

**S266001**

**No. 19-55802**

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**IN THE UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT**

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WALLEN LAWSON,

*Plaintiff-Appellant,*

v.

PPG ARCHITECTURAL FINISHES, INC.

*Defendant-Appellee.*

On Appeal from the United States District Court  
for the Central District of California  
No. 8:18-cv-00705-AG-JPR  
Hon. Andrew J. Guilford

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**APPELLANT'S EXCERPTS OF RECORD  
VOLUME II**

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21 **UNITED STATES DISTRICT COURT**  
 22 **CENTRAL DISTRICT OF CALIFORNIA**

23 WALLEN LAWSON,

24 Plaintiff

25 vs.

26 PPG ARCHITECTURAL FINISHES,  
27 INC.,

28 Defendant.

Case No.: 8:18-CV-00705-AG-JPR

**NOTICE OF APPEAL**

The Honorable Andrew J. Guilford

1 Notice is hereby given that Plaintiff in the above-captioned case hereby appeals to  
2 the United States Court of Appeals for the Ninth Circuit from an order entered in in this  
3 Action on the 21st day of June, 2019, at Dkt. 62, granting Defendant’s motion for  
4 summary judgment, and judgment entered for Defendant and against Plaintiff on the  
5 26<sup>th</sup> day of June, 2019, at Dkt. 64.

6  
7 Dated: July 12, 2019

Respectfully submitted,

8  
9  
10 /s/Andrew J. Horowitz, Esq.

11 Andrew J. Horowitz, Esq.

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13 *Attorneys for Plaintiff Wallen Lawson*  
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**CERTIFICATE OF SERVICE**

I, Andrew J. Horowitz, hereby certify that the within Notice of Appeal has been served on all counsel of record this 12th day of July, 2019, via the Court's CM/ECF filing system.

*/s/Andrew J. Horowitz, Esquire*

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JS-6

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16 UNITED STATES DISTRICT COURT  
17 CENTRAL DISTRICT OF CALIFORNIA

18 WALLEEN LAWSON,  
19  
20 Plaintiff,  
21 v.  
22 PPG ARCHITECTURAL FINISHES,  
INC.,  
23 Defendant.

Case No. 8:18-CV-00705AG-JPR

**JUDGMENT**

Judge: Hon. Andrew J. Guilford  
Hearing Date: June 10, 2019  
Time: 10:00 a.m.  
Courtroom: 10D

Pretrial Conference: July 8, 2019  
Trial Date: July 23, 2019

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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

WALLEN LAWSON,

Plaintiff,

v.

PPG ARCHITECTURAL FINISHES,  
INC.,

Defendant.

Case No. 8:18-CV-00705AG-JPR

**JUDGMENT**

Hearing Date: June 10, 2019  
Time: 10:00 a.m.  
Courtroom: 10D

Pretrial Conference: July 8, 2019  
Trial Date: July 23, 2019

**TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

PPG Architectural Finishes, Inc.'s Motion for Summary Judgment or, in the Alternative, Partial Summary Judgment ("Motion") of Defendant PPG Architectural Finishes, Inc. ("Defendant") came on regularly for hearing on June 10, 2019 at 10:00 a.m., the Honorable Andrew J. Guilford presiding.

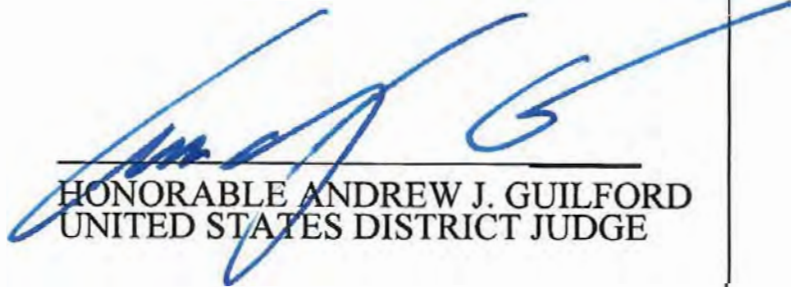
The Court, having considered the evidence proffered in support of and in opposition to Defendant's Motion for Summary Judgment or, in the Alternative, Partial Summary Adjudication, having read and considered the supporting, opposition and reply points and authorities, and having heard and considered the arguments of counsel, and for good cause shown, the Court hereby finds that there are no genuine disputes of material fact on at least one required element of each of Plaintiff Wallen Lawson's claims, and that accordingly, Defendant is entitled to judgment as a matter of law on all causes of action in Plaintiff Wallen Lawson's Second Amended Complaint. Defendant's Motion for Summary Judgment is hereby GRANTED.

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**IT IS HEREBY ORDERED, ADJUDGED, AND DECREED** that Judgment is entered in favor of Defendant and against Plaintiff and that Plaintiff shall take nothing as to his complaint against Defendant. It is further ordered, adjudged and decreed that Defendant is the prevailing party in this action and shall be entitled to recover its litigation costs in this matter.

**IT IS SO ORDERED.**

Dated: JUNE 21, 2019

  
\_\_\_\_\_  
HONORABLE ANDREW J. GUILFORD  
UNITED STATES DISTRICT JUDGE

FIRMWIDE:163341242.1 034801.2166



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16 UNITED STATES DISTRICT COURT  
17 CENTRAL DISTRICT OF CALIFORNIA

18 WELLEN LAWSON,  
19 Plaintiff,  
20  
21 v.  
22 PPG ARCHITECTURAL FINISHES,  
INC.,  
23 Defendant.

Case No. 8:18-CV-00705AG-JPR

**DECLARATION OF MICHAEL W.  
M. MANOUKIAN IN SUPPORT OF  
DEFENDANT'S REPLY  
MEMORANDUM IN SUPPORT OF  
MOTION FOR SUMMARY  
JUDGMENT OR, IN THE  
ALTERNATIVE, PARTIAL  
SUMMARY JUDGMENT**

Judge: Hon. Andrew J. Guilford  
Hearing Date: June 10, 2019  
Time: 10:00 a.m.  
Courtroom: 10D

Pretrial Conference: July 8, 2019  
Trial Date: July 23, 2019

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I, Michael W. M. Manoukian, hereby declare and state as follows:

1. I am an attorney at law duly admitted to practice in the State of California and I am an Associate at the law firm of Littler Mendelson, P.C., attorneys for Defendant PPG ARCHITECTURAL FINISHES, INC. (“PPG” or “Defendant”) in the above-captioned matter.

2. I have personal knowledge of the facts set forth below. If called upon as a witness, I could testify competently thereto.

3. Attached hereto as **Exhibit A** is a true and correct copy of the relevant pages from the deposition transcript of Michelle Minda dated April 2, 2019.

I declare under penalty of perjury under the laws of the United States of America and the State of California that the foregoing is true and correct.

Executed at San Jose, California, this 27<sup>th</sup> day of May, 2019.

/s/ Michael W. Manoukian  
Michael W. Manoukian

FIRMWIDE:164588085.1 034801.2166

# EXHIBIT A



**NETWORK DEPOSITION SERVICES**  
**Transcript of Michele Minda**

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1 accountability for this, that's all.

2 MR. SCHROEDER: Well, you have asked  
3 her the scope of her knowledge as to who made  
4 the decision and she's answered it.

5 BY MR. FOX:

6 Q. Now, when did you first become aware that  
7 Wally Lawson had blown the whistle on Clarence  
8 Moore?

9 A. I was not -- I don't even -- I can't even  
10 respond to that question because I was not  
11 aware. I don't even know what your question  
12 means.

13 Q. When did you learn that --

14 A. I was aware there was an ethics complaint. I  
15 was not aware of who made the complaint.

16 Q. You don't understand what I mean when I say  
17 blow the whistle?

18 A. No.

19 Q. Does that term not have meaning to you as an  
20 HR person?

21 A. Well, I'm being specific. I don't understand  
22 what your question is.

23 Q. My question is, first of all, Wally was the  
24 one who blew the whistle on Clarence Moore,  
25 isn't that right?

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**866-565-1929**

**NETWORK DEPOSITION SERVICES**  
**Transcript of Michele Minda**

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1 A. I do not know that.

2 Q. Okay. It seems like you said a moment ago  
3 that you were aware that at some point that  
4 Wally was the one who filed the ethics charge?

5 MR. SCHROEDER: Objection,  
6 mischaracterizes her testimony.

7 A. No, I never said that.

8 BY MR. FOX:

9 Q. When did you learn of that?

10 A. I did not -- ask me your question again.

11 Q. When did you learn that Wally filed an ethics  
12 charge?

13 A. I'm not aware that Wally filed an ethics  
14 charge.

15 Q. You're not aware of that as we sit here today? No.

16 A. Who do you think filed the ethics charge?

17 Q. I don't know.

18 A. Is it not of interest to you?

19 Q. No.

20 A. And so you don't care, I'm trying to

21 Q. understand why you wouldn't view this as  
22 significant?

23 Most ethics complaints are anonymous, so I'm not  
24 A. aware of who filed this ethics complaint.

25

**Johnstown - Erie - Pittsburgh - Greensburg - Harrisburg - Scranton**  
**866-565-1929**

**NETWORK DEPOSITION SERVICES**  
**Transcript of Michele Minda**

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1           I have never been told who filed the ethics  
2           complaint.

3       Q.     Why did no one tell you who filed the ethics  
4           complaint?

5                       MR. SCHROEDER:  Objection, calls for  
6           speculation.

7       A.     I don't know.

8       BY MR. FOX:

9       Q.     Now, you sitting here for this deposition in  
10           this lawsuit filed by Wally Lawson in which  
11           the central claim is that Wally was retaliated  
12           against for filing an ethics charge --

13      A.     Uh-huh.

14      Q.     -- against Clarence Moore --

15      A.     Uh-huh.

16      Q.     -- you're aware of that, right?

17      A.     I'm aware of that.

18      Q.     And how did you become aware of that?

19                       MR. SCHROEDER:  Objection.  Instruct  
20           you not to answer about any conversations you  
21           have had with counsel.  So if you learned it  
22           other than through conversations with counsel,  
23           you can answer.  Otherwise, you shouldn't  
24           answer any questions.

25      A.     Then I won't answer the question.

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**866-565-1929**

NETWORK DEPOSITION SERVICES  
Transcript of Michele Minda

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1 A. No, I can't vouch for him. I have no reason  
2 to believe that he would retaliate.

3 Q. You don't think that a person that committed  
4 inventory theft and then lied about it to  
5 his -- to the investigators, as someone who  
6 might be capable of retaliating?

7 MR. SCHROEDER: Objection,  
8 argumentative, assumes facts. You can answer.

9 A. Yeah, I don't have an answer on that.

10 BY MR. FOX:

11 Q. So Andy Mayhew consulted with you before Wally  
12 Lawson was fired, did he not?

13 A. He may have mentioned he was getting ready to  
14 do a termination for someone on a PIP, as  
15 typically the HR managers would let me know.  
16 I wouldn't say he necessarily consulted with  
17 me.

18 Q. When he consulted with you, did you express  
19 any concern about Wally being potentially  
20 retaliated against by Clarence Moore?

21 MR. SCHROEDER: Objection, assumes  
22 facts, it mischaracterizes her testimony. You  
23 can answer.

24 A. We don't know who called in the ethics  
25 complaint, so the answer is no.

Johnstown - Erie - Pittsburgh - Greensburg - Harrisburg - Scranton  
866-565-1929



**NETWORK DEPOSITION SERVICES**  
**Transcript of Michele Minda**

1 CERTIFICATE  
2 COMMONWEALTH OF PENNSYLVANIA) ) SS:  
3 COUNTY OF INDIANA ) )  
4 I, Tammie Elias, RPR and Notary Public in  
5 and for the Commonwealth of Pennsylvania, do hereby  
6 certify that the witness, MICHELE MINDA, was by me  
7 first duly sworn to testify to the truth, the whole  
8 truth, and nothing but the truth; that the foregoing  
9 deposition was taken at the time and place stated  
10 herein; and that the said deposition was recorded  
11 stenographically by me and then reduced to printing  
12 under my direction, and constitutes a true record of  
13 the testimony given by said witness.  
14  
15 I further certify that the inspection,  
16 reading and signing of said deposition were not  
17 waived by counsel for the respective parties and by  
18 the witness.  
19  
20 I further certify that I am not a relative  
21 or employee of any of the parties, or a relative or  
22 employee of either counsel, and that I am in no way  
23 interested directly or indirectly in this action.  
24  
25 IN WITNESS WHEREOF, I have hereunto set my  
hand and affixed my seal of office this 8th day of  
April, 2019.

Commonwealth of Pennsylvania  
Tammie Elias, Notary Public  
Center Township, Indiana County  
My Commission Expires December 9, 2019

NETWORK DEPOSITION SERVICES  
Transcript of Michele Minda

1 COMMONWEALTH OF PENNSYLVANIA ) E R R A T A  
2 COUNTY OF INDIANA ) S H E E T

3 I, MICHELE MINDA, have read the foregoing  
4 pages of my deposition given on Tuesday, April 2,  
5 2019, and wish to make the following, if any,  
6 amendments, additions, deletions or corrections:

7 Pg. No. Line No. Change and reason for change:  
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17 In all other respects, the transcript is true and  
18 correct.

19 \_\_\_\_\_  
20 MICHELE MINDA

21 Subscribed and sworn to before me this  
22 \_\_\_\_\_ day of \_\_\_\_\_, 2019.

23 \_\_\_\_\_  
24 Notary Public  
25 Reference No. TE64914

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16 UNITED STATES DISTRICT COURT  
17 CENTRAL DISTRICT OF CALIFORNIA

18 WALLEEN LAWSON,  
19 Plaintiff,

20 v.

21 PPG ARCHITECTURAL FINISHES,  
22 INC.,  
23 Defendant.

Case No. 8:18-CV-00705AG-JPR

**DEFENDANT PPG'S RESPONSE  
TO PLAINTIFF'S STATEMENT OF  
GENUINE DISPUTES OF FACT**

Judge: Hon. Andrew J. Guilford  
Hearing Date: June 10, 2019  
Time: 10:00 a.m.  
Courtroom: 10D

Pretrial Conference: July 8, 2019  
Trial Date: July 23, 2019

1 Defendant PPG Architectural Finishes, Inc. (“Defendant” or “PPG”) submits the  
 2 following response to Plaintiff’s Additional Undisputed Material Facts. (Dkt. 58-1.)

3 **RESPONSE TO PLAINTIFF’S ALLEGED ADDITIONAL UNDISPUTED**  
 4 **MATERIAL FACTS**

PLAINTIFF’S UNDISPUTED MATERIAL FACT	DEFENDANT’S REPLY
7 1. Lawson’s duties as territory manager 8 were principally merchandizing 9 Olympic paint and other PPG 10 products in Lowe’s home 11 improvement stores in Orange and Los Angeles counties. (Declaration of Wallen Lawson, ¶ 2).	Undisputed that as a Territory Manager, Plaintiff was responsible for merchandizing PPG products. (Dkt. 57-3 at 274-275.) Further undisputed that Plaintiff’s territory included stores within Orange County and Los Angeles County.
12 2. While territory managers are 13 required to ensure that PPG displays 14 are stocked and in good condition 15 and that Lowe’s associates are 16 trained on PPG products, they are not 17 salespersons and exercise little 18 independent discretion. (Lawson 19 Dec’1. ¶3-4).	Undisputed that TMs are responsible for ensuring that PPG displays are stocked and in good condition and that Lowe’s associates are trained on PPG products. Whether Plaintiff exercised independent discretion is immaterial, and thus undisputed for purposes of this motion. Disputed to the extent Plaintiff asserts he was not responsible for developing and delivering sales plans and selling PPG products. The TM job description and Plaintiff’s own statements in his 2016 Performance Review confirm otherwise, and Plaintiff cannot create a genuine issue of material fact through his own contradictory sworn testimony. <i>See</i> <i>Davis v. Foster Wheeler Energy Corp.</i> , 205 Cal. App. 4th 731, 736 (2012).  (Dkt. 57-3 at pg. 274; Dkt. 58-2 at pgs. 9, 15, 16.)
26 3. Lawson was paid approximately 27 \$36,000 per year, including 28 mandatory overtime. (Lawson Dec’1 ¶ 5).	Undisputed as immaterial.

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PLAINTIFF'S UNDISPUTED MATERIAL FACT	DEFENDANT'S REPLY
<p>4. On October 6, 2016, Lawson had his first market walk with his original regional manager, Paul Stanton, and received 92 out of 100 available points. Lawson was recognized as having the highest market walk score in the country (out of some 210 territory managers), and was awarded a pay raise and a gift card. He also received a congratulatory call from Sean Kacsir, the divisional manager overseeing all of the regional managers in the western half of the United States. (Dkt. 57-5, p. 8; Dkt. 57-3, p. 26).</p>	<p>Undisputed, with the exception that Plaintiff provides no evidence as to the number of other TMs.</p>
<p>5. On March 2, 2017, he received an annual review with a rating of "successful." (Lawson Dec'l, Ex. A).</p>	<p>Undisputed that for the review period of January 1, 2016 to December 31, 2016, Plaintiff received a "successful" rating.</p>
<p>6. Moore was under a directive from Kacsir to attempt to sell off a paint product called "Rescue It" to free up shelf space in Lowe's stores for other PPG products. (Horowitz Dec'l, Ex. B).</p>	<p>Disputed as it misstates the cited evidence, but immaterial for purposes of PPG's motion.</p>
<p>7. Rescue It is designed to resurface decks with damaged boards, and it was slow-selling—possibly due in part to being the subject of a class action lawsuit that exposed to the public issues with poor adhesion. PPG was concerned that Lowe's would require it to buy back unsold Rescue It inventory if it remained on the shelves for much longer. (Horowitz Dec'l, Ex. C; Lawson Dec'l, ¶7).</p>	<p>Disputed as it misstates the cited evidence and contains speculative argument, but immaterial for purposes of PPG's motion.</p>
<p>8. During the April 18 conference call, Moore directed his territory</p>	<p>Undisputed for purposes of this motion.</p>

PLAINTIFF'S UNDISPUTED MATERIAL FACT	DEFENDANT'S REPLY
<p>managers to surreptitiously “mis-tint” a few gallons of Rescue It on each store visit “on the down-low” while no one from Lowe’s was watching. He further instructed the territory managers that if any Lowe’s associates caught them mistinting paint, they should dissemble, and say that the paint was ordered by a customer who did not pick it up. The mistinted paint would then be placed on an “oops” rack next to the paint desk and sold at a deep discount. (Horowitz Dec’l, Ex. A, p.150- 153).</p>	
<p>9. Moore repeated the instruction to mis-tint on at least two weekly conference calls with his territory managers. During those calls, some of the territory managers bragged to Moore about the amount of paint they mis-tinted. (Horowitz Dec’l, Ex. B).</p>	<p>Undisputed for purposes of this motion.</p>
<p>10. Like most paint, Rescue It is shipped from the factory as a neutral base formula without pigment, and then “tinted” to the customer’s requested color at the Lowe’s paint desk using a machine that mixes pigments into the base formula. (Lawson Dec’l, ¶8).</p>	<p>Undisputed.</p>
<p>11. While Lowe’s associates typically operate the tinting machine, territory managers would frequently cover the paint desk while the Lowe’s associates were at lunch or on break. (Lawson Dec’l, ¶8).</p>	<p>Undisputed, but immaterial.</p>
<p>12. PPG admits that mistinting paint by territory managers without the knowledge and consent of Lowe’s is</p>	<p>Misstates the cited evidence. Undisputed that PPG admits that intentionally damaging a customer’s assets without the</p>

PLAINTIFF'S UNDISPUTED MATERIAL FACT	DEFENDANT'S REPLY
<p>a violation of PPG's Global Code of Ethics. (Horowitz Dec'l, Ex. D, Req. no. 12).</p>	<p>customer's consent constitutes a violation of PPG's Global Code of Ethics.</p>
<p>13. After conferring with his daughter, an HR specialist, on April 18, 2017 Lawson reported Moore's instruction to mis-tint paint to the company's web-based confidential ethics reporting online portal (Horowitz Dec'l, Ex. A, p.150- 153).</p>	<p>Undisputed that Plaintiff made a report to PPG's ethics hotline on <u>April 21, 2017</u>. The complaint itself indicates it was submitted on April 21, 2017, a fact Plaintiff does not dispute. (Lawson Depo., 154:19-25.) Plaintiff cannot create a genuine issue of material fact through his own contradictory sworn testimony. <i>See Davis v. Foster Wheeler Energy Corp.</i>, 205 Cal. App. 4th 731, 736 (2012).</p>
<p>14. At some point shortly thereafter in April, Lawson spoke by phone with Moore and informed him that he believed the mis-tinting practice was unethical. Lawson also related an anecdote about how he had confronted an employee at his former job about using a company postage meter for personal mail and had told him that it was stealing. Lawson further made reference to John Dean and his historical role in Watergate in his conversation with Moore. Moore at that point became agitated and told Lawson that the conversation was over. (Horowitz Dec'l, Ex. A, p.155-157, 233-235, 255-256).</p>	<p>Undisputed for purposes of this motion.</p>
<p>15. After not receiving a response to his original report to the ethics portal, Lawson called PPG's ethics reporting hotline on June 15, 2017. On June 26, 2017, PPG's compliance department contacted Lawson though the ethics reporting</p>	<p>Disputed as it misstates the cited evidence and contains speculative argument, but immaterial for purposes of PPG's motion.</p> <p>Undisputed that on April 26, 2017, PPG followed up with the anonymous reporter and requested more information</p>

PLAINTIFF'S UNDISPUTED MATERIAL FACT	DEFENDANT'S REPLY
<p>online portal and asked if he would speak with David Duffy, PPG's Senior Manager of Investigations and Corporate Security. Lawson agreed and provided his personal cell phone number. Duffy called Lawson on June 28, 2017 and left a voicemail asking Lawson to call back. In doing so, Duffy heard Lawson's voicemail greeting, which states: "Hi, this is Wally Lawson. I'm not available, please leave a brief message and I'll get back to you as soon as I can." He therefore learned Lawson's identity, and Lawson's ethics report was no longer confidential. (Dkt. 57-3, p.117; Horowitz Dec'l, Ex. E; Lawson Dec'l, Exhs. B, C)</p>	<p>regarding where the alleged directive to mis-tint paint occurred since it had no store in Long Beach, CA. (Lawson Depo., 149:21-150:5, Exh. 10.) Undisputed that the anonymous reporter failed to provide any additional information, and PPG closed the investigation. (<i>Id.</i>, Duffy Depo., 58:6-13, 59:12-15.)</p> <p>Plaintiff cites no evidence supporting the conclusion that "Lawson's ethics report was no longer confidential." Mere assertions in a legal brief without factual support are insufficient to create a genuine issue of material fact for trial. <i>See Surrell v. California Water Service Co.</i>, 518 F.3d 1097, 1103 (9th Cir. 2008)</p>
<p>16. Moore denied ordering the mis-tinting, claiming that one of his territory managers suggested it on the conference call and that he "failed to stop it." (Horowitz Dec'l, Ex. F).</p>	<p>Undisputed.</p>
<p>17. Dalton interviewed all fourteen of Moore's territory managers, who uniformly confirmed that Moore ordered the mis-tinting. Duffy and Dalton thereupon issued a report finding that Moore ordered the mis-tinting. (Horowitz Dec'l, Ex. G).</p>	<p>Disputed as it misstates the cited evidence. Ex. G is an email from Duffy, the content of which does not reference Dalton's interviews with Moore's TMs, does not contain a report, and does not indicate any "finding that Moore ordered the mistinting."</p> <p>Plaintiff cannot create a genuine dispute of material fact in the absence of evidence.</p>
<p>18. Dalton also directed Moore to discontinue the practice. Moore then sent his territory managers a text message: "Effective immediately!!!!</p>	<p>Undisputed that Dalton instructed Moore to inform his team that the practice of mistining was to cease immediately. Undisputed that Moore sent his TMs a</p>



PLAINTIFF'S UNDISPUTED MATERIAL FACT	DEFENDANT'S REPLY
<p>Please do not mis-tint Rescue It product anymore.” Dalton further directed Moore to have all of his territory managers re-read PPG’s global code of ethics. (Horowitz Dec’l, Exhs. B, H, T p. 55).</p>	<p>text message.</p> <p>Nothing in the cited evidence supports the assertion that Dalton directed Moore to have all his TMs re-read PPG’s global code of ethics. This fact is therefore disputed as it misstates the cited evidence, but immaterial for purposes of PPG’s motion.</p>
<p>19. At the direction of Dalton, Moore prepared a statement regarding his role in the mis-tinting for the investigative file. (Horowitz Dec’l, Exhs. F, T p. 88-89).</p>	<p>Misstates the cited evidence, but undisputed for purposes of this motion that Moore provided the statement in Exhibit F to Dalton. Dalton testified that Moore provided the statement regarding their conversation, and that it is Dalton’s practice following a conversation to “provide them the opportunity to provide their recollection of that conversation.” (Horowitz Decl., Ex. T p. 88-89).</p>
<p>20. Dalton also received a report from another territory manager in Texas that her regional manager, Brian Wells, had similarly directed her to mis-tint paint. (Horowitz Dec’l, Exhs. E, I).</p>	<p>Undisputed that another TM indicated that her manager “told me that I can give the store credit for x amount of gallons and then turn around and mistint them or leave them on the shelf.” (Horowitz Decl., Ex. I).</p>
<p>21. Duffy and Dalton expanded the scope of the investigation and enlisted Kacsir to assist. (Horowitz Dec’l, Exhs. E, I).</p>	<p>Disputed as it misstates the cited evidence, but immaterial for purposes of PPG’s motion.</p>
<p>22. Regional Manager David Larson, who also reported to Kacsir, also ordered his territory managers to mis-tint paint. (Horowitz Dec’l, Ex. J, p.26).</p>	<p>Undisputed for purposes of this motion, but immaterial.</p>
<p>23. Duffy and Dalton launched a national inquiry regarding the mis-tinting practice. (Horowitz Dec’l, Ex. K, p. 31).</p>	<p>Disputed as it misstates the cited evidence. Exhibit K does not support, let alone, speak to the alleged fact.</p>

PLAINTIFF'S UNDISPUTED MATERIAL FACT	DEFENDANT'S REPLY
<p>24. No one from PPG notified Lowe's at that time or any time thereafter of the mis-tinting scheme. (Horowitz Dec'l, Ex. K, p. 31).</p>	<p>Undisputed that Ms. McKinley testified that to her knowledge she did not know if anyone at Lowe's was every informed of the mistinting practice.</p>
<p>25. Michele Minda, Director of HR for Defendant, gave Moore and Wells identical written warnings that did not state that they ordered their territory managers to mis-tint paint. (Horowitz Dec'l Exhs. L, M).</p>	<p>Undisputed that Moore and Wells received the written warnings attached as Exhibits L and M.</p>
<p>26. Lowe's dropped PPG paint a few weeks later, and ended its relationship with Defendant. At that time, all of the Lowes merchandising team at PPG was laid off. Moore, however, was given a new job managing a PPG paint store in the Phoenix, Arizona area. (Horowitz Dec'l, Ex. N, p.14).</p>	<p>Unsupported by the cited evidence. Plaintiff offers no evidence that "Lowe's dropped PPG paint a few weeks later, and ended its relationship with Defendant. At that time, all of the Lowes merchandising team at PPG was laid off." Plaintiff further misstates the testimony regarding Moore. Moore was let go from PPG on March 15, 2018. He was rehired on April 2, 2018 as a Store Manager.</p> <p>Mere assertions in a legal brief without factual support are insufficient to create a genuine issue of material fact for trial. <i>See Surrell v. California Water Service Co.</i>, 518 F.3d 1097, 1103 (9th Cir. 2008)</p>
<p>27. Duffy testified that he found it "ironic" that Moore was not fired while Lawson was, and he thought that Moore should have been the one to be fired. (Horowitz Dec'l, Ex. O, p.34, 104).</p>	<p>Undisputed, but immaterial for purposes of this motion.</p>
<p>28. On July 13, 2017, one week after Moore's interrogation by Dalton, Moore traveled to Los Angeles to do a market walk with Lawson, and scored him 66 out of 100. (Horowitz Dec'l, Ex. B; Dkt. 57-3, p. 99).</p>	<p>Undisputed that on July 6, 2017 Dalton interviewed Moore. Disputed, but immaterial as to Plaintiff's characterization of the meeting as an "interrogation."</p>

PLAINTIFF'S UNDISPUTED MATERIAL FACT	DEFENDANT'S REPLY
	Undisputed that on July 13, 2017, Moore concluded a Market Walk with Plaintiff and that Plaintiff scored 66.
29. During this market walk, Moore also observed that the training roster software on Lawson's company-issued tablet was malfunctioning, prompting him to send an email to PPG's IT department. (Horowitz Dec'l, Ex. P).	Disputed to the extent it misstates the cited evidence, but immaterial. The cited evidence does not indicate when Moore saw the file "not working" on Plaintiff's computer.
30. A training roster lists the paint department employees in each Lowe's store and tracks when the territory manager trained them on various subjects dictated by PPG management. Because Lowe's employees can be high-turnover, territory managers have to frequently update their roster. (Horowitz Dec'l, Ex. N, p. 193- 196).	Undisputed, although there is no cited evidence that "territory managers have to frequently update their roster."
31. Moore went on another market walk with Lawson on August 16, 2016. He scored Lawson 40 out of 100. (Dkt. 57-3, p. 104).	Undisputed that Moore completed another Market Walk with Plaintiff on August 16, 2016 and that Plaintiff scored 40.
32. Moore observed that there were some discrepancies in Lawson's training roster, making it appear that Lawson was training Lowe's associates in stores that he did not visit on a particular day. Rather than investigating the possibility that this was a result of the aforementioned issues with Lawson's tablet, or merely a result of Lawson making clerical errors, Moore later contended that Lawson had "intentionally falsified" his training roster. (Dkt. 57-3, p. 104; Horowitz Dec'l, Ex. N, p.228-230).	Disputed as it misstates the cited evidence and contains speculative argument.  Moore testified that based on the totality of the circumstances, and the repeated discrepancies, he concluded that Plaintiff was falsifying his training records.  During a conversation with Mayhew about the discrepancies in his training roster, Plaintiff admitted that he did not do the training reflected in his roster, and as Mayhew understood it, acknowledged that he knew such action was falsifying company documents. (Mayhew Depo.,

