion
21 was totally without any substance. It was a blanket
22 assertion of summary judgment against eight affirmative
23 defenses, without any discussion whatsoever of evidence or
24 the law on them.

25 THE COURT: I did notice that, Counsel.

1 MR. MURRAY: So I don't think that the plaintiff has
2 carried its burden at a summary judgment standard of showing
3 Your Honor that they're entitled to any summary judgment on
4 anything but what Your Honor has already ruled on, which was
5 the only part that was actually analyzed, the mile radius
6 issue.

7 In regards to failure to mitigate, Dr. Anel --

8 THE COURT: And I'm just trying to be consistent with other
9 case law.

10 MR. MURRAY: Sure.

11 THE COURT: That's all I'm trying to do here.

12 MR. MURRAY: Absolutely.

13 THE COURT: And that way it gives you some boundaries that
14 I think that the courts would uphold. And that's why I'm
15 ruling that way.

16 All right. Thank you. I appreciate that. Mr. Woods, I
17 guess it's your turn.

18 MR. WOODS: Yes, Your Honor.

19 MR. BLANKENSHIP: May I say something about failure to
20 mitigate, Your Honor?

21 THE COURT: I don't know. I mean, no.

22 MR. BLANKENSHIP: Okay.

23 THE COURT: I've heard enough.

24 MR. BLANKENSHIP: Thank you, Your Honor.

25 THE COURT: Mr. Woods?

1 MR. WOODS: Yes, Your Honor. First of all to respond to
2 defense counsel's claim that there is no law supporting the
3 requests to dismiss the affirmative defenses. That's simply
4 false. On page 21 of Plaintiff's --

5 THE COURT: Well, here. Here. Wait, wait. Tell me which
6 affirmative defense. Because you've just blanketly thrown
7 out eight affirmative defenses.

8 MR. WOODS: Sure.

9 THE COURT: What affirmative defense are we talking about
10 now?

11 MR. WOODS: Well, so first of all I'd like to respond in
12 general to Counsel's claim. When dealing with summary
13 judgment, a party moves for summary judgment to dismiss
14 another party's claim that they bear the burden of proving.
15 It is enough on summary judgment to point out that there is a
16 lack of evidence to support that claim.

17 On page 21 of Plaintiff's Motion for Partial Summary
18 Judgment, lines 21 through 23, we cite Burnside and Sias v.
19 City Demonstration Agency. They hold exactly this: that the
20 defendants bear the burden of proving -- excuse me. I
21 apologize.

22 At page 23, lines 2 through 7. Defendant has the burden of
23 proof on the issues of his affirmative defense. That's
24 bedrock law, Your Honor, citing Olpinski and Locke v. City of
25 Seattle. And a party is entitled to summary judgment if it

1 can show there is an absence of evidence to support the
2 nonmoving party's case. That's Stanfield, citing Young v.
3 Key Pharmaceuticals.

4 So the law is that Plaintiff does not have to point out
5 specific evidence that disproves the defendants' affirmative
6 defenses. Rather, the defendants failed to present evidence
7 in support of those affirmative defenses. And, in fact, I
8 note that Defendants have withdrawn affirmative defenses
9 No. 1, No. 5, No. 8, and No. 15. So there's no dispute that
10 there is a lack of evidence to support those.

11 THE COURT: Well, then you only have four left.

12 MR. WOODS: And I will turn to --

13 THE COURT: Affirmative defense No. 3.

14 MR. WOODS: Defense No 3 is the mitigation defense, Your
15 Honor.

16 THE COURT: Okay. Number six --

17 MR. WOODS: And again, the defendants have not presented
18 evidence that there were jobs available.

19 THE COURT: We've heard mitigation. Number six?

20 MR. WOODS: I apologize, Your Honor. Finding the exact
21 issues here.

22 THE COURT: I'll tell you what. It's a lot of stuff here
23 and I appreciate --

24 MR. WOODS: Okay. Yes. And, Your Honor --

25 THE COURT: Wait, wait. You've got to learn, Mr. Woods, at

1 a young age you don't interrupt the Court.

2 I'm going to take a 10-minute break and when I come back
3 we'll plod our way through the rest of this. Okay?

4 MR. WOODS: Yes, Your Honor.

5 THE COURT: And what I want when I get back, Mr. Woods, is
6 you tell me what Affirmative Defense No. 6 is; No. 7, and No.
7 9. Those are three we have left. And then we'll get on to
8 the defendants' motions. Okay?

9 MR. WOODS: Yes, Your Honor.

10 THE COURT: And then you tell me why each one -- I
11 understand what the law is. I'm well aware of that. But
12 it's okay. I appreciate your argument. I just want you to
13 hone in on the real issue here and why you think they haven't
14 made any showing at all.

15 And I'll acknowledge that No. 1, 5, 8, and 9 are withdrawn.
16 And we've already argued on No. 3, which is the failure to
17 mitigate. Okay?

18 MR. BLANKENSHIP: Thank you, Your Honor.

19 THE COURT: So I'll be back in 10 minutes. Thank you.

20 THE CLERK: Please rise.

21 (Recess)

22 THE COURT: Thank you. I know that was a long 10 minutes.
23 Please be seated.

24 All right. Mr. Woods, you are on the hot seat.

25 MR. WOODS: Thank you, Your Honor. One other thing I would

1 like to point out is that there are three defenses listed in
2 Affirmative Defense No. 7 and defendants have also withdrawn
3 the laches defense from No. 7.

4 THE COURT: Okay. Thank you. Let's go to six first, okay?

5 MR. WOODS: Yes, Your Honor.

6 THE COURT: What is six?

7 MR. WOODS: Six is the defense that third parties could be
8 liable for Dr. Anel's damages. In their response brief,
9 Defendants did not claim any third parties could be liable
10 for damages related to the wrongful discharge claims, the
11 willful withholding of wage claims, the defamation claims, or
12 the tortious interference claims.

13 So I would argue that those issues are admitted and the
14 only contention from defendants is that the malicious
15 prosecution damages could have been caused by the police or
16 the prosecutor in that case. That is the only argument that
17 was made by the defendants in their response to summary
18 judgment.

19 The defendants cited no law that suggests the police or the
20 prosecutors could be liable for damages in the malicious
21 prosecution case. And indeed, there is immunity, absolute
22 immunity --

23 THE COURT: Well, it's technically immunity, but that
24 doesn't mean that they can't be liable. They just can't be
25 prosecuted. So I understand.

1 Mr. Murray, would you agree that with the exception of the
2 police and prosecuting attorney, you didn't respond as to any
3 other third parties who could be liable?

4 MR. MURRAY: Your Honor, the way we framed it in the brief
5 is how we would present the third party issue at trial.

6 THE COURT: Well, I think you can present issues about the
7 police and prosecutor.

8 MR. MURRAY: Sure.

9 THE COURT: But you obviously don't have any other third
10 parties. And so we'll narrow the issue there. I'll grant
11 part of your motion and that is I'll grant all your motion as
12 to any other third parties, potential third parties, with the
13 exception of the police and prosecutor. And their immunity
14 from lawsuit doesn't necessarily mean that they can't plead
15 them as an affirmative defense, because they can.

16 So you can certainly use that. And just because they can't
17 be sued doesn't mean that they can't have done something
18 wrong.

19 MR. WOODS: Thank you, Your Honor.

20 THE COURT: All right. So now we're on to No. 7.

21 MR. WOODS: Yes, Your Honor.

22 THE COURT: And you've indicated already that the defense
23 of laches basically has been withdrawn.

24 MR. WOODS: Yes, Your Honor.

25 THE COURT: All right.

1 MR. WOODS: In defendants' response brief, they withdrew
2 it.

3 THE COURT: Good, because I never really understood that in
4 law school very well anyway. So I'm really glad I don't have
5 to rule on that. I appreciate withdrawing it.

6 MR. WOODS: Yes, Your Honor. So the remaining --

7 THE COURT: That and negative pregnant and all those other
8 kinds of things that we all learned our first year and we
9 kept looking at each other wondering what in the world they
10 meant.

11 Now, I realize my first year, we actually had running water
12 and electricity when I was in law school. I mean, I know it
13 was a long time ago. But so.

14 Mr. Madden, don't say anything. I think you were after me.

15 MR. MADDEN: That's for sure.

16 THE COURT: What year?

17 MR. MADDEN: Seventy-eight.

18 THE COURT: Yeah, you were. Thank you for the kindness. I
19 appreciate it. UW?

20 MR. MADDEN: No, no. Boston.

21 THE COURT: Oh, so sorry.

22 MR. MADDEN: It felt a long time ago.

23 THE COURT: All right. So laches is withdrawn. And tell
24 me now about the other parts of Affirmative Defense No. 7?

25 MR. WOODS: Yes, Your Honor. The remaining claims, or

1 defenses I should say, for Affirmative Defense No. 7 are
2 waiver and estoppel.

