

S266001

No. 19-55802

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

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

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

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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.

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

**DECLARATION OF CLARENCE
MOORE IN SUPPORT OF
DEFENDANT PPG
ARCHITECTURAL FINISHES,
INC.'S 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

1 I, Clarence Moore, hereby declare and state as follows:

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

4 2. I was a Regional Sales Manager (“RSM”) for PPG Architectural
5 Finishes, Inc. from February 2016 to March 2018. PPG manufactures and sells interior
6 and exterior paints, stains, caulks, repair products, adhesives and sealants for
7 homeowners and professionals. As an RSM, I managed Territory Managers (“TM”)
8 throughout various states, including Arizona, Colorado and California.

9 3. TMs manage PPG’s sales at designated Lowe’s stores within their
10 respective territory.

11 4. One of the key metrics of success as a TM is the ability to meet
12 monthly sales goals. PPG sets monthly sales goal based on the total of the sales for that
13 TM’s specific Lowe’s stores in the previous year. For example, the sales goal for
14 December 2016 is the equivalent to the total sales for those same stores in December
15 2015. A TM only needs to sell the same amount of PPG product as was sold in that
16 same month the previous year to meet their goal.

17 5. TMs are responsible for accurately maintaining a Training Roster.
18 The Training Roster is a list of Lowe’s associates that work at each of the stores within
19 a TM’s territory, and then the applicable date(s) the TM provided training to the Lowe’s
20 associate on PPG products. To ensure that the Training Roster was current, TMs were
21 expected to update it after every visit to each store.

22 6. Since TMs work remotely in the field, the Company also used
23 Market Walks as a means for a RSM to coach, train and measure the performance of
24 TMs against defined criteria.

25 7. Market Walks are scored in these categories: 1) Sales Results; 2)
26 Sales Operations Checklist; 3) Sales Planning; 4) Relationships; 5) Merchandizing; 6)
27 Sales Tactics; 7) Pro Sales; 8) Administrative Duties; 9) Safety; and 10) Bonus Points.

28 8. In October 2016, Plaintiff conducted a Market Walk with RSM Paul

1 Stanton. Mr. Stanton was Plaintiff's RSM prior to me. On the October 2016 Market
2 Walk, Plaintiff received a score of 92. A true and correct copy of Plaintiff's October
3 2016 Market Walk is attached hereto as **Exhibit A**.

4 9. In December 2016, I completed my first Market Walk with Plaintiff.
5 Plaintiff's previous RSM, Mr. Stanton was no longer with the Company, and I was
6 temporarily overseeing Southern California, including Plaintiff's territory. On this
7 Market Walk, we visited three stores in Plaintiff's territory. Plaintiff scored a 60 –
8 "Marginal" – on this Market Walk, which was just one point above an "Unsuccessful"
9 rating. A true and correct copy of Plaintiff's December 2016 Market Walk is attached
10 hereto as **Exhibit B**.

11 10. Around early-2017, my territory officially changed to include
12 Southern California. This included Plaintiff's territory.

13 11. In March 2017, I conducted another Market Walk with Plaintiff. On
14 this Market Walk, we visited three stores. On his March 2017 Market Walk, Plaintiff
15 scored a 58 – "Unsuccessful". A true and correct copy of Plaintiff's October 2016
16 Market Walk is attached hereto as **Exhibit C**.

17 12. In or around mid-April 2017, I received the 12-month sales numbers
18 for each of my TMs from April 2016 through March 2017. Because Plaintiff missed 8
19 of the 12 months, the recommendation was to place Plaintiff on a Performance
20 Improvement Plan ("PIP").

21 13. Towards the conclusion of the initial 60 day period of Plaintiff's
22 PIP, I discussed with Mr. Mayhew and Mr. Kacsir whether or not to extend Plaintiff's
23 PIP an additional 30 days. I supported extending the PIP because I recognized that I
24 had not been able to check-in with Plaintiff as frequently as I intended. I supported
25 Plaintiff having additional time to complete his PIP as I did not take the decision to
26 terminate Plaintiff lightly.

27 14. Following the August 2017 Market Walk, I recommended that the
28 Company proceed with terminating Plaintiff's employment because he had failed to

1 meet his PIP.