PLAINTIFF'S UNDISPUTED MATERIAL FACT	DEFENDANT'S REPLY
	<p>19:14-20:17.) During his deposition Plaintiff denied that he “falsified” his training roster, but he admitted that he inputted information incorrectly, and, sometimes, his training rosters were wrong. (Lawson Depo., 129:17-130:25.) More specifically, Plaintiff admitted his training roster and his store log-in reports may have had discrepancies such that his training roster showed he trained Lowe’s employees when he was not even present in that particular Lowe’s store. (Lawson Depo., 127:15-128:6.) Plaintiff blamed these discrepancies on the “human factor.” (Lawson Depo., 135:23-136:12.)</p>
<p>33. Moore and Kacsir then asked Andrew Mayhew of HR to approve firing Wally Lawson. Moore forwarded the request to his supervisor, Minda. (Dkt. 57-3, p. 282; Horowitz Dec’l, Ex. Q, p. 86-87).</p>	<p>Undisputed that Moore recommended that the Company proceed with terminating Plaintiff’s employment, and that Kacsir and Mayhew approved the decision.</p> <p>Undisputed that <u>Mayhew</u> informed Minda of the termination decision.</p>
<p>34. Kacsir and Moore socialized around activities like football, drinking, and Topgolf. (Horowitz Dec’l, Ex. R, p. 17-18).</p>	<p>Disputed that Kacsir and Moore socialized at work events, but immaterial for purposes of PPG’s Motion.</p>
<p>35. Minda was deeply involved in Duffy’s investigation of the mistinting and knew that the investigation had started with an anonymous report from Moore’s region. (Horowitz Dec’l, Ex. Q, p. 86-87).</p>	<p>Misstates the cited evidence. Exhibit Q is deposition testimony from Mayhew and speaks nothing to Minda’s involvement or knowledge of the investigation.</p> <p>Mere assertions in a legal brief without factual support are insufficient to create a genuine issue of material fact for trial. <i>See Surrell v. California Water Service Co.</i>, 518 F.3d 1097, 1103 (9th Cir. 2008) (“Conclusory statements without factual support are insufficient to</p>

PLAINTIFF'S UNDISPUTED MATERIAL FACT	DEFENDANT'S REPLY
	defeat a motion for summary judgment.”)
<p>36. Moore fired Lawson at a meeting in a hotel conference room on September 6, 2017. Mayhew participated by phone. (Lawson Dec’l, ¶11; Horowitz Dec’l Ex. Q, p.87-95; Dkt. 57-3, p. 109-110).</p>	<p>Undisputed that Plaintiff was notified of his termination during a meeting with Moore and Mayhew on September 6, 2017. Undisputed that Mayhew participated by phone. Disputed, but immaterial, that “Moore fired Lawson.”</p>
<p>37. Lawson asked why he was being fired, and Mayhew responded that he falsified his training roster and that he had failed his PIP. Lawson strenuously objected, and explained that the discrepancy was due to issues with his company-supplied i-Pad, to which Moore was aware. Moore responded that it didn’t matter, and he was going to be terminated. Lawson then said, “if anyone should be fired, it should be you (meaning Moore) because you stole from Lowe’s, our valued customer.” Mayhew then yelled, “this meeting is over, I’m hanging up now.” (Lawson Dec’l, ¶11; Horowitz Dec’l Ex. Q, p.87-95; Dkt. 57-3, p. 109-110).</p>	<p>Undisputed for purposes of this motion, but immaterial.</p>
<p>38. Moore continues to deny that he instructed his territory managers to mis-tint paint. (Horowitz Dec’l, Ex. N., p.44:8- 11).</p>	<p>Undisputed.</p>
<p>39. Mayhew admitted that Lawson did not admit to falsifying documents. (Horowitz Dec’l Ex. Q, p.84:1-85:12).</p>	<p>Undisputed that Mayhew admitted that Plaintiff did not use the word “falsification.”</p>
<p>40. On his August, 2017 market walk, Moore gave Lawson zero points for liquid nails placements even though he had more Liquid Nails placements than required,</p>	<p>Misstates the cited evidence, but immaterial.  Plaintiff’s testimony regarding Liquid Nails references a Market Walk where</p>

PLAINTIFF'S UNDISPUTED MATERIAL FACT	DEFENDANT'S REPLY
<p>demonstrating that he had gotten Lowe's managers to give him extra space in the stores. (Dkt. 57-3, at p. 18-20).</p>	<p>Plaintiff scored a 66, which would have been the July 2017 Market Walk – not the August one.</p>
<p>41. Moore docked Lawson by five points by having one force-out during the ninety-day period applicable to the market walk, despite PPG's policy of deducting points only if a territory manager has more than one force out. (Dkt. 57-3, p.104).</p>	<p>Undisputed that during the August 2017 Market Walk, Plaintiff was docked 5 points for having a force out.</p> <p>Disputed as to a "PPG policy." Moore testified that the criteria was a guideline. (Horowitz Decl., Ex. N at 218:2-19.) Mere assertions in a legal brief without factual support are insufficient to create a genuine issue of material fact for trial. <i>See Surrell v. California Water Service Co.</i>, 518 F.3d 1097, 1103 (9th Cir. 2008)</p>
<p>42. A "force-out" is when a territory manager does not clock out when leaving a Lowe's store, causing the timekeeping system to automatically log him out of the store at midnight. (Horowitz Dec'l Ex. N, p. 197:24-198:2).</p>	<p>Undisputed.</p>
<p>43. When asked about this at his deposition, Moore stated that it was he decided to override the rubric provided by PPG "because it was very important to me." (Horowitz Dec'l Ex. N, p. 218:5- 18).</p>	<p>Undisputed that Moore testified that it was very important to him not to have force-outs, "so if [he] saw a force-out, they lost the five points." (Horowitz Decl., Ex. N at 218:10-13.)</p>
<p>44. Moore reassigned Lawson three underperforming stores including one that was eventually closed, and also removed two high-performing stores from Lawson. (Lawson Dec'l, ¶ 12).</p>	<p>Plaintiff's conclusory statement that he was given underperforming stores lacks foundation as he fails to state when the realignment occurred in relation to his struggling performance, and fails to provide any evidence as to when, and why the stores underperformed and/or later closed.</p>

PLAINTIFF'S UNDISPUTED MATERIAL FACT	DEFENDANT'S REPLY
	<i>See Kennedy v. Applause, Inc.</i> , 90 F.3d 1477, 1481 (9th Cir. 1996) (refusing to find "genuine dispute" where only evidence presented was uncorroborated and self-serving deposition testimony).
45. Moore claimed that he put Lawson on the PIP because of his sales numbers, telling Lawson that he was required by PPG policy to place Moore on a PIP under such circumstances. (Horowitz Dec'l Ex. Q, p. 57-58).	Disputed, but immaterial for purposes of PPG's Motion.  The evidence cited by Plaintiff does not support his contention, "Moore claimed that he put Lawson on the PIP because of his sales numbers, telling Lawson that he was required by PPG policy to place Moore on a PIP under such circumstances." Rather, the evidence cited by Plaintiff asserts that Plaintiff told Mayhew that Moore told Plaintiff that any TM who missed his monthly sales goals for 8 of 12 months on a rolling basis would be automatically placed on a PIP.
46. Mayhew, however, confirmed that there was no policy requiring territory managers to be automatically put on a PIP due to their sales numbers. (Horowitz Dec'l Ex. Q, p. 57-58).	Undisputed that Mayhew told Moore that there was not an HR policy.
47. Territory managers were required to work from home approximately five hours per week to perform administrative duties. This included entering time records in PPG's database, completing online training modules, and communicating via email. (Lawson Dec'l, ¶13).	Undisputed for purposes of this motion.
48. While territory managers were provided with company-issued phones that they could set up as mobile hotspots to connect their company-issued tablets to the	Undisputed that Plaintiff's declaration states that he more often than not used his <u>existing</u> home internet connection.  There is no admissible evidence that other

PLAINTIFF'S UNDISPUTED MATERIAL FACT	DEFENDANT'S REPLY
<p>internet, Lawson and other territory managers more often than not used their existing home internet connections to connect to the internet because this was faster and easier. (Lawson Dec'1, ¶13).</p>	<p>territory managers did the same. <i>See Kennedy v. Applause, Inc.</i>, 90 F.3d 1477, 1481 (9th Cir. 1996) (refusing to find "genuine dispute" where only evidence presented was uncorroborated and self-serving deposition testimony).</p>
<p>49. Many territory managers complained that they were going to continue using their home internet and that they felt that PPG's failure to provide reimbursement was unfair. (Lawson Dec'1, ¶13).</p>	<p>Plaintiff fails to identify who the territory managers are, when the complaints were made, and to whom. <i>F.T.C. v. Publ'g Clearing House, Inc.</i>, 104 F.3d 1168, 1171 (9th Cir. 1997) ("A conclusory, self-serving affidavit, lacking detailed facts and any supporting evidence, is insufficient to create a genuine issue of material fact.")</p> <p>Immaterial for purposes of this motion since it does not show knowledge by PPG, or that the expense was reasonable and necessary.</p>
<p>50. Stanton told Lawson and his other territory managers, "sometimes you need to make sacrifices," which Lawson interpreted as Stanton telling him that he needed to work off the clock in order to complete his job duties. (Lawson Dec'1, ¶14).</p>	<p>Undisputed for purposes of this motion since Plaintiff's subjective belief is immaterial.</p> <p>Plaintiff's self-serving declaration does not create a genuine dispute. <i>See Walker v. Boeing Corp.</i>, 218 F. Supp. 2d 1177, 1187 (C.D. Cal. 2002) (holding plaintiff's deposition testimony alone is insufficient to defeat summary judgment where he merely speculates his employer's motive was unlawful); <i>Kennedy v. Applause, Inc.</i>, 90 F.3d 1477, 1481 (9th Cir. 1996) (refusing to find "genuine dispute" where only evidence presented was uncorroborated and self-serving deposition testimony); <i>Villiarimo v. Aloha Island Air, Inc.</i>, 281 F.3d 1054, 1061 (9th Cir. 2002) (same); <i>King v.</i></p>



PLAINTIFF'S UNDISPUTED MATERIAL FACT	DEFENDANT'S REPLY
	<i>United Parcel Svc.</i> , 152 Cal.App.4th 426, 433-34 (2007) (plaintiff's subjective beliefs do not create a genuine issue of fact).
<p>51. Moore told Lawson, "these national and regional objectives are not optional and there's no reason you can't accomplish this with your time management. I'm only going to say this once." (Lawson Dec'l, ¶15).</p>	<p>Undisputed for purposes of this motion since Plaintiff's subjective belief is immaterial.</p> <p>Plaintiff's self-serving declaration does not create a genuine dispute. <i>See Walker v. Boeing Corp.</i>, 218 F. Supp. 2d 1177, 1187 (C.D. Cal. 2002) (holding plaintiff's deposition testimony alone is insufficient to defeat summary judgment where he merely speculates his employer's motive was unlawful); <i>Kennedy v. Applause, Inc.</i>, 90 F.3d 1477, 1481 (9th Cir. 1996) (refusing to find "genuine dispute" where only evidence presented was uncorroborated and self-serving deposition testimony); <i>Villiarimo v. Aloha Island Air, Inc.</i>, 281 F.3d 1054, 1061 (9th Cir. 2002) (same); <i>King v. United Parcel Svc.</i>, 152 Cal.App.4th 426, 433-34 (2007) (plaintiff's subjective beliefs do not create a genuine issue of fact).</p>
<p>52. When Lawson told Moore that he worked off the clock to accomplish his duties, Moore cryptically replied, "now that you have told me, I have to write you up," implying that Lawson should get his work done without saying anything. This was later confirmed by Moore saying, "just get it done." (Lawson Dec'l, ¶15).</p>	<p>Disputed as contradictory to Plaintiff's deposition testimony that he was never discipline for recording over five hours of overtime in a week, and that he never told Moore he worked off the clock. (SUF 89, 91-94.)</p> <p>Plaintiff cannot create a genuine issue of material fact through his own contradictory sworn testimony. <i>See Davis v. Foster Wheeler Energy Corp.</i>, 205 Cal. App. 4th 731, 736 (2012).</p>

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Dated: May 27, 2019

/s/ Karin M. Cogbill

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16 **UNITED STATES DISTRICT COURT**  
17 **CENTRAL DISTRICT OF CALIFORNIA**  
18

19 WALLEN LAWSON,

20 Plaintiff

21 vs.

22 PPG INDUSTRIES, INC.,

23 Defendant.  
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Case No.: 8:18-CV-00705-AG-JPR

**PLAINTIFF'S STATEMENT OF  
GENUINE DISPUTES OF FACT**

The Honorable Andrew J. Guilford

Pretrial Conference: July 8, 2019

Trial Date: July 23, 2019

Pursuant to Local Rule 56-2, Plaintiff hereby submits his Statement of Genuine Disputes of Material Fact, together with references to supporting evidence, in opposition to Defendant’s Motion for Summary Judgment.

DEFENDANT’S UNCONTROVERTED FACTS	PLAINTIFF’S RESPONSE
<p>1. As a Territory Manager ("TM"), Plaintiff Wallen Lawson ("Plaintiff") was responsible for developing and delivering sales plans and managing and increasing the sales of PPG products within his defined territory. Deposition of Clarence Moore "Moore Depo."), 130:6-20, Plaintiff's Exh. 36.</p>	<p>Disputed. Lawson’s duties were principally merchandizing Olympic paint and other PPG products in Lowe’s home improvement stores in Orange and Los Angeles counties. (Declaration of Wallen Lawson, ¶ 2). While they are required to ensure that PPG displays are stocked and in good condition and that Lowe’s associates are trained on PPG product, territory managers are not salespeople. (Lawson Dec’l. ¶3). While they serve as front-line “ambassadors” for PPG as Lawson testified in his deposition, they have little independent discretion. (Lawson Dec’l ¶4).</p>
<p>2. Plaintiff describes his role as a TM as being "an ambassador for the PPG company." Lawson Depo. 19:23-20:15.</p>	<p>Undisputed.</p>
<p>3. Some of Plaintiff's "Key Responsibilities" included: 1) partnering with Lowe's management teams to develop, drive, and achieve sales growth plans; 2) working cross-functionally with all appropriate Lowe's departments to exceed sales goals; 3) meeting with all Lowe's store personnel weekly, and the District Manager once a month to review sales performance against target; 4) analyzing territory sales performance</p>	<p>Disputed. Territory managers were, in practice retail merchandizing clerks who had little ability to influence the sales of PPG products in a particular store. (Lawson Dec’l, ¶¶2-4).</p>

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<p>reports and developing strategic territory business plans to support growth; and 5) aggressively identifying in-store selling opportunities. Lawson Depo.19:23-20:15; Moore Depo., 130:6-20, Plaintiff's Exh. 36</p>	
<p>4. One of the key metrics of success as a TM is the ability to meet monthly sales goals. Declaration of Clarence Moore ("Moore Decl."), ¶ 4</p>	<p>Disputed. The "market walk" form used to evaluate TMs focuses not on sales, but on merchandizing tasks. (Dkt. 57-5, p.7).</p>
<p>5. The sales goal is the total of the sales for that TM's specific stores in the previous year. The TM only needs to sell the same amount of product as was sold in that same month the previous year to meet their goal. Moore Decl., ¶ 4.</p>	<p>Undisputed but immaterial.</p>
<p>6. Since TMs work remotely in the field, the Company also uses Market Walks as a means for a Regional Sales Manager ("RSM") to coach, train and measure the performance of TMs against defined criteria. Moore Decl., ¶ 6.</p>	<p>Undisputed.</p>
<p>7. On Market Walks, RSMs and TMs visit several stores within a TM's territory and walk through the store to ensure TMs are building relationships with Lowe's employees, PPG product is properly placed throughout the store, and TMs are training and helping customers. Lawson Depo.; 21:24-22:14; 25:24-26:21.</p>	<p>Undisputed</p>

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<p>8. Market Walks are scored in these categories: 1) Sales Results; 2) Sales Operations Checklist; 3) Sales Planning; 4) Relationships; 5) Merchandizing; 6) Sales Tactics; 7) Pro Sales; 8) Administrative Duties; 9) Safety; and 10) Bonus Points. Moore Decl., 17, 8, Exh. A</p>	<p>Undisputed.</p>
<p>9. A TM's raw Market Walk score falls into one of five categories: 1) Exceptional; 2) Excels; 3) Successful; 4) Marginal; or 5) U</p>	<p>.Undisputed.</p>
<p>10. In October 2016, Plaintiff conducted a Market Walk with RSM Stanton. On that particular Market Walk, Plaintiff received a score of 92. Moore Decl., 118, Ex. B</p>	<p>Undisputed</p>
<p>11. In December 2016, Moore conducted a Market Walk with Plaintiff. This was the first Market Walk Moore conducted with Plaintiff, and together they visited 3 stores. Moore Decl., ¶ 9, Exh. B.</p>	<p>Undisputed.</p>
<p>12. On his Market Walk in December 2016, Plaintiff scored a 60 "Marginal", which was just one point above an "Unsuccessful" rating. Moore Decl., ¶ 9, Exh. B.</p>	<p>Undisputed.</p>
<p>13. Some areas where Moore noted Plaintiff struggled included: 1) failing to have PPG product in specific locations; 2) failing to complete monthly goals and then representing on his checklist the goal had been completed; 3) failing to build relationships and communicate with key Lowe's employees; and 4) failing to update Plaintiff's Training Roster</p>	<p>Disputed. There is no record evidence other than Moore's sham affidavit that Plaintiff made any misrepresentations on his checklists.</p>

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<p>on each visit. Moore Decl., ¶ 9, Exh. B</p>	
<p>14. A Training Roster is a list of Lowe's associates that work at each of the stores within a TMs territory, and Training Rosters had to be updated by the TM after every visit to each store. Moore Decl., ¶ 5.</p>	<p>Undisputed.</p>
<p>15. In March 2017, Moore conducted another Market Walk with Plaintiff. Moore and Plaintiff visited 3 stores in Plaintiff's territory. Plaintiff scored a 58 — "Unsuccessful". Moore Decl., ¶ 11, Exh. C.</p>	<p>Undisputed.</p>
<p>16. Plaintiff testified that following his March 2017 Market Walk, he received a verbal warning. Lawson Depo., 71:3-8.</p>	<p>Undisputed</p>
<p>17. Following the March 2017 Market Walk, Moore sent Plaintiff an email identifying numerous shortcomings and areas for improvement. Some issues Moore identified included: 1) Plaintiff failed to contemporaneously update his Training Roster, and failed to include some of Plaintiff's stores in his Training Roster altogether; 2) Plaintiff failed to establish relationships with key Lowe's staff members; 3) Plaintiff was unfamiliar with a key tool that provided TMs with critical product information; and 4) Plaintiff failed to stock PPG product in required locations. Moore Depo., 146:4-11, Plaintiff's Exh. 38</p>	<p>Disputed to the extent that Counsel attempts to characterize the email, which is a document that speaks for itself. Undisputed only that Moore sent Lawson such an email.</p>

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<p>18. By mid-April 2017, the Company Had received Plaintiff's 12-month sales numbers through March 2017. Moore Decl., ¶ 12</p>	<p>Undisputed</p>
<p>19. For the twelve-month period of April 2016 to March 2017, Plaintiff only met his monthly goal four times. Plaintiff missed his goal for six consecutive months beginning in October 2016. Lawson Depo.; 148:17-149:3, Exh. 9</p>	<p>Undisputed.</p>
<p>20. Because Plaintiff had missed 8 of the 12 months, the recommendation was to place Plaintiff on a Performance Improvement Plan ("PIP"). Moore Decl., ¶ 12.</p>	<p>Disputed. Mayhew admitted that PPG has no policy recommending that TMs be placed on PIPs based on their sales numbers. (Horowitz Dec'1 Ex. Q, p.57-58).</p>
<p>21. Andy Mayhew, Human Resources Manager, and Moore discussed the PIP, and concluded that one reason a PIP was appropriate was because Plaintiff had failed to achieve his sales goal for six straight months. Deposition of Andrew Mayhew ("Mayhew Depo."), 54:6-55:19; Moore Depo., 137:14-138:4, 139:10-140:6, Plaintiff's Exh. 37</p>	<p>Disputed. This is not a fact, but an inference, and all reasonable inferences are to be drawn in favor of Lawson on summary judgment.</p>
<p>22. The decision to put Plaintiff on a PIP was ultimately made by Human Resources. Kacsir Depo., 79:24-80:15; Moore Depo., 137:14-138:4, 139:10-140:6; 154:1-5, 224:4-9; Mayhew Depo.; 40:23-41:5; Plaintiff's Exh. 37.</p>	<p>Disputed. This is not a fact, but an inference, and all reasonable inferences are to be drawn in favor of Lawson on summary judgment.</p>



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<p>23. On April 21, 2017, Plaintiff and RSM Moore completed another Market Walk. Lawson Depo., 69:11-70:17</p>	<p>Undisputed</p>
<p>24. On his April 2017 Market Walk, Plaintiff scored a 46 "Unsuccessful". As with prior Market Walks, Plaintiff had failed to complete numerous national and regional monthly objectives, including 1) training Lowe's associates and completing his Training Roster; 2) completing PPG product demonstrations and displays; and 3) obtaining the contact information of specific Lowe's employees. Lawson Depo., 148:17-149:4, Exh. 9.</p>	<p>It is undisputed that Lawson's score was a 46, and undisputed that these were Moore's criticisms of Lawson. It is disputed that they were justified, as this is an inference that must be drawn in favor of Lawson for summary judgment.</p>
<p>25. At the conclusion of the Market Walk on April 21, 2017, Moore discussed Plaintiff's performance issues with him. Lawson Depo., 144:4-14.</p>	<p>Undisputed</p>
<p>26. PPG maintains an Ethics Helpline operated by a third-party administrator which provides PPG Employees a secure way to anonymously report issues. Declaration of David Duffy ("Duffy Decl."), ¶ 4.</p>	<p>Undisputed</p>

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<p>27. PPG also maintains a Global Code of Ethics which advises employees how to raise concerns through an online feature called the Compliance Portal, or through a toll-free phone number called the Ethics Helpline, both of which are operated by an independent third-party provider, Convercent. Duffy Decl., ¶ 5.</p>	<p>Undisputed.</p>
<p>28. Convercent receives and documents ethics reports. Deposition of Ian Dalton ("Dalton Depo."), 42:4-7, 99:22-24.</p>	<p>Undisputed</p>
<p>29. On April 21, 2017, an anonymous complaint was submitted to Convercent's online Compliance Portal. The anonymous complaint stated that on April 18, 2017, an unidentified "supervisor request[ed] territory managers purposely mis-mix product (paint) for the purpose of getting rid a of a slow moving product off the shelves and selling it at a reduced price." The anonymous reporter was informed that, "Neither Convercent Staff nor your organization will receive your contact information." Dalton Depo., 49:14-49:22, Plaintiff's Exh. 2; Lawson Depo., 154:19-25.</p>	<p>Undisputed.</p>
<p>30. The anonymous reporter specifically requested to remain completely anonymous. Lawson Depo., 149:21-150:5, Exh. 10.</p>	<p>Undisputed</p>
<p>31. Using the Compliance Portal, PPG confirmed and informed the anonymous reporter that PPG had received and was reviewing the anonymous report. Lawson Depo., 149:21-150:5, Exh. 10; Duffy Depo., 106:21-107:4.</p>	<p>Undisputed.</p>

1 2 3 4 5 6	32. On April 26, 2017, PPG followed up with the anonymous reporter and requested more information regarding where the alleged directive to mis-tint paint occurred since it had no store in Long Beach, CA. Duffy Depo., 106:21-107:4.	Undisputed.
7 8 9 10	33. The anonymous reporter failed to provide any additional information, and PPG closed the investigation. Lawson Depo., 149:21-150:5, Exh. 10; Duffy Depo., 58:6-13, 59:12-15, 106:21107:4	Undisputed.
11 12	34. Duffy was unaware that Plaintiff made the anonymous complaint. Duffy Depo., 57:19-23.	Undisputed.
13 14 15 16 17	35. Plaintiff testified he submitted the April 2017 complaint anonymously because he did not want Moore, or anyone else at PPG to know he was submitting a report. SAC ¶¶ 8, 15.; Lawson Depo.; 154:19- 155:-13, 157:3-5.	Undisputed.
18 19 20 21 22 23 24	36. Plaintiff testified he has no reason to believe Moore knew Plaintiff made the anonymous April 2017 report. Lawson Depo.; 170:3-7.	Disputed. Lawson's testimony that he had no "reason to believe that Mr. Moore knew" was an error, which he withdrew later in his deposition, emphasizing that he believed Moore knew because he told Moore that he believed mistinting was unethical. (Horowitz Dec'l, Ex. A, p. 245:10-24).
25 26 27 28	37. Plaintiff admits he told no one at PPG he submitted the anonymous April 2017 report. Lawson Depo.; 169:25-170:2.	Disputed. At some point later in April, he spoke by phone with Moore, and informed Moore that he believed that the mistinting practice was unethical. (Dkt. 57-

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	<p>3, p.57-60). He related an anecdote about how he had confronted an employee at his former job about using the postage meter for personal mail and told him that it was stealing. <i>Id.</i> Moore became agitated and told Lawson that the conversation was over. (Horowitz Dec’l, Ex. A, p.255-256). On June 26, 2017, PPG’s compliance department contacted Lawson through the ethics hotline’s online portal and asked if he would speak with David Duffy, PPG’s Senior Manager of Investigations and Corporate Security. (Horowitz Dec’l, Ex. E). Lawson agreed and provided his personal cell phone number. <i>Id.</i> Duffy called Lawson on June 28, 2017 and left a voice mail asking Lawson to call back. (Lawson Dec’l, Ex. B) In doing so, Duffy heard Lawson’s voicemail greeting, which states: “Hi, this is Wally Lawson. I’m not available, please leave a brief message and I’ll get back to you as soon as I can.” (Lawson Dec’l, Ex. C). He therefore learned Lawson’s identity, and Lawson’s ethics report was no longer confidential.</p>
<p>38. A PIP was delivered to Plaintiff on May 12, 2017. Lawson Depo., 73:21-25, 148:17-149:4, Exh. 9</p>	<p>Undisputed.</p>
<p>39. The goal of Plaintiff’s PIP was to help Plaintiff improve his performance and help Plaintiff meet the expectations and</p>	<p>Disputed. This is not a fact, but an inference, and all reasonable inferences are to be drawn in favor</p>

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<p>requirements of his role as a TM. Moore Depo., 156:22-157:2, Lawson Depo.,148:17-149:4, Exh. 9, Kacsir Depo., 80:22-81:10.</p>	<p>of Lawson on summary judgment.</p>
<p>40. Plaintiff's PIP identified numerous deficiencies in his performance, including: 1) missing 8 of the last 12 months in sales; 2) inaccuracies in a Training Roster Plaintiff submitted on May 1, 2017; 3) Plaintiff repeatedly exceed his allotted five hours of Admin Time per week without pre-approval from his RSM; 4) Plaintiff failed to complete monthly regional and national objectives; and 5) Plaintiff scored two consecutive "Unsuccessful" Market Walks on March 15, 2017, and April 21, 2017.</p> <p>The PIP provided the expected measurable goals that Plaintiff was to accomplish, including: 1) meeting his sales goal for Q2, 2) maintaining an accurate training roster; 3) keeping admin time to 5 hours, absent prior approval; 4) timely complete regional and national initiatives; and 5) have a "successful" Market Walk "prior to the endof the PIP to continue employment."</p> <p>Plaintiff's PIP was set to expire on July 7, 2017.</p> <p>Lawson Depo., 148:17-149:4, Exh. 9.</p>	<p>It is undisputed that Plaintiff was placed on a PIP, which is a document that speaks for itself. The remainder of this Paragraph is replete with prohibited argument, characterizations, inferences in favor of the moving party, and conclusions of law</p>
<p>On June 15, 2017, an anonymous complaint was submitted to PPG's Ethics Helpline. The Helpline is managed by Convercent, who intakes the information and then passes along certain details/information to PPG. The June 15, 2017, anonymous complaint</p>	<p>Undisputed</p>

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<p>was submitted through Convercent's call center and the anonymous reporter stated a regional manager asked TMs to purposely mis-tint paint, and referenced a prior complaint submitted in April 2017. The anonymous reporter indicated they wanted to remain anonymous toward their organization, and that he or she had not reported the incident in question to any supervisors or management. Lawson Depo., 162:18-163:12, 164:24- 165:22, Exhs. 12, 13.</p>	
<p>42. Plaintiff testified he understood the person he submitted the complaint to was employed by a third-party, and was not a PPG employee. Lawson Depo.; 160:3-5, 16-18162:10-17, 164:8-10</p>	<p>Undisputed.</p>
<p>43. When PPG received the June 2017 complaint, it did not receive the identity of the anonymous reporter, and Plaintiff admitted he has no evidence to the contrary. Duffy Decl., ¶ 8, Lawson Depo., 162:1-4</p>	<p>Undisputed that PPG did not receive the identity of the reporter when it received the complaint. However, on June 26, 2017, PPG's compliance department contacted Lawson through the ethics hotline's online portal and asked if he would speak with David Duffy, PPG's Senior Manager of Investigations and Corporate Security. (Horowitz Dec'l, Ex. E). Lawson agreed and provided his personal cell phone number. <i>Id.</i> Duffy called Lawson on June 28, 2017 and left a voice mail asking Lawson to call back. (Lawson Dec'l, Ex. B) In doing so, Duffy heard Lawson's voicemail greeting, which states: "Hi, this is Wally Lawson. I'm not available, please leave a brief message and I'll get back to you</p>

<p>46. The anonymous reporter agreed to speak with Duffy and provided PPG with a phone number. PPG confirmed the conversation would be confidential. Lawson Depo., 165:2-22; Exh. 13.</p>	<p>as Undisputed.” (Lawson Dec’1, Ex. C). He therefore learned Lawson’s identity, and Lawson’s ethics report was no longer confidential.</p>	
<p>47. On or around June 29, 2017, Duffy spoke with the anonymous reporter for about 15-20 minutes. Lawson Depo.; 168:14-17.</p>	<p>Undisputed that Lawson was the anonymous reporter and that this conversation occurred.</p>	
<p>44. PPG commenced an investigation into the June</p>	<p>Undisputed.</p>	
<p>48. During the call with Duffy, Plaintiff does not remember identifying himself to Duffy as (“Duffy”), PPG’s forensic Plaintiff’s Loss Prevention Specialist. Duffy Depo., 168:18-22</p>	<p>Undisputed.</p>	
<p>45. As part of the investigation, Duffy asked Plaintiff an anonymous reporter would speak with PPG regarding the information in the anonymous complaint. Lawson Depo.; 164:14-165:13, Exhs. 12, 13; Duffy Depo., 9:12-17.</p>	<p>Undisputed that Duffy gave this testimony. The credibility of this testimony is at issue, however, and it therefore must be assumed for the purposes of summary judgment that Duffy knew he was speaking to Lawson.</p>	
<p>50. After Duffy spoke with the anonymous reporter, he emailed Dalton and Alejandro Sanchez Monjaraz, Global Forensic Audit Director, and stated: The reporter was kind enough to provide a phone number on the posted message last night. I spoke to the reporter this afternoon. The reporter did not provide a name — since they were still concerned about remaining anonymous...I advised the caller to keep us informed if anything changed or if new information comes to light. Dalton Depo., 62:6-63:16, Plaintiff’s Exh. 4.</p>	<p>Undisputed that Duffy gave this testimony. The credibility of this testimony is at issue, however, and it therefore must be assumed for the purposes of summary judgment that Duffy knew he was</p>	

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	speaking to Lawson.
51. On July 6, 2017, Dalton met with Moore to interview him regarding the June 2017 Complaint. Moore Depo., 40:19-22; Dalton Depo., 50:24-51:7, Plaintiff's Exh. 3	Undisputed.
52. Moore understood his conversation with Dalton was confidential. Moore Depo., 46:21-25, 94:3-5.	Undisputed but irrelevant.