3 Again, the defendants did not claim in their response brief
4 that these would apply to all of the claims. They only
5 argued that this could apply to the willful withholding of
6 wage claim. They did not argue that it applied to wrongful
7 discharge, malicious prosecution, tortious interference, or
8 the defamation claims.

9 THE COURT: Okay. Let me ask, Mr. Murray, the estoppel
10 part of your affirmative defense, doesn't that really apply
11 to how much the wages were, rather than any of the other
12 claims?

13 MR. MURRAY: I'll stand up.

14 THE COURT: Whatever you want to do, sir.

15 MR. MURRAY: Your Honor, the waiver and estoppel issue goes
16 directly to the heart of what we were discussing earlier on
17 whether there is any validity to the plaintiff's assertion
18 that he held a quality medical directorship, in addition to
19 the medical directorships in which he had a signed, written
20 contract.

21 The signed, written contracts that he executed specifically
22 contained integration clauses saying what an integration
23 clause says, "This supersedes any and all prior oral
24 agreements or promises," or anything of that nature.

25 And so we've asserted the waiver and estoppel defense on

1 the quality medical directorship issue, saying that he is
2 estopped from asserting that based upon what he specifically
3 signed in his contracts, that he waived any alleged,
4 unsubstantiated oral promise by signing integration clauses
5 as well.

6 THE COURT: Thank you. Mr. Woods, your response?

7 MR. WOODS: Yes, Your Honor. Two things. First of all,
8 the defendants do not cite any law that this issue would
9 constitute waiver or estoppel.

10 But beyond that and more importantly, the integration
11 clauses in question have nothing to do with the quality
12 medical directorship. What they cite is an integration
13 clause in a contract with Franciscan Health System from two
14 months before the quality directorship verbal contract was
15 entered into. And it is bedrock, first year law school law,
16 Your Honor, that an integration clause does not have any
17 preclusive effect on entering into future contracts. It has
18 no impact on future contracts.

19 The other two integration clauses they referred to are
20 integration clauses contained within contracts with FMG,
21 Franciscan Medical Group, not Franciscan Health System. And
22 they occurred much later in 2012 after Dr. Anel had already
23 stopped performing and resigned from the quality
24 directorship.

25 So again, integration clauses from those contracts have no

1 effect on a three-year prior contract with another company.

2 THE COURT: I'm going to rule, deny your motion at this
3 time, without prejudice for you to raise it at a later time
4 after you fully brief the issue. There's not enough briefing
5 for me to be able to rule on that particular legal issue,
6 Counsel. And so you can bring that up at a later time.

7 So it's denied without prejudice.

8 MR. WOODS: And, Your Honor, I would --

9 THE COURT: And there are a number of other claims and
10 Affirmative Defense No. 7, which sounds like the only thing
11 we're really left with is waiver estoppel.

12 MR. WOODS: Yes, Your Honor. And I would ask if Your Honor
13 is ruling that waiver and estoppel, that it would be granted
14 as to waiver and estoppel for the other claims, the wrongful
15 discharge, malicious prosecution --

16 THE COURT: I don't have enough information before me to do
17 that. I'll deny it without prejudice, the entire waiver
18 estoppel claim. And then you can bring a motion and outline
19 all the different claims and what you think it doesn't apply
20 to and what you think it does apply to and why. And then
21 they can respond.

22 MR. WOODS: Thank you, Your Honor. And I would ask if you
23 are hereby granting leave to file a dispositive motion on
24 this, since the deadline for filing dispositive motions will
25 have passed already?

1 THE COURT: I am.

2 MR. WOODS: Thank you, Your Honor.

3 THE COURT: And we'll talk about a timeframe as soon as
4 we're done.

5 MR. WOODS: Thank you.

6 THE COURT: What's our trial date, October what?

7 MR. BLANKENSHIP: Twelfth, Your Honor.

8 MR. MURRAY: Twelfth.

9 THE COURT: Twelfth. Today is and we'll just talk about at
10 timeframe right now. Today is the 21st of August. If you're
11 going to file any more dispositive motions, they have to be
12 filed on the 4th and a response should be by the 16th of
13 September. Reply by the 21st.

14 And do we have any time on the 25th of September, Lisa?
15 Probably not. Okay. What about the 24th? Why don't we
16 tentatively, subject to your guys' calendars, you're really
17 busy and I know that especially the guys from Colorado, we
18 can change it. But let's tentatively try and set a date if
19 we're going to have any other additional dispositive motions,
20 so that at least you have a time reserved.

21 We have a very, very busy trial calendar. And so let's
22 look at 1:30 on the 24th, I'll special set it. I don't like
23 doing that, but I will.

24 MR. WOODS: Thank you, Your Honor.

25 THE COURT: And so if there's any motions left that we

1 haven't ruled on or what have you, again, I'm trying my best,
2 but I really want more briefing on this issue.

3 MR. WOODS: Understood, Your Honor.

4 THE COURT: All right. So now Affirmative Defense, I think
5 we're down to No. 9, aren't we?

6 MR. MURRAY: Yes, Your Honor.

7 MR. WOODS: Yes, Your Honor.

8 THE COURT: What is No. 9, Counsel?

9 MR. WOODS: That is the unclean hands defense.

10 THE COURT: What is No. 9?

11 MR. WOODS: That is the unclean hands defense, Your Honor.

12 THE COURT: Go ahead, give me a brief summary of your
13 argument?

14 MR. WOODS: Yes, Your Honor. Again, this is not asserted
15 as to all of the claims. It's not asserted as to any of the
16 post-termination claims: malicious prosecution, tortious
17 interference, or defamation. And would argue that on that
18 basis the motion for summary judgment should be granted as to
19 those issues.

20 As to the pre-termination claims, Defendants rely solely on
21 the claim that Dr. Anel somehow committed timecard fraud, yet
22 they cite no admissible evidence in support of this claim.
23 The three people whose testimony they cite, or the two people
24 whose testimony they cite are Mr. Schley and Mr. Field, and
25 they both admitted in their depositions they lacked personal

1 knowledge of this issue and were relying on hearsay
2 statements from other people.

3 Given the lack of admissible evidence under CR 56(e), this
4 claim must be dismissed.

5 THE COURT: All right. Thank you. Mr. Murray, what is
6 your argument on the unclean hands? First of all, do you
7 agree that there's no evidence to suggest that unclean hands
8 actually attaches to any of the post-termination claims?

9 MR. MURRAY: Your Honor, we were only asserting the unclean
10 hands defense as to the termination and the wage claim.

11 THE COURT: That's what I thought.

12 MR. MURRAY: Yes. So yes, I agree.

13 THE COURT: So the motion as far as the post-termination is
14 clearly granted. There's no opposition.

15 MR. WOODS: Thank you, Your Honor.

16 THE COURT: Make sure that's in an order.

17 So let's talk about the pre-termination claims.

18 MR. MURRAY: Yes, Your Honor.

19 THE COURT: And the unclean hands. How do you respond to
20 Mr. Wood's argument?

21 MR. MURRAY: Yes. It would have been nice if there was any
22 discussion about why they were seeking summary judgment for
23 it in their brief, other than the --

24 THE COURT: Well, I agree with that. So I'm going to stop
25 you right now.

1 I'm going to deny, but you can bring it same as affirmative
2 defense on No. 7.

3 MR. MURRAY: Thank you.

4 THE COURT: I agree with you. I don't feel comfortable
5 making a ruling without seeing more in front of me. Don't
6 reinvent the wheel, but make in concise but give me something
7 in writing. And then give them an opportunity to respond.
8 And we'll go from there.

9 And if you guys can't make it up from Colorado, then we'll
10 try and schedule it for the following week. Let's see, I set
11 it for the 24th. The following week I'm here, so we could do
12 something that following week.

13 I'm gone, there is a judicial conference that begins on
14 Sunday, the 4th and goes the 5th, 6th, and 7th. And then I'm
15 out of town. So we're going to have to delay this trial one
16 day. I'm out of town. I don't get back until late on the
17 evening of the 12th. And I'll be here on the 13th.

18 So trial will actually begin on the 13th rather than on the
19 12th.

20 MR. WOODS: Yes, Your Honor.

21 THE COURT: And I apologize to everybody, but I want to
22 tell you far enough in advance. I've had a personal leave
23 planned for a number of months now actually, since April. So
24 you guys will find me in a very crappy mood if I don't get a
25 chance to go.