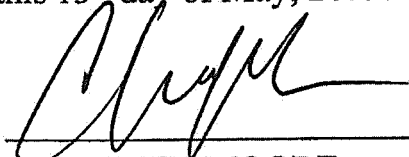
2 15. When I was a RSM, one of the TMs that reported to me was Laura
3 Sanchez. Ms. Sanchez remained employed with PPG as a TM until Lowe's cancelled
4 its contract with PPG in March 2018.

5 16. Neither during his employment, or afterwards, have I harbored any
6 ill-will or hatred towards Plaintiff.

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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 Phoenix, Arizona, this 13th day of May, 2019.



CLARENCE MOORE

FIRMWIDE:164328026.1 034801.2166

EXHIBIT A

**THIS DOCUMENT WAS PRODUCED
IN NATIVE FORMAT**

File Type: Microsoft Excel 2013 Workbook

2016 Market Walk Report

10.6.16. Wally Lawson Market Walk #2		Available Points	Actual Points	Store 56	Store 2	Store 3	Store 4785	Store 5773	Store 6	Comments
Sales Results										
2016 GOALS		TM YTD	REGION YTD	NATION YTD	TM YTD LAST M WALK	COMMENTS				
Total Paint Sales	13.0%	13.5% 1.5%	4.8% 7.4%	4.8% +7.3%	7%					
Total Stain Sales	1.0%	12%	12%	11%	7%					
Total LN/Homax Sales	1.0%	NA	3.1%	3.1	NA					
Total Comp	6.0%	6%	1%	1%	9%					
Sales Operations Checklist										
Full (brochures & cards), clean, & all rights working (or addressed)	Yes: 3 Points No: 0 Points	3	Y	Y						
All current POS/Marketing Materials displayed	Yes: 3 Point No: 0 Points	3	Y	Y						
Inventory issues addressed using Inventory Worksheets/Selected Items Reports (Observe TM in process)	Yes: 3 Points No: 0 Points	3	Y	N		Please work with Rob Walker's NEW inventory Request sheet and Genesis to gain familiarity.				
LIQUID NAILS:										
Products cross merchandised in all directed locations	Yes: 3 Points (3 points means all stores)	3	Y	Y		Great and imaginative finding of spots for cross merchandising				
Accurate Training Roster updated every visit & exported to RM monthly by the 1st of each month	Yes: 3 Points No: 0 Points Verify accuracy of roster in each store	3	Y	Y		Nice progress since your last market walk Wally.				
Total Store Operations Checklist		15	13							
Sales Planning										
Current sales reports analyzed & Monthly Action Plan (MAP) utilized during store calls	Yes: 10 Points No: 0 Points	10	Y	Y		Nice work documenting progress as well as notes on your MAPs.				
All Stores visited as specified by RM; Majority of time in top volume stores	Yes: 3 Points No: 0 Points Review data from last 4 weeks	3	Y	Y						
Meeting requirements for Saturday store visits; Majority of time in top volume stores	Yes: 2 Points No: 0 Points Review data from prior qtr.	2	Y	Y						
Total Planning and Operations		15	15							
Relationships										
Monthly Market Director communication (CC RM)	5: Proficient to 0: Not meeting expectations	5	4	0	0	You have made great inroads with your MD. Congrats on the success and penetration of this level of the management team.				
Biannual Market Director Meetings with recap to MD (CC RM)	5: Proficient to 0: Not meeting expectations	5	3	0	0	Keep me in the loop on these meetings and communications monthly as I am looking forward to joining you whenever possible.				
Monthly Store Manager/ASM Business Review (Observe 1 during market walk)	5: Proficient to 0: Not meeting expectations	5	4	0	0					
Quarterly Meetings with PSI	5: Proficient to 0: Not meeting expectations	5	5	0	0					
TOTAL RELATIONSHIP POINTS		20	16							
Merchandising										
ENDCAPS: Corporate Endcap(s)/Drop Zone/Pods Set by Assigned Deadline(s)	Yes: 1 Point No: 0 Points (1 point means all stores)	1	1	Y	Y					
DESK/CORRAL: Equal representation between Olympic and competitive brands inside paint desk/paint coral	Yes: 5 Points No: 0 Points (5 points means all stores)	5	5	Y	Y					
STACK OUTS Ensure promotional stack outs are set on a timely basis with correct signing	Yes: 4 Points No: 0 Points (4 points means all stores)	4	2	Y	Y					
TOTAL MERCHANDISING POINTS		10	8							