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<p>84. PPG maintained a policy that TMs could not work over 45 hours or over six days in any workweek without prior approval from the TM's RSM.</p> <p>TMs were required to accurately record all of the time — including regular time and overtime - they worked each day into PPG's Time Management System ("TMS").</p> <p>TMs are required to "carefully review [their] time entries and certify that the reported hours are accurate and that [they] have not reported more or less time than [they] actually worked." Moore Depo., 121:20-122:4, Exh., 32, at pp. 63, 65.</p>	<p>Undisputed that PPG maintained these policies. Disputed that PPG actually followed these policies. (Lawson Dec'1, ¶14-15).</p>
<p>85. Plaintiff knew he could account for all of the time he worked in PPG's TMS. Lawson Depo., 172:19-23.</p>	<p>Undisputed.</p>
<p>86. Plaintiff understood working off-the-clock was prohibited and he could be disciplined for doing it. Lawson Depo., 201:24-202:5.</p>	<p>Undisputed that PPG maintained these policies. Disputed that PPG actually followed these policies. (Lawson Dec'1, ¶14-15).</p>
<p>87. Plaintiff admits Moore never denied</p>	<p>Undisputed. By way of further</p>



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<p>a request by Plaintiff to work over 45 hours in a week. Lawson Depo., 175:15-17, 183:20-22.</p>	<p>answer, see Lawson Dec’l, ¶14-15.</p>
<p>88. Plaintiff admits whenever he recorded over five hours of overtime in a week, sometimes without prior permission, he would be paid for those hours. Lawson Depo., 183:20-25 196:11-17.</p>	<p>Disputed. This paragraph misconstrues the testimony cited, which plainly related to very small amounts of unapproved overtime. Larger amounts of overtime would need to be approved. (Lawson Dec’l, ¶14-15).</p>
<p>89. Plaintiff was never disciplined for recording over five hours of overtime in a week. Lawson Depo., 184:1-3, 196:18-20.</p>	<p>Undisputed.</p>
<p>90. Plaintiff admits Stanton told him that he needed to record his time associated with performing demonstrations for contractors. Lawson Depo., 187:10-189:5.</p>	<p>Undisputed.</p>
<p>91. Plaintiff admits he told no one at PPG, including Moore, he prepared for Market Walks off-the-clock. Lawson Depo., 190:7-192:12.</p>	<p>Undisputed.</p>
<p>92. Plaintiff admits he never requested to work overtime to prepare for Red Vest Ready trainings, even though he never had an overtime request denied, and he sometimes worked overtime without permission. Lawson Depo., 172:19-23,195:18-23, 196:11-15, 201:24-202:5.</p>	<p>Disputed as misleading. He never made an overtime request, so none were denied. (Horowitz Dec’l, Ex. A, p. 195).</p>
<p>93. No one from PPG ever instructed</p>	<p>Undisputed that nobody at PPG</p>

<p>1 Plaintiff to work off-the-clock, and                  2 Plaintiff never told Moore he worked off-                  3 the-clock in connection with any Pro                  4 events. Lawson Depo., 201:14-23.</p>	<p>explicitly told Lawson to work off                  the clock. Disputed that this was                  not intentionally implied to                  Lawson and other TMs. (Lawson                  Dec’1, ¶14-15).</p>
<p>8 94. Plaintiff testified he doesn't recall                  9 ever telling anyone at PPG, including                  10 Moore, he worked off-the-clock to                  11 complete the "stain hut" project. Lawson                  12 Depo., 184:4-12.</p>	<p>Undisputed that nobody at PPG                  explicitly told Lawson to work off                  the clock. Disputed that this was                  not intentionally implied to                  Lawson and other TMs. (Lawson                  Dec’1, ¶14-15).</p>
<p>15 95. Moore harbored no ill-will towards                  16 Plaintiff. Moore Decl., ¶16.</p>	<p>Undisputed that this was stated in                  Moore’s declaration. Whether                  Moore actually harbored ill-will                  towards Lawson is an inference                  that must be construed in                  Lawson’s favor for the purposes of                  summary judgment.</p>

**PLAINTIFF’S ADDITIONAL UNDISPUTED MATERIAL FACTS**

<b><u>UNDISPUTED MATERIAL FACT</u></b>	<b><u>RECORD CITATION</u></b>
<p>25 1. Lawson’s duties as territory                  26 manager were principally                  27 merchandizing Olympic paint                  28 and other PPG products in                  Lowe’s home improvement                  stores in Orange and Los</p>	<p>(Declaration of Wallen Lawson, ¶                  2).</p>

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Angeles counties.	
2. While territory managers are required to ensure that PPG displays are stocked and in good condition and that Lowe’s associates are trained on PPG products, they are not salespersons and exercise little independent discretion.	(Lawson Dec’l. ¶3-4).
3. Lawson was paid approximately \$36,000 per year, including mandatory overtime.	(Lawson Dec’l ¶5).
4. On October 6, 2016, Lawson had his first market walk with his original regional manager, Paul Stanton, and received 92 out of 100 available points. Lawson was recognized as having the highest market walk score in the country (out of some 210 territory managers), and was awarded a pay raise and a gift card. He also received a congratulatory call from Sean Kacsir, the divisional manager overseeing all of the regional managers in the western half of the United States.	(Dkt. 57-5, p. 8; Dkt. 57-3, p. 26).
5. On March 2, 2017, he received an annual review with a rating of “successful.”	(Lawson Dec’l, Ex. A).
6. Moore was under a directive from Kacsir to attempt to sell off a paint product called “Rescue It” to free up shelf space in Lowe’s stores for other PPG products.	(Horowitz Dec’l, Ex. B).
7. Rescue It is designed to resurface decks with damaged boards, and it was slow-selling—possibly due in part to	(Horowitz Dec’l, Ex. C; Lawson Dec’l, ¶7).

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<p>being the subject of a class action lawsuit that exposed to the public issues with poor adhesion. PPG was concerned that Lowe’s would require it to buy back unsold Rescue It inventory if it remained on the shelves for much longer.</p>	
<p>8. During the April 18 conference call, Moore directed his territory managers to surreptitiously “mis-tint” a few gallons of Rescue It on each store visit “on the down-low” while no one from Lowe’s was watching. He further instructed the territory managers that if any Lowe’s associates caught them mis-tinting paint, they should dissemble, and say that the paint was ordered by a customer who did not pick it up. The mis-tinted paint would then be placed on an “oops” rack next to the paint desk and sold at a deep discount.</p>	<p>(Horowitz Dec’l, Ex. A, p.150-153).</p>
<p>9. Moore repeated the instruction to mis-tint on at least two weekly conference calls with his territory managers. During those calls, some of the territory managers bragged to Moore about the amount of paint they mis-tinted.</p>	<p>(Horowitz Dec’l, Ex. B).</p>
<p>10. Like most paint, Rescue It is shipped from the factory as a neutral base formula without pigment, and then “tinted” to the customer’s requested color at the Lowe’s paint desk using a machine that mixes pigments</p>	<p>(Lawson Dec’l, ¶8).</p>

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<p>into the base formula.</p>	
<p>11. While Lowe’s associates typically operate the tinting machine, territory managers would frequently cover the paint desk while the Lowe’s associates were at lunch or on break.</p>	<p>(Lawson Dec’l, ¶8).</p>
<p>12. PPG admits that mistinting paint by territory managers without the knowledge and consent of Lowe’s is a violation of PPG’s Global Code of Ethics.</p>	<p>(Horowitz Dec’l, Ex. D, Req. no. 12).</p>
<p>13. After conferring with his daughter, an HR specialist, on April 18, 2017 Lawson reported Moore’s instruction to mis-tint paint to the company’s web-based confidential ethics reporting online portal</p>	<p>(Horowitz Dec’l, Ex. A, p.150-153).</p>
<p>14. At some point shortly thereafter in April, Lawson spoke by phone with Moore and informed him that he believed the mistinting practice was unethical. Lawson also related an anecdote about how he had confronted an employee at his former job about using a company postage meter for personal mail and had told him that it was stealing. Lawson further made reference to John Dean and his historical role in Watergate in his conversation with Moore. Moore at that point became agitated and told Lawson that the conversation was over.</p>	<p>(Horowitz Dec’l, Ex. A, p.155-157, 233-235, 255-256).</p>
<p>15. After not receiving a response to his original report to the ethics portal, Lawson called PPG’s</p>	<p>(Dkt. 57-3, p.117; Horowitz Dec’l, Ex. E; Lawson Dec’l, Exhs. B, C)</p>

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<p>ethics reporting hotline on June 15, 2017. On June 26, 2017, PPG’s compliance department contacted Lawson though the ethics reporting online portal and asked if he would speak with David Duffy, PPG’s Senior Manager of Investigations and Corporate Security. Lawson agreed and provided his personal cell phone number. Duffy called Lawson on June 28, 2017 and left a voicemail asking Lawson to call back. In doing so, Duffy heard Lawson’s voicemail greeting, which states: “Hi, this is Wally Lawson. I’m not available, please leave a brief message and I’ll get back to you as soon as I can.” He therefore learned Lawson’s identity, and Lawson’s ethics report was no longer confidential.</p>	
<p>16. Moore denied ordering the mis-tinting, claiming that one of his territory managers suggested it on the conference call and that he “failed to stop it.”</p>	<p>(Horowitz Dec’l, Ex. F).</p>
<p>17. Dalton interviewed all fourteen of Moore’s territory managers, who uniformly confirmed that Moore ordered the mis-tinting. Duffy and Dalton thereupon issued a report finding that Moore ordered the mis-tinting.</p>	<p>(Horowitz Dec’l, Ex. G).</p>
<p>18. Dalton also directed Moore to discontinue the practice. Moore then sent his territory managers a text message: “Effective immediately!!!! Please do not</p>	<p>(Horowitz Dec’l, Exhs. B, H, T p. 55).</p>

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<p>mis-tint Rescue It product any more.” Dalton further directed Moore to have all of his territory managers re-read PPG’s global code of ethics.</p>	
<p>19. At the direction of Dalton, Moore prepared a statement regarding his role in the mis-tinting for the investigative file.</p>	<p>(Horowitz Dec’l, Exhs. F, T p. 88-89).</p>
<p>20. Dalton also received a report from another territory manager in Texas that her regional manager, Brian Wells, had similarly directed her to mis-tint paint.</p>	<p>(Horowitz Dec’l, Exhs. E, I).</p>
<p>21., Duffy and Dalton expanded the scope of the investigation and enlisted Kacsir to assist.</p>	<p>(Horowitz Dec’l, Exhs. E, I).</p>
<p>22. Regional Manager David Larson, who also reported to Kacsir, also ordered his territory managers to mis-tint paint.</p>	<p>(Horowitz Dec’l, Ex. J, p.26).</p>
<p>23. Duffy and Dalton launched a national inquiry regarding the mis-tinting practice.</p>	<p>(Horowitz Dec’l, Ex. K, p. 31).</p>
<p>24. No one from PPG notified Lowe’s at that time or any time thereafter of the mis-tinting scheme.</p>	<p>(Horowitz Dec’l, Ex. K, p. 31).</p>
<p>25. Michele Minda, Director of HR for Defendant, gave Moore and Wells identical written warnings that did not state that they ordered their territory managers to mis-tint paint.</p>	<p>(Horowitz Dec’l Exhs. L,M).</p>
<p>26. Lowe’s dropped PPG paint a few weeks later, and ended its relationship with Defendant. At that time, all of the Lowes merchandising team at PPG was laid off. Moore, however, was</p>	<p>(Horowitz Dec’l, Ex. N, p.14).</p>

1	given a new job managing a	
2	PPG paint store in the Phoenix,	
3	Arizona area.	
4	27. Duffy testified that he found it	(Horowitz Dec'l, Ex. O, p.34, 104).
5	"ironic" that Moore was not	
6	fired while Lawson was, and he	
7	thought that Moore should have	
8	been the one to be fired.	
9	28. On July 13, 2017, one week	(Horowitz Dec'l, Ex. B; Dkt. 57-3,
10	after Moore's interrogation by	p. 99).
11	Dalton, Moore traveled to Los	
12	Angeles to do a market walk	
13	with Lawson, and scored him 66	
14	out of 100.	
15	29. During this market walk, Moore	(Horowitz Dec'l, Ex. P).
16	also observed that the training	
17	roster software on Lawson's	
18	company-issued tablet was	
19	malfunctioning, prompting him	
20	to send an email to PPG's IT	
21	department.	
22	30. A training roster lists the paint	(Horowitz Dec'l, Ex. N, p. 193-
23	department employees in each	196).
24	Lowe's store and tracks when	
25	the territory manager trained	
26	them on various subjects	
27	dictated by PPG management.	
28	Because Lowe's employees can	
	be high-turnover, territory	
	managers have to frequently	
	update their roster.	
	31. Moore went on another market	(Dkt. 57-3, p. 104).
	walk with Lawson on August	
	16, 2016. He scored Lawson 40	
	out of 100.	
	32. Moore observed that there were	(Dkt. 57-3, p. 104; Horowitz Dec'l,
	some discrepancies in Lawson's	Ex. N, p.228-230).
	training roster, making it appear	
	that Lawson was training	
	Lowe's associates in stores that	
	he did not visit on a particular	



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<p>day. Rather than investigating the possibility that this was a result of the aforementioned issues with Lawson’s tablet, or merely a result of Lawson making clerical errors, Moore later contended that Lawson had “intentionally falsified” his training roster.</p>	
<p>33. Moore and Kacsir then asked Andrew Mayhew of HR to approve firing Wally Lawson. Moore forwarded the request to his supervisor, Minda.</p>	<p>(Dkt. 57-3, p. 282; Horowitz Dec’l, Ex. Q, p. 86-87).</p>
<p>34. Kacsir and Moore socialized around activities like football, drinking, and Topgolf.</p>	<p>(Horowitz Dec’l, Ex. R, p. 17-18).</p>
<p>35. Minda was deeply involved in Duffy’s investigation of the mistinting and knew that the investigation had started with an anonymous report from Moore’s region.</p>	<p>(Horowitz Dec’l, Ex. Q, p. 86-87).</p>
<p>36. Moore fired Lawson at a meeting in a hotel conference room on September 6, 2017. Mayhew participated by phone.</p>	<p>(Lawson Dec’l, ¶11; Horowitz Dec’l Ex. Q, p.87-95; Dkt. 57-3, p. 109-110).</p>
<p>37. Lawson asked why he was being fired, and Mayhew responded that he falsified his training roster and that he had failed his PIP. Lawson strenuously objected, and explained that the discrepancy was due to issues with his company-supplied i-Pad, to which Moore was aware. Moore responded that it didn’t matter, and he was going to be terminated. Lawson then said, “if anyone should be fired, it</p>	<p>(Lawson Dec’l, ¶11; Horowitz Dec’l Ex. Q, p.87-95; Dkt. 57-3, p. 109-110).</p>

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<p>should be you (meaning Moore) because you stole from Lowe’s, our valued customer.” Mayhew then yelled, “this meeting is over, I’m hanging up now.”</p>	
<p>38. Moore continues to deny that he instructed his territory managers to mis-tint paint.</p>	<p>(Horowitz Dec’l, Ex. N., p.44:8-11).</p>
<p>39. Mayhew admitted that Lawson did not admit to falsifying documents.</p>	<p>(Horowitz Dec’l Ex. Q, p.84:1-85:12).</p>
<p>40. On his August, 2017 market walk, Moore gave Lawson zero points for liquid nails placements even though he had more Liquid Nails placements than required, demonstrating that he had gotten Lowe’s managers to give him extra space in the stores.</p>	<p>(Dkt. 57-3, at p. 18-20).</p>
<p>41. Moore docked Lawson by five points by having one force-out during the ninety-day period applicable to the market walk, despite PPG’s policy of deducting points only if a territory manager has more than one force out.</p>	<p>(Dkt. 57-3, p.104).</p>
<p>42. A “force-out” is when a territory manager does not clock out when leaving a Lowe’s store, causing the timekeeping system to automatically log him out of the store at midnight.</p>	<p>(Horowitz Dec’l Ex. N, p. 197:24-198:2).</p>
<p>43. When asked about this at his deposition, Moore stated that it was he decided to override the rubric provided by PPG “because it was very important to me.”</p>	<p>(Horowitz Dec’l Ex. N, p.218:5-18).</p>
<p>44. Moore reassigned Lawson three</p>	<p>(Lawson Dec’l, ¶12).</p>

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<p>underperforming stores including one that was eventually closed, and also removed two high-performing stores from Lawson.</p>	
<p>45. Moore claimed that he put Lawson on the PIP because of his sales numbers, telling Lawson that he was required by PPG policy to place Moore on a PIP under such circumstances.</p>	<p>(Horowitz Dec’l Ex. Q, p.57-58).</p>
<p>46. Mayhew, however, confirmed that there was no policy requiring territory managers to be automatically put on a PIP due to their sales numbers.</p>	<p>(Horowitz Dec’l Ex. Q, p.57-58).</p>
<p>47. Territory managers were required to work from home approximately five hours per week to perform administrative duties. This included entering time records in PPG’s database, completing online training modules, and communicating via email.</p>	<p>(Lawson Dec’l, ¶13).</p>
<p>48. While territory managers were provided with company-issued phones that they could set up as mobile hotspots to connect their company-issued tablets to the internet, Lawson and other territory managers more often than not used their existing home internet connections to connect to the internet because this was faster and easier.</p>	<p>(Lawson Dec’l, ¶13).</p>
<p>49. Many territory managers complained that they were going to continue using their home internet and that they felt that PPG’s failure to provide</p>	<p>(Lawson Dec’l, ¶13).</p>

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reimbursement was unfair.	
50. Stanton told Lawson and his other territory managers, “sometimes you need to make sacrifices,” which Lawson interpreted as Stanton telling him that he needed to work off the clock in order to complete his job duties.	(Lawson Dec’l, ¶14).
51. Moore told Lawson, “these national and regional objectives are not optional and there's no reason you can't accomplish this with your time management. I'm only going to say this once.”	(Lawson Dec’l, ¶15).
52. When Lawson told Moore that he worked off the clock to accomplish his duties, Moore cryptically replied, “now that you have told me, I have to write you up,” implying that Lawson should get his work done without saying anything. This was later confirmed by Moore saying, “just get it done.”	(Lawson Dec’l, ¶15).

Dated: May 20, 2019

Respectfully submitted,

/s/Andrew J. Horowitz, Esq.  
Andrew J. Horowitz, Esq.

*Attorneys for Plaintiff Wallen Lawson*

**CERTIFICATE OF SERVICE**

I, Andrew J. Horowitz, hereby certify that the within Statement of Genuine Disputes has been served on all counsel of record this 20<sup>th</sup> day of May, 2019, via the Court's CM/ECF filing system.

/s/Andrew J. Horowitz, Esquire

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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

WALLEN LAWSON,  
Plaintiff,  
v.  
PPG ARCHITECTURAL FINISHES,  
INC.,  
Defendant.

Case No. 8:18-CV-00705-AG-JPR  
**DECLARATION OF WALLEN A.  
LAWSON REGARDING  
PLAINTIFF'S OPPOSITION TO  
DEFENDANT'S MOTION FOR  
SUMMARY JUDGMENT**

I, Wallen A. Lawson, hereby declare the following:

1. I am the Plaintiff in this lawsuit. I have personal knowledge of the facts set forth below. If called upon as a witness, I could testify competently hereto.
2. I was employed as a territory manager for defendant PPG Architectural Finishes, Inc. from May 15, 2015 until I was fired on September 6, 2017. My duties were principally merchandizing Olympic paint and other PPG products in Lowe's home improvement stores.

DEC'L OF WALLEN LAWSON  
RE: SUMMARY JUDGMENT

1.

CASE NO. 8:18-CV-00705 AG-JPR

4815-0351-6823

1           3.     While as a territory manager, I was required to ensure that PPG displays  
2 were stocked and in good condition and that Lowe's associates were trained on PPG  
3 product, I was not a salesperson. I did not make sales on behalf of PPG because all  
4 PPG products in the store were already sold by PPG to Lowe's.  
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6           4.     In performing my duties as a territory manager, I had little independent  
7 discretion to determine how to perform my job duties. PPG products had to be stocked  
8 in the store according to a plan-o-gram dictated by Lowe's that specified down to the  
9 inch where everything was supposed to be. I was required to visit all of my assigned  
10 stores regularly and conduct trainings with Lowe's associates. All of the content for  
11 the trainings was provided by PPG.  
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13           5.     As a territory manager, I was paid approximately \$36,000 per year,  
14 including mandatory overtime.  
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16           6.     Exhibit A to this Declaration is a true and correct copy of a year-end  
17 performance review that I received on March 2, 2017.  
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19           7.     It was my understanding that if unsold old-label Rescue It remained on  
20 Lowe's shelves beyond July of 2017, Lowe's would require PPG to buy it back.  
21

22           8.     Like most paint, Rescue It is shipped from the factory as a neutral base  
23 formula without pigment, and then "tinted" to the customer's requested color at the  
24 Lowe's paint desk using a machine that mixes pigments into the base formula. While  
25 Lowe's associates typically operate the tinting machine, territory managers would  
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1 frequently offer to cover the paint desk while the Lowe's associates were at lunch or  
2 on break.

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4 9. Exhibit B is a true and correct copy of a transcript of a voicemail I  
5 received from David Duffy on June 28, 2017.

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7 10. Exhibit C is a true and correct copy of a transcript of my voicemail  
8 greeting as it existed on June 28, 2017.

9  
10 11. I was fired at a meeting in a hotel conference room on September 6,  
11 2017. Mayhew participated by phone. I asked why I was being fired, and Mayhew  
12 responded that I "falsified" my training roster and failed my PIP. I strenuously  
13 objected, and explained that the discrepancy was due to circumstances of which  
14 Moore was aware. I told them that Clarence knew all about the issues with my training  
15 roster and what happened to my records due to my company-supplied Apple iPad  
16 crashing and related issues, and that there was no falsification of records whatsoever. I  
17 asked Moore to clarify this, and he responded that, it didn't matter, and I was going to  
18 be terminated anyways. I then said, "if anyone should be fired, it should be you  
19 (meaning Moore) because you stole from Lowe's our valued customer." Mayhew  
20 yelled "this meeting is over, I'm hanging up now."  
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24 12. Clarence Moore realigned my territory to include three underperforming  
25 stores, including one (store no. 1900 in Aliso Viejo) that Lowe's eventually closed. In  
26 exchange, Moore removed two high-performing stores from Lawson. I feel that this  
27 reduced my sales numbers.  
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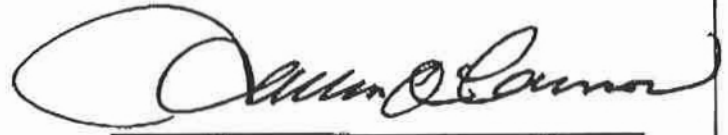
1           13. As a territory manager, I was required to work from home approximately  
2 five hours per week to perform administrative duties. This included entering time  
3 records in PPG's database, completing online training modules, and communicating  
4 via email. While I was provided with a company-issued phone that could be set up as  
5 a mobile hotspot to connect my company-issued tablet to the internet, I more often  
6 than not used my existing home internet connection to connect to the internet because  
7 this was faster and easier. I know that many territory managers complained that they  
8 were going to continue using their home internet and that they felt that PPG's failure  
9 to provide this reimbursement was unfair.  
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13           14. When I made inquiry about how I was to account for my time, Stanton  
14 told me and the other territory managers, "sometimes you need to make sacrifices,"  
15 which I interpreted as Stanton telling me that I needed to work off the clock in order  
16 to complete my job duties.  
17

18           15. Moore advised me: "These national and regional objectives are not  
19 optional and there's no reason you can't accomplish this with your time management.  
20 I'm only going to say this once." Also, when I told Moore that I worked off the clock  
21 to accomplish my duties, Moore replied, "now that you have told me, I have to write  
22 you up," implying that I should get my work done without saying anything. This was  
23 later confirmed by Moore saying, in response to further queries about how I was to  
24 account for my time, "just get it done."  
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I declare under the penalty of perjury under the laws of the United States that the foregoing is true and correct, and that this declaration was executed this 20th day of May, 2019, in Tustin, California.



WALLEN A. LAWSON

# **EXHIBIT A**



## 2016 Performance Review: USCA

Review Period 1/1/2016 - 12/31/2016



### REVIEWER

Clarence Moore (Manager), 2016 Rating (External Reviewer)

Wallen Lawson

Territory Manager Lowes  
Position Title List



## Overview

### Employee Details

User ID	289990
Manager	Clarence Moore
Location	Area Services - AZ
Payroll Country	United States
Parent SBU	Architectural Coatings

## Goals Status

### ADMINISTRATIVE

- \* All deadlines proactively met.
- \* Admin time less than or equal to 5-hours per week.
- \* Comprehensive market updates provided during Work Day #1-#3 calls with Regional Sales Manager.
- \* Expense reports submitted a minimum of one time per month.

<b>Start Date</b> 8/15/2016	<b>End Date</b> 12/31/2016	<b>Status</b> On Track
<b>Updates</b>	<b>Categories</b> Business Goal, Development Goal	<b>Visibility</b> Yes

#### Comments

Wallen Lawson - 2/7/2017 10:24:47 PM  
on track..

### +100% Completion of all online training courses by assigned deadlines.

Stay current mandatory no options.

<b>Start Date</b> 3/18/2016	<b>End Date</b> 12/31/2016	<b>Status</b> Completed
<b>Updates</b>	<b>Categories</b> Development Goal	<b>Visibility</b> Yes

#### Comments

Wallen Lawson - 2/7/2017 10:14:22 PM  
completed always current.



**+100% Compliance with all EHS PPE ( Safety equipment- Shoes, Gloves, Glasses, & Knife.**

Again use common sense. There is no such thing as a smart accident.

<b>Start Date</b> 3/18/2016	<b>End Date</b> 12/31/2016	<b>Status</b> Completed
<b>Updates</b>	<b>Categories</b> Development Goal	<b>Visibility</b> Yes

**Comments**

**Wallen Lawson** - 2/7/2017 10:15:53 PM  
current no safety violations

**+20% increase in Stain & Resurfacer product sales in my territory in 2016'**

develop a blueprint to make this happen & achieve this important goal.