1 MR. WOODS: Understood, Your Honor.

2 THE COURT: So --

3 MR. GALLAGHER: Your Honor, if I might address the hearing
4 that we talked about on September 24th?

5 THE COURT: Yes, sir.

6 MR. GALLAGHER: I have committed to an event the evening of
7 September 24th in Denver.

8 THE COURT: That's fine. Let's try and set it sometime
9 close to the 24th but after the 24th. It's going to have to
10 be on a weekday, because every Friday we're full. We are
11 just jammed. We've got over 600 cases assigned to us, and so
12 we have summary judgments and motions starting at 8:30 in the
13 morning and going until 4:30 every single Friday. Plus we
14 have sentencing calendars three out of five Fridays every
15 afternoon, and those usually take up the whole afternoon.

16 So we're busy down here in Kent. So you know if we can do
17 it Tuesday afternoon or Wednesday afternoon, the following
18 week, that works for you guys and you guys. That is fine.
19 But get together and figure it out. And then let Lisa know
20 what day works and we'll try and just reserve it for you.

21 MR. WOODS: Thank you, Your Honor.

22 MR. MADDEN: Your Honor, it'll facilitate the scheduling if
23 the Court might excuse me, because I'm going to be in trial
24 in front of Judge Robinson downtown starting on the 14th.

25 I'd be willing to bow to out of state counsel.

1 THE COURT: I will. I will assume that hac pro vice is
2 okay.

3 MR. MADDEN: Thank you, Your Honor.

4 THE COURT: And thank you, Counsel. You are more than
5 welcome to be here when you can be here. I can call my dear
6 friend, Judge Robinson, and make all kinds of excuses for you
7 if you'd like. But I don't think she'll be probably happy.

8 MR. MADDEN: It's a med mal case with all witnesses from
9 out of the state, if not out of the country. So it's not the
10 best case to interrupt.

11 THE COURT: Doesn't sound like it.

12 MR. MADDEN: No. Thank you, Your Honor.

13 THE COURT: But it's the kind of case that Judge Robinson
14 would love to hear.

15 MR. MADDEN: I understand the judicial priorities.

16 THE COURT: Good. I won't take that away from her. She's
17 a very dear friend.

18 All right. So seven and nine we're going to talk about
19 subsequently, all right?

20 MR. WOODS: Yes, Your Honor.

21 THE COURT: So I think that there are some questions of
22 fact on failure to mitigate. I'm not going to grant that.

23 Number two is withdrawn apparently. Let me go back and
24 make sure. Yup. Two wasn't the issue, I'm sorry. Number
25 five. One, five, eight, and fifteen are withdrawn, so we're

1 just talking about failure to mitigate, which is three.

2 MR. WOODS: Yes, Your Honor.

3 THE COURT: And I believe there's issues of fact there. So
4 I'll deny that.

5 MR. BLANKENSHIP: But, Your Honor, you're sticking with the
6 ruling of 75 miles, right?

7 THE COURT: Yes.

8 MR. BLANKENSHIP: Okay.

9 THE COURT: Yes. I've already ruled on that one.

10 MR. BLANKENSHIP: All right.

11 THE COURT: And seven and nine we have to determine at a
12 later time. Six I've already ruled on. Okay.

13 So, Mr. Blankenship, you need to prepare an order
14 summarizing all the rulings that we've had so far. And I
15 know your staff's been taking notes back there and Mr. Wood's
16 been carefully doing that. You can also get a copy of the CD
17 from the clerk if you need to go through and listen to all of
18 our pearly words of wisdom.

19 MR. BLANKENSHIP: We intend to do that, Your Honor. Thank
20 you.

21 MR. GALLAGHER: Absolutely, Your Honor.

22 THE COURT: Like to have an order please, if I could,
23 before the 4th of September when I'm scheduled to be gone for
24 four days. So that means you've got really if you could get
25 me an order by the -- today's the 21st, by the 31st I would

1 be much appreciative. That way I could go back and look at
2 my notes while they're fresh in my mind and make sure that I
3 agree with it.

4 Make sure that Counsel, and Counsel, if you don't agree
5 with his order, then send me a separate order by the same
6 date so that I can look at both orders and make a decision.
7 Okay?

8 MR. BLANKENSHIP: Thank you, Your Honor.

9 THE COURT: All right. Now we've gotten through a good
10 portion of what we needed to do, but now we have Defendants'
11 Motion for Summary Judgment Against Wrongful Termination and
12 Wage Claims. Defendants' Motion for Summary Judgment Against
13 Plaintiff's Tortious Interference Claim. Defendants' Motion
14 for Summary Judgment Against Plaintiff's Malicious
15 Prosecution Claim. And Defendants' Motion for Summary
16 Judgment Against Plaintiff's Defamation Claim.

17 And some of the material that the plaintiff provided in
18 support of their motions is duplicative and applies to some
19 of these as well. And I think I've looked at all of these.

20 Let me try and first of all, Mr. Murray, I'll put you on
21 the hot seat, if you would, sir. I've already tried to
22 narrow the -- I've already ruled that some wages were
23 withheld, and so I think the first motion is pretty much
24 already decided, which is that there are issues of fact for a
25 jury or judge to determine concerning the plaintiff's

1 wrongful termination and wage claims. I think we've already
2 ruled on that haven't we, I mean, basically?

3 MR. MURRAY: Your Honor, the plaintiff's motion did not
4 address at all one of the requisite elements of the
5 overriding justification issue, which was actually the focus
6 of our motion. And we did say that we contested the other
7 issues, which the Court has addressed: the clarity, the
8 jeopardy, and the causation issues.

9 But in order for --

10 THE COURT: I've ruled on clarity and jeopardy. I've only
11 indicated that, I believe, that there are some factual
12 disputes or issues concerning the remaining issue.

13 MR. MURRAY: Yes, Your Honor. I apologize. Not ruled on
14 them, addressed.

15 In order for the claim to be viable, there has to be an
16 inability of the defendants to show that an overriding
17 justification existed. And the issues about the timesheets;
18 the inability to get them submitted timely; to have
19 verifiable services, has been extensively briefed.

20 THE COURT: But don't you think that there are issues of
21 fact present? I mean, it seems to me if I ruled one way and
22 denied their motions and indicated what I did orally, my
23 feeling is that there is some testimony on the part of some
24 of the folks that you have identified in your material as to
25 other reasons for termination. And I would be, I don't think

1 there's any way in the world that this isn't an issue that
2 should be submitted to the trier of fact. I mean, on both
3 sides.

4 And so I have a hard time, I want to try and cut through
5 the issues that I want to talk about. But I have a hard time
6 making a ruling in your favor on this issue, because I think
7 it's a factual dispute that needs to be determined. Why
8 exactly he was terminated probably is something that the
9 finder of fact needs to figure out. Hearing the testimony,
10 live testimony, because there are so many conflicting
11 statements and arguments. There's no way in the world that
12 this is ripe for summary judgment.

13 So I just really believe that and I want to make sure that
14 you understand why. I mean, there's too many issues of fact
15 here that people are contradicting each other and one
16 person's saying, "No, he wasn't at this meeting and he billed
17 for it and it was improper billing practices. And he was
18 basically trying to cheat us out of money." And the other
19 people are saying, "No, that's not true."

20 I mean, I don't know. And I certainly can't make that
21 decision on a summary judgment basis. Has to be a trier of
22 fact.

23 So I'm going to rule on your Motion for Summary Judgment
24 Against Plaintiff's Wrongful Termination and Wage Claims is
25 denied, because there are issues of fact present that must

1 resolved by a trier of fact.

2 The second Motion for Summary Judgment Against Plaintiff's
3 Tortious Interference Claim, go ahead, Mr. Murray?

4 MR. MURRAY: Your Honor, if I may, just for the record, on
5 the wrongful termination claim I understand the Court's
6 finding that there's a genuine issue of material fact.

7 Just for the record, I would like to note that the notice
8 of the written warning that was tendered to Dr. Anel a month
9 prior to his termination was specific for delays in
10 professional charges and untimely submission of timesheets.

11 THE COURT: I understand that. And I don't think they
12 dispute that fact, not from what I gathered.

13 MR. MURRAY: Mm-hmm.

14 THE COURT: But there's so many other facts here and so
15 many other witnesses who are saying different things, that I
16 can't make a decision on that issue.

17 MR. MURRAY: Understood, Your Honor.

18 THE COURT: All right. So now the tortious interference
19 claim?

20 MR. MURRAY: Yes, Your Honor. The tortious interference
21 claim, Plaintiff threw a wide net early in the case and I
22 think it's --

23 THE COURT: And if you want to talk about all three of
24 these, because in a way they're a little bit related, the
25 post-termination claims.