2016 Market Walk Report

Sales Tactics									
Point Dept. Trained on ALL Olympic products - Tested for product knowledge	Yes: 5 Points No: 0 Points	5	Y	Y	Y	Y	Y	Y	5
Ask EVERY associate to verify current approved Lowes Training observed for effectiveness and completed per expectations	Yes: 5 Points No: 0 Points	5	Y	Y	Y	Y	Y	Y	5
Hands On training observed for sales effectiveness (Min. 1 per market walk)	Yes: 5 Points No: 0 Points	5	Y	Y	Y	Y	Y	Y	5
Outside the Paint department Training observed for effectiveness - PSI, Pro Sales (Min. 1 per market walk)	Yes: 2 Points No: 0 Points	2	Y	Y	Y	Y	Y	Y	2
Observation for effectiveness of the end user (consumer/pro) sales process	Yes: 3 Points No: 0 Points	3	Y	Y	Y	Y	Y	Y	3
TOTAL TRAINING POINTS		20							20
Pro Sales									
Contact Sheet Available at Pro Desk	Yes: 1 Point No: 0 Points	1	Y	Y	Y	Y	Y	Y	1
Sales Tools at Pro Desk (All Fan Decks, etc.)	Yes: 2 Points No: 0 Points	2	Y	Y	Y	Y	Y	Y	2
Regional Pro Contacts organizational system utilized and updated	Yes: 2 Point No: 0 Points	2	Y	Y	Y	Y	Y	Y	2
Observe "Elevator Speech"/Training at Pro Desk for Effectiveness	Yes: 5 Points No: 0 Points	5	Y	Y	Y	Y	Y	Y	5
TOTAL PRO SALES POINTS		10							10
Administrative Duties									
All deadlines proactively met and online training completed by assigned deadlines	Yes: 2 Points No: 0 Points	2	2	1	1	1	1	1	2
Admin Time less/equal 5 hours/week	Yes: 1 Point No: 0 Points	1	1	Y	Y	Y	Y	Y	1
Comprehensive market updates provided during monthly communication w/RM (Best Practices, 1 on 1 calls, monthly letter updates)	Yes: 2 Points No: 0 Points	2	2	Y	Y	Y	Y	Y	2
TOTAL ADMINISTRATIVE DUTIES POINTS		5							5
									Great improvement with keeping to all required due dates.
									Keep the flow of information coming Wally and please interject into our conference calls your best practices used in your daily store dealings.
Safety									
Completes All Assigned Safety Courses by Assigned Deadline(s)	Yes: 1 Point No: 0 Points	1	1	Y	Y	Y	Y	Y	1
Has All Safety Equipment During Market Walk	Yes: 1 Point No: 0 Points	1	1	Y	Y	Y	Y	Y	1
PPG & Lowes Safety Guideline Adherence	Yes: 3 Points No: 0 Points	3	3	Y	Y	Y	Y	Y	3
Incurred Preventable Safety Incident(s)	Deduct 5 Points	-5	0	0	0	0	0	0	
TOTAL SAFETY POINTS		5							5
Bonus Points									
Regional Manager Discretion	i.e. Open territory coverage, Lead regional project, Large Pro success, etc.	5 bonus points							5
TOTAL BONUS POINTS		0							0
TOTAL MARKET WALK POINTS		100							92
2016 MARKET WALK RECAP									
	Date:	Q1	Q2	Q3	Q4				
			7/15/16	10/6/16		92			
									ADDITIONAL MARKET WALKS