<b>Start Date</b> 3/18/2016	<b>End Date</b> 12/31/2016	<b>Status</b> Behind
<b>Updates</b>	<b>Categories</b> Business Goal	<b>Visibility</b> Yes

**Comments**

**Wallen Lawson** - 2/7/2017 10:18:35 PM  
did not attain goal struggled in my market selling Rescue It line of products.

**Accurate traing roster updated each visit & exported to my RM BY THE 1st of the Month.**

Stay make this happen without fail.

<b>Start Date</b> 3/18/2016	<b>End Date</b> 12/31/2016	<b>Status</b> On Track
<b>Updates</b>	<b>Categories</b> Development Goal	<b>Visibility</b> Yes

**Comments**

**Wallen Lawson** - 2/7/2017 10:20:22 PM  
Training Roster current revised and up to date.

**Activate & ongoing participation in regional calls, prijects, best practices & proactive weekly communicationwith my Regional Manager**

Feed back is very helpful.



<b>Start Date</b>	<b>End Date</b>	<b>Status</b>
3/18/2016	12/31/2016	On Track
<b>Updates</b>	<b>Categories</b>	<b>Visibility</b>
	Development Goal	Yes

#### Comments

**Wallen Lawson** - 2/7/2017 10:22:59 PM  
yes communications on track to date.

#### Admin time less than or equal to 5hours per week

Got-It.

<b>Start Date</b>	<b>End Date</b>	<b>Status</b>
3/18/2016	12/31/2016	On Track
<b>Updates</b>	<b>Categories</b>	<b>Visibility</b>
	Development Goal	Yes

#### Comments

**Wallen Lawson** - 2/7/2017 10:23:48 PM  
on track.

#### All deadlines met for all peoplel Dvelopment Center courses

Again stay close make this happen.

<b>Start Date</b>	<b>End Date</b>	<b>Status</b>
3/18/2016	12/31/2016	On Track
<b>Updates</b>	<b>Categories</b>	<b>Visibility</b>
	Development Goal	Yes

#### Comments

**Wallen Lawson** - 2/7/2017 10:25:31 PM  
current on track.

#### All deadlines met for Popl Dvelopment Center courses

urgent to accomplish deadlines on schedule.

<b>Start Date</b>	<b>End Date</b>	<b>Status</b>
3/18/2016	12/31/2016	On Track
<b>Updates</b>	<b>Categories</b>	<b>Visibility</b>
	Development Goal	Yes



**Comments**

**Wallen Lawson** - 2/7/2017 10:26:18 PM  
on track.. current

**All deadlines proactively met.**

Good mindset to have always.

<b>Start Date</b> 3/18/2016	<b>End Date</b> 12/31/2016	<b>Status</b> On Track
<b>Updates</b>	<b>Categories</b> Development Goal	<b>Visibility</b> Yes

**Comments**

**Wallen Lawson** - 2/7/2017 10:27:24 PM  
on track current.

**All Lowe's paint dept. staff trained on all Olympic products.**

Make this happen no excuses.

<b>Start Date</b> 3/18/2016	<b>End Date</b> 12/31/2016	<b>Status</b> Behind
<b>Updates</b>	<b>Categories</b> Development Goal	<b>Visibility</b> Yes

**Comments**

**Wallen Lawson** - 2/7/2017 10:28:51 PM  
pro service training behind plus some stores missing some training to date.

**All promotional product to be displayed in a timely manner with proper signage ADMINISTRATIVE..**

Key her in a timely matter.

<b>Start Date</b> 3/18/2016	<b>End Date</b> 12/31/2016	<b>Status</b> On Track
<b>Updates</b>	<b>Categories</b> Development Goal	<b>Visibility</b> Yes

**Comments**

**Wallen Lawson** - 2/7/2017 10:30:19 PM  
on track for the most part in this area.





**Annual team Regional meeting ( just our region ) to be held in the fall. More to Follow.**

Prepare after meeting date is established.

<b>Start Date</b> 3/18/2016	<b>End Date</b> 12/31/2016	<b>Status</b> Derailed
<b>Updates</b>	<b>Categories</b> Development Goal	<b>Visibility</b> Yes

**Comments**

**Clarence Moore** - 3/2/2017 3:26:46 PM  
This is not a goal.

**Completeing the daily store checklst every visit.**

Helpful tool to keep a handle on every visit to Lowe's.

<b>Start Date</b> 3/18/2016	<b>End Date</b> 12/31/2016	<b>Status</b> Derailed
<b>Updates</b>	<b>Categories</b> Business Goal	<b>Visibility</b> Yes

**Comments**

**Wallen Lawson** - 2/7/2017 10:34:51 PM  
every visit last year can't say this happen every visit.

**Comprehensive market updares provided during Work Day #1-#3 calls with Regional Sales Managee**

Will make this a priority.

<b>Start Date</b> 3/18/2016	<b>End Date</b> 12/31/2016	<b>Status</b> Behind
<b>Updates</b>	<b>Categories</b> Development Goal	<b>Visibility</b> Yes

**Comments**

**Wallen Lawson** - 2/7/2017 10:36:34 PM  
this didn't happen one market walk last year not much visability from regional manager

**Curent Sales Reports analyzed and Minthly Action Plans ( MAP ) utilized during store calls.**

This will help drive sales in my territory.



<b>Start Date</b> 3/18/2016	<b>End Date</b> 12/31/2016	<b>Status</b> On Track
<b>Updates</b>	<b>Categories</b> Business Goal	<b>Visibility</b> Yes

**Comments**

Wallen Lawson - 2/7/2017 10:37:37 PM  
updated monthly.

**Effective & Consistent monthly email communications to the Market Director.**

Face to Face and contacts via emails too.

<b>Start Date</b> 3/18/2016	<b>End Date</b> 12/31/2016	<b>Status</b> Behind
<b>Updates</b>	<b>Categories</b> Development Goal	<b>Visibility</b> Yes

**Comments**

Wallen Lawson - 2/7/2017 10:38:42 PM  
this didn't happen every month in 2016'.

**Incident Reporting Process followed & submitted to Manager within 24 hours. ( if applicable )**

This is very important no exceptions no options.

<b>Start Date</b> 3/18/2016	<b>End Date</b> 12/31/2016	<b>Status</b> On Track
<b>Updates</b>	<b>Categories</b> Development Goal	<b>Visibility</b> Yes

**Comments**

Wallen Lawson - 2/7/2017 10:39:23 PM  
N/A

**Liquid Nails / Homx +1%**

Manage inventory levels and audit sales results.

<b>Start Date</b> 3/18/2016	<b>End Date</b> 12/31/2016	<b>Status</b> Behind
<b>Updates</b>	<b>Categories</b> Business Goal	<b>Visibility</b> Yes



### Comments

**Wallen Lawson** - 2/7/2017 10:40:27 PM  
fell short of goal 2016'

### Monthly Store Manager / ASM Business Review Meetings with MAP documentation.

verbal and written documentation key to success.

<b>Start Date</b> 3/18/2016	<b>End Date</b> 12/31/2016	<b>Status</b> Behind
<b>Updates</b>	<b>Categories</b> Development Goal	<b>Visibility</b> Yes

### Comments

**Wallen Lawson** - 2/7/2017 10:41:36 PM  
this requirement did not happen every month in 2016'

### One Lowe's approved & coordinated classroom training per store in each in my territory in 2016'

Review Training Schedule with Lowe's Management.

<b>Start Date</b> 3/18/2016	<b>End Date</b> 12/31/2016	<b>Status</b> Completed
<b>Updates</b>	<b>Categories</b> Business Goal	<b>Visibility</b> Yes

### Comments

**Wallen Lawson** - 2/7/2017 10:42:36 PM  
completed.

### Participate in "Safety 365" discussions via Monthly Calls with Team EHS / Safety Captain.

These meeting are very helpful with the theme "Safety 365"

<b>Start Date</b> 3/18/2016	<b>End Date</b> 12/31/2016	<b>Status</b> Completed
<b>Updates</b>	<b>Categories</b> Development Goal	<b>Visibility</b> Yes

### Comments

**Wallen Lawson** - 2/7/2017 10:43:20 PM  
completed



### Quarterly PSI meetings with each store PSI with MAP documation

They play a vital roll stay close.

<b>Start Date</b> 3/18/2016	<b>End Date</b> 12/31/2016	<b>Status</b> Behind
<b>Updates</b>	<b>Categories</b> Development Goal	<b>Visibility</b> Yes

#### Comments

**Wallen Lawson** - 2/7/2017 10:46:08 PM  
behind goal in 2016'

### Regional Development Sales Goals 2016

My region (California specifically) has been under producing sales in the following category.

- \* Increase deck cleaner sales by 20%
- \* Increase stain sales by 20%
- \* Increase Re-surface (Rescue It) sales by 15%

<b>Start Date</b> 2/2/2016	<b>End Date</b> 12/31/2016	<b>Status</b> Behind
<b>Updates</b>	<b>Categories</b> Development Goal	<b>Visibility</b> Yes

#### Comments

**Wallen Lawson** - 2/7/2017 10:51:17 PM  
missed goal +2.3% up

### SAFETY Zero Recordable Incidents.

Focus at all times to avoid accidents in all areas on the job.

<b>Start Date</b> 3/18/2016	<b>End Date</b> 12/31/2016	<b>Status</b> On Track
<b>Updates</b>	<b>Categories</b> Development Goal	<b>Visibility</b> Yes

### Sales Goals

- Paint +13%
- Stain +1%



Liquid Nails/Homax +1%

Total Comp +6%

<b>Start Date</b> 8/15/2016	<b>End Date</b> 12/31/2016	<b>Status</b> Behind
<b>Updates</b>	<b>Categories</b> Business Goal	<b>Visibility</b> Yes

#### Comments

**Wallen Lawson** - 2/7/2017 11:44:53 PM  
missed my goal for 2016'

## PLP General Comments

### General Comment Section

#### Previous Responses

**Wallen Lawson (Self)**

**Review:** 2016 Mid-Year Performance & Learning Plan - **Date:** 8/9/2016

following our drive for 25 process key, Map program great tool to track success, training hands-on, building relationships with pro services & AED'S = new opportunities for PPG. dependable sales service calls monthly meeting with market directors.

**Paul Stanton (Manager)**

**Review:** 2016 Mid-Year Performance & Learning Plan - **Date:** 8/26/2016

Wally, great job of goal setting! Keep up with daily review of the MAP and the Drive 4 25 at each store to determine opportunities for training leading to sales growth. Continue to build relationships with the PRO Desk, PSI's, PSE's, AEP's, store managers and market directors. You took the words right out of my mouth! Keep up the great work in your stores!

## Overall Comments

### Overall Comments

#### Comments

**Wallen Lawson (Self):**

This has been a very challenging and exciting first full year with the PPG company. I have learned many new innovative selling skills from our Coach training program and my new Regional Manager Clarence Moore. His knowledge of the Lowe's system has been invaluable.

My first market walk score was one of the top scores in the nation at +92 points.

I will continue to learn and improve my second market walk was disappointing, however I will use the results to motivate myself to improve this year to use all our resources available to win in my territory in an honest ethical way by selling the



reputation of the PPG Corporation that supports all our efforts.

## Year End Performance Evaluation

### Year End Performance Evaluation Comments

#### Comments

Clarence Moore (Manager):

Row Labels	2015 Gallons	2016 Gallons	Total Comp
Lawson, Wallen	53740	51140	-5%
EXTERIOR PAINT	11867	9854	-17%
EXTERIOR STAIN	9508	8155	-14%
HOMAX	3341	3487	4%
INTERIOR PAINT	24796	25795	4%
LIQUID NAILS	4008	3638	-9%
SOLVENTS	220	211	-4%

## Signature

X Wallen Lawson

Self

1/30/2017

Date

X

\_\_\_\_\_  
Functional Manager (1)

\_\_\_\_\_  
Date

X

\_\_\_\_\_  
Functional Manager (3)

\_\_\_\_\_  
Date

X Clarence Moore

Manager

3/2/2017

Date

X

\_\_\_\_\_  
Functional Manager (2)

\_\_\_\_\_  
Date

## Year End Performance Evaluation-5 point scale



## Employee Access Online March 31, 2016

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Reviewer	Rating
2016 Rating (External Reviewer)	Successful

## Summary

### Overall Rating

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2016 Performance Review: USCA  
Wallen Lawson

**Successful**

# **EXHIBIT B**



1 IN THE UNITED STATES DISTRICT COURT  
2 FOR THE CENTRAL DISTRICT OF CALIFORNIA

3 - - -

4 WALLEN LAWSON, )  
 )  
5 Plaintiff, )  
 )  
6 vs. )  
 )  
7 PPG ARCHITECTURAL )  
 FINISHES, INC., )  
8 )  
 Defendant. )

Case No.:  
8:18-cv-00705-AG-JPR

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Transcription of Audio Recording  
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NETWORK DEPOSITION SERVICES  
1101 GULF TOWER  
707 GRANT STREET  
PITTSBURGH, PENNSYLVANIA 15219  
(866) 565-1929  
- - -

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2 (This begins the transcription of the  
3 audio recording.)

4 - - -

5 MR. DUFFY: Well, good morning.

6 This is Dave Duffy calling from  
7 PPG in the compliance office.

8 I saw that you were kind enough  
9 to provide your phone number to discuss the  
10 issue regarding Lowe's and the Rescue It  
11 product and what it was you were being asked  
12 to do as a territory manager.

13 I can't thank you enough for your  
14 kindness for providing your information and  
15 for allowing us to speak with you. If you  
16 get the opportunity, it is now 11:43 in  
17 Pittsburgh, I'm sure your time zone is  
18 different than mine, but if you get the  
19 opportunity, please feel free to give me a  
20 call back.

21 Again, it's Dave Duffy. My phone  
22 number in the office is 412-434-4034,  
23 412-434-4034.

24 And, again, I thank you very much  
25 for your time and your consideration to not

1           only make the report, but to allow us to  
2           speak with you. I look forward to the  
3           opportunity to talk to you.

4                           Thank you, bye.

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6                           (This ends the transcription of the  
7           audio recording.)

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C-E-R-T-I-F-I-C-A-T-E

I, Nina Warren Biehler, the undersigned, do hereby certify that the foregoing transcript is a true and correct transcription of the audio recording given to me to transcribe.

Signed and sworn to on this day, Friday, February 15, 2019.

\_\_\_\_\_  
Nina Warren Biehler  
Notary Public in and for the  
Commonwealth of Pennsylvania  
My Commission expires: September 19, 2021

- - -

# **EXHIBIT C**

1 IN THE UNITED STATES DISTRICT COURT  
2 FOR THE CENTRAL DISTRICT OF CALIFORNIA

3 - - -

4 WALLEN LAWSON, )

5 )

6 Plaintiff, )

7 )

8 vs. )

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10 PPG ARCHITECTURAL )

11 FINISHES, INC., )

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13 Defendant. )

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Case No.:  
8:18-cv-00705-AG-JPR

- - -  
Transcription of Audio Recording  
Voicemail Greeting  
- - -

- - -  
NETWORK DEPOSITION SERVICES  
1101 GULF TOWER  
707 GRANT STREET  
PITTSBURGH, PENNSYLVANIA 15219  
(866) 565-1929  
- - -

1 - - -

2 (This begins the transcription of the  
3 audio recording.)

4 - - -

5 (Telephone ringing)

6 RECORDED GREETING: Hi, this is  
7 Wally Lawson.

8 I'm not available, please leave a  
9 brief message and I'll get back to you as  
10 soon as I can.

11 Thank you.

12 FEMALE RECORDED VOICE: At the  
13 tone please record your message. When you  
14 finished recording you may hang up or press 1  
15 for more options.

16 - - -

17 (This ends the transcription of the  
18 audio recording.)

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1 C-E-R-T-I-F-I-C-A-T-E

2 I, Nina Warren Biehler, the  
3 undersigned, do hereby certify that the foregoing  
4 transcript is a true and correct transcription of  
5 the audio recording given to me to transcribe.

6 Signed and sworn to on this day,  
7 Tuesday, March 5, 2019.

8

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10 Nina Warren Biehler  
11 Notary Public in and for the  
12 Commonwealth of Pennsylvania  
13 My Commission expires: September 19, 2021

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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

WALLEN LAWSON,

Plaintiff,

v.

PPG ARCHITECTURAL FINISHES,  
INC.,

Defendant.

Case No. 8:18-CV-00705-AG-JPR

**DECLARATION OF ANDREW J.  
HOROWITZ REGARDING  
PLAINTIFF'S OPPOSITION TO  
DEFENDANT'S MOTION FOR  
SUMMARY JUDGMENT**

Pretrial Conference: July 8, 2019  
Trial Date: July 23, 2019

I, Andrew J. Horowitz, hereby declare the following:

1. I have personal knowledge of the facts set forth below. If called upon as a witness, I could testify competently hereto.

2. I am an attorney dully admitted to practice in the Commonwealth of Pennsylvania and associated with the law firm of Obermayer Rebmann Maxwell & Hippel, LLP. I am admitted *pro hac vice* in this case on behalf of the Plaintiff, Wallen A. Lawson.

1           3.     I make this declaration regarding Plaintiff's opposition to PPG's motion  
2 for summary judgment.

3  
4           4.     **Exhibit A** is a true and correct copy of excerpts of the deposition of  
5 Plaintiff.

6           5.     **Exhibit B** is a true and correct copy of a document marked in this case as  
7 Plaintiff's deposition exhibit 3.

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9           6.     **Exhibit C** is a true and correct copy of a document marked in this case as  
10 Plaintiff's deposition exhibit 28.

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12          7.     **Exhibit D** is a true and correct copy of Defendant's response to  
13 Plaintiff's Requests for Admission, Set One.

14          8.     **Exhibit E** is a true and correct copy of a document marked in this case as  
15 Plaintiff's deposition exhibit 13.

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17          9.     **Exhibit F** is a true and correct copy of a document marked in this case as  
18 Plaintiff's deposition exhibit 15.

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20          10.    **Exhibit G** is a true and correct copy of a document marked in this case as  
21 Plaintiff's deposition exhibit 17.

22  
23          11.    **Exhibit H** is a true and correct copy of a document marked in this case as  
24 Plaintiff's deposition exhibit 6.

25          12.    **Exhibit I** is a true and correct copy of a document marked in this case as  
26 Plaintiff's deposition exhibit 14.  
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1           13.    **Exhibit J** is a true and correct copy of excerpts of the deposition of  
2 Vincent Wilcher.

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4           14.    **Exhibit K** is a true and correct copy of excerpts of the deposition of  
5 Catherine McKinley.

6           15.    **Exhibit L** is a true and correct copy of a document marked in this case as  
7  
8 Plaintiff's deposition exhibit 20.

9           16.    **Exhibit M** is a true and correct copy of a written warning for Brian  
10 Wells, produced by PPG in discovery in this case.

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12           17.    **Exhibit N** is a true and correct copy of excerpts of the deposition of  
13 Clarence Moore.

14           18.    **Exhibit O** is a true and correct copy of excerpts of the deposition of  
15 David Duffy.

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17           19.    **Exhibit P** is a true and correct copy of an email produced by PPG in  
18 discovery in this case.

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20           20.    **Exhibit Q** is a true and correct copy of excerpts of the deposition of  
21 Andrew Mayhew.

22           21.    **Exhibit R** is a true and correct copy of excerpts of the deposition of Sean  
23 Kacsir.

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25           22.    **Exhibit S** is a true and correct copy of a document marked in this case as  
26 Plaintiff's deposition exhibit 4.  
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23. **Exhibit T** is a true and correct copy of excerpts of the deposition of John “Ian” Dalton.

I declare under the penalty of perjury under the laws of the United States that the foregoing is true and correct, and that this declaration was executed this 20th day of May, 2019, in Pittsburgh, Pennsylvania.

/s/Andrew J. Horowitz  
ANDREW J. HOROWITZ

# **EXHIBIT A**

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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

WALLEN LAWSON,	)	CASE NO.
	)	8:18-CV-00705-AG-JPR
Plaintiff,	)	
	)	
vs.	)	
	)	
PPG ARCHITECTURAL FINISHES,	)	
INC.,	)	
	)	
Defendant.	)	
_____	)	

VIDEO RECORDED DEPOSITION OF WALLEN LAWSON  
Los Angeles, California  
Thursday, November 15, 2018

Reported By:  
Teri Lingenfelter  
CSR No. 5369  
Pages 1-268

1 produced. Correct? 02:38:30

2 A Yes.

3 Q Is this a printout?

4 Did you print this from a computer system?

5 A Yes.

6 Q Now is it your understanding that you -- well  
7 tell me what you did.

8 A The morning of our weekly conference call when we  
9 just go over a lot of the MAP initiatives Clarence  
10 asked -- he asked that he would like us all during our --  
11 whether it's one visit or two visits per day to mismix  
12 three to five gallons -- it might have been two to three  
13 gallons -- two to five gallons of Rescue It per visit  
14 every visit he said on the down low.

15 He instructed -- a couple people asked questions 02:39:56  
16 about the risk factor with video cameras. There's cameras  
17 in the paint department. "What happens if you're seen on  
18 the camera mismixing this product?" and Clarence said  
19 "Well all you have to do is just say you were mixing it  
20 for a customer and they never came back to pick it up."

21 And then he asked each territory manager during  
22 the conference call to -- if -- and I can't believe -- I  
23 can't believe he asked us to do this but he -- he wanted,  
24 you know, to purposely mismix it but also -- you know,  
25 you're using their own pigments and then ask if you could

1 man the paint corral and have the paint department person 02:40:09  
2 take a break -- either take a break or tell them you'll  
3 cover the paint department while he's at lunch and then  
4 while he's at lunch, taking a break or whoever the  
5 associate is -- that's when he'd mismix the paint.

6 And, you know, that's what he asked everybody to  
7 do on the conference call on the 18th.

8 Q What time are your weekly conference calls?

9 A Nine o'clock. Nine o'clock.

10 Q And how long do they usually last?

11 A An hour.

12 Q And so you would have had a weekly conference  
13 call on April 18th from approximately 9:00 to 10:00?

14 A Yes.

15 Q Now when did you actually submit this complaint 02:42:28  
16 into the PPG system?

17 Or I'm sorry. It's not even the PPG system.

18 Correct?

19 A Right.

20 Q It's a third party system?

21 A Yes.

22 Q So you go and you log in to the system. Correct?

23 A Yes.

24 Q And --

25 A Actually I logged in the PPG -- our PPG website.



1 You can access this through the PPG website. They have an 02:42:35  
2 unethical business complaint tab you can tab onto at PPG  
3 and I did it on the 18th.

4 I thought I did it on the 18th. Yes.

5 Q Is it your recollection -- when on the 18th did  
6 you do it?

7 A Pardon me?

8 Q What time on the 18th did you do this?

9 A Later that day.

10 Q Were you at home or were you in a store?

11 A I was -- I don't remember. I don't remember if I  
12 was at home or in a store but I called my daughter.

13 My daughter is an HR director for a large company  
14 and she's a global international HR person and I told her  
15 the details of what I was asked to do and she suggested I 02:43:27  
16 file an unethical business complaint anonymously --  
17 anonymously -- because if I didn't I would be just as  
18 guilty as the people that were told to mismix the paint  
19 Ruin the paint.

20 So based on talking to her and she's HR -- has a  
21 lot of HR expertise -- I generated this report.

22 Q Do you recall when it is that you talked to her?

23 A That same day.

24 Q Like did you call her right after the meeting  
25 ended?

1 A Yes. 02:43:53

2 Q Now if you look down at the bottom of what's been  
3 marked as Exhibit 131 the last row -- the last section is  
4 "Messages."

5 A Yes.

6 Q Did you understand that the system allowed for  
7 you and the organization to exchange messages?

8 A No, I didn't. Honestly I didn't realize that  
9 they had the threads down here for the messages so I  
10 discovered that later on that oh, you could reply and find  
11 out what the status was because time had passed and  
12 nothing was happening and I'm going "Why isn't anything  
13 happening?" and then I scrolled down and I saw that  
14 "Oh. "Concern Close-Out. Thank you for contacting PPG"  
15 and I looked at -- and they wanted -- you know, there was 02:44:40  
16 no reply. They didn't reply.

17 But I didn't see it because when I went online  
18 after they gave me the pass code and how to submit the  
19 complaint -- the unethical business practice complaint --  
20 I didn't realize they had the messages down here, Karin.

21 And then I realized that later when there was  
22 nothing happening well I needed to respond. They had some  
23 questions about where it took place.

24 Q When did you realize that you had messages that  
25 you hadn't responded to?

1 wouldn't bet my house. I thought I submitted it -- I 02:46:38  
2 might have talked to her on the 18th and then I was clear  
3 that it was a big violation -- unethical violation -- so I  
4 might have submitted it on the 21st so --

5 But it happened on the 18th. We were asked to do  
6 that on the 18th by Clarence.

7 Q Now you selected to submit this report  
8 anonymously. Correct?

9 A Yes. Yes.

10 Q And that's because you didn't want Mr. Moore or  
11 anybody else to know that you were the one submitting the  
12 report?

13 A Right.

14 Q Did you ever tell Mr. Moore that you had  
15 submitted this report? 02:47:20

16 A I told him I wasn't comfortable -- I wasn't  
17 comfortable purposely ruining paint. It's not right.  
18 It's not -- there's something -- and I told him a story  
19 about I managed a branch -- years ago I managed a branch  
20 and we had one of our employees -- one of the sales  
21 people -- and he would come in to the branch and he would  
22 use our stamp machine to stamp all his mail. His  
23 Christmas cards or whatever.

24 He was always using our stamp machine and one of  
25 the employees brought it to my attention and said "Wally,

1 he's coming in here. He's using it." And so I confronted 02:47:25  
2 the employee and I said "That's stealing. You can't, you  
3 know, use our stamps for your personal postage or your  
4 Christmas cards. Stop immediately."

5 I said "We have 6,000 reps. If all 6,000 reps  
6 were using our stamp machine the way you are" -- it was  
7 10, 15, \$20 every time he came or, you know, once a  
8 month -- 6,000 times \$20 -- it's stealing. Bad. Not  
9 acceptable.

10 And so I told Clarence the story that this is --  
11 this is not good. It's not -- you know -- and so I wasn't  
12 going to participate.

13 Q When did you have that discussion with Mr. Moore?

14 A Probably the end of that week or the next time I  
15 saw him which I don't remember when it was. 02:49:04

16 Q Now you had a market walk with Mr. Moore that  
17 week.

18 A Right.

19 Q Right?

20 A Right.

21 Q And I think we established earlier that the  
22 market walk would have been over the 20th -- or sorry --  
23 the 19th, 20th and 21st.

24 A Right.

25 Q Did you have the discussion with Mr. Moore during

1 that time when you saw him on the market walk? 02:49:18

2 A No. No. After.

3 Q And did you tell Mr. Moore that you had actually  
4 submitted a complaint or reported him to PPG?

5 A No. No. No, I didn't.

6 Q So in your conversation with Mr. Moore you told  
7 him that you were uncomfortable with --

8 A Yes. Personally I -- I could tell by his  
9 responses to all the other territory managers that it's  
10 not optional. This is going to happen. You know, "We're  
11 going to mismix this paint. We're going to go in and  
12 we're going to ruin this paint" and people were bragging  
13 about it.

14 Some of the territory managers the following  
15 week -- we had our conference call on Tuesday morning 02:49:42  
16 nine o'clock and I'm not going to name the names of the  
17 territory managers that bragged about it but "Hey, I've  
18 just mismixed three gallons, I mismixed five gallons here"  
19 and it adds up. There's how many? Two hundred -- over  
20 200 reps mismixing three to five gallons nationally if it  
21 was happening nationally. I didn't know.

22 I just knew it wasn't right. I knew it had to be  
23 breaking some kind of law and then I phoned -- I called a  
24 third party company to report it. I called them on the  
25 phone just to file another complaint because nothing was

1 yourself out of that store but you actually stayed in the 03:36:10  
2 store and continued to work.

3 A Yes. Yes.

4 Q Approximately how many hours did you continue to  
5 work while you were logged out?

6 A Probably three to five hours till everything was  
7 done.

8 Q And this just occurred on one day?

9 A No. It was a series of days. But then on top of  
10 it too after building these stain huts I built -- we had  
11 placements and approval by Lowe's for six locations of the  
12 stain huts. I built 11 and Clarence was hoping that we'd  
13 be able to get approval to put the other ones in place at  
14 the other Lowe's stores which in a couple cases we were  
15 successful. 03:36:38

16 But I built them and then I couldn't get one in  
17 my car without taking it apart so I rented a truck and I  
18 just delivered -- I delivered all the stain huts I built  
19 or the six that had a deadline.

20 I rented a truck, put them all in the truck  
21 delivered them to the six Lowe's and I didn't charge the  
22 company for the -- you know, for the rental truck or the  
23 extra time it took me because I knew that Clarence -- and  
24 I wasn't about to take these things apart after I built  
25 them so that was a project that took a lot of extra time

1 but it was more efficient to build them at one location 03:36:40  
2 and buy the lumber in that one location versus buying the  
3 lumber at separate Lowe's stores because every store would  
4 charge you a different amount of money.

5 So that generated some extra time too that I  
6 wasn't compensated for.

7 Q So let me go back.

8 How many days do you recall with respect to the  
9 stain huts were you clocked out of the store but continued  
10 to work while you were at the store?