1 MR. MURRAY: Sure.

2 THE COURT: All three of them.

3 MR. MURRAY: They have some overlapping facts and then some
4 very distinct facts.

5 THE COURT: Right. I agree.

6 MR. MURRAY: On the tortious interference claim, I think
7 I'll go through. We tried to crystalize the issues in our
8 reply on pages 14 through 18 as to what Plaintiff has put
9 forth as what the basis of his claim is.

10 The first is an issue about an alleged interference with
11 his ability to obtain subleasing for office space for his Key
12 Nephrology practice. We raised in the motion that to the
13 extent there was any alleged interference with an entity's
14 leasing of an office space, that that entity should be the
15 one that asserts the claim, not Dr. Anel in his individual
16 capacity.

17 Aside from the standing issue, there are two entities that
18 he claims that were interfered with, Multicare and Pulmonary
19 Consultants. But as we said --

20 THE COURT: And those are the places where he was trying to
21 rent?

22 MR. MURRAY: Correct, correct. So Dr. Anel was in the
23 process of trying to secure a subleased area just to open up
24 his own practice. And during his deposition he was
25 specifically asked about these issues, and he testified that

1 the regional director or manager for Multicare had told him
2 that their leadership decided, essentially have a change of
3 heart. And that they weren't going to lease to independent
4 physicians. And that he only suspects that one or all of the
5 defendants, it's unclear which defendant he's alleging it
6 against, interfered with that somehow.

7 It's suspicion, speculation, there's no actual evidence of
8 it. And what someone from Multicare said to him is also
9 inadmissible hearsay.

10 So there's really no record evidence that could support,
11 admissible evidence that could support that there was any
12 interference, even in the light most favorable to him.

13 On the Pulmonary Consultants side, the only evidence that
14 he's been able to set forth was that someone told an
15 executive or the chief medical officer, Dr. Adams, someone
16 told him that someone had interfered with the lease. Or that
17 he said that Franciscan wouldn't like it if you lease to
18 Dr. Anel. It's double hearsay. It's someone from somewhere
19 else telling him that Dr. Adams said something.

20 So there's no admissible evidence to support that. Again,
21 it's also based on just I would say suspicion.

22 If we get into the next category -- do you want me to take
23 these one by one, or do you want me to address all of the
24 tortious interference together?

25 THE COURT: I think you should address all of them.

1 MR. MURRAY: Okay.

2 THE COURT: But I'm with you on page 7 of your brief right
3 now.

4 MR. MURRAY: Okay.

5 THE COURT: And so we can go to the next one.

6 MR. MURRAY: Okay. Well, let me address the next one I
7 have is employment applications. I'm looking at my --

8 THE COURT: Okay. Right.

9 MR. MURRAY: So the interference with Dr. Anel's employment
10 applications, he has been applying for part-time positions
11 around the country for locum tenens, these are locum tenens
12 positions. And he's alleging that he hasn't been able to
13 secure some of those because the hospital, or someone from
14 one of the defendants, Dr. deLeon, was sending responses to
15 those inquiries in which he says there was no basis to
16 include information about the internal peer review
17 allegations being unfounded.

18 And first, there's no evidence that he didn't secure any of
19 those positions. There's no evidence that any of those
20 entities that received the communications actually told him,
21 "We're not going to hire you because we received this."
22 There's no evidence that there was actually a reasonable
23 fruition of gaining employment with those entities.

24 But more importantly, hospitals are required by Washington
25 statute to respond to inquiries from other healthcare

1 facilities asking about the employment status or verification
2 of someone who's applying for a position with them.

3 And the statute, which is 70.41.230(4) provides immunity
4 for that. It's actually an essential process for healthcare
5 entities that privilege and credential providers to contact
6 the other facilities where that provider has been employed or
7 worked at, ask, "Have they ever been subject to discipline?
8 Have they ever been investigated? Do they have any issues?"
9 Those types of questions. And receive an appropriate
10 response. And there's statutory immunity for that.

11 I would note, for the record, Plaintiff does not address
12 the statutory immunity question in their response brief at
13 all, and I would say it's been confessed. There's no
14 rebuttal to the statutory immunity issue.

15 All we received were allegations that there was a shocking
16 desire to ruin his reputation. But when you actually look at
17 Dr. Deleon's responses, he even, you know, this is noted in
18 our reply brief, on some of those responses where it was
19 more, instead sending a letter, there's a check the box
20 category. It asked, I'll paraphrase, "Is this physician
21 respected amongst administration or providers or staff?" And
22 he said, "Yes." And then he also checked the box, "I have no
23 reservation of recommending him for this position," type
24 answers.

25 It doesn't mesh with their theory that Dr. deLeon's trying

1 to sabotage him. He's actually recommending him. But by
2 statute he's providing the required information, which is
3 immune from civil liability for a healthcare entity to
4 provide information about a provider to another healthcare
5 entity.

6 So I think the Dr. deLeon response letter is a meritless
7 argument for tortious interference. The next --

8 THE COURT: Let me ask. Let's stop right now, because
9 there's more to it obviously. But I want to hear
10 Mr. Blankenship's or Mr. Wood's response to the first two,
11 which is interference with his ability to be able to rent
12 space at a lower amount. Eventually, he did get space, but
13 it was at a higher amount. And the deLeon letter and whether
14 or not it's statutorily, what he did was statutorily
15 required. So go ahead?

16 MR. WOODS: Yes, Your Honor. Well, I'll start with the
17 immunity issue. It is incorrect to say that Plaintiff did
18 not respond to that in Plaintiff's response brief. In fact,
19 Plaintiff pointed out on page 38 of the response brief that
20 the only law Defendants cited for this proposition is RCW
21 70.41.230(4), but that that statute does not require telling
22 potential employers that someone was investigated for alleged
23 harassment and then acquitted of the charge.

24 MR. MURRAY: And, Your Honor, I apologize. They do address
25 it in two sentences in their 96-page brief.

1 THE COURT: Well, I had seen it also, but there's a lot of
2 material here. So no, you don't need to apologize. I
3 appreciate your candor. Thank you.

4 Mr. Woods, what exactly is it that you think that
5 Dr. deLeon did which justifies your claim?

6 MR. WOODS: Dr. Anel applied for positions at various
7 hospitals. Those hospitals sent a specific letter that
8 requested the exact information that is required to be
9 disclosed in RCW 70.41.230. Those requests, consistent with
10 that statute, did not ask if he had been investigated. They
11 asked if discipline had been imposed against him, which it
12 was not.

13 There was a box that had to be checked in numerous of these
14 forms. The box was, "Yes, these things have occurred." And
15 after yes, it said, "If so, please explain." And the other
16 box was no. Dr. deLeon checked the box no every time,
17 because the information requested and required to be produced
18 under this statute had not happened.

19 Nevertheless, he went out of his way to draft an
20 explanation of the fact that Dr. Anel had been investigated
21 for harassing a coworker, information that was not requested
22 and not required. And as Dr. Anel testified in his
23 deposition, right after that happened, suddenly several of
24 these places did, in fact, stop returning his phone calls,
25 places that had been discussing his schedule so he could come

1 out to do work. And instead, all of the sudden, they simply
2 ceased contact with him.

3 Circumstantial evidence on summary judgment is admissible
4 and is just as powerful at summary judgment as a lot of forms
5 of direct evidence. Dr. Anel has presented enough evidence
6 from which a reasonable jury could find --

7 THE COURT: Okay. Wait, wait, wait. I don't need to have
8 the basic arguments. I want to know about the tenant, the
9 rent. You addressed the statutory argument on Dr. deLeon.
10 Tell me about the tenant argument that he's just made.

11 MR. WOODS: Yes, Your Honor. Well, that information is not
12 hearsay, it's not offered for the truth of the matter. It
13 would be, if somebody from Multicare, for example, had said,
14 "We denied you this lease because we were told to deny it by
15 the Franciscan Group." That's not what they said, so we're
16 not offering it for the truth of the matter.

17 What we're offering that testimony for is to show that they
18 gave a false reason, creating suspicious circumstances for
19 the denial of the lease.

20 THE COURT: Well, that's not enough though, on a claim.

21 MR. WOODS: No, it's not enough, Your Honor.

22 THE COURT: You have to tell me, what information, what
23 evidence do you have to support your claim?

24 MR. WOODS: Right. So what happened is Dr. Anel was told
25 by Multicare that they were denying him the lease because

1 they will not give that space to any third parties. And they
2 immediately rented that same space to a third party.