EXHIBIT B

**THIS DOCUMENT WAS PRODUCED
IN NATIVE FORMAT**

File Type: Microsoft Excel 2013 Workbook

Date: 12/30/16 TM Name: Wally Lawson		Available Points	Actual Points	773	785	1753	Comments
Sales Results							
2016 GOALS		TM YTD	REGION YTD	NATION YTD	TM YTD LAST M WALK	COMMENTS	
Interior Paint Sales	13.0%	4%	18%	15%			
Exterior Paint Sales	13.0%	-17%	-12%	1%			
Total Stain Sales	1.0%	-14%	-12%	-16%			
Total Liquid Nails	1.0%	-9%	3%	-4%			
Total Comp	6.0%	-6%	2%	-3%			
Sales Operations Checklist							
Full (Brochures & Cards), Clean, & all lights working (or addressed)	Yes: 3 Points No: 0 Points	3	3				
All current POS/Marketing Materials displayed	Yes: 3 Point No: 0 Points	3	3				
Inventory issues addressed using Inventory Worksheets/Selected Items Reports (Observed TM in process)	Yes: 3 Points No: 0 Points	3	0				
LIQUID NAILS: Products cross merchandised in all directed locations	Yes: 3 Points No: 0 Points (3 points means all stores)	3	0				Not being worked.
Accurate Training Roster updated every visit & exported to RM monthly by the 1st of each month	Yes: 3 points No: 0 Points Verify accuracy of roster in each store	3	0				Needs to update on "every visit" to ensure that all associates are accounted for and input correctly.
Total Store Operations Checklist		15	6				
Sales Planning							
Current sales reports analyzed & Monthly Action Plan (MAP) utilized during store calls	Yes: 10 Points No: 0 Points	10	0				MAP's were not completed in any store with items being checked off that were complete.
All Stores visited as specified by RM; Majority of time in top volume stores	Yes: 3 Points No: 0 Points Review data from last 4 weeks	3	3				
Meeting requirements for Saturday store visits; Majority of time in top volume stores	Yes: 2 Points No: 0 Points Review data from prior qtr.	2	2				
Total Planning and Operations		15	5				
Relationships							
Monthly Market Director communication (CC RM)	5: Proficient to 0: Not meeting expectations	5	0				I have not been receiving CC's on emails to MD on a monthly basis.
Biannual Market Director Meetings with recap to MD (CC RM)	5: Proficient to 0: Not meeting expectations	5	5				
Monthly Store Manager/ASM Business Review (Observe 1 during market walk)	5: Proficient to 0: Not meeting expectations	5	0				Didn't even know ASM 2 name when asked in store.
Quarterly Meetings with P51	5: Proficient to 0: Not meeting expectations	5	0				
TOTAL RELATIONSHIP POINTS		20	5				
Merchandising							
ENDCAPS: Corporate Endcap(s)/Drop Zone/Pods Set by Assigned Deadline(s)	Yes: 1 Point No: 0 Points (1 point means all stores)	1	1				
DESK/CORRAL: Equal representation between Olympic and competitive brands inside paint desk/paint corral	Yes: 5 Points No: 0 Points (5 points means all stores)	5	5				
STACK OUTS Ensure promotional stack outs are set on a timely basis with correct signing	Yes: 4 Points No: 0 Points (4 points means all stores)	4	0				No stackouts were present in any of the stores we walked.
Unauthorized Signage/Demos/Displays Found	Automatically Fail Market Walk	Fail Mkt Walk					
TOTAL MERCHANDISING POINTS		10	6				

Date: 12/30/16 TM Name: Wally Lawson		Available Points	Actual Points	773	785	1753	Comments			
Sales Tactics										
Paint Dept. Trained on ALL Olympic products Tested for product knowledge	Yes: 5 Points No: 0 Points Ask EVERY associate to verify	5	5							
Current approved Lowes Training observed for effectiveness and completed per expectations	Yes: 5 Points No: 0 Points	5	5							
Hands On training observed for sales effectiveness (Min. 1 per market walk)	Yes: 5 Points No: 0 Points	5	5							
"Outside the Paint Department" Training observed for effectiveness - PSI, Pro Sales (Min. 1 per market walk)	Yes: 2 Points No: 0 Points	2	2							
Observation for effectiveness of the end user (consumer/pro) sales process	Yes: 3 Points No: 0 Points	3	3							
TOTAL TRAINING POINTS		20	20							
Pro Sales										
Contact Sheet Available at Pro Desk	Yes: 1 Point No: 0 Points	1	1							
Sales Tools at Pro Desk (All Fan Decks, etc.)	Yes: 2 Points No: 0 Points	2	2							
Regional Pro Contacts organizational system utilized and updated	Yes: 2 Point No: 0 Points	