11 A Well sometimes the travel time would be affected  
12 because -- you know, the math as far as coming out to  
13 45 hours every week if you had stores in Hawthorne, stores  
14 in Rancho Santa Margarita and the travel time -- and  
15 having that come out to match 45 hours sometimes is a 03:38:31  
16 little bit difficult because of the fact that most of the  
17 Olympic territory managers had double the amount of Lowe's  
18 stores -- responsibilities for more stores than the  
19 Valspar rep or the Sherwin Williams rep.

20 They had six -- most of them had six to seven  
21 maybe -- maybe -- I don't know -- and I didn't know any of  
22 them that I worked with that had more than eight -- eight  
23 Lowe's -- and I had 11.

24 I had 11 stores that I was responsible for so it  
25 was difficult trying to make the -- you know, not submit

1 your personal goals. 03:59:52

2 This is a huge responsibility when you're the  
3 host vendor because it's Lowe's training for the Lowe's  
4 people but you work with your competitors too. The  
5 Sherwin Williams company and the Valspar company. It's  
6 coordinated with them but as a host vendor you're in  
7 charge of all the timing and working with the HR  
8 departments to make sure you have a full class.

9 And so when I did it I had no idea it was going  
10 to be that involved. So I remember -- I remember, you  
11 know, working because it's happening on this day and  
12 everything has to be done and complete so --

13 Q And did you request to have overtime approved so  
14 that you could --

15 A No. 04:02:05

16 Q -- remain clocked in?

17 A No. No.

18 Q And why didn't you request to have overtime?

19 A Because I -- I just -- I knew that it probably  
20 wouldn't be approved or it wouldn't be -- you know, maybe  
21 I'm not as efficient as some of the other territory  
22 managers that had organized these events but -- so I  
23 didn't request overtime pay.

24 I'm just telling you today that, you know, I put  
25 in the time. Whatever it took to get it done.



1 had made the complaints regarding the mistinting. Is that 04:49:57  
2 correct?

3 A A hundred percent. Yes. Yes.

4 Q What is your basis or belief for that allegation?

5 A What is my basis or belief for that?

6 Q Yeah. What makes you believe that your  
7 termination was because of the complaints?

8 A Because there's no -- it's clear in my mind -- it  
9 could not be clearer -- that that morning of the 18th when  
10 Clarence Moore asked the territory managers -- 17  
11 managers -- territory managers -- to purposely mismix  
12 paint and he knew what he was doing -- he asked us to do  
13 something illegal, unethical and my allegation is that he  
14 left me no choice but to submit an unethical business  
15 practice claim. 04:50:22

16 And when I talked to Clarence I told Clarence too  
17 about a John Dean story about Watergate and I told him  
18 that John Dean just felt something wasn't right. And I  
19 told Clarence I was not going to mismix paint. There's no  
20 way I'm going to participate in this. And he was upset  
21 and I told him the story about John Dean. He just knew  
22 something was wrong and he refused to do it and he had to  
23 share the truth. The truth mattered. And Clarence was  
24 upset about that.

25 So I know bottom line, Karin, that he knew -- he

1 knew for a fact that it was wrong to do that and he did it 05:05:54  
2 anyway and I wasn't going to participate in it. And so I  
3 felt like as time passed he retaliated against me because  
4 I wouldn't participate in the scheme that he decided to  
5 ask us to participate in.

6 Q Now you just described a conversation that you  
7 had with Mr. Moore.

8 A Yes.

9 Q Earlier today you testified to a conversation  
10 that you had with Mr. Moore where you shared the story  
11 about the postage.

12 A Yes. In conjunction with the postage story I  
13 shared the John Dean story with him just so he got the  
14 idea that this is wrong. This is not something you should  
15 be doing -- 05:06:59

16 Q And --

17 A -- and I was shocked and then as -- he was very  
18 upset and he was aggressive and I told him -- I said "I  
19 don't agree with it" and then now we're here. I'm  
20 terminated as a result and --

21 Q And that conversation that you've just described  
22 which is the same conversation that you had talked about  
23 earlier today with the postage --

24 A Yes.

25 Q -- I believe your testimony earlier was that that

1 conversation was sometime in the week following the 05:07:49  
2 April 18th conference call. Is that correct?

3 A Yes. Yes. And I could see a change because I  
4 did mention too it's like driving a hundred miles an hour.  
5 You don't need a law to tell you you shouldn't drive a  
6 hundred miles an hour. You know it's not right without  
7 reading something, you know, that it's not safe or you  
8 shouldn't drive that fast. You don't have to read  
9 something to know it's not right.

10 Q Is there any other basis for your allegation that  
11 your termination was in response to filing the complaint?

12 A I don't think there's any doubt in my mind that I  
13 was retaliated against by Clarence Moore based on  
14 receiving a 40 on a market score. I don't think there's  
15 any doubt based on his actions and the fact that Sean came 05:08:37  
16 out, Karin, during that time to join Clarence with my  
17 market walk. He's taking pictures of my notes.

18 Why is he taking pictures of my notes? Why am I  
19 getting -- again there's no doubt that I was phased out of  
20 the program as a result of that. No question in my mind.

21 Q Okay.

22 A It's very clear.

23 Q And so that I'm clear --

24 A Yes.

25 Q -- when you say "as a result of that" --



1 attitude like that unless there's some kind of issue. 05:36:10

2 Some kind of issue.

3 Q I want to ask you how did he appear to be -- what  
4 manifestations of aggressiveness did you see when you said  
5 he was aggressive?

6 MS. COGBILL: Objection. Vague.

7 THE WITNESS: Just short. Just really short.

8 MR. FOX: Well let me just restate the question  
9 then.

10 BY MR. FOX:

11 Q In connection with the conversation you had with  
12 him that you described regarding the stamps and regarding  
13 John Dean -- that's the conversation I'm talking about.

14 A Right.

15 Q Okay? You testified earlier that he was 05:37:06  
16 aggressive in that conversation.

17 A Yes.

18 Q He reacted aggressively.

19 What manifestations -- what physical  
20 manifestations did you see that made you conclude that he  
21 was being aggressive?

22 A Just "stop it." Just he ended the conversation.  
23 He ended the conversation and didn't want to hear any more  
24 about what I had to say about breaking the law.

25 Q What did he say when he ended the conversation?

1 Did he just say "stop it" or -- 05:37:43

2 A "Don't worry about it. Don't -- stop. Don't  
3 concern yourself."

4 Q And what was his tone with you?

5 A "That I'm not going to stutter when I say it.  
6 I'm going to say it one time so you understand. You know,  
7 we're not going to discuss it anymore period."

8 Q And what was your reaction to seeing him respond  
9 in such a fashion?

10 A I just knew -- I knew at that time that more than  
11 likely -- pretty good idea that Clarence and Sean both  
12 were aware of the unethical business complaint I filed.  
13 They knew it.

14 Q And you said the relationship deteriorated?

15 A Yes. 05:38:22

16 Q When did it start to deteriorate?

17 Was it right after that conversation or some  
18 period of time thereafter?

19 A It was a little bit after the conversation we had  
20 after the first or the second -- I'm sorry -- the  
21 second conference call on the Tuesday at -- nine o'clock  
22 Tuesday conference call meeting where he relayed that he  
23 wanted us to continue to mismix the paint and how many  
24 gallons worth. You know, keeping track. Tracking those  
25 gallons. After that.

# **EXHIBIT B**

O212aa17-PPG Lowes

On June 15<sup>th</sup>, 2017 a call was received through the PPG Ethics Hotline in which the caller stated the following:

PPG Lowes Regional Manager (Clarence Moore) requested Territory Managers miss-mix 2-3 gallons of Rescu- It product per day in order to avoid issuing a credit to Lowes and that the TM's should cover the Lowes paint department while the Lowes team is on break/lunch to provide opportunity to miss-mix the paint.

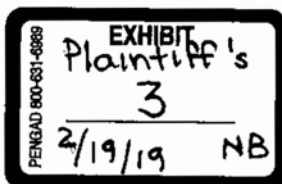
On July 6, 2017 PPG Forensic Specialist Ian Dalton met with RM Clarence Moore and interviewed him regarding the above mentioned allegations. Moore stated the following in response to Dalton's questions:

- Mr. Moore admitted that his team discussed mis-tinting old label Rescue It product that was approaching the expiration date.
- Mr. Moore acknowledge that he was aware of the practice but did nothing to stop the behaviors of his TMs.
- Mr. Moore indicated that he could not recall how this idea was brought up but advised that he did not generate the idea, nor did he do anything to stop it.
- Mr. Moore believes that approximately 70 – 80 units of Rescue It was handled in this fashion but it could have been more.
- Mr. Moore stated that he had not sought nor received direction/approval from his supervisor to allow this practice to be used.

Moore was instructed at that time to inform his team that this practice was to cease immediately. Moore has provided a statement regarding his actions.

Dalton then interviewed all of Moore's direct report TSM's via phone resulting in the information below:

- All 14 stated that Moore directed them to mis-tint Rescue-It during Tuesday conference calls as well as reaffirming his instructions during market walks.
- All 14 indicated that discussions continued during several Tuesday conference calls regarding the idea to intentionally mis-tint Rescue-It (old label) product. (Occurred in April – May – June timeframe)
- 3 TMs admitted that they had carried out the objective to mis-tint Rescue-It – but later stopped when they realized it was not the right thing to do.
- 11 indicated they did not action the request but said they heard that other TMs actually did it – even bragged about in during the calls.
- TM Laura Sanchez was noted by several other TMs – that she expressed strongly during the conference calls that she did NOT agree with the idea and would not participate.
- Note: Dalton was unable to substantiate a reliable number to determine the scope of the problem as reported. The earlier estimate of 70 – 80 units was Mr. Moore's estimate only.
- All TM's stated that they had been instructed to cease this practice as of July 7, 2017.





Dalton interviewed Moore's direct supervisor Sean Kacsir regarding the above. Kacsir stated that he had instructed the market to focus on reducing Rescue-It but had not done so in the manner used by Moore. Kacsir then stated though that it was common practice for TSM's to mis-tint product that was aged or at very low inventory levels, doing so to open shelf space for new product. Kacsir stated that this practice was done in conjunction with Lowes management and only with their prior knowledge and approval. Soon after Kacsir contacted Dalton with concern that the same practice might be active in his Houston market. Kacsir stated that a Houston market TM had contacted him with concern that the RM Brian Wells had given instruction to mis-tint product (Assure base 2). Dalton interviewed the concerned TM as well as other TM's from the market all of which stated that he had instructed them to mistint product. All TM's stated that they were instructed to do so but only with Lowes management's knowledge and approval.

# **EXHIBIT C**

## Rescue It/Revitalize Talking Points

V Final2 – 24 May 2017

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### Talking Points:

- Olympic “Rescue It!” and Pittsburgh Paints and Stains “Revitalize” are products intended for use on distressed wooden decks and concrete surfaces. The products fill cracks, lock down splinters and prolong the useful life of time worn surfaces.
- PPG can confirm that it has reached a settlement regarding the class action lawsuit pertaining to its Rescue It!/Revitalize products.
- The proposed settlement requires court approval and all parties are working expeditiously to complete that process.
- PPG stands behind the performance of Rescue It! and Revitalize when they are applied to a properly prepared surface in accordance with the product instructions

### Potential Q&A with paint desk rep.

1. **How much is the settlement for?**
  - a. The financial terms of the settlement are publicly available through the court record and shortly the court-appointed claims administrator will set up a dedicated web site with details about the settlement.
2. **Which products does this impact?**
  - a. The proposed settlement applies to all Rescue It! and Revitalize products sold between January 1, 2013 and April 27, 2017.
3. **Does this impact the deck resurfacer products that PPG makes today?**
  - a. No
4. **How does this settlement impact PPG’s customers (Lowe’s and Menard’s)?**
  - a. Lowe’s and Menard’s fall within the definition of “Released Persons” under the settlement and will receive the same broad protection against future claims as PPG for product sold before April 27, 2017.
5. **What should I tell consumers who ask about this?**
  - a. Today’s Rescue It! and Revitalize wood and concrete resurfacer products remain an excellent solution for time worn surfaces. Please be sure to remind consumers about the importance of proper surface preparation and following the label instructions.
  - b. If they purchased one of the products covered by the proposed settlement and were unsatisfied with its performance, they *may* be eligible for compensation if the Court ultimately approves the settlement. The court-appointed claims administrator soon will provide eligible class members with notice of their rights and also soon will set up a dedicated web site that provides additional information. PPG will create a link to this information on its web page once the claims administrator indicates that the dedicated web site is operational. In the meantime, please feel free to contact PPG at 1-800-426-6306 or email [techservice@ppg.com](mailto:techservice@ppg.com) with further questions
6. **Why would PPG make a product like this?**
  - a. PPG is the world’s leading coatings company and is committed to develop innovative products to meet its customer needs. We stand behind the

**EXHIBIT 28**

Moore  
3/19/2019

Cindy Mahoney, RMR

performance of Rescue It! and Revitalize when applied to a properly prepared surface in accordance with the product instructions

###

# **EXHIBIT D**

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15 Attorneys for Defendant  
16 PPG ARCHITECTURAL FINISHES, INC.

17 UNITED STATES DISTRICT COURT  
18 CENTRAL DISTRICT OF CALIFORNIA

19 WALLEEN LAWSON,  
20  
21 Plaintiff,

22 v.

23 PPG ARCHITECTURAL FINISHES,  
INC.,  
24  
25 Defendant.

Case No. 8:18-CV-00705

**DEFENDANT'S RESPONSE TO  
PLAINTIFF'S REQUESTS FOR  
ADMISSION, SET ONE**

1 PROPOUNDING PARTY: Plaintiff, WALLEN LAWSON  
2 RESPONDING PARTY: Defendant, PPG ARCHITECTURAL FINISHES,  
3 INC.  
4 SET NO.: ONE (1)  
5

6 Pursuant to Rule 36 of the Federal Rules of Civil Procedure, PPG  
7 ARCHITECTURAL FINISHES, INC. (hereinafter "PPG") responds to the Requests  
8 for Admission served upon it by Plaintiff WALLEN LAWSON ("Plaintiff") as  
9 follows:

10 **RESPONSES TO REQUESTS FOR ADMISSIONS**

11 **REQUEST FOR ADMISSION NO. 1:**

12 Lawson contacted PPG's compliance portal on April 18, 2017 and reported that  
13 Lowe's Team Territory Managers ("TMs") were being directed to purposely mistint  
14 paint.

15 **RESPONSE TO REQUEST FOR ADMISSION NO. 1:**

16 After a reasonable inquiry, PPG denies that anyone, including Plaintiff,  
17 contacted PPG's Compliance Portal on April 18, 2017 to report that "Lowe's Team  
18 Territory Managers ("TMs") were being directed to purposely mistint paint." PPG  
19 admits that there was an anonymous report filed through PPG's Compliance Portal on  
20 April 21, 2017, which alleged "supervisor requesting that territory managers  
21 purposely mis-mix product ( paint ) for the purpose of getting rid of a slow moving  
22 product off the shelf and selling it at a reduced price." This report was reviewed and  
23 then ultimately closed because the reporter indicated the conduct involved a PPG store  
24 located in Long Beach, California, PPG did not have a store located in Long Beach,  
25 California, and the reporter failed to provide additional information when requested.

26 **REQUEST FOR ADMISSION NO. 2:**

27 Clarence Moore placed Lawson on a 60-day performance improvement plan on  
28 May 12, 2017.

1 **RESPONSE TO REQUEST FOR ADMISSION NO. 2:**

2 PPG admits that Plaintiff was issued a written performance improvement plan  
3 on May 12, 2017, and that the PIP was delivered to Plaintiff by his supervisor,  
4 Clarence Moore. PPG further admits that the PIP was originally for 60-day.

5 **REQUEST FOR ADMISSION NO. 3:**

6 Lawson contacted PPG's ethics hotline on June 15, 2017 and expressed  
7 concerns about TMs being directed to mistint paint.

8 **RESPONSE TO REQUEST FOR ADMISSION NO. 3:**

9 After a reasonable inquiry, PPG lacks knowledge or information as to whether  
10 Plaintiff contacted PPG's Ethics Hotline on June 15, 2017, and, on that basis, PPG  
11 cannot admit or deny this Request. PPG admits that on or about June 15, 2017, an  
12 anonymous report was submitted through PPG's Ethics Hotline which alleged a PPG  
13 Lowes Regional Manager requested Territory Managers to mis-mix 2-3 gallons of  
14 Recue It product per day in order to avoid issuing a credit to Lowes. The report also  
15 alleged the unidentified Regional Manager instructed Territory Managers to cover the  
16 Lowes paint department while the Lowes team was on break or lunch which would  
17 provide the Territory Managers an opportunity to mis-mix paint.

18 **REQUEST FOR ADMISSION NO. 4:**

19 Lawson completed his performance improvement plan on July 7, 2017.

20 **RESPONSE TO REQUEST FOR ADMISSION NO. 4:**

21 Deny.

22 **REQUEST FOR ADMISSION NO. 5:**

23 Clarence Moore gave Lawson an unsuccessful score on his July 13, 2017  
24 market walk evaluation.

25 **RESPONSE TO REQUEST FOR ADMISSION NO. 5:**

26 Deny.

27 **REQUEST FOR ADMISSION NO. 6:**

28 Clarence Moore gave Lawson an unsuccessful score on another market walk



1 evaluation, on or about late-August, 2017.

2 **RESPONSE TO REQUEST FOR ADMISSION NO. 6:**

3 PPG objects to this request on the ground the term “late-August, 2017” is vague  
4 and ambiguous as to time.

5 Subject to and without waiving the foregoing objections, PPG responds as  
6 follows: On or around August 17, 2017, Plaintiff received a Market Walk score of 40  
7 – “Unsuccessful”.

8 **REQUEST FOR ADMISSION NO. 7:**

9 PPG terminated Lawson’s employment on September 6, 2017.

10 **RESPONSE TO REQUEST FOR ADMISSION NO. 7:**

11 Admit.

12 **REQUEST FOR ADMISSION NO. 8:**

13 At the termination session, Lawson said that he believed that his termination  
14 was in retaliation for reporting mistinting.

15 **RESPONSE TO REQUEST FOR ADMISSION NO. 8:**

16 PPG objects to this request on the grounds that the terms “termination session”  
17 and “mistinting” are vague and ambiguous.

18 Subject to and without waiving the foregoing objections, PPG responds as  
19 follows: Deny.

20 **REQUEST FOR ADMISSION NO. 9:**

21 At the termination session, Mayhew responded to Lawson’s allegation of  
22 retaliation by saying that he did not want to hear about it.

23 **RESPONSE TO REQUEST FOR ADMISSION NO. 9:**

24 PPG objects to this request on the ground the term “termination session” is  
25 vague and ambiguous.

26 Subject to and without waiving the foregoing objections, PPG responds as  
27 follows: Deny.

28

1 **REQUEST FOR ADMISSION NO. 10:**

2 Moore directed his Territory Managers to mistint paint in 2017.

3 **RESPONSE TO REQUEST FOR ADMISSION NO. 10:**

4 PPG objects to this request on the grounds that the term “mistint” is vague and  
5 ambiguous.

6 Subject to and without waiving the foregoing objections, PPG responds as  
7 follows: Deny.

8 **REQUEST FOR ADMISSION NO. 11:**

9 PPG’s investigation found that Moore directed his Territory Managers to  
10 mistint paint in 2017.

11 **RESPONSE TO REQUEST FOR ADMISSION NO. 11:**

12 PPG objects to this request on the grounds that the term “mistint” is vague and  
13 ambiguous. PPG also objects to this request on the ground it is neither relevant to a  
14 claim or defense, nor is it proportional to the needs of the case.

15 Subject to and without waiving the foregoing objections, PPG responds as  
16 follows: Deny.

17 **REQUEST FOR ADMISSION NO. 12:**

18 PPG considers mistinting paint without the consent of Lowe’s to be an  
19 unethical business practice.

20 **RESPONSE TO REQUEST FOR ADMISSION NO. 12:**

21 PPG objects to this request on the grounds that the terms “PPG” “Lowe’s”  
22 “mistinting” “consent of Lowe’s” and “unethical business practice” are vague and  
23 ambiguous. PPG also objects to this request on the ground it is neither relevant to a  
24 claim or defense, nor is it proportional to the needs of the case.

25 Subject to and without waiving the foregoing objections, as phrased, PPG  
26 responds as follows: PPG admits that intentionally damaging a customer’s assets  
27 without the customer’s consent constitutes a violation of PPG’s Global Code of  
28 Ethics.

1 **REQUEST FOR ADMISSION NO. 13:**

2 Other than the written warning identified as PPG\_Lawson\_000939, Moore  
3 received no discipline relating [sic] mistinting of paint by his Territory Managers.

4 **RESPONSE TO REQUEST FOR ADMISSION NO. 13:**

5 PPG objects to this request on the grounds that the terms “mistinting” “by his  
6 Territory Managers” and “discipline” are vague and ambiguous. PPG also objects to  
7 this request on the ground it is neither relevant to a claim or defense, nor is it  
8 proportional to the needs of the case.

9 Subject to and without waiving the foregoing objections, PPG states that this  
10 Request for Admission assumes facts which are not true, and on that basis, it denies  
11 this request.

12 **REQUEST FOR ADMISSION NO. 14:**

13 PPG never notified Lowe’s of the mistinting of paint by Territory Managers in  
14 Clarence Moore’s territory.

15 **RESPONSE TO REQUEST FOR ADMISSION NO. 14:**

16 PPG objects to this request on the grounds that the terms “PPG” “Lowe’s”  
17 “mistinting” and “by Territory Managers” are vague and ambiguous. PPG also  
18 objects to this request on the ground it is neither relevant to a claim or defense, nor is  
19 it proportional to the needs of the case.

20 Subject to and without waiving the foregoing objections, PPG states that this  
21 Request for Admission assumes facts which are not true, and on that basis, it denies  
22 this request.

23 **REQUEST FOR ADMISSION NO. 15:**

24 PPG never notified Lowe’s of the results of its 2017-2018 investigation of  
25 mistinting of paint by Territory Managers.

26 **RESPONSE TO REQUEST FOR ADMISSION NO. 15:**

27 PPG objects to this request on the grounds that the terms “PPG” “Lowe’s”  
28 “mistinting” and “by Territory Managers” are vague and ambiguous. PPG also

1 objects to this request on the ground it is neither relevant to a claim or defense, nor is  
2 it proportional to the needs of the case.

3 Subject to and without waiving the foregoing objections, PPG states that this  
4 Request for Admission assumes facts which are not true, and on that basis, it denies  
5 this request.

6  
7 Dated: February 6, 2019

*Karin Cogbill*

8  
9  
10 KARIN M. COGBILL  
11 MICHAEL W. M. MANOUKIAN  
12 LITTLER MENDELSON, P.C.  
13 Attorneys for Defendant  
14 PPG ARCHITECTURAL FINISHES, INC.

15  
16 FIRMWIDE:161623304.3 034801.2166  
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22  
23  
24  
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28

# **EXHIBIT E**

Message

From: Kacsir, Sean [kacsir@ppg.com]  
Sent: 7/26/2017 2:37:06 PM  
To: Dalton, John [dalton@ppg.com]  
Subject: Fwd: Concern  
Attachments: image001.jpg

Here is the response he sent me after I brought the issue up below via email. Sean

Sean Kacsir  
West Division Manager  
7 Redacted -  
Kacsir@ppg.com<mailto:kacsir@ppg.com>

Begin forwarded message:

From: "Wells, Brian" <bwells@ppg.com<mailto:bwells@ppg.com>>  
Date: July 26, 2017 at 12:32:03 PM CDT  
To: "Kacsir, Sean" <kacsir@ppg.com<mailto:kacsir@ppg.com>>  
Subject: Re: Concern

Sean:

If a store has 1 or 2 items left of an discontinued assortment I will tell the TMs to get with the store and see if they want to get clean them out and and mistint the remaining few.

Also some TMs have gotten with the stores and mistinted items and taken them to the Pro Desk. When we had the spreadsheet on all of the base 2 Assure it was a way to address the last of what was left over.

Thanks,

Brian Wells  
Regional Sales Manager  
Houston Region  
M: Redacted - PII  
Email: Bwells@ppg.com<mailto:Bwells@ppg.com>

On Jul 26, 2017, at 12:20 PM, Kacsir, Sean <kacsir@ppg.com<mailto:kacsir@ppg.com>> wrote:

Are you having conversations like this to your team? This was a concern from one of your TM's and I need to address. Where do you get the information that Matt is looking at reports and that causes a red flag?

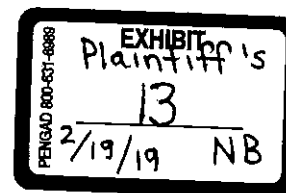
"He told me that I can give the store credit for X amount of gallons and then turn around and mistint them or leave them on the shelf. I told him it sounded shady and I wasn't going to do that. He then tells me it's fine to do that as long as you don't do it all the time because Matt Thoman sees those RA reports and too much or too many times can cause a redflag. Sorry, but that sounds a little unethical to me. "

Sean Kacsir  
Divisional Manager - West  
National Accounts - Lowes Team

M (Redacted - PII  
E Kacsir@ppg.com<mailto:kacsir@ppg.com>

PPG Architectural Coatings  
Kansas City, Kansas  
www.ppgac.com<http://www.ppgac.com/>

<image001.jpg>



# **EXHIBIT F**

Message

**From:** Dalton, John [dalton@ppg.com]  
**Sent:** 7/28/2017 6:36:20 AM  
**To:** Duffy, David [david.duffy@ppg.com]  
**Subject:** Clarence Moore statement  
**Attachments:** image001.png; Statement MAX.DOCX

See attached:

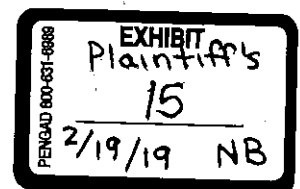
Thanks,

Ian Dalton CFI  
Forensic Audit & Loss Prevention Specialist  
PPG Corporate Audit Services

2220 W Alabama  
Houston, TX 77098

M: Redacted -  
E: dalton@ppg.com

[ppg\_lg\_rgb\_email]





To Whom It May Concern,

On Thursday July 6<sup>th</sup> I met with John Ian Dalton to discuss a matter that had been brought to his attention. When we met that afternoon it was brought to my attention that there has been a high amount of mis-tinted Rescue It product coming from the phoenix region. I would like to go on record and say that I do not recall the conversation where the mis-tint idea was brought up, but I do remember it happening. I would also like to restate that I don't remember being the original person sharing the idea, but I didn't stop it. I understand the reasons why a PPG associate should not be permitted to initiate any mis-tints and my team knows that they now are to never be a part of this process again in the future. Only Lowe's associates are allowed to do so. I would like to end this statement by saying that in multiple stores throughout the region there has been stores who agreed to discount this product manually. Through my years of experience working for Lowe's, I know that there is no way to depict the difference of a manual mark down and a mis-tint. I honestly believe that this was a huge factor in the reasoning for the peak.

Thank you,

Clarence Moore

# **EXHIBIT G**

Message

From: Duffy, David [david.duffy@ppg.com]  
Sent: 8/7/2017 2:03:16 PM  
To: McKinley, Catherine [cathie.mckinley@ppg.com]  
CC: Dalton, John [dalton@ppg.com]; Minda, Michele [michele.minda@ppg.com]  
Subject: RE: Follow-up from our call this morning  
Attachments: image001.png; FW: Assure B2 Reporting as of 6.28.17.xlsx

Cathie - Good afternoon

To your initial question on best practices:

\* According to Ian, Clarence reviewed Sean's direction to move the product out, with his TM team. The discussion was around markdowns and according to the TMs interviewed - this was when the subject of mis-tinting came up. It was Clarence's initiative to direct them to mistint product, without the knowledge of Lowes - according to the TMs interviewed.

Regarding the other items from last week

\* Matt Thoman Inventory reports

o Spoke with Matt on Friday (8/4) and he indicated that he does NOT have a tracking report to monitor sales / write-offs / mistints.

o Matt provided that data that was collected on the Assure Base 2 product as part of the daily inventory tracking as an example of what is provided to the field.

\* Sales impact / help your numbers.

o According to Matt - the field staff is measured off of "gallons out the door" not dollars.

o The more of the fast selling SKUs that are in stock - the better chances the TMs have of improving sell through and bonus / performance potential.

o In theory - moving out the Assure Base 2 and the old label rescue it product helps Lowes & PPG - when the fast moving SKUs are in the store as opposed to the old stock.

Ian interviewed 4 TMs of Brian Wells.

\* The same story holds true as reported by TM Coree Bell - with two others indicating the same discussion was about both Assure and Rescue It.

\* Ian is scheduled to interview Brian Wells tomorrow. We will update everyone in the afternoon.

Thanks and let me know if you have any questions.

From: Duffy, David  
Sent: Wednesday, August 02, 2017 4:55 PM  
To: McKinley, Catherine; Minda, Michele  
Cc: Dalton, John (dalton@ppg.com)  
Subject: RE: Follow-up from our call this morning

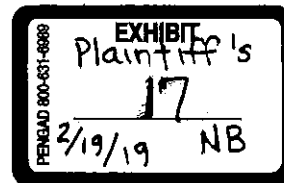
Cathie - thanks for the reply.

Ian - please review and advise if this was discussed with Clarence. For some reason I thought this referred to the markdown process - not mis-tinting. Let me know.

Thanks in advance.