3 At the same time, the defendants' managers and executives
4 were emailing each other, saying, "Hey, Dr. Anel's trying to
5 open a space here at Multicare. That's right across the
6 street. We need to meet. We need to figure out how to deal
7 with this." They're contemporaneous emails from the
8 defendants' executives saying, "We need to make sure that
9 there's not a "avalanche" of patients. If one patient leaves
10 for Anel, there will be "an avalanche.""

11 So the timing of these issues, along with the suspicious
12 circumstances, does provide circumstantial evidence in
13 support of the claims.

14 THE COURT: Are you prepared to offer any evidence that
15 there was contact between the defendant and Multicare?

16 MR. WOODS: Well, we are prepared to offer the
17 circumstantial evidence that we've identified, Your Honor.

18 THE COURT: I understand your argument that all of this was
19 a conspiracy from the defendant against your client. There's
20 got to be some evidence here, Counsel. And I'm having a hard
21 time thinking that you have enough evidence to show that the
22 defendant did something, affirmatively did something, which
23 is what you have to show, to prevent your client from leasing
24 space.

25 I don't see any evidence. I mean, I understand the

1 arguments and I understand the circumstantial, but I don't
2 see any evidence to indicate that that occurred.

3 So that limited summary judgment motion is going to be
4 granted. I don't see any evidence. I don't think there's
5 any facts.

6 So now, the deLeon issue, not granted. I think that
7 there's evidence there to indicate that Dr. deLeon went out
8 of his way, arguably went out of his way, to tell the other
9 side stuff that wasn't required by the statute.

10 MR. WOODS: Thank you, Your Honor.

11 THE COURT: And stuff that may not have been true.

12 In your brief, Mr. Woods, I just want to point out to you
13 that, it may be a very small point, but nevertheless, it's a
14 point that I simply want you to be aware of for the future.
15 When you say that your client was "acquitted," the prosecutor
16 dropped charges. That's not the same as acquitted.
17 Acquitted means going to trial and actually having a jury or
18 a judge rule in your favor. Therefore, you are acquitted,
19 you are not guilty.

20 He never got that far. The prosecutor dropped charges for
21 lack of evidence. That's different. And it may be a small
22 point, it may not matter in the grand scheme of things,
23 because it doesn't really affect your argument about what Dr.
24 deLeon did. But it does affect the facts.

25 MR. WOODS: And I apologize for the confusion there, Your

1 Honor. What we intended to say was that he had been
2 acquitted of the charge before the medical executive
3 committee, which is what one of the executives testified
4 about.

5 THE COURT: Which is different than what you said. Yes.

6 MR. WOODS: That is what we intended. So I apologize for
7 that confusion.

8 THE COURT: All right. Well, yeah, they said it hadn't
9 been proved.

10 MR. MURRAY: Your Honor, may I address a couple points real
11 quick?

12 THE COURT: Sure.

13 MR. MURRAY: Thank you. The deLeon letters, Dr. Anel
14 specifically testified in his deposition that there was
15 actually nothing in those letters that was untrue. They were
16 actually true statements. The letters are specific as to, as
17 Mr. Woods pointed out, the hospital policy violations and the
18 peer review/medical executive committee investigation, which
19 was what Dr. deLeon was referencing to these inquiring
20 entities.

21 I do want to just note for the record that on page
22 ANE00384, which we cited in our reply brief on page 16, there
23 is a form like this and it says, "Has the practitioner ever
24 been subject to or considered for disciplinary action?" Yes
25 was checked. It said, "See below," and the exact same

1 statement or almost word verbatim statement that is included
2 in all of Dr. deLeon's responses is provided.

3 So there is evidence that the hospital was being
4 specifically inquired as to had Dr. Anel ever been considered
5 for disciplinary action. He appropriately checked the yes
6 box, provided a summary as to why he was investigated, and
7 that it was unproven.

8 And then on the same form it says, "Is the practitioner
9 respected by colleagues, administration, and ancillary
10 staff?" Yes. And then he checked, "I recommend without
11 reservation for appointment/reappointment."

12 In Dr. deLeon's statements, he's not going out of the way
13 to prevent him from getting a position. He's without
14 reservation recommending him for the position.

15 THE COURT: Well, Counsel, I'm not disagreeing with what
16 you just pointed out to me. You've made your record. I
17 think there's some issues of fact here that a trier of fact's
18 just going to have to sort through.

19 It may very well be that they find that on this particular
20 claim there's not sufficient evidence. But I do think, as
21 you have argued to me an hour ago, I need to take the
22 inference in a light most favorable to the nonmoving party.
23 And I will on this one.

24 MR. MURRAY: Understood, Your Honor. Thank you.

25 THE COURT: All right.

1 Now let's go to the next title or heading you have is
2 "Seeking Employment." And former patients. And alleged
3 interference with medical treatment and denying Plaintiff the
4 right to conduct business at Defendants' facilities.

5 When I read over all the material that was submitted on
6 these issues, I honestly felt there were issues of fact here
7 that would prevent me, for the same reasons that I've
8 indicated on the first one, prevent me from ruling one way or
9 the other on summary judgment.

10 Former patients, if they bring up some former patients as
11 they've indicated, then there might be an issue of fact here.
12 There was one person that they cited in their brief. Well,
13 they're going to have to present that evidence. But again,
14 all inferences in their favor at this point. So I'm going to
15 deny that.

16 Alleged interference with medical treatment in denying
17 Plaintiff the right to conduct business at the defendants'
18 facilities, there was an incident that they reported in their
19 brief that talked about a nurse or someone from the hospital
20 telling the staff not to give someone dialysis, who was a
21 patient of Dr. Anel's. And I don't know if that happened or
22 not, but they say it did.

23 And your response to that? Because if it did happen, boy,
24 that's number one, a pretty serious offense. And number two,
25 certainly supports their claim.

1 MR. MURRAY: Sure. If I may go back to their response
2 brief, Your Honor, on the solicitation or the patient issue.
3 And then also this issue about the Group Health patient.

4 They tendered a significant number of witness declarations,
5 which we pointed out in our combined reply brief, as factual
6 support. As essentially the cornerstone of their factual
7 support in opposition to the motions on the tort claims.

8 And those declarations, this was also the subject of some
9 of the surreply briefing, in our view were completely,
10 utterly, purposely withheld --

11 THE COURT: Which I signed an order and I'm sure you all
12 got yesterday.

13 MR. MURRAY: Yes.

14 THE COURT: I've had enough briefing.

15 MR. MURRAY: Sure.

16 THE COURT: And so I said, "No surreply."

17 MR. MURRAY: No surreply. But the declarations were
18 attached to the opposition to the summary judgment.

19 THE COURT: Yes, they were. And I actually read them.

20 MR. MURRAY: And those declarations, the contents of them
21 are actually plagued with a lot of inadmissible opinion,
22 hearsay, lack of foundation, lack of personal knowledge. But
23 the more troubling aspect is we had specific discovery
24 requests during formal discovery asking for statements from
25 witnesses, asking for documents specific to claims, asking

1 about anything. And we inventoried this in our reply brief.

2 And the disclosure, the existence of witness declarations,
3 was actually never even made. It was never included in a
4 privilege log. We got boilerplate objections that said, "We
5 won't produce attorney/client privilege or work product,"
6 kind of things like that.

7 And now they've asserted the work product doctrine as a
8 justification for never giving us witness declarations,
9 trying to use the privilege as a sword and a shield, saying,
10 "We didn't have to disclose these to you, but now we're going
11 to use them against you on summary judgment."

12 And that is completely against the jurisprudence on
13 privilege. You can't use privilege as a shield and a sword.
14 And that's exactly what they did. They hid the ball from us.
15 They withheld declarations that they've had for over a year.
16 And then attached them onto the summary judgment brief.

17 And we ask that the Court just not consider them in ruling
18 on the motions.

19 THE COURT: All right. Thank you. Your response, Counsel?

20 MR. WOODS: Yes, Your Honor. So I actually have several
21 responses.

22 THE COURT: And I'm familiar with the Hickman case. I
23 teach it in my class at Seattle U. So I know what it says.

24 MR. WOODS: Okay. Additionally, it is incorrect for
25 Defendants to say that we just made boilerplate objections.

1 I drafted the objections, I specifically wrote in there that
2 we were denying to produce statements because they were
3 protected by work product. Defense counsel never conferred
4 with us, never filed a motion with the court on that issue.

5 THE COURT: Mr. Murray, you'll get a chance.

6 MR. MURRAY: During depositions, defense counsel confirmed
7 that they were not personally representing numerous employees
8 of the defendants, and yet they still instructed --

9 THE COURT: That's not his issue. His issue is you hid
10 them and then you used them. So shield and sword. And it
11 seems to me that that has some merit.