From: McKinley, Catherine  
Sent: Wednesday, August 02, 2017 11:52 AM  
To: Duffy, David; Minda, Michele  
Subject: RE: Follow-up from our call this morning

Dave  
I have reviewed and am interested in what Clarence shared with the team as best practice as noted in Sean's April 17 email that outlined the agenda speakers on the call.  
I guess you could ask Clarence or Sean or any other RSM that was on the call.  
This will provide insight as to what the best practice was and who knew about it.



Cathie McKinley  
Director Home Center Field Sales & Strategic Accounts  
Architectural Coatings  
PPG

T: Redacted -  
E: cathie.mckinley@ppg.com<mailto:cathie.mckinley@ppg.com>

[ppg\_lg\_rgb\_email]

From: Duffy, David  
Sent: Wednesday, August 2, 2017 11:28 AM  
To: McKinley, Catherine; Minda, Michele  
Subject: Follow-up from our call this morning

Cathie / Michele - Thanks for your time today.

The emails attached are the specific references regarding 'Rescue It' from Sean or Clarence to their respective teams. Nothing to indicate - to mis-tint while Lowes person is not at the paint desk.

The review only included March 2017 to June - since that is the time frame provided by the anonymous reporter to the Ethics Helpline.

- \* WD 7 Slides April 11th - Page 19 - first reference noted regarding Rescue It from Sean Kacsir
- \* Conference Call April 17th - Kacsir to RSM - Best Practices - last section of email - Clarence Moore note - Rescue It - pushing OL out
- \* Untitled April 24th - Kacsir RSM call notes to discuss - middle of email - OLD RI product - 36 days to get rid of product - Be aggressive.
- \* Tidbit of Week April 25th - Clarence to RSM counterparts - instructions on changing price of old rescue it. Originally sent by TM to AZ TM team.
- \* 1 on 1 April 28th - Clarence's format for 1 on 1 discussion with TMs - Region Objectives - get rid of old Rescue It (and Assure Base 2)
- \* Old product May 9th - Kacsir to RSMS - RI old label June 1 deadline - west initiative.
- \* Rescue It RTM May 12th - Example of complete RTM for Lowes Store sent by Clarence to Sean (Example of proper process)
- \* Rescue It Follow-up June 15th - Kacsir to RSM team - settlement talking points

As noted on the call today - Ian was advised that most of the information regarding Rescue It was done through conference calls, IM or text messaging.

Please review and let me know if you have any questions.

Thanks  
Duffy

# **EXHIBIT H**



Wallen



next week as I will be up north the beginning of the week. Have a great weekend!

Jul 6, 2017, 3:14 PM

Effective immediately !!! Please do not mistint Rescue It product any more.

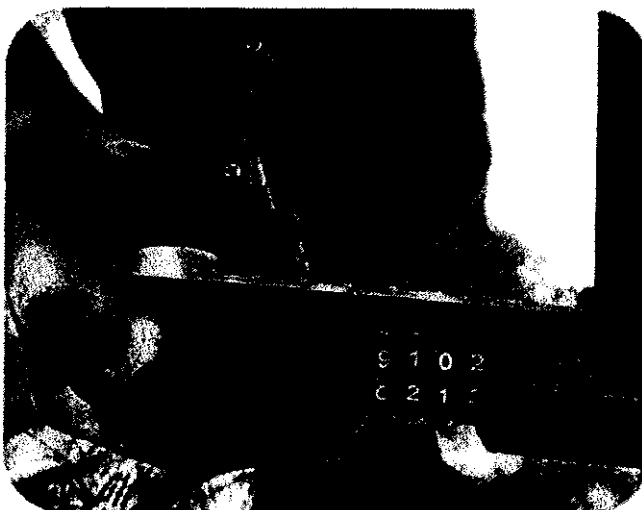


EXHIBIT Plaintiff's 6 2/19/19 NB PENGAD 900-881-6889



SON000125

# **EXHIBIT I**

Message

From: Duffy, David [david.duffy@ppg.com]  
Sent: 7/28/2017 12:41:15 PM  
To: Dalton, John [dalton@ppg.com]  
CC: Minda, Michele [michele.minda@ppg.com]  
Subject: RE: Houston mkt

Ian - Good Afternoon again.

Please see if you can have the conversation with other TM referenced during your discussion with Coree Bell.

Once you have that discussion - please re-group with Sean Kacsir / Michele Minda to set up a discussion with RSM Brian Wells.

If at all possible, let me know if you can have that completed by the end-of-day Tuesday - that would be greatly appreciated.

Thanks  
Duffy

Michele - FYI

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

From: Dalton, John  
Sent: Friday, July 28, 2017 12:38 PM  
To: Duffy, David  
Subject: Re: Houston mkt

No. She referenced a product called Assure base 2.

Sent from my iPhone

> On Jul 28, 2017, at 10:52 AM, Duffy, David <david.duffy@ppg.com> wrote:

> Ian - Thanks for the update

> I am on a c-call for the next 45 minutes - I will track you down after that call.

> Thanks for providing this.

> If you would - please get in touch with Sean and get some clarity on the reports that Matt Thoman sees.

> Also - was this specific to the Rescue It product or any PPG sku?

> -----Original Message-----

> From: Dalton, John  
> Sent: Friday, July 28, 2017 11:23 AM  
> To: Duffy, David  
> Subject: FW: Houston mkt

> Dave,  
> I spoke with Coree Bell regarding her comments below:

> Another thing that concerns me. When he met me in Kerrville (2-3 weeks ago) we went over some things on how to "help" my numbers.

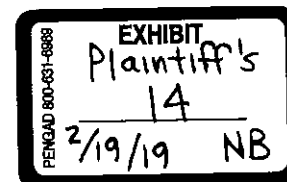
> He told me that I can give the store credit for X amount of gallons and then turn around and mistint them or leave them on the shelf.

> I told him it sounded shady and I wasn't going to do that. He then tells me it's fine to do that as long as you don't do it all the time because Matt Thoman sees those RA reports and too much or too many times can cause a redflag.

> Sorry, but that sounds a little unethical to me.

> She stated that her supervisor, Brian Wells Houston Mkt., explained that if she did this it would help her "out the door" numbers. This may be easier to explain via phone...but essentially it makes the TM's numbers appear to be better than they actually are. This also influences their ability to bonus. (AZ market comes to mind as well). Call me and I will explain the mechanics of this better, if you can-very interesting.

> She has provided another TM's name and number to contact as well.





>  
>  
> Thanks,  
>  
> Ian Dalton CFI  
> Forensic Audit & Loss Prevention Specialist  
> PPG Corporate Audit Services  
>  
>

> 2220 W Alabama  
> Houston, TX 77098  
>  
>

> M: Redacted -  
> E: dalton@ppg.com  
>  
>  
>

> -----Original Message-----

> From: Dalton, John  
> Sent: Friday, July 28, 2017 5:50 AM  
> To: Duffy, David  
> Subject: Houston mkt  
>

> Good Morning Dave- I am scheduled to speak with the Texas TM at 9:00 this morning. What time is your meeting today?  
>

> Sent from my iPhone

# **EXHIBIT J**

IN THE UNITED STATES DISTRICT COURT  
FOR THE CENTRAL DISTRICT OF CALIFORNIA

-----x  
WALLEN LAWSON, :  
 :  
 Plaintiff, : Civil Action No.  
 :  
 vs. : 8:18-cv-00705-AG-JPR  
 :  
 PPG ARCHITECTURAL FINISHES, :  
 :  
 INC., :  
 :  
 Defendants. :

-----x  
TRANSCRIPTION OF  
VIDEOTAPED DEPOSITION OF VINCENT WILCHER  
April 11, 2019  
10:09 a.m.  
201 Third Street, Northwest  
Suite 1630  
Albuquerque, New Mexico

Job No. 224599

Pages 1 - 59

Transcribed: Mary A. Seal, RDR, CRR, NM CCR 69

1 MR. MANOUKIAN: Objection, form.

2 A Yes. Yeah. We had a couple other  
3 flagship products that sold a lot better than those  
4 products.

5 Q Okay. Now, your supervisor, Dave Larson,  
6 that you described earlier.

7 A Uh-huh.

8 Q Did he also direct you to mis-tint paint?

9 A From what I recall, yes, he did.

10 Q Okay. And over what period of time was  
11 that; do you recall?

12 A I don't. I think it was kind of  
13 throughout the time that he was my manager. It was  
14 a short period of time, but from what I recall, yes,  
15 both the Rescue It and the Assure product, to  
16 mis-tint it.

17 Q Okay. Now, you testified you were working  
18 more hours than you were being compensated for  
19 earlier?

20 A Correct. Yes.

21 Q How many hours were you working?

22 A It was probably close to around 50 hours  
23 per week, depending on the week.

24 Q And how many hours -- how many hours were  
25 you compensated?

# **EXHIBIT K**

NETWORK DEPOSITION SERVICES  
Transcript of Catherine McKinley

1           IN THE UNITED STATES DISTRICT COURT  
2           FOR THE CENTRAL DISTRICT OF CALIFORNIA

3	WALLEN LAWSON,	)	
		)	
4	Plaintiff,	)	Case No.
	vs.	)	8:18-cv-00705-AG-JPR
5		)	
		)	
6	PPG ARCHITECTURAL	)	
	FINISHES, INC.,	)	
7		)	
	Defendant.	)	

8

9                                 - - - - -

10                                THE VIDEOTAPE OF CATHERINE MCKINLEY

                                  WEDNESDAY, MAY 15, 2019

                                  - - - - -

11

12           The videotape deposition of CATHERINE

13 MCKINLEY, called by the Plaintiff for examination

14 pursuant to the Federal Rules of Civil Procedure,

15 taken before me, the undersigned, Aimee N. Szinte,

16 Notary Public within and for the State of Ohio,

17 taken at Cleveland Metropolitan Bar Association,

18 1375 East Ninth Street, Second Floor, Cleveland,

19 Ohio, commencing at 10:30 a.m., the day and date

20 above set forth.

1 A No, I did not.

2 Q Who did within the PPG organization?

3 A Will Wooten.

4 Q Do you know if anyone at Lowe's was ever  
5 informed of the mistinting practices?

6 A I do not.

7 Q Would you expect that they would have been?

8 A It would have depended on the practice that was  
9 already in place for tinting end of line  
10 product lines.

11 Q And why do you say it would have depended on  
12 those factors?

13 A If it was a regular practice, then they would  
14 not have been notified about that.

15 Q If the practice had been ongoing for some  
16 period of time and it had been done  
17 surreptitiously, would it not have been  
18 appropriate for someone in the PPG organization  
19 to let Lowe's know that the practice had been  
20 going on so they could at least police against  
21 it in the future, if for no other reason?

22 MR. SCHROEDER: Objection.

23 Assumes facts. Calls for speculation. You can  
24 answer.

25 A If it shouldn't have been going on, yes.

# **EXHIBIT L**





PPG Industries, Inc.  
400 Bertha Lamme Drive  
Cranberry Township, PA 16066 USA  
Telephone: Redacted  
michele.minda@ppg.com

Michele M. Minda  
HR Director, Home Centers & Functions

February 22, 2018

Clarence Moore  
Redacted - PII

Re: Lowe's Mis-tint Issue.

Clarence,

You are aware of the investigation conducted during Q3 2017 through current Q1 2018 based on an Ethics complaint and allegations of Territory Managers being instructed to mis-tint Rescue-It product and thereby forcing members of the Lowe's team to write-off product and sell as mis-mixed paint.

The investigation into the allegations has closed and you are being given this letter as a formal written warning that:

- your compliance with all PPG policies and all applicable laws is expected;
- all PPG employees must act with the highest ethical standards at all times;
- you are expected to follow proper business practices at all times;
- you are expected to address issues or questionable activity directly or escalate it for further discussion or direction, not ignore it;
- you need to be aware of and mindful that appropriate email communications and instructions with your teams is needed at all times;
- you need to follow proper email signature policy and refrain from adding personal quotes or any quotes, mottos or anything else which is not standard to policy in all email communications;
- all market walks need to be conducted and points allocated as appropriate, you should not imply or give "points off" for not giving the store credit on old label product and/or not mis-tinting

As part of this formal warning you are required to review and acknowledge PPG's Global Code of Ethics which can be found via the links attached below. The Global Code of Ethics sets the principles that apply to all PPG employees and is to be a guide to conduct on ethical issues that are faced during the normal course of business. Once you have completed your review of the below links and information on the Global Code of Ethics, please acknowledge and confirm back to me by placing your signature and date on this letter, scanning and emailing to me, as well as sending me the original upon completion.

**Global Code of Ethics:** <http://ppgindustries.pairserver.com/GCOE2017/index.html>

**Global Code of Ethics Overview:** [http://corporate.ppg.com/getmedia/0d11c0ab-8126-4832-850a-975e9eaa4fff/Code-of-Ethics-Bi-Fold\\_v9-LINKS-12-12-16-HiRes-Single-Pages.pdf.aspx](http://corporate.ppg.com/getmedia/0d11c0ab-8126-4832-850a-975e9eaa4fff/Code-of-Ethics-Bi-Fold_v9-LINKS-12-12-16-HiRes-Single-Pages.pdf.aspx)

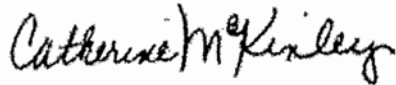


PPG\_LAWSON\_000942

Frequently Asked Questions: <http://corporate.ppg.com/getdoc/895a5c92-cc61-4968-b28d-ec1677d3dbfc/Fact-Sheet-English.aspx>

If you have any questions regarding the content of this formal warning which we have discussed, upon your receipt of this letter, please let us know so we can discuss further.

Sincerely,



Cathie McKinley  
Director, Home Center Field Sales  
& Strategic Accounts

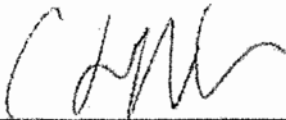


Michele M. Minda  
HR Director, Home Centers & Functions

cc: Employee File

---

I acknowledge that I have reviewed the Global Code of Ethics, Global Code of Ethics Overview and Frequently Asked Questions.



Signature

2/27/18

Date

# **EXHIBIT M**



PPG Industries, Inc.  
400 Bertha Lamme Drive  
Cranberry Township, PA 16066 USA  
Telephone: Redacted  
[michele.minda@ppg.com](mailto:michele.minda@ppg.com)

**Michele M. Minda**  
HR Director, Home Centers & Functions

February 22, 2018

Brian Wells  
Redacted - PII

Re: Lowe's Mis-tint Issue

Brian,

You are aware of the investigation conducted during Q3 2017 through current Q1 2018 based on an Ethics complaint and allegations of Territory Managers being instructed to mis-tint Rescue-It product and thereby forcing members of the Lowe's team to write-off product and sell as mis-mixed paint.

The investigation into the allegations has closed and you are being given this letter as a formal written warning that:

- your compliance with all PPG policies and all applicable laws is expected;
- all PPG employees must act with the highest ethical standards at all times;
- you are expected to follow proper business practices at all times;
- you are expected to address issues or questionable activity directly or escalate it for further discussion or direction, not ignore it;
- you need to be aware of and mindful that appropriate email communications and instructions with your teams is needed at all times;
- you need to follow proper email signature policy and refrain from adding personal quotes or any quotes, mottos or anything else which is not standard to policy in all email communications;
- all market walks need to be conducted and points allocated as appropriate, you should not imply or give "points off" for not giving the store credit on old label product and/or not mis-tinting

As part of this formal warning you are required to review and acknowledge PPG's Global Code of Ethics which can be found via the links attached below. The Global Code of Ethics sets the principles that apply to all PPG employees and is to be a guide to conduct on ethical issues that are faced during the normal course of business. Once you have completed your review of the below links and information on the Global Code of Ethics, please acknowledge and confirm back to me by placing your signature and date on this letter, scanning and emailing to me, as well as sending me the original upon completion.

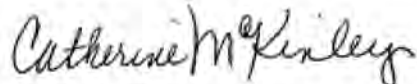
**Global Code of Ethics:** <http://ppgindustries.pairserver.com/GCOE2017/index.html>

**Global Code of Ethics Overview:** [http://corporate.ppg.com/getmedia/0d11c0ab-8126-4832-850a-975e9eaa4fff/Code-of-Ethics-Bi-Fold\\_v9-LINKS-12-12-16-HiRes-Single-Pages.pdf.aspx](http://corporate.ppg.com/getmedia/0d11c0ab-8126-4832-850a-975e9eaa4fff/Code-of-Ethics-Bi-Fold_v9-LINKS-12-12-16-HiRes-Single-Pages.pdf.aspx)

**Frequently Asked Questions:** <http://corporate.ppg.com/getdoc/895a5c92-cc61-4968-b28d-ec1677d3dbfc/Fact-Sheet-English.aspx>

If you have any questions regarding the content of this formal warning which we have discussed, upon your receipt of this letter, please let us know so we can discuss further.

Sincerely,



Cathie McKinley  
Director, Home Center Field Sales  
& Strategic Accounts



Michele M. Minda  
HR Director, Home Centers & Functions

cc: Employee File

-----  
I acknowledge that I have reviewed the Global Code of Ethics, Global Code of Ethics Overview and Frequently Asked Questions and have completed the online Global Ethics training.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

# **EXHIBIT N**

1 UNITED STATES DISTRICT COURT  
2 FOR THE CENTRAL DISTRICT OF CALIFORNIA

3  
4 WALLEEN LAWSON, )  
5 Plaintiff, )  
6 v. ) Civil Action No.  
7 ) 8:18-cv-00705-AG-JPR  
8 PPG ARCHITECTURAL FINISHES, INC., )  
9 Defendant. )  
\_\_\_\_\_ )

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VIDEOTAPED DEPOSITION OF CLARENCE MOORE  
Phoenix, Arizona  
March 19, 2019

Prepared by:  
CINDY MAHONEY, RPR, RMR  
Certified Court Reporter  
Certificate No. 50680

1 purposes of the written transcript so that the court  
2 reporter can take it down. The court reporter can't  
3 take down a nod or a shake of the head, for example.

4 All right?

5 A Yes, sir.

6 Q Okay. So describe for me your further  
7 employment history after football.

8 A After football, I started working for Lowe's in  
9 2009, worked for Lowe's from 2009 all the way until  
10 2015. In 2015 I was hired as a general manager at  
11 Eyeglass World in September and then hired on to PPG as  
12 a regional manager in February of 2016. Worked with PPG  
13 from February 2016 through March 2018. Was let go from  
14 PPG March 15, 2018, and rehired with PPG April 2, 2018,  
15 as a store manager.

16 Q Okay. And are you presently a store manager?

17 A And I'm currently a store manager, yes.

18 Q Where are you a store manager?

19 A With PPG.

20 Q I mean, what store?

21 A Here in Phoenix.

22 Q Okay. What's -- what's the location, if I may  
23 ask?

24 A 35th Avenue and Thomas Road, store number 8094.

25 Q And what are your duties as store manager?



1 Mr. Moore indicated that he could not recall how the  
2 idea was brought up but advised that he did not generate  
3 the idea, nor did he do anything to stop it. Is that  
4 correct?

5 MS. COGBILL: Objection; vague.

6 THE WITNESS: Yes, sir.

7 BY MR. FOX:

8 Q Do you -- do you still maintain today that you  
9 did not direct your territory managers to mis-tint the  
10 paint?

11 A I do.

12 Q The next bullet point reads, Mr. Moore believes  
13 that approximately 70 to 80 units of Rescue It was  
14 handled in this fashion, but it could have been more.

15 Do you recall saying that to Mr. Dalton?

16 A I don't recall that being the context of it. I  
17 recall us just trying to find out if -- if during this  
18 time this many mis-tints would have happened, about how  
19 many could it have been. And it was just a calculation  
20 of what could be, but I -- I couldn't have given anyone  
21 a -- a number of how many mis-tints happened because I  
22 didn't have one.

23 Q Okay. And is it correct you don't know to this  
24 day the number of mis-tints or approximate number of  
25 mis-tints that occurred?

1 THE WITNESS: Yeah, I have no idea. That  
2 was my understanding or my -- that was my perception,  
3 was a better relationship with Sherwin-Williams, but I  
4 have no -- I have no idea why it happened.

5 BY MR. FOX:

6 Q Okay. Olympic had been fighting an uphill  
7 battle, do you think?

8 A I don't know.

9 Q Under training, Wally was effective as a  
10 trainer?

11 MS. COGBILL: Objection; vague.

12 THE WITNESS: What do you -- Wally --

13 BY MR. FOX:

14 Q Do you think he was effective as a trainer?

15 A Again, it is a vague question, but when we  
16 trained, we were scripted. So Wally was good with  
17 people, and Wally knew how to read, so Wally could train  
18 well.

19 Q Okay. And you gave him 21 out of 25  
20 available --

21 A I did.

22 Q -- points for training; correct?

23 A Yes, sir.

24 Q Then you did make a note, though, by this  
25 training roster, and you said that he missed some

1 people; correct?

2 A Yes, sir.

3 Q Now, do Lowe's associates turn over frequently?

4 A Yes.

5 MS. COGBILL: Objection; vague.

6 BY MR. FOX:

7 Q Very frequently, in fact; isn't that correct?

8 A I worked there for eight years, and I know  
9 people who worked there prior to myself that are still  
10 working there, so it's variable.

11 Q It's variable. A lot of people do come and go,  
12 however; correct?

13 A You would have to contact Lowe's about their  
14 over -- their overturn.

15 Q It's a place to which people are often termed  
16 for temporary employment --

17 A Absolutely not.

18 Q -- correct?

19 A I disagree with that.

20 Q You disagree with that?

21 A [Nodded up and down.]

22 Q Or between jobs?

23 A I disagree with that.

24 Q Okay. What do you think the average duration  
25 is of the Lowe's associate --

1 MS. COGBILL: Objection; calls for --

2 BY MR. FOX:

3 Q Do you have any sense of that?

4 MS. COGBILL: Sorry. Objection; calls for  
5 speculation.

6 THE WITNESS: I don't.

7 BY MR. FOX:

8 Q Do you know when the two missing associates you  
9 referred to here were hired?

10 A I do not.

11 Q Did you ask?

12 A I would have in this case.

13 Q Okay. If they were very recent hires, it would  
14 have been excusable that they weren't on the roster yet;  
15 correct?

16 A Not if Wally had had a visit with that store in  
17 between that time.

18 Q But if they were just hired, he might not have  
19 become aware of them immediately; isn't that correct?

20 A Not correct. Because the purpose of the update  
21 of the training roster on each visit was not to just see  
22 those people. It was -- it was not the training that  
23 occurred. It was updating the names of the people in  
24 the department. So he could have not trained -- he  
25 could have not trained them, but he would have still

1 found out that they were hired into the department by  
2 talking to management about the updated associates in  
3 the department.

4 Q Okay. How many paint associates in total are  
5 there in each Lowe's store?

6 A There is no number.

7 Q Okay. Now, you visit five stores on this  
8 market walk?

9 A On this one, yes, sir.

10 Q Is that what it indicates?

11 A Yes, sir.

12 Q And his roster included correctly all but two  
13 of the however many there were paint associates of these  
14 five stores; correct?

15 A The way that I -- the way that I did this part  
16 of the training roster was while I was there in the  
17 store that day, I would ask the associates who are all  
18 the members of the paint department. And I would look  
19 directly at his training roster to see if it reflected  
20 the names that they gave me.

21 Q So he missed two out of all those people, yet  
22 you still gave him a zero out of four for this category;  
23 correct?

24 A He missed two just in that one store.

25 Q Correct.

1 And none in the other stores; correct?

2 A I don't -- I don't -- I didn't put them in  
3 here, so I -- but I don't remember if he missed any at  
4 all.

5 Q Well, if he did, you likely would have;  
6 correct?

7 A All I needed was that situation there for me to  
8 grade this portion of the training roster or training in  
9 the market walk.

10 Q Okay. Let me ask you: Under administrative  
11 duties, you have five out of five. So you had no  
12 complaints in that area; right?

13 MS. COGBILL: Objection; vague.

14 BY MR. FOX:

15 Q You gave him a full rating; correct?

16 A To the -- to the questions on the lines, yes.

17 Q So it appears that the issue with him taking  
18 more than five hours of administrative time had been  
19 resolved at this point; correct?

20 A It appears from -- from this he -- whatever I  
21 reviewed during this market walk, I didn't see any  
22 problems with him exceeding the five hours of admin  
23 time.

24 Q Okay. What is a force-out?

25 A A force-out is when an associate does not clock

1 out, which means when the clock strikes 12 at midnight,  
2 the system would force them out of the store.

3 Q And how many force-outs did Wally have?

4 A I don't know the number, if any at all.

5 Q Okay. It wasn't a problem? That wasn't an  
6 issue for him; correct?

7 A During this market walk, it had not been an  
8 issue.

9 Q You can give up to five bonus points; correct?

10 A I can.

11 Q That's the last category.

12 It states under bonus points, i.e. open  
13 territory coverage, lead regional project, large pro  
14 success, etcetera.

15 What's the purpose of the bonus points section?

16 A Those examples that it lists there gives you an  
17 opportunity to give a person bonus points if -- if  
18 things like that have happened in their market.

19 Q Okay. So that's subject to your discretion;  
20 correct?

21 A It's -- it's just another grading point. It is  
22 my discretion, but it -- but they're factual.

23 Q Okay. So in -- in your view, Wally didn't do  
24 anything meriting the addition of even a single bonus  
25 point; correct?

1 clear. I didn't -- I didn't need to document that.

2 Q Force-out, you list one force-out in the  
3 comments and give him five points off; correct?

4 A I do.

5 Q And the rubric says, Negative five if more than  
6 one per quarter; correct?

7 A I see that.

8 Q And was there another one not listed here?

9 A No, sir.

10 Q So why did he get a negative five for only one  
11 force-out?

12 A Because it was -- it was very important to me.  
13 So if I saw a force-out, they lost the five points.

14 Q Okay. But that seems to go against the  
15 guidance that would require more than one per quarter;  
16 correct?

17 A It was my decision, yes, sir.

18 Q To override that guidance?

19 A That's just a guideline.

20 Q Okay. Did you have a meeting with Wally  
21 shortly after the market walk to go over the result?

22 A This one here?

23 Q Yes.

24 A I would -- I would have. I always did, yes,  
25 sir.



1 falsified a training roster?

2 A That was one of the things that was brought up.

3 Q Okay. And -- and the PIP results; is that  
4 correct?

5 A Those were two things that were brought up,  
6 yes.

7 Q Okay. Now, was there any evidence Wally had  
8 actually falsified the training roster as opposed to  
9 making mistakes or having the incorrect dates for  
10 various meetings with people?

11 A The evidence was the training roster.

12 Q Yeah. Yes. Okay.

13 But was there any evidence that he had  
14 falsified it as opposed to making mistakes?

15 A The only evidence was the training roster  
16 itself. Again, I mean, we can -- we can go in circles  
17 on whether we feel like it was intended or not, but all  
18 I can go off is the facts that I saw on the training  
19 roster.

20 Q Well, but there's a big difference in terms of  
21 whether or not someone -- an employee falsifies a  
22 document as opposed to making mistakes in the document;  
23 right?

24 A Yeah. And in that case, I -- I saw a lot more  
25 than a mistake. It -- if it seemed like habit when you

1 see it more than one time, more than two times, more  
2 than three times, then you -- then you have to question  
3 it.

4 Q Did you ever confront Wally and say, hey, I  
5 think -- I think you're intentionally falsifying your  
6 training roster?

7 A During that recap, we talked about the training  
8 roster.

9 Q I know you talked about it, but did you ever  
10 say, Wally, I think you're falsifying it; you're  
11 intentionally putting false information in there; what  
12 do you have to say about that?

13 A I don't know if I used the word falsified  
14 during that recap, but I let him know that he stated  
15 that he trained someone in a store that he had never  
16 visited that day. I did let him know that he misled or  
17 put the wrong information in his training roster or  
18 information that never happened.

19 Q Okay. And he -- he acknowledged he may have  
20 made mistakes, but he never admitted to falsifying  
21 anything, did he?

22 A Well, his -- his paperwork, the don'ts  
23 specifically say, don't fill out the map, stay -- or I'm  
24 sorry, fill out the map. Don't stay -- don't box -- if  
25 the -- can't really read his handwriting right now.

1 Fill out the maps, stay current, don't check box if  
2 objective isn't completed, don't guess. So this is  
3 something he's telling himself not to do.

4 Q Okay. Does that suggest he's falsifying  
5 anything?

6 A It can to some.

7 Q Okay. I -- okay. If you say so.

8 So then Wally -- as Wally indicated in his  
9 notes, he objected vociferously and said, no, no, he did  
10 not falsify or lie concerning the training roster, did  
11 he not?

12 A When he heard the word falsify he --

13 Q Did he get animated?

14 A Say again.

15 Q Did he get animated?

16 A He was upset when he heard the word falsify.

17 Q Okay. And then he further said, Clarence knows  
18 all about the issues with my training roster and what  
19 happened to my records; correct?

20 A I don't remember what he said, sir.

21 Q Okay. But you're -- you're not denying he said  
22 that? You're saying --

23 A Do I know of a time where he had a training  
24 roster printed out? I do. Did he say, Clarence --  
25 Clarence knows all about it? Again, he was upset, so he

# **EXHIBIT O**

NETWORK DEPOSITION SERVICES

Transcript of David Duffy

1 IN THE UNITED STATES DISTRICT COURT  
2 FOR THE CENTRAL DISTRICT OF CALIFORNIA

3 - - -

4 WALLEN LAWSON, )

5 )

6 Plaintiff, )

7 )

8 vs. )

Case No.

8:18-cv-00705-AG-JPR

9 PPG ARCHITECTURAL )

10 FINISHES, INC., )

11 )

12 Defendant. )

13

14 - - -

15 Videotape Deposition of DAVID DUFFY

16 Thursday, February 21, 2019

17 - - -

18 The videotape deposition of DAVID DUFFY,  
19 called as a witness by the Plaintiff, pursuant to  
20 notice and the Federal Rules of Civil Procedure  
21 pertaining to the taking of depositions, taken  
22 before me, the undersigned, Nina Warren Biehler, a  
23 Notary Public in and for the Commonwealth of  
24 Pennsylvania, at the law offices of Obermayer  
25 Rebmann Maxwell & Hippel LLP, Suite 5240, One  
Mellon Center, 500 Grant Street, Pittsburgh,  
Pennsylvania 15219, commencing at 10:10  
o'clock a.m., the day and date above set forth.

20

21

22 - - -

23 NETWORK DEPOSITION SERVICES

1101 GULF TOWER

707 GRANT STREET

24 PITTSBURGH, PENNSYLVANIA 15219

(866) 565-1929

25 - - -

1 been -- had been fired?

2 A I believe it was a conversation with  
3 counsel, Bill Adams.

4 Q When -- do you recall when that  
5 conversation occurred?

6 A I do not.

7 Q Would it have been shortly after Wally  
8 was fired?

9 A I have a funny feeling it was more  
10 along the lines of when these interviews -- these  
11 depositions were set up.

12 Q Okay. Do you think it's ironic that  
13 the whistleblower who reported the misconduct of  
14 Clarence Moore was terminated by Clarence Moore  
15 and that --

16 MR. SCHROEDER: Object -- sorry,  
17 finish your question.

18 BY MR. FOX:

19 Q -- Clarence Moore is still working at  
20 the company?

21 MR. SCHROEDER: Objection, calls  
22 for an opinion. Assumes facts.

23 You can answer.

24 THE WITNESS: In my opinion, yes.

25

1 Q Did you consider the practice that  
2 Clarence Moore was engaged in as stealing from  
3 Lowe's?

4 MR. SCHROEDER: Objection, vague,  
5 calls for a legal conclusion.

6 But you can answer.

7 BY MR. FOX:

8 Q The mistinting practice.

9 A I concluded it was unethical, yes.

10 Q And were you -- were you in charge of  
11 Clarence Moore, would you have terminated him?

12 MR. SCHROEDER: Objection, calls  
13 for speculation.

14 THE WITNESS: May I answer?

15 MR. SCHROEDER: You may answer.

16 THE WITNESS: Yes.

17 MR. FOX: Okay, why don't we take  
18 a short break. If I could have a moment, we  
19 may be done with our questioning.

20 MR. SCHROEDER: Sure.

21 THE VIDEOGRAPHER: We're off the  
22 record, the time is 1:39 p.m.

23 (Recess taken.)

24 THE VIDEOGRAPHER: We're on the  
25 record, the time is 1:48 p.m.

# **EXHIBIT P**



Message

**From:** Moore, Clarence [Moore, Clarence]  
**Sent:** 8/3/2017 8:30:22 AM  
**To:** Hazi, Alissa [ahazi@ppg.com]  
**CC:** Wallen Lawson (WLawson@ppg.com) [WLawson@ppg.com]  
**Subject:** FW: July Lowe's Training Roster Wally Lawson  
**Attachments:** image001.png; Lowes2017TRv1.accdb

Here is the file Alissa, it's funny though, because I just exported it to myself from my computer. I personally saw it not working on Wally's computer. I'm not sure this file will help you. Let me know if there is anything else you need.

Thanks,

**"Being Committed is so much more rewarding than being Compliant."**

**Clarence Moore**  
Regional Sales Manager  
National Accounts Lowe's

( Redacted -  
[clarence.moore@ppg.com](mailto:clarence.moore@ppg.com)

PPG/Olympic  
PHOENIX, ARIZONA  
[www.olympic.com](http://www.olympic.com)  
[www.liquidnails.com](http://www.liquidnails.com)



---

**From:** Lawson, Wallen  
**Sent:** Sunday, July 30, 2017 3:29 PM  
**To:** Moore, Clarence  
**Cc:** walawson3@aol.com  
**Subject:** July Lowe's Training Roster Wally Lawson

'Hi Clarence:

Updated Lowe's Training Roster for July 2017'.

Many-Thank's

**Wally Lawson**  
Territory Manager  
National Accounts Lowe's  
Redacted - PII  
[wlawson@ppg.com](mailto:wlawson@ppg.com)

PPG/Olympic  
Long Beach, Ca.  
[www.olympic.com](http://www.olympic.com)  
[www.liquidnails.com](http://www.liquidnails.com)

# **EXHIBIT Q**

NETWORK DEPOSITION SERVICES  
Transcript of Andrew Mayhew

1 IN THE UNITED STATES DISTRICT COURT  
2 FOR THE CENTRAL DISTRICT OF CALIFORNIA

3 - - -

4 WALLEEN LAWSON, )  
 )  
5 Plaintiff, )  
 )  
6 vs. ) Case No.  
 ) 8:18-cv-00705-AG-JPR  
7 PPG ARCHITECTURAL )  
 FINISHES, INC., )  
8 )  
 Defendant. )

9  
10 - - -

11 Videotape Deposition of ANDREW MAYHEW  
12 Thursday, March 21, 2019

13 - - -

14 The videotape deposition of ANDREW MAYHEW,  
15 called as a witness by the Plaintiff, pursuant to  
16 notice and the Federal Rules of Civil Procedure  
17 pertaining to the taking of depositions, taken  
18 before me, the undersigned, Nina Warren Biehler, a  
19 Notary Public in and for the Commonwealth of  
20 Pennsylvania, at the law offices of Obermayer  
21 Rebmann Maxwell & Hippel LLP, Suite 5240, One  
22 Mellon Center, 500 Grant Street, Pittsburgh,  
23 Pennsylvania 15219, commencing at 10:16  
24 o'clock a.m., the day and date above set forth.

25 - - -

NETWORK DEPOSITION SERVICES  
1101 GULF TOWER  
707 GRANT STREET  
PITTSBURGH, PENNSYLVANIA 15219  
(866) 565-1929

1 they were required to complete per quarter, per  
2 year with their territory manager. It was more  
3 than one.

4 Q Would four market walks in a six to  
5 eight month period of time be unusual?

6 A Can you repeat the numbers?

7 Q Yeah, four market walks in a period of  
8 six to eight months.

9 A It just all depended on the territory,  
10 who the employee was, the reasoning as to why they  
11 were doing a market walk. I'm not sure.

12 Q Are you aware of any territory  
13 managers, other than Wally, being subjected to  
14 such a high frequency of market walks?

15 MR. SCHROEDER: Objection,  
16 mischaracterization. Assumes facts.

17 THE WITNESS: I'm not -- I'm not  
18 sure.

19 BY MR. FOX:

20 Q Now, in one of his conversations with  
21 you, did Wally advise you that Clarence had told  
22 him that there was a policy that -- when I say,  
23 Clarence, Clarence Moore had told him that there  
24 was a policy that any territory manager who was  
25 not on budget for eight of the past twelve months

1 would be automatically placed on a performance  
2 improvement plan?

3 A That wasn't the set criteria. There  
4 was a -- there was a program, there was a  
5 quarterly review where managers would review the  
6 sales performance results.

7 Q Do you recall Wally calling you to  
8 report to you that Clarence had informed him of  
9 that?

10 A Yes.

11 Q And did you advise Wally that there  
12 was no such policy?

13 A He had indicated that Clarence had  
14 told him it was an HR policy, and I said, no,  
15 that's not an HR policy.

16 Q Okay. And did you then tell Wally  
17 that you would follow up with Clarence on that?

18 A Yes.

19 Q Okay, did you do that?

20 A Yes.

21 Q Did you follow up with Clarence Moore  
22 and Sean Kacsir?

23 A Yes.

24 Q Okay, but you allowed Clarence Moore  
25 to put Wally on a PIP anyway?

1 Q Now, why was Wally Lawson's PIP  
2 extended for 30 days, as indicated in the e-mail?

3 A This would have been at the time that  
4 we had reissued the PIP that -- so Wally had  
5 reached out to me in early July, and this was at  
6 the time where we had reissued and updated his new  
7 performance improvement plan.

8 Q Okay. And why was it updated?

9 A It was, you know, based off of the  
10 facts that when Wally had called me we had taken  
11 everything into consideration and we had -- when I  
12 say, we, Sean, Clarence and myself -- to determine  
13 what actions we should take with Wally, and his  
14 performance -- related to his performance.

15 Q And was it perceived that he was doing  
16 a better job, as indicated in the e-mail?

17 MR. SCHROEDER: Objection, vague.

18 BY MR. FOX:

19 Q Let me just direct your -- the last  
20 sentence of the e-mail from Clarence Moore, to  
21 Wally states, You're doing a better job, but there  
22 is still so much room for improvement.

23 A Right.

24 Q That's what I was referring to. Do  
25 you know what Clarence Moore meant by that?

1 Q Okay, there's -- again, my question is  
2 simply, there's no reference in here to any --  
3 anything beyond inaccuracies in the training  
4 roster, correct?

5 A No.

6 Q There's no reference to any  
7 falsification of the training roster, is there?

8 A No.

9 Q In fact, you can't produce any  
10 evidence that Wally Lawson falsified his training  
11 roster, can you?

12 MR. SCHROEDER: Objection, asked  
13 and answered.

14 THE WITNESS: He admitted to  
15 myself and others, Sean and Clarence, on the  
16 phone, that he falsified company documents.

17 BY MR. FOX:

18 Q He used that word, falsified?

19 MR. SCHROEDER: Objection, he --  
20 this has been asked and answered. You asked  
21 him to provide the specific words and he gave  
22 you the specific conversation. We're just  
23 rehashing the same ground over again.

24 BY MR. FOX:

25 Q Did he use that word? He did not, did

1 he?

2 A Wally did not use the word,  
3 falsification. I had told -- I had  
4 informed Wally, falsifying company documents is  
5 against policy.

6 And his -- Wally's response was, I  
7 know, Andy. I know.

8 Q Okay. And he didn't -- in saying  
9 that, he did not say, I falsified documents, did  
10 he?

11 A No.

12 Q Thank you.

13 Was there a push to eliminate old  
14 label Rescue It product from Lowe's stores in the  
15 summer of 2017?

16 MR. SCHROEDER: Objection,  
17 foundation.

18 THE WITNESS: I was not aware of  
19 that business initiative.

20 BY MR. FOX:

21 Q Were you aware of a class action  
22 lawsuit?

23 A I was not aware of a class action  
24 lawsuit.

25 Q Specifically with regard to Rescue It



1 paint?

2 A No.

3 Q I'd like to show you Moore Exhibit 34.

4 Can you identify Moore Exhibit 34?

5 A This was -- this was an e-mail  
6 Clarence sent to myself regarding Wally Lawson and  
7 our decision to -- and if we had made a decision  
8 for termination.

9 Q Okay. Was there a delay in obtaining  
10 approval for terminating Wally Lawson?

11 A You know, we -- whenever we are  
12 terminating someone with -- at PPG we typically  
13 take multiple things into consideration. We  
14 review this with -- I would have reviewed this  
15 with my boss, I would have reviewed this with  
16 internal counsel.

17 And then also, too, we would have  
18 ensured that all appropriate labor laws in  
19 California or state laws were being handled  
20 appropriately with any final termination paychecks  
21 that would have been owed to him.

22 So that could have resulted in a  
23 delay.

24 Q Who was your boss you reviewed it  
25 with?

1           A       I would have discussed this with my  
2 boss, Michele Minda.

3           Q       Okay. So Michele Minda was fully  
4 aware that Wally was being terminated, correct?

5           A       Yes.

6           Q       Now, when you discussed it with her at  
7 that time, did she not indicate to you that  
8 Clarence Moore was the subject of an investigation  
9 for inventory fraud?

10          A       No.

11          Q        Okay, I'd like to show you Plaintiff's  
12 Exhibit 35.

13                   Okay, was Wally Lawson terminated on  
14 September 6th, 2017?

15          A       Yes.

16          Q       Okay. And who participated in Wally's  
17 firing?

18          A       Myself, Clarence Moore.

19          Q       And did you participate by phone?

20          A       Yes.

21          Q        Did anyone else sit in with you?

22          A        No.

23          Q        Did you take any notes during the  
24 conversation?

25          A        I did not.

1 Q How long did the phone call last?

2 A I would be speculating. Probably 10  
3 to 15 minutes.

4 Q Okay. Did Wally ask, at the outset of  
5 the meeting, if he could record the call and  
6 record the meeting?

7 A I don't recall.

8 Q Do you -- do you not recall telling  
9 him he absolutely was not permitted to record the  
10 call?

11 A It's against PPG policy to record  
12 phone conversations, so if -- if he's saying I  
13 informed him of that, then that would make sense,  
14 because that's typically -- the typical practice  
15 we follow, when employees ask to record  
16 conversations.

17 Q And why is it PPG's policy not to  
18 permit an employee to record a phone conversation,  
19 to make sure that it's accurately captured?

20 MR. SCHROEDER: Objection,  
21 foundation.

22 THE WITNESS: Well, from my  
23 understanding, it's against the Pennsylvania  
24 state law.

25

1 BY MR. FOX:

2 Q Well, it's not against Pennsylvania  
3 state law if both parties consent, is it?

4 MR. SCHROEDER: Objection, calls  
5 for a legal conclusion, foundation.

6 THE WITNESS: From my  
7 understanding, it's PPG's policy.

8 BY MR. FOX:

9 Q Okay, but you -- but you told Wally,  
10 you said, Absolutely not, no way, it's not legal.

11 Is that what you said?

12 MR. SCHROEDER: Objection,  
13 mischaracterizes his testimony.

14 THE WITNESS: I would not have  
15 said that. If this -- if this is what would  
16 have occurred, I would have informed him, you  
17 do not have my permission, it's against PPG  
18 policy to record this conversation.

19 BY MR. FOX:

20 Q So you deny that you said it wasn't  
21 legal?

22 A Can you repeat the question?

23 Q You deny that you told Wally it was  
24 not legal?

25 A I -- I don't recall ever saying that

1 to Wally.

2 Q Did Wally ask you if he could take  
3 notes?

4 A I don't recall.

5 Q Did Wally ask you, Why am I being  
6 terminated, Andy?

7 A He -- he might have asked that  
8 question.

9 Q Okay, and did you say that he  
10 falsified the training roster -- he was being  
11 terminated because he falsified the training  
12 roster and because of the PIP results?

13 A I -- I informed Wally he was being  
14 terminated for his inability to perform to our  
15 standards set forth in the performance improvement  
16 plan and for falsifying company documents.

17 Q And did Wally not respond by saying,  
18 no, no, no, he did not falsify or lie regarding  
19 the training roster?

20 A He was rather upset with the  
21 falsification comment.

22 Q Um-hum.

23 A And did vent frustration around --  
24 around the fact that that was one of the reasons  
25 we terminated him for.

1 Q Okay. And did his expression of  
2 outrage seem to you to be genuine?

3 MR. SCHROEDER: Objection, calls  
4 for speculation.

5 THE WITNESS: He was frustrated,  
6 you could sense that.

7 BY MR. FOX:

8 Q It was genuine?

9 A From what I recall, yes.

10 Q And then did Wally not say to you,  
11 Clarence knows all about the issues with my  
12 training roster and what happened to my records?

13 A I don't recall that.

14 Q And he was referring to the fact that  
15 his iPad had crashed; was he not?

16 MR. SCHROEDER: Objection,  
17 foundation. Calls for speculation.

18 THE WITNESS: If he would have  
19 had issues with his technology, he would have  
20 had resources to contact our internal help  
21 desk, IT support to resolve those.

22 BY MR. FOX:

23 Q And he did that; did he not?

24 A I do not -- I do not know.

25 Q So my question was, do you recall him

1 saying, Clarence knows all about the issues with  
2 my training roster and what happened to my  
3 records?

4 MR. SCHROEDER: Objection, asked  
5 and answered.

6 THE WITNESS: I do not recall him  
7 saying that.

8 BY MR. FOX:

9 Q And did you say, You had admitted it.  
10 Did you say that to Wally during the conversation,  
11 You admitted it?

12 A Yes, I did.

13 Q And did Wally say, No, I said in some  
14 cases, because my Apple iPad crashed, I had to  
15 guess in some cases, because I couldn't read the  
16 printout. And I explained it to Clarence, all the  
17 issues and details?

18 A I do not recall him saying that in  
19 the termination meeting, but he also did not  
20 bring that forward when we had that conversation  
21 around falsification on the performance  
22 improvement call -- recap call.

23 Q Okay, you don't recall whether he said  
24 this during the termination session?

25 A Correct.

1 Q You're not denying that he said it,  
2 correct?

3 A No, I'm not denying he didn't say  
4 that, no.

5 Q And did Wally not say he had recorded  
6 many hours trying to retrieve the training roster  
7 information?

8 A No, I do not recall that.

9 Q Did -- did he ask Clarence to clarify  
10 this issue?

11 A I do not recall.

12 Q Did Clarence say, when Wally asked him  
13 to clarify the issue regarding the training  
14 roster, It doesn't matter, you're going to be  
15 terminated?

16 A I -- I do not remember that being  
17 discussed in the meeting.

18 Q And then Clarence said, Please give me  
19 your cell phone, credit card, car keys and other  
20 personal effects, correct?

21 A That is how we would have closed out  
22 the meeting, just because we would have collected  
23 all of Wally's company property.

24 Q But before the meeting ended, Wally  
25 said, If anyone should be fired it should be you,



1 referring to Clarence Moore; isn't that correct?

2 A I do not recall that being said.

3 Q And Wally said, That's because you  
4 stole from Lowe's, our valued customer.

5 Do you not recall Wally saying that?

6 A He did not say that.

7 Q Do you not recall, then, saying in a  
8 loud voice at that point, after Wally had stated  
9 that Clarence Moore had stole from Lowe's, our  
10 valued customer, that, This meeting's over. And  
11 I'm hanging up right now?

12 MR. SCHROEDER: Objection,  
13 assumes facts.

14 BY MR. FOX:

15 Q Do you not recall terminating the  
16 meeting?

17 A I would have informed -- I remember  
18 informing Wally and Clarence this -- the meeting  
19 is over, and Clarence is going to collect your  
20 belongings. Yes, I remember that happening.

21 Q Okay. But you don't recall Wally  
22 saying to Clarence that he had stolen from Lowe's?

23 A He did not say that.

24 Q You're denying he said that?

25 A Wally did not say that.

1 Q Did you talk to Clarence after the  
2 call?

3 A I would have called him to inform  
4 him -- to ensure that he collected all the  
5 belongings and the company vehicle, that's a  
6 standard practice we follow in the field.

7 Q So you didn't call him to say, Hey,  
8 Clarence, what was Wally talking about when he  
9 said you were stealing from Lowe's, our valued  
10 customer?

11 MR. SCHROEDER: Objection,  
12 assumes facts. He testified that didn't  
13 happen.

14 THE WITNESS: No, I did not  
15 discuss that with Clarence.

16 BY MR. FOX:

17 Q Okay. Is it correct that you didn't  
18 have personal knowledge of any of the content of  
19 any of the market walks that Wally engaged in with  
20 Clarence Moore?

21 A The market walk was consistent across  
22 all territory managers, so I would have -- I  
23 would have known what the specifics are, if I  
24 would have -- if I look at a document.

25 MR. FOX: Okay, why don't we --

# **EXHIBIT R**

1                   IN THE UNITED STATES DISTRICT COURT  
2                   CENTRAL DISTRICT OF CALIFORNIA

3  
4  
5   WALLEN LAWSON,

6                               Plaintiff,

7  
8               vs.                               Case No. 8:18-cv-00705-AG-JPR

9  
10   PPG ARCHITECTURAL FINISHES, INC.,

11                               Defendant.

12  
13  
14                               VIDEOTAPED DEPOSITION

15   OF

16   SEAN KACSIR,

17  
18  
19  
20   taken on behalf of the Plaintiff, pursuant to Notice  
21   to Take Deposition, beginning at 9:10 a.m. on the  
22   28th day of March, 2019, at 1501 Westport Road,  
23   Suite 100, in the City of Kansas City, County of  
24   Jackson, and State of Missouri, before Ksenija M.  
25   Zeltkalns, RPR, Kansas CCR No. 1461.

1 A. Well, I just, I didn't know if you meant  
2 work or nonwork, so.

3 Q. Okay.

4 A. Work we -- yes.

5 Q. You got along well with him?

6 A. I did, yes.

7 Q. You had camaraderie?

8 A. Yes.

9 Q. Did you share common interests?

10 MS. COGBILL: Objection. Vague.

11 BY MR. FOX:

12 Q. Sports or anything like that?

13 A. Yes.

14 Q. Okay. Describe that for me.

15 A. He was a football fan and I'm a football  
16 fan.

17 Q. Um-hm. And he was -- he was a former NFL  
18 pro player, is that right?

19 A. Correct.

20 Q. And you liked that about him?

21 A. Yes.

22 Q. Okay. Did you ever go out and have a  
23 drink with him or cocktail?

24 A. In work -- in work situations, yes.

25 Q. Okay. Describe those meetings for drinks.

1 MS. COGBILL: Objection. Vague.

2 A. I don't know if I have a particular  
3 instance where I could describe.

4 BY MR. FOX:

5 Q. How many -- how many times would you say  
6 you drank with him?

7 A. I don't know.

8 Q. You don't know. Can you estimate?

9 A. Less than ten.

10 Q. Less than ten. Okay. When you would meet  
11 with him on these occasions, drinking, what would  
12 you typically discuss?

13 A. I don't know.

14 Q. Did you discuss work-related matters?

15 A. No.

16 Q. Okay. You just discussed things of mutual  
17 interest to you?

18 A. I don't remember what we discussed.

19 Q. Okay. When was the last time you talked  
20 to Clarence?

21 A. In person?

22 Q. Um-hm?

23 A. We had a PPG event in Phoenix, maybe three  
24 or four months ago, and he came out to the event.  
25 We did Top Golf.

**EXHIBIT S**

Message

**From:** Duffy, David [Duffy, David]  
**Sent:** 6/29/2017 10:25:07 AM  
**To:** Dalton, John [dalton@ppg.com]  
**CC:** Sanchez Monjaraz, Alejandro [asanchezmon@ppg.com]  
**Subject:** Phoenix - Lowes Investigation 0212aa17

Ian – Good Afternoon

I hope that all is well in Lake Charles.

I sent over the information I had on the concern in the USCA Home Centers – Lowes issue. I am still waiting to hear back from Michele Minda (HRD) on Clarence's schedule next week. Michele will try to have this later today.

We can discuss on Friday or Wednesday – your convenience.

Bottom line – need to interview Regional Sales Manager Clarence Moore regarding instructions to purposefully mis-tint the Rescue It product to move the Generation 1 (old label) product off the shelves. As you can see the reported did call us back and provided the information below.

Alejandro – we asked for Ian's assistance on this current Helpline investigation. Ian has a relationship with the subject – Clarence Moore from previous matter investigated in 2016. Based on the fact that this requires an in-person interview and perhaps follow-up with several Territory Managers working for Clarence via the phone – Ian is the perfect person to handle the investigation.

Please let me know if you have any questions / concerns.

The reporter was kind enough to provide a phone number on the posted message last night. I spoke to the reporter this afternoon. The reporter did not provide a name - since they were still concerned about remaining anonymous. The reporter did not provide any names of other Territory Managers that share his same opinion about this being un-ethical.

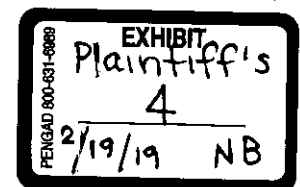
The reporter relayed:

- That the instruction was given on three separate Tuesday conference calls with the RSM – starting in April.
- Several of the TMs are actively engaged in the miss-mix process and actually bragged about it on the calls.
- The RSM – reiterated to do this on the down low and tell Lowes if questioned "the customer never came back" as the reason for the miss-mix.
- Was not aware of any inventory movement reports that were available to track the this activity.
- Advised that he spoke with a TM in the Salt Lake region – where a similar message had been relayed.

I advised the caller to keep us informed if anything changes or if new information comes to light. I thanked him for providing the information and for choosing to contact the helpline a second time.

I will provide this to Ian for his discussion with Mr. Moore next week.

Thanks and let me know if you have any questions.





**S266001**

**EXHIBIT T**

**NETWORK DEPOSITION SERVICES**

**Transcript of John Dalton**

1 IN THE UNITED STATES DISTRICT COURT  
2 FOR THE CENTRAL DISTRICT OF CALIFORNIA

3 - - -

4 WALLEEN LAWSON, )  
 )  
5 Plaintiff, )  
 )  
6 vs. ) Case No.  
 ) 8:18-cv-00705-AG-JPR  
7 PPG ARCHITECTURAL )  
 FINISHES, INC., )  
8 )  
 Defendant. )

9  
10 - - -

11 Videotape Deposition of JOHN DALTON  
12 Tuesday, February 19, 2019

13 - - -

14 The videotape deposition of JOHN DALTON,  
15 called as a witness by the Plaintiff, pursuant to  
16 notice and the Federal Rules of Civil Procedure  
17 pertaining to the taking of depositions, taken  
18 before me, the undersigned, Nina Warren Biehler, a  
19 Notary Public in and for the Commonwealth of  
20 Pennsylvania, at the law offices of Obermayer  
21 Rebmann Maxwell & Hippel LLP, Suite 5240, One  
22 Mellon Center, 500 Grant Street, Pittsburgh,  
23 Pennsylvania 15219, commencing at 10:04  
24 o'clock a.m., the day and date above set forth.

25

21  
22 - - -  
23 NETWORK DEPOSITION SERVICES  
1101 GULF TOWER  
707 GRANT STREET  
24 PITTSBURGH, PENNSYLVANIA 15219  
(866) 565-1929  
25 - - -

**NETWORK DEPOSITION SERVICES**  
**Transcript of John Dalton**

55

1 THE VIDEOGRAPHER: The time is  
2 11:00 a.m., we are off the video record.

3 (Recess taken.)

4 THE VIDEOGRAPHER: The time is  
5 11:04, we're now back on the video record.

6 MR. FOX: Okay, and we have Wally  
7 Lawson participating in the deposition, he's  
8 listening in by phone right now.

9 BY MR. FOX:

10 Q So, Mr. Dalton, the memo continues  
11 that you wrote, outlining your conversation with  
12 Clarence Moore.

13 It states that, "Moore was instructed  
14 at that time to inform his team that the practice  
15 was to cease immediately. Moore has provided a  
16 statement regarding his actions."

17 Who instructed Moore that his team was  
18 to cease the practice immediately?

19 MR. SCHROEDER: Objection,  
20 foundation.

21 THE WITNESS: I did.

22 BY MR. FOX:

23 Q Okay. And then it's further stated,  
24 Dalton then interviewed all of Moore's direct  
25 reports -- report TSMs via phone, resulting in the

**NETWORK DEPOSITION SERVICES**  
**Transcript of John Dalton**

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1 Thoman sees?

2 A I don't recall if I did.

3 Q Well, in the e-mail it appears that  
4 you did, correct, in the middle of the page?

5 A Could you read that to me, please?

6 Q Actually, I'm sorry, this is an e-mail  
7 from -- to you, from Dave Duffy, where he asks you  
8 to get in touch with Sean to get some clarity on  
9 the reports that Matt Thoman sees.

10 A I would have been asking at that time  
11 what those reports were.

12 Q Okay. Was Thoman the national sales  
13 manager for Lowe's?

14 A I do not know.

15 Q Do you recall if you accessed the  
16 reports?

17 A I don't recall, no, sir.

18 MR. FOX: Okay, we're up to 15.

19 I'd like to mark this as Exhibit 15.

20 (Plaintiff's Exhibit No. 15 marked for  
21 identification.)

22 BY MR. FOX:

23 Q Okay, can you identify Exhibit 15?

24 A Yes, sir, it's an e-mail from myself  
25 to David Duffy, with an attachment. And that

**NETWORK DEPOSITION SERVICES**  
**Transcript of John Dalton**

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1 attachment is a statement provided to me by  
2 Clarence Moore, regarding my conversation with  
3 him.

4 Q Was that a statement provided to you  
5 by Clarence Moore in the form of an e-mail?

6 A Yes, sir.

7 Q And he drafted that e-mail immediately  
8 after he met with you?

9 A I don't recall.

10 Q Okay, for what purpose was the  
11 statement prepared?

12 A As I had stated earlier, when I have a  
13 conversation with an individual I provide them the  
14 opportunity to provide their recollection of that  
15 conversation.

16 Q And that's what he did in this e-mail,  
17 correct?

18 A Yes, sir.

19 Q So in the e-mail he documented the  
20 contentions which you later determined were  
21 untruthful about his involvement in the  
22 mistinting?

23 A I would have to --

24 MR. SCHROEDER: Objection, vague.

25 THE WITNESS: I would have to go

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14 Attorneys for Defendant  
15 PPG ARCHITECTURAL FINISHES, INC.

16 UNITED STATES DISTRICT COURT  
17 CENTRAL DISTRICT OF CALIFORNIA

18 WALLEN LAWSON,

19 Plaintiff,

20 v.