12 MR. WOODS: We're not using them as a shield and a sword.
13 We're not trying to --

14 THE COURT: Well, you sure as heck used them as a sword.

15 MR. WOODS: Well, so first of all, well, the work product
16 doctrine is not a privilege. Case law about the
17 attorney/client privilege shield and sword does not address
18 the work product doctrine. The work product doctrine can be
19 waived at any time simply by intentionally turning over
20 information that had been protected by the work product
21 doctrine.

22 Witness statements again, witness information cannot simply
23 be stricken without going through the testimony. I won't get
24 into that, given that you are well aware of that, Your Honor.
25 And Plaintiff was not using these as a sword. Plaintiff

1 chose to withdraw the work product doctrine protection when
2 the defendants raised issues. These are not being used as a
3 sword. These are being used to present admissible evidence
4 to this Court.

5 If this Court would like, we can recontact all of the
6 witnesses and have them sign something new at this point.
7 But Defendants were well aware of all of these witnesses.
8 They were listed, nine of the ten witnesses, were listed in
9 witness disclosure forms. And the tenth was identified by
10 the defendants' witnesses during depositions. That's how we
11 learned about the witness, Ali Subleet Yanez (sp).

12 So Defendants knew about all of these witnesses. In
13 numerous interrogatory answers, Plaintiff explained how their
14 testimony would relate to defamation claims or to tortious
15 interference claims or things of that nature. The defendants
16 had every opportunity to depose these people or to contact
17 them. They chose not to. There is no law that they cite
18 that would allow these witness statements, admissible
19 evidence, to be rejected and stricken.

20 THE COURT: All right. Mr. Murray, your response?

21 MR. MURRAY: Yes, thank you, Your Honor.

22 I think Mr. Woods' characterization of this as evidence
23 settles the issue that it's not work product. These weren't
24 attorney notes from a --

25 THE COURT: Well, it's evidence now. And the issue is --

1 MR. MURRAY: It's a sword.

2 THE COURT: Whether or not it was work product earlier.

3 MR. MURRAY: Sure.

4 THE COURT: But it's clearly evidence now.

5 MR. MURRAY: And the suggestion that Ms. Ramirez-Yanez only
6 came to light during the depositions this spring is
7 essentially belied by the fact that her declaration's signed
8 March 22, 2014. So it was after the lawsuit was filed, but
9 well before any of these depositions were taken.

10 These were relevant, discoverable, sworn statements made
11 under oath that should have been produced. It's not work
12 product. These weren't interview notes from counsel that
13 would be work product. They weren't attorney's notes. These
14 were sworn statements made under the penalty of perjury that
15 they obtained for no other purpose than to use in litigation.
16 You don't obtain a sworn statement from a witness unless
17 you're going to use it for some reason.

18 And the suggestion that they disclosed them by a vague
19 objection that we're not producing anything under the work
20 product doctrine is also unsupported, because they didn't
21 list it on a privilege log. They produced privilege logs,
22 but we didn't get a privilege log that listed all these
23 witnesses declarations. They were completely hidden and then
24 when the time was right, they were attached to a summary
25 judgment brief.

1 It's shield and sword. There's no other way to explain it.

2 THE COURT: Well --

3 MR. WOODS: And, Your Honor, I do have --

4 THE COURT: I don't want to hear any more.

5 MR. WOODS: Oh, sorry.

6 THE COURT: I have some mixed emotions, to be honest with
7 you. It kind of smells a little. I don't like it.

8 I do believe that the Hickman case, which is the U.S.
9 Supreme Court case that directly effects the definition of
10 work product, clearly defines work product. And this clearly
11 work product.

12 It is material that was prepared in anticipation of
13 litigation. Whether it's in the form of a declaration or
14 notes taken by a staff member or a lawyer doesn't really seem
15 to matter to the Hickman court. And so it's work product.
16 That's pretty clear from the definition that we get out of
17 Hickman.

18 But now it's not. It's now evidence. So the issue is
19 whether or not it can, if there's prejudice to the defendants
20 by the late disclosure. Because there was late disclosure.

21 I like to think that every case we have and every trial we
22 have is a search for the truth, regardless of what that might
23 be. And I've always felt and my judicial philosophy is to
24 allow facts to come into play so that the trier of fact can
25 ultimately decide what's right and what's wrong.

1 And so I'm going to let it in. I'm going to also, however,
2 indicate that I'll reserve the issue of terms. If there are
3 added expenses or added problems that the defendants face
4 because of the late disclosure of these witnesses, then you
5 may bring a motion before me and I'll seriously consider the
6 imposition of terms. Because I do think it's late.

7 But I also believe that we're here to try and figure out
8 what happened. And if these witnesses assist in that
9 process, then it's appropriate. So that'll be my ruling.

10 And as far as, Mr. Murray, as far as your tortious
11 interference claim, I think that the -- I've already talked
12 about the ones that I don't think are supported. I don't
13 think that the rent thing is supported. I'll grant your
14 motion on that.

15 I think that the other issues as to tortious interference,
16 there's some facts there. They have to produce facts. They
17 can't produce hearsay, that's not going to be admissible.
18 Period. But I do think that there's an issue that I have as
19 to whether or -- and I have this feeling that it's just
20 something a trier of fact needs to determine. So I'll deny
21 the rest of that motion.

22 As to the malicious prosecution claim --

23 MR. GALLAGHER: Your Honor, may I interject for just a
24 second?

25 THE COURT: Yes, sir.

1 MR. GALLAGHER: With regard to the witnesses who were
2 disclosed in the declarations, in furtherance of the Court's
3 belief that the trial process is a search for the truth, now
4 that we have the benefit of these work product affidavits
5 that have been disclosed, we would like to ask the Court for
6 leave to be able to depose these witnesses.

7 THE COURT: Absolutely. Absolutely, every one of them.

8 MR. GALLAGHER: All right. Thank you.

9 THE COURT: And again, if there are delays which cause you
10 something that you think is an unfair expense, you may, I'll
11 reserve the issue of the imposition of terms.

12 MR. GALLAGHER: Thank you.

13 THE COURT: Because of the late disclosure of witnesses.
14 Because it was after the discovery cutoff, there's no doubt
15 about that.

16 All right. But they can use them.

17 Now the malicious prosecution claim is the next one and it
18 seems to me that that is, there's just so many facts in
19 dispute about that, that there's one witness from the
20 hospital whose actions in particular appear to be in issue.
21 And then what was told to the police officers and what was
22 told to the prosecutor and what happened, that should be
23 pretty easily proven or disproven by their testimony.

24 So I'm going to deny that. I think there's an issue of
25 fact.

1 MR. MURRAY: Your Honor, if I may address the issue of
2 statutory immunity?

3 THE COURT: Yes. Oh, that doesn't apply to you guys. It
4 applies to the prosecutor and to the cops, but not to you.

5 MR. MURRAY: The statutory immunity I'm referring to is RCW
6 4.24.510, which allows civil immunity from cases like this,
7 where an individual provides information to law enforcement
8 or a governmental agency --

9 THE COURT: You're talking about the second anti-SLAPP
10 statute?

11 MR. MURRAY: Yes, yes, Your Honor. The one that was not
12 addressed by Davis.

13 THE COURT: The one that wasn't held unconstitutional?

14 MR. MURRAY: Correct.

15 THE COURT: By the State Supreme Court?

16 MR. MURRAY: Yes.

17 THE COURT: I don't think it applies. I really don't. I
18 looked at it, I read the statute. I just, I don't think it
19 is required in this case. I just don't believe it is.

20 And it says, you have it cited on page 11 of your brief and
21 I'm looking at it right here, "A person who communicates a
22 complaint or information to any branch or agency, federal or
23 state, is immune from civil liability for claims based upon
24 the communication to the agency or organization regarding any
25 matter reasonably of concern to that agency or organization."

1 If the complaint was something that was, if there were
2 misrepresentations made, I don't think the statute applies.
3 And I don't think it was meant to shield someone from making
4 a grossly negligent or a misrepresentative complaint. And I
5 don't know if that's the case or not here, but that's the
6 allegation.

7 MR. MURRAY: And, Your Honor, just so I can make a record.
8 The Bailey case, the Bailey v. State case that we cited in
9 our briefing specifically acknowledged that the legislature
10 removed the good faith requirement earlier in the 2000's from
11 the statute, such that if you provide information to law
12 enforcement that there's no good faith requirement. So I
13 just wanted to make a record for that.

14 So if you provide information that's inaccurate, you know,
15 there's a lot of accusations coming at us from the other
16 side. But, you know, at the thrust of it all, they're saying
17 that we provided misinformation to the police.