21 PPG ARCHITECTURAL FINISHES,  
22 INC.,

23 Defendant.  
24

Case No. 8:18-CV-00705AG-JPR

**DEFENDANT PPG  
ARCHITECTURAL FINISHES,  
INC.'S STATEMENT OF  
UNCONTROVERTED FACTS AND  
CONCLUSIONS OF LAW IN  
SUPPORT OF MOTION FOR  
SUMMARY JUDGMENT, OR IN  
THE ALTERNATIVE, PARTIAL  
SUMMARY JUDGMENT**

Judge: Hon. Andrew J. Guilford  
Hearing Date: June 10, 2019  
Time: 10:00 a.m.  
Courtroom: 10D

Pretrial Conference: July 8, 2019  
Trial Date: July 23, 2019

Pursuant to Local Rule 56-1, Defendant PPG ARCHITECTURAL FINISHES, INC. (“Defendant”) hereby submits its Statement of Uncontroverted Facts and Conclusions of Law, together with references to supporting evidence, in support of its Motion for Summary Judgment or, in the Alternative, Partial Summary Adjudication.

**STATEMENT OF UNCONTROVERTED FACTS**

UNCONTROVERTED FACTS	SUPPORTING EVIDENCE
1. As a Territory Manager (“TM”), Plaintiff Wallen Lawson (“Plaintiff”) was responsible for developing and delivering sales plans and managing and increasing the sales of PPG products within his defined territory.	Deposition of Clarence Moore (“Moore Depo.”), 130:6-20, Plaintiff’s Exh. 36.
2. Plaintiff describes his role as a TM as being “an ambassador for the PPG company.”	Lawson Depo. 19:23-20:15.
3. Some of Plaintiff’s “Key Responsibilities” included: 1) partnering with Lowe’s management teams to develop, drive, and achieve sales growth plans; 2) working cross-functionally with all appropriate Lowe’s departments to exceed sales goals; 3) meeting with all Lowe’s store personnel weekly, and the District Manager once a month to review sales performance against target; 4) analyzing territory sales performance reports and developing strategic territory business plans to support growth; and 5) aggressively identifying in-store selling opportunities.	Lawson Depo. 19:23-20:15; Moore Depo., 130:6-20, Plaintiff’s Exh. 36

UNCONTROVERTED FACTS	SUPPORTING EVIDENCE
4. One of the key metrics of success as a TM is the ability to meet monthly sales goals.	Declaration of Clarence Moore (“Moore Decl.”), ¶ 4.
5. The sales goal is the total of the sales for that TM’s specific stores in the previous year. The TM only needs to sell the same amount of product as was sold in that same month the previous year to meet their goal.	Moore Decl., ¶ 4.
6. Since TMs work remotely in the field, the Company also uses Market Walks as a means for a Regional Sales Manager (“RSM”) to coach, train and measure the performance of TMs against defined criteria.	Moore Decl., ¶ 6.
7. On Market Walks, RSMs and TMs visit several stores within a TM’s territory and walk through the store to ensure TMs are building relationships with Lowe’s employees, PPG product is properly placed throughout the store, and TMs are training and helping customers.	Lawson Depo.; 21:24-22:14; 25:24-26:21.
8. Market Walks are scored in these categories: 1) Sales Results; 2) Sales Operations Checklist; 3) Sales Planning; 4) Relationships; 5) Merchandizing; 6) Sales Tactics; 7) Pro Sales; 8) Administrative Duties; 9) Safety; and 10) Bonus Points.	Moore Decl., ¶¶ 7, 8, Exh. A
9. A TM’s raw Market Walk score falls into one of five categories: 1) Exceptional; 2) Excels; 3) Successful; 4) Marginal; or 5)	Lawson Depo., 26:22-28:17.



UNCONTROVERTED FACTS	SUPPORTING EVIDENCE
Unsuccessful.	
10. In October 2016, Plaintiff conducted a Market Walk with RSM Stanton. On that particular Market Walk, Plaintiff received a score of 92.	Moore Decl., ¶ 8, Ex. B
11. In December 2016, Moore conducted a Market Walk with Plaintiff. This was the first Market Walk Moore conducted with Plaintiff, and together they visited 3 stores.	Moore Decl., ¶ 9, Ex. B.
12. On his Market Walk in December 2016, Plaintiff scored a 60 – “Marginal”, which was just one point above an “Unsuccessful” rating.	Moore Decl., ¶ 9, Ex. B.
13. Some areas where Moore noted Plaintiff struggled included: 1) failing to have PPG product in specific locations; 2) failing to complete monthly goals and then representing on his checklist the goal had been completed; 3) failing to build relationships and communicate with key Lowe’s employees; and 4) failing to update Plaintiff’s Training Roster on each visit.	Moore Decl., ¶ 9, Ex. B.
14. A Training Roster is a list of Lowe’s associates that work at each of the stores within a TMs territory, and Training Rosters had to be updated by the TM after every visit to each store.	Moore Decl., ¶ 5.
15. In March 2017, Moore conducted another Market Walk with Plaintiff.	Moore Decl., ¶ 11, Ex. C.

UNCONTROVERTED FACTS	SUPPORTING EVIDENCE
<p>Moore and Plaintiff visited 3 stores in Plaintiff’s territory. Plaintiff scored a 58 – “Unsuccessful”.</p>	
<p>16. Plaintiff testified that following his March 2017 Market Walk, he received a verbal warning.</p>	<p>Lawson Depo., 71:3-8.</p>
<p>17. Following the March 2017 Market Walk, Moore sent Plaintiff an email identifying numerous shortcomings and areas for improvement. Some issues Moore identified included: 1) Plaintiff failed to contemporaneously update his Training Roster, and failed to include some of Plaintiff’s stores in his Training Roster altogether; 2) Plaintiff failed to establish relationships with key Lowe’s staff members; 3) Plaintiff was unfamiliar with a key tool that provided TMs with critical product information; and 4) Plaintiff failed to stock PPG product in required locations.</p>	<p>Moore Depo., 146:4-11, Plaintiff’s Exh. 38.</p>
<p>18. By mid-April 2017, the Company had received Plaintiff’s 12-month sales numbers through March 2017.</p>	<p>Moore Decl., ¶ 12.</p>
<p>19. For the twelve-month period of April 2016 to March 2017, Plaintiff only met his monthly goal four times. Plaintiff missed his goal for six consecutive months beginning in October 2016.</p>	<p>Lawson Depo.; 148:17-149:3, Exh. 9.</p>
<p>20. Because Plaintiff had missed 8 of the 12 months, the recommendation was to place Plaintiff on a Performance</p>	<p>Moore Decl., ¶ 12.</p>

UNCONTROVERTED FACTS	SUPPORTING EVIDENCE
Improvement Plan (“PIP”).	
21. Andy Mayhew, Human Resources Manager, and Moore discussed the PIP, and concluded that one reason a PIP was appropriate was because Plaintiff had failed to achieve his sales goal for six straight months.	Deposition of Andrew Mayhew (“Mayhew Depo.”), 54:6-55:19; Moore Depo., 137:14-138:4, 139:10-140:6, Plaintiff’s Exh. 37.
22. The decision to put Plaintiff on a PIP was ultimately made by Human Resources.	Kacsir Depo., 79:24-80:15; Moore Depo., 137:14-138:4, 139:10-140:6; 154:1-5, 224:4-9; Mayhew Depo.; 40:23-41:5; Plaintiff’s Exh. 37.
23. On April 21, 2017, Plaintiff and RSM Moore completed another Market Walk.	Lawson Depo., 69:11-70:17.
24. On his April 2017 Market Walk, Plaintiff scored a 46 – “Unsuccessful”. As with prior Market Walks, Plaintiff had failed to complete numerous national and regional monthly objectives, including 1) training Lowe’s associates and completing his Training Roster; 2) completing PPG product demonstrations and displays; and 3) obtaining the contact information of specific Lowe’s employees.	Lawson Depo., 148:17-149:4, Exh. 9.
25. At the conclusion of the Market Walk on April 21, 2017, Moore discussed Plaintiff’s performance issues with him.	Lawson Depo., 144:4-14.
26. PPG maintains an Ethics Helpline operated by a third-party	Declaration of David Duffy (“Duffy Decl.”), ¶ 4.

UNCONTROVERTED FACTS	SUPPORTING EVIDENCE
<p>1 administrator which provides PPG 2 employees a secure way to 3 anonymously report issues. 4</p>	
<p>5 27. PPG also maintains a Global Code Of 6 Ethics which advises employees how 7 to raise concerns through an online 8 feature called the Compliance Portal, 9 or through a toll-free phone number 10 called the Ethics Helpline, both of 11 which are operated by an independent third-party provider, Convercent.</p>	<p>Duffy Decl., ¶ 5.</p>
<p>12 28. Convercent receives and documents 13 ethics reports.</p>	<p>Deposition of Ian Dalton (“Dalton Depo.”), 42:4-7, 99:22-24.</p>
<p>14 29. On April 21, 2017, an anonymous 15 complaint was submitted to 16 Convercent’s online Compliance 17 Portal. The anonymous complaint 18 stated that on April 18, 2017, an 19 unidentified “supervisor request[ed] 20 territory managers purposely mis-mix 21 product (paint) for the purpose of 22 getting rid a of a slow moving 23 product off the shelves and selling it 24 at a reduced price.” The anonymous reporter was informed that, “Neither Convercent Staff nor your organization will receive your contact information.”</p>	<p>Dalton Depo., 49:14-49:22, Plaintiff’s Exh. 2; Lawson Depo., 154:19-25.</p>
<p>25 30. The anonymous reporter specifically 26 requested to remain completely anonymous.</p>	<p>Lawson Depo., 149:21-150:5, Exh. 10.</p>
<p>27 31. Using the Compliance Portal, PPG 28 confirmed and informed the</p>	<p>Lawson Depo., 149:21-150:5, Exh. 10; Duffy Depo., 106:21-107:4.</p>

UNCONTROVERTED FACTS	SUPPORTING EVIDENCE
<p>anonymous reporter that PPG had received and was reviewing the anonymous report.</p>	
<p>32. On April 26, 2017, PPG followed up with the anonymous reporter and requested more information regarding where the alleged directive to mis-tint paint occurred since it had no store in Long Beach, CA.</p>	<p>Duffy Depo., 106:21-107:4.</p>
<p>33. The anonymous reporter failed to provide any additional information, and PPG closed the investigation.</p>	<p>Lawson Depo., 149:21-150:5, Exh. 10; Duffy Depo., 58:6-13, 59:12-15, 106:21-107:4.</p>
<p>34. Duffy was unaware that Plaintiff made the anonymous complaint.</p>	<p>Duffy Depo., 57:19-23.</p>
<p>35. Plaintiff testified he submitted the April 2017 complaint anonymously because he did not want Moore, or anyone else at PPG to know he was submitting a report.</p>	<p>SAC ¶¶ 8, 15.; Lawson Depo.; 154:19-155:-13, 157:3-5.</p>
<p>36. Plaintiff testified he has no reason to believe Moore knew Plaintiff made the anonymous April 2017 report.</p>	<p>Lawson Depo.; 170:3-7.</p>
<p>37. Plaintiff admits he <i>told no one</i> at PPG he submitted the anonymous April 2017 report.</p>	<p>Lawson Depo.; 169:25-170:2.</p>
<p>38. A PIP was delivered to Plaintiff on May 12, 2017.</p>	<p>Lawson Depo., 73:21-25, 148:17-149:4, Exh. 9.</p>
<p>39. The goal of Plaintiff’s PIP was to help Plaintiff improve his performance and help Plaintiff meet</p>	<p>Moore Depo., 156:22-157:2, Lawson Depo., 148:17-149:4, Exh. 9, Kacsir Depo., 80:22-81:10.</p>

UNCONTROVERTED FACTS	SUPPORTING EVIDENCE
<p>the expectations and requirements of his role as a TM.</p>	
<p>40. Plaintiff’s PIP identified numerous deficiencies in his performance, including: 1) missing 8 of the last 12 months in sales; 2) inaccuracies in a Training Roster Plaintiff submitted on May 1, 2017; 3) Plaintiff repeatedly exceed his allotted five hours of Admin Time per week without pre-approval from his RSM; 4) Plaintiff failed to complete monthly regional and national objectives; and 5) Plaintiff scored two consecutive “Unsuccessful” Market Walks on March 15, 2017, and April 21, 2017.</p> <p>The PIP provided the expected measurable goals that Plaintiff was to accomplish, including: 1) meeting his sales goal for Q2, 2) maintaining an accurate training roster; 3) keeping admin time to 5 hours, absent prior approval; 4) timely complete regional and national initiatives; and 5) have a “successful” Market Walk “prior to the end of the PIP to continue employment.”</p> <p>Plaintiff’s PIP was set to expire on July 7, 2017.</p>	<p>Lawson Depo., 148:17-149:4, Exh. 9.</p>
<p>41. On June 15, 2017, an anonymous complaint was submitted to PPG’s Ethics Helpline. The Helpline is managed by Convercent, who intakes the information and then passes along</p>	<p>Lawson Depo., 162:18-163:12, 164:24-165:22, Exhs. 12, 13.</p>

UNCONTROVERTED FACTS	SUPPORTING EVIDENCE
<p>1 certain details/information to PPG.                      2 The June 15, 2017, anonymous                      3 complaint was submitted through                      4 Convercent’s call center and the                      5 anonymous reporter stated a regional                      6 manager asked TMs to purposely                      7 mis-tint paint, and referenced a prior                      8 complaint submitted in April 2017.                      9 The anonymous reporter indicated                      10 they wanted to remain anonymous                      11 toward their organization, and that he                      12 or she had not reported the incident                      13 in question to any supervisors or                      14 management.</p>	
<p>15 42. Plaintiff testified he understood the                      16 person he submitted the complaint to                      17 was employed by a third-party, and                      18 was not a PPG employee.</p>	<p>Lawson Depo.; 160:3-5, 16-18162:10-17,                      164:8-10.</p>
<p>19 43. When PPG received the June 2017                      20 complaint, it did not receive the                      21 identity of the anonymous reporter,                      22 and Plaintiff admitted he has no                      23 evidence to the contrary.</p>	<p>Duffy Decl., ¶ 8, Lawson Depo., 162:1-4..</p>
<p>24 44. PPG commenced an investigation                      25 into the June 2017 report, led by                      26 Duffy, who was assisted by John                      27 “Ian” Dalton (“Dalton”), PPG’s                      28 Forensic Audit and Loss Prevention                      Specialist.</p>	<p>Duffy Depo., 14:1-21, Dalton Depo.,                      10:19-22.</p>
<p>45. As part of the investigation, Duffy                      asked if the anonymous reporter                      would speak with PPG regarding the                      information in the anonymous                      complaint.</p>	<p>Lawson Depo.; 164:14-165:13, Exhs. 12,                      13; Duffy Depo., 9:12-17.</p>

UNCONTROVERTED FACTS	SUPPORTING EVIDENCE
<p>46. The anonymous reporter agreed to speak with Duffy and provided PPG with a phone number. PPG confirmed the conversation would be confidential.</p>	<p>Lawson Depo., 165:2-22; Exh. 13.</p>
<p>47. On or around June 29, 2017, Duffy spoke with the anonymous reporter for about 15-20 minutes.</p>	<p>Lawson Depo.; 168:14-17.</p>
<p>48. During the call with Duffy, Plaintiff does not remember identifying himself to Duffy, and Duffy never referred to Plaintiff by name.</p>	<p>Lawson Depo.; 168:18-23.</p>
<p>49. Duffy testified that to his knowledge, he did not know he was speaking to Plaintiff.</p>	<p>Duffy Depo., 16:10-15, 18:20-19:4, 20:7-10, 24:24-25:5.</p>
<p>50. After Duffy spoke with the anonymous reporter, he emailed Dalton and Alejandro Sanchez Monjaraz, Global Forensic Audit Director, and stated: The reporter was kind enough to provide a phone number on the posted message last night. I spoke to the reporter this afternoon. The reporter did not provide a name – since they were still concerned about remaining anonymous..I advised the caller to keep us informed if anything changed or if new information comes to light.</p>	<p>Dalton Depo., 62:6-63:16, Plaintiff's Exh. 4.</p>
<p>51. On July 6, 2017, Dalton met with Moore to interview him regarding the June 2017 Complaint.</p>	<p>Moore Depo., 40:19-22; Dalton Depo., 50:24-51:7, Plaintiff's Exh. 3.</p>
<p>52. Moore understood his conversation</p>	<p>Moore Depo., 46:21-25, 94:3-5.</p>



UNCONTROVERTED FACTS	SUPPORTING EVIDENCE
with Dalton was confidential.	
53. Dalton told Moore PPG's investigation was initiated to review expensed-out product, but never revealed to Moore that an anonymous complaint had been filed.	Dalton Depo., 38:16-39:6; Moore Depo., 40:9-18.
54. As part of the investigation, Dalton also interviewed all fourteen TMs that reported directly to Moore.	Dalton Depo., 50:24-51:7; Plaintiff's Exh. 3.
55. Dalton interviewed Kacsir, who did not know the extent of the investigation, or that it was initiated because PPG had received an anonymous complaint.	Kacsir Depo., 47:22-48:8, 50:25-51:10, 55:25-56:3, 63:9-17, 63:23-64:4, 71:14-21.
56. Moore did not know Dalton interviewed anyone else during the Company's investigation, including Kacsir or the fourteen TMs that reported to Moore.	Moore Depo., 47:9-15, 64:9-12, 79:14-80:3.
57. Plaintiff never told Moore or anyone else at PPG he submitted the June 2017 complaint.	Lawson Depo.; 169:15-24.
58. Dalton did not learn that Plaintiff was the anonymous reporter until after this lawsuit was filed.	Dalton Depo., 37:19-23, 63:25-64:5, 75:6-10.
59. On or around June 29, 2017, Plaintiff spoke with Mayhew and said he felt Moore was not properly overseeing his PIP.	Lawson Depo.; 146:16-25, Mayhew Depo., 12:23-13:3, 49:12-16, 50:17-24.
60. Plaintiff did not meet his monthly	Moore Depo., 223:21-224:20, Plaintiff's

UNCONTROVERTED FACTS	SUPPORTING EVIDENCE
<p>sales goal for April, May and June 2017, scoring 95.4%, 94.4% and 86.1%, respectively.</p>	<p>Exh. 46.</p>
<p>61. On July 13, 2017, Plaintiff completed another multi-day Market Walk with Moore. The Market Walk was scored a 66 – “Marginal” – which was higher than his previous three Market Walks with Moore, but did not meet the PIP expectation of “Successful.”</p>	<p>Lawson Depo., 49:13-50:11, Exh 1.</p>
<p>62. During the Market Walk Moore told Plaintiff he would see if he could get Plaintiff’s PIP extended for him.</p>	<p>Lawson Depo., 91:11-25.</p>
<p>63. Although Plaintiff had not met the requirements of the PIP, Mayhew, Kacsir, and Moore decided to extend it for an additional 30 days because Plaintiff had shown some improvement.</p>	<p>Lawson Depo., 91:11-92:17, 146:16-147:3, Mayhew Depo., 58:24-59:10, 79:1-80:8.</p>
<p>64. Moore supported extending the PIP because he recognized that he had not been able to check-in with Plaintiff as frequently as intended, and did not take the decision to terminate Plaintiff lightly.</p>	<p>Moore Decl., ¶ 13.</p>
<p>65. To determine whether Plaintiff had successfully met his PIP, Kacsir asked Moore to conduct an additional Market Walk during Plaintiff’s last week of his extended PIP.</p>	<p>Moore Depo., 202:6-203:12, Plaintiff’s Exh. 43.</p>
<p>66. Another Market Walk with Plaintiff concluded on August 17, 2017, with Plaintiff scoring a 40 –</p>	<p>Lawson Depo., 103:10-19, 137:10-138:20, Exhs. 6, 7.</p>

UNCONTROVERTED FACTS	SUPPORTING EVIDENCE
“Unsuccessful”.	
67. Both Moore and Kacsir attended this Market Walk.	Lawson Depo., 59:11-14.
68. Some issues identified on Plaintiff’s August 2017 Market Walk were: 1) Plaintiff only visited his second highest volume store once in over five weeks; 2) Plaintiff achieved no national or regional objectives at three of his stores; 3) Plaintiff failed to train associates according to a monthly objective; 4) Plaintiff was not tracking sales of at least one PPG product; 5) Plaintiff failed to setup product displays; and 6) Plaintiff failed to update his Training Roster and his Training Roster had an inaccuracy in it.	Lawson Depo., 103:10-19, Exh 6; Moore Depo., 216:14-217:7.
69. While on this Market Walk with Moore, Plaintiff failed to adhere to PPG’s safety guidelines, and Plaintiff later violated Company policy when he was using his cell phone while driving.	Lawson Depo., 115:2-7.
70. Kacsir reviewed Plaintiff’s August 2017 Market Walk score and, based on what Kacsir witnessed during the Market Walk, Kacsir believed that Plaintiff’s August 2017 Market Walk was a fairly scored.	Kacsir Depo., 133:7-10.
71. Following the Market Walk, Moore recommended that the Company proceed with terminating Plaintiff’s employment.	Moore Decl., ¶14.

UNCONTROVERTED FACTS	SUPPORTING EVIDENCE
72. Plaintiff was terminated on September 6, 2017.	Lawson Depo, 138:21-139:18; Exh. 8.
73. Neither Duffy nor Dalton, the two individuals who lead the investigation into the June 2017 anonymous complaint, were involved in the decision to terminate Plaintiff.	Duffy Depo., 33:21-34:11; Dalton Depo., 64:9-16.
74. Moore, Kacsir and Mayhew first learned Plaintiff submitted a complaint to the ethics hotline after Plaintiff filed this lawsuit.	Moore Depo., 70:1-7; Kacsir Depo., 69:16-70:4; Mayhew Depo., 35:9-14.
75. According to Plaintiff, <i>every</i> Market Walk on which Moore scored him – both <i>before and after</i> the April 2017 complaint –was unfair.	Lawson Depo., 65:8-66:23.
76. Plaintiff confirmed Moore did not make any comments to him or say anything to him that would give him any indication as to why Moore might be unfairly scoring Plaintiff’s Market Walks.	Lawson Depo., 67:11-14.
77. During a conversation with Mayhew about the discrepancies in his training roster, Plaintiff admitted he did not do the training reflected in his roster, and acknowledged he knew such action was falsifying company documents.	Mayhew Depo., 19:14-20:17;
78. During his deposition Plaintiff denied that he “falsified” his training roster, but he admitted that he inputted information incorrectly, and,	Lawson Depo., 126:4-128:6; 129:17-130:25; 135:23-136:12.

UNCONTROVERTED FACTS	SUPPORTING EVIDENCE
<p>1 sometimes, his training rosters were                  2 wrong. More specifically, Plaintiff                  3 admitted his training roster and his                  4 store log-in reports may have had                  5 discrepancies such that his training                  6 roster showed he trained Lowe’s                  7 employees when he was not even                  8 present in that particular Lowe’s                  9 store. Plaintiff blamed these                  discrepancies on the “human factor.”</p>	
<p>10 79. PPG provided Plaintiff with a                  11 company iPhone and a company                  12 tablet.</p>	<p>Lawson Depo., 51:11-14, 207:19-208:8,                  Moore Depo., 130:6-20, Plaintiff’s Exh.                  36.</p>
<p>13 80. Plaintiff admitted his iPhone operated                  14 as a mobile hot spot so if he needed                  15 to access the internet from his tablet                  16 – whether he was out working with a                  17 customer or while working at home –                  he could always use his iPhone to                  connect his tablet to the internet.</p>	<p>Lawson Depo., 207:23-208:8.</p>
<p>18 81. Plaintiff admitted his company-                  19 issued phone served as a mobile hot                  20 spot during his entire employment                  with PPG.</p>	<p>Lawson Depo., 208:9-13.</p>
<p>21 82. PPG did not maintain a policy that                  22 required Plaintiff to have home                  23 internet, nor did PPG require Plaintiff                  24 to have home internet to fulfill his                  work duties.</p>	<p>Lawson Depo., 209:4-7.</p>
<p>25 83. Plaintiff understood TMs were                  26 expected to work 45 hours per week                  27 – forty regular hours and five                  28 overtime hours.</p>	<p>Lawson Depo., 183:14-19.</p>

UNCONTROVERTED FACTS	SUPPORTING EVIDENCE
<p>84. PPG maintained a policy that TMs could not work over 45 hours or over six days in any workweek without prior approval from the TM’s RSM.</p> <p>TMs were required to accurately record all of the time – including regular time and overtime - they worked each day into PPG’s Time Management System (“TMS”).</p> <p>TMs are required to “carefully review [their] time entries and certify that the reported hours are accurate and that [they] have not reported more or less time than [they] actually worked.”</p>	<p>Moore Depo., 121:20-122:4, Exh., 32, at pp. 63, 65.</p>
<p>85. Plaintiff knew he could account for all of the time he worked in PPG’s TMS.</p>	<p>Lawson Depo., 172:19-23.</p>
<p>86. Plaintiff understood working off-the-clock was prohibited and he could be disciplined for doing it.</p>	<p>Lawson Depo., 201:24-202:5.</p>
<p>87. Plaintiff admits Moore never denied a request by Plaintiff to work over 45 hours in a week.</p>	<p>Lawson Depo., 175:15-17, 183:20-22.</p>
<p>88. Plaintiff admits whenever he recorded over five hours of overtime in a week, sometimes without prior permission, he would be paid for those hours.</p>	<p>Lawson Depo., 183:20-25 196:11-17.</p>
<p>89. Plaintiff was never disciplined for recording over five hours of overtime in a week.</p>	<p>Lawson Depo., 184:1-3, 196:18-20.</p>

	<b>UNCONTROVERTED FACTS</b>	<b>SUPPORTING EVIDENCE</b>
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3	90. Plaintiff admits Stanton told him that	Lawson Depo., 187:10-189:5.
4	he needed to record his time	
5	associated with performing	
6	demonstrations for contractors.	
7	91. Plaintiff admits he told no one at	Lawson Depo., 190:7-192:12.
8	PPG, including Moore, he prepared	
9	for Market Walks off-the-clock.	
10	92. Plaintiff admits he never requested to	Lawson Depo., 172:19-23, 195:18-23, 196:11-15, 201:24-202:5.
11	work overtime to prepare for Red	
12	Vest Ready trainings, even though he	
13	never had an overtime request	
14	denied, and he sometimes worked	
15	overtime without permission.	
16	93. No one from PPG ever instructed	Lawson Depo., 201:14-23.
17	Plaintiff to work off-the-clock, and	
18	Plaintiff never told Moore he worked	
19	off-the-clock in connection with any	
20	Pro events.	
21	94. Plaintiff testified he doesn't recall	Lawson Depo., 184:4-12.
22	ever telling anyone at PPG, including	
23	Moore, he worked off-the-clock to	
24	complete the "stain hut" project.	
25	95. Moore harbored no ill-will towards	Moore Decl., ¶16.
26	Plaintiff.	

Based on the foregoing Uncontroverted Facts, the following Conclusions of Law should be made:

**CONCLUSIONS OF LAW**

1. Plaintiff's First Cause of Action for retaliation in violation of public

1 policy fails as a matter of law because Plaintiff cannot establish a *prima facie* case of  
2 retaliation.

3 2. Plaintiff’s First Cause of Action for retaliation in violation of public  
4 policy fails as a matter of law because PPG terminated him for a legitimate business  
5 reason, which Plaintiff cannot prove was pretextual.

6 3. Plaintiff’s Second Cause of Action for wrongful termination in violation  
7 of public policy fails as a matter of law because he cannot establish a *prima facie* case  
8 of retaliation.

9 4. Plaintiff’s Second Cause of Action for wrongful termination in violation  
10 of public policy fails as a matter of law because PPG terminated Plaintiff for a  
11 legitimate business reason, which Plaintiff cannot prove was pretextual.

12 5. Plaintiff’s Third Cause of action for unpaid wages fails because Plaintiff  
13 admitted he did not comply with PPG’s requirement to record all time worked, and  
14 cannot show that PPG had knowledge of his alleged unworked time.

15 6. Plaintiff’s Fourth Cause of Action for unpaid wages fails because  
16 Plaintiff admitted he did not comply with PPG’s requirement to record all time  
17 worked, and cannot show that PPG had knowledge of his alleged unworked time.

18 7. Plaintiff’s Fifth Cause of Action for failure to reimburse business  
19 expenses fails because Plaintiff did not incur any necessary expenditures or losses in  
20 direct consequence of the discharge of his duties.

21 8. Plaintiff’s Sixth Cause of Action for Violation of California Business &  
22 Professions Code § 17200 *et seq.* fails because it is entirely derivative of Plaintiff’s  
23 claim for unpaid wages and business expenses and those underlying claims fail.

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1           9.     Plaintiff is not entitled to punitive damages as a matter of law.

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3     Dated:   May 13, 2019

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*/s/ Karin M. Cogbill* \_\_\_\_\_

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**STATE OF CALIFORNIA**  
Supreme Court of California

**PROOF OF SERVICE**

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Supreme Court of California

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Lower Court Case Number:

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EXHIBITS	19-55802_Appellant_EOR_Vol1
EXHIBITS	19-55802_Appellant_EOR_Vol2_part1
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EXHIBITS	19-55802_Appellant_EOR_Vol3_part2(exhibit A_part1)
EXHIBITS	19-55802_Appellant_EOR_Vol3_part2(exhibit A_part2)
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United States Court of Appeals for the Ninth Circuit

Law Firm