18 Well, that falls squarely within the statute, when you
19 provide information to a detective who asks for information
20 during a pending investigation and you cooperate. The fact
21 actually has gone undisputed that everything the detective
22 testified to, no one's come forth, the plaintiff has not
23 presented any evidence to rebut what the detective testified
24 to.

25 The detective testified that he conducted an

1 independent investigation. Everything he asked for was
2 given to him. He made his own decisions. He actually
3 viewed information provided to him as not the truth,
4 because he was being objective and doesn't base his
5 entire investigation on what someone else did in an
6 internal hospital investigation, or what someone gives
7 to them. He has to apply his own detective skills,
8 which this detective had 30 years of law enforcement
9 experience, in assessing whether he thought there was
10 probable cause.

11 He testified he believed there was probable cause. He
12 testified that he thought it was appropriate to refer the
13 case to the prosecutor. And if he didn't believe there was
14 -- all cases get referred to the prosecutor, but if he
15 thought there was a reason why he needed to address something
16 with the prosecutor about probable cause, he would have told
17 him. Because he wouldn't want an injustice to be done to Dr.
18 Anel.

19 That has all gone unrebutted. So the suggestion that has
20 been put forth in the briefing that we were trying to
21 conspire and get Dr. Anel charged goes against everything
22 that the detective testified to, as a representative of the
23 Gig Harbor Police Department in his Rule 30(b)(6) deposition.

24 And then the prosecutor did his own thing. There's no
25 evidence that anyone from any of the defendants ever spoke to

1 the prosecutor. They only spoke with the police department.
2 And that falls squarely within the protections and, I might
3 add, that probable cause is an absolute defense to a
4 malicious prosecution claim. And there is no evidence that
5 rebuts the detective's testimony that he believed, as a man
6 of reasonable caution with 30 years of law enforcement
7 experience, believed that there was probable cause.

8 Now, whether or not the claim got dismissed later or there
9 wasn't a basis for it, that's an issue for whether or not,
10 beyond a reasonable doubt, he would have been convicted. But
11 the detective believed, based upon everything he saw in his
12 independent objective investigation, probable cause existed.

13 And I would suggest to this Court that a detective with 30
14 years law enforcement experience is man of reasonable caution
15 in conducting a criminal investigation.

16 THE COURT: All right. Thank you. Mr. Woods?

17 MR. WOODS: Yes, Your Honor. Plaintiff's opposition brief
18 already addressed every point that was just made by defense
19 counsel. I would point out that in Bender, which is
20 controlling law, the court specifically rejected the notion
21 that a police officer or prosecutor's individual opinion over
22 whether there was probable cause matters at all. It is a
23 fact question for a jury. In fact, it makes no sense to say
24 that if law enforcement thought there was probable cause --

25 THE COURT: No, I want you to address the issue here. The

1 issue is whether or not the anti-SLAPP statute applies to the
2 facts of this case.

3 MR. WOODS: Yes, Your Honor. The one case that the
4 defendants cited was not in the context of a malicious
5 prosecution claim.

6 THE COURT: But you indicated in your brief that this
7 statute is unconstitutional. But isn't it the other statute
8 that was ruled unconstitutional by the State Supreme Court?

9 MR. WOODS: The other statute was ruled unconstitutional.
10 The grounds for which that unconstitutionality finding was
11 made would apply to a judge making any kind of ruling that
12 applies the anti-SLAPP immunity under the remaining statute
13 without sending it to a jury. Because there are questions of
14 fact.

15 That is the exact, exact basis that Davis overruled RCW
16 4.24.525 as unconstitutional was because it required factual
17 determinations by a court, not by the jury. Thus violating
18 Washington's Constitution Article One, Section 21. There are
19 inherent fact questions before anti-SLAPP immunity under RCW
20 4.24.510 can be applied, such as whether there was a
21 communication that meets a reasonableness standard, if it's
22 reasonably of interest to authorities. That kind of
23 reasonableness standard is inherently a jury question.

24 The same thing with the portion of the statute that
25 requires a determination as to whether the defendant acted

1 with bad faith. That is inherently a jury question --

2 THE COURT: Tell me a bit more about that, because Counsel
3 argues that this was not a bad faith requirement basically.

4 MR. WOODS: Bad faith is an issue that applies, that must
5 be decided if there is a factual determination that
6 communications were made to a government official that were
7 of reasonable interest to that official, then there must be a
8 factual determination as to whether the comments were made in
9 bad faith or not. If they were made in bad faith, there is
10 no award of statutory damages and attorney's fees. So that
11 absolutely is part of --

12 THE COURT: But does the anti-SLAPP statute that has not
13 been ruled unconstitutional as yet, so let's put that aside
14 for the time being.

15 Let's assume just for argument's sake that 510, which
16 hasn't been ruled on, is not adjudged by our State Supreme
17 Court to be unconstitutional. So let's assume that it's
18 still a viable statute for the purposes of this case.

19 Let's furthermore assume that you can show, just for
20 argument's sake, that you can show that there was bad faith
21 on the part of the defendant in making the report to the
22 police officers. Does it matter under the anti-SLAPP? He
23 says it doesn't. Does it matter?

24 MR. WOODS: It does matter under --

25 THE COURT: Where?

1 MR. WOODS: Additional language in Davis, which states that
2 misuse of the criminal justice system to improperly
3 essentially target a person, is and always has been an
4 actionable tort. That is malicious prosecution. That is
5 exactly what a malicious prosecution claim is.

6 And this wasn't some stray comment in a random case that
7 had nothing to do with the anti-SLAPP. This was a comment in
8 a case that found that the other anti-SLAPP statute itself
9 was unconstitutional. The issue of RCW 4.24.510 was simply
10 not before the Court. However, in the context of anti-SLAPP,
11 the Washington Supreme Court unanimously held that this type
12 of claim is and always will be actionable. And again --

13 THE COURT: I'll read over Davis. I'm not going to rule,
14 I'll reserve ruling. I'll read on Davis and I'll send you an
15 email indicating to you what my ruling is on the
16 constitutionality of 510 as -- or its applicability. More
17 appropriately, its applicability in this particular instance,
18 when there are factual disputes as to whether or not there
19 was bad faith here in reporting the claim. There are factual
20 disputes. I believe that.

21 So in that regard the motion for summary judgment is
22 denied, but there may very well be, he argues that it doesn't
23 matter at this point in time, because the anti-SLAPP statute
24 wasn't complied with. I have to read the Davis case again.

25 I read it when it first came out, but I did not read it in

1 that context, because I didn't have any anti-SLAPP cases at
2 that time. So --

3 MR. BLANKENSHIP: Your Honor, just for context, basically
4 all we have to show is that they provided false information
5 to the police in order to encourage a false prosecution.

6 THE COURT: I'll read the case, Counsel, and then I'll let
7 you know.

8 MR. BLANKENSHIP: What's that? But it's not just that
9 case. It's also the other cases that we cited.

10 THE COURT: I understand what you cited.

11 MR. BLANKENSHIP: All right. Okay.

12 THE COURT: I want to read the case.

13 MR. WOODS: Yes. And, Your Honor, I would just
14 additionally respond that we're not talking about bad faith.
15 We're talking about whether false --

16 THE COURT: Malicious prosecution.

17 MR. WOODS: We're talking about for the anti-SLAPP whether
18 a false statement made to police is something that is of
19 reasonable interest to the police. In fact, it is a crime
20 under the criminal code, to make false or misleading
21 statements to public officers.

22 THE COURT: Well --

23 MR. WOODS: To public officials.

24 THE COURT: All right. That's not before me. I
25 understand. However, there is a different motion before me

1 that is certainly related to this, Plaintiff's Motion for
2 Spoliation Sanctions Against the Defendants. I'm reserving
3 ruling on that, because I don't have enough evidence to make
4 a ruling right now. I want to hear more.

5 I understand the videos, you're talking about the videos
6 that would have shown Dr. Anel leaving the lounge, employee
7 lounge, at certain times during the days in question; is that
8 not correct?

9 MR. BLANKENSHIP: Yes, Your Honor. It involves both the
10 videos that they actually cherry picked and just got videos
11 showing Dr. Anel sometimes coming in once, coming in and
12 coming out. And then the badge swipes, where they literally
13 just saved badge swipes when Dr. Anel came in. For example,
14 one day the only badge swipe they preserved was a badge swipe
15 of Dr. Anel coming in.

16 In my supplemental declaration where we finally talk about
17 withholding witnesses and we would certainly reserve, would
18 like the ability to file motions for terms on the issues with
19 respect to witnesses with defendants, but on the issues of
20 these hard drives that were basically withheld until after
21 discovery cutoff, we were able to uncover the Ellen Hardin
22 was on the computer, or appears to be on the computer,
23 logging into her other things, and Ms. Latvin testified, the
24 head of HR, head of the investigation, that she was nowhere
25 near the computer at that time.

1 So basically the only thing that would have, I think we've
2 given enough information to show Your Honor that they clearly
3 destroyed evidence. Because they literally at the time they
4 grabbed the badge swipe information, they could have saved it
5 all. At the time they put the videos just of Dr. Anel
6 entering the room, and he could have walked out two minutes
7 later, they basically at the time they did that, they could
8 have preserved it.

9 Meanwhile, I'm having conversation with Mike Madden about
10 the NEC and the other litigation going on with Dr. Anel. His
11 law firm's drafting declarations for Vicki Latvin and the
12 antiharassment hearing. I'm basically dealing with all of
13 these issues, completely hot issue.

14 And we even filed a lawsuit. And yet they allow these
15 videos to be destroyed, they allow these videos to be
16 destroyed that would have shown when other people entered and
17 left the room. For example, we know that Ellen Hardin was
18 there --

19 THE COURT: Okay. I'm reserving ruling.

20 MR. BLANKENSHIP: Okay. Thank you, Your Honor.

21 MR. MURRAY: I was going to ask, Your Honor, if you're
22 taking argument on this issue?

23 THE COURT: I'm reserving ruling.

24 MR. MURRAY: Thank you.

25 THE COURT: And you've only got six minutes left. I have

1 another case involving several thousand pages this afternoon
2 at 1:30, so six minutes is it.

3 So the spoliation, that ruling is reserved for further
4 argument and for the trial. There may very well be a motion
5 that you can bring, Counsel, at the conclusion of your case
6 that you're allowed to do.

7 Okay. I have a couple more here. A malicious prosecution
8 claim, I think that there's issues of fact here and I'm going
9 to have to make a ruling on the anti-SLAPP statute, which I
10 will do. And I'll get that out to you hopefully by Monday.
11 I need to read the Davis case and I'll do my best.

12 Number six, it's my number six, Defendants' Motion for
13 Summary Judgment Against the Plaintiff's Defamation Claim.
14 Mr. Murray, make your record, but I find that there are
15 sufficient facts present to deny that.

16 MR. MURRAY: Yes, Your Honor.

17 THE COURT: That's an issue to be determined by a jury.

18 MR. MURRAY: Thank you, Your Honor, I appreciate the
19 opportunity to address it.

20 The defamation claim has been narrowed down to three
21 alleged statements by two different managers employed by some
22 of the defendants to staff members.

23 THE COURT: Right. I read the brief.

24 MR. MURRAY: You read it? Okay.

25 THE COURT: Yes.

1 MR. MURRAY: So for purposes of the record, the three
2 employee-to-employee communications that are alleged, which
3 are also contested, would fall within the -- they weren't
4 published to a third party for purposes of defamation. They
5 were intracorporate communications. It's essentially the
6 hospital speaking with itself. It's not publishing it to a
7 third party for purposes of defamation.

8 Next, the qualified privilege for a common interest
9 statement, Ms. O'Kane's alleged statement of saying,
10 "Dr. Anel threatened to kill Dr. Gill," well, if you know
11 that was ever truly made and she said that as a manager to a
12 staff member, that would be a common interest statement,
13 because she was in charge of overseeing the workplace. And a
14 threat to the workplace is --

15 THE COURT: Kind of depends on the circumstances
16 surrounding the statement, who it was made to, what the
17 situation was. It may be, but at this point in time, I can't
18 rule on that.

19 MR. MURRAY: And then the statements by Ms. Janes, Dana
20 Janes, to staff that apparently an opinion statement that
21 Dr. Anel's a criminal. Well, one, there were criminal
22 charges filed so there is an issue.

23 THE COURT: And I must admit to you I found that to be
24 really offensive.

25 MR. MURRAY: Mm-hmm.

1 THE COURT: And I know that there were charges, but that
2 doesn't mean that someone's a criminal.

3 MR. MURRAY: Sure.

4 THE COURT: And it kind of depends on the context in which
5 it was said.

6 MR. MURRAY: Sure.

7 THE COURT: And what the circumstances were and who it was
8 said to. So I, at this point in time, I find that there are
9 facts sufficient to let a trier of fact decide if that's a
10 valid claim or not.

11 MR. MURRAY: Thank you, Your Honor.

12 And just to note for the record, Dana Janes did testify
13 that she did not make that statement.

14 THE COURT: Thank you, sir.

15 MR. MURRAY: Yes. Thank you.

16 THE COURT: All right. So those are denied, the anti-SLAPP
17 issue I will resolve by a separate email. When you get that
18 email, then draft the motions that apply to what we've
19 decided so far please. Or draft the orders I mean.

20 There is Plaintiff's motion to seal certain exhibits to
21 Mr. Blankenship's declaration. Is there any opposition to
22 that? It seems to me that you all know what needs to be
23 sealed and what doesn't need to be sealed.

24 MR. GALLAGHER: Your Honor, no opposition to that.

25 THE COURT: All right. I'll grant the motion.

1 MR. MURRAY: I'm sorry, Your Honor, we did file an
2 opposition on some of them.

3 THE COURT: I know you did, but I couldn't understand what
4 you were really opposing.

5 MR. MURRAY: We would ask that the medical executive
6 committee exhibits that are specific to the minutes from the
7 meetings and the correspondence within the medical executive
8 committee be sealed. Those fall within the peer review and
9 quality assurance privileges.

10 THE COURT: What about all of the other stuff?

11 MR. MURRAY: The other stuff we noted that we did not
12 oppose the other. I think we had nonopposition to half, and
13 then opposition on the peer review quality assurance
14 privileged documents.

15 THE COURT: Mr. Blankenship, my practice has always been to
16 seal those kind of things.

17 MR. BLANKENSHIP: Well, the reason I don't think -- the
18 medical executive committee meetings, the reason I think
19 that's important is just partially for his career. I mean,
20 it shows that he was exonerated --

21 THE COURT: At this point in time, I'll seal them. It's
22 subject to review during the course of the trial.

23 MR. BLANKENSHIP: Thank you, Your Honor.

24 THE COURT: But it's always been my practice to seal those
25 kinds of things, because I think there's some case law to

1 support that. And I've actually had it ruled against me by a
2 judge years ago. I think the judge was right.

3 So I'll seal it now, but if you can show me something as we
4 proceed along this journey, then let me know. All right?

5 I don't want to do something that's going to damage his
6 career, but by the same time, I think as a general rule those
7 things are sealable.

8 All right. Now there's also a motion to seal the exhibits
9 to the Declaration of Paul Woods. I'm going to at this point
10 in time again, we'll seal that now, but once the spoliation
11 issue is resolved, I'll revisit that issue. Because it may
12 very well not be sealed at that point in time.

13 But right now yes, because I haven't ruled on the
14 spoliation issue and won't until the close of the plaintiff's
15 case.

16 Now, jury trial or judge trial? That's the last issue I
17 think that I have to resolve. Jury trial. I believe that
18 there's a constitutional right to a jury trial. I believe
19 that Washington State especially, many, many, many times, the
20 Supreme Court is our state has always, always leaned toward
21 people's right to a jury trial. And I can't find anything
22 that I think applies to this case that would go against that.

23 And I must admit to you, I'd kind of like to try it myself,
24 and I think it'll be much more difficult to have a jury trial
25 than it would to have a judge trial. But I think you're

1 entitled to a jury trial. That's my ruling.

2 I think that covers all the issues. I assume I'll probably
3 see you before the 13th of October in some form toward the
4 end of September. I'm going to sit down and get ready for my
5 next case. Thank you all for your time. Have a nice day.

6 MR. BLANKENSHIP: Thank you, Your Honor.

7 MR. GALLAGHER: Thank you, Your Honor.

8 MR. MURRAY: Thank you, Your Honor.

9 MR. WOODS: Thank you, Your Honor.

10 THE CLERK: Please rise.

11 (Conclusion of hearing)

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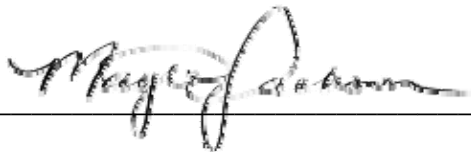
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STATE OF WASHINGTON)
) ss
COUNTY OF KING)

I, the undersigned, do hereby certify that the foregoing recorded statements, hearings and/or interviews were transcribed under my direction as a transcriptionist; and that the transcript is true and accurate to the best of my knowledge and ability; that I am not a relative or employee of any attorney or counsel employed by the parties hereto, nor financially interested in its outcome.

IN WITNESS WHEREOF, I have hereunto set my hand this 5th day of September, 2015.



Marjie Jackson, CET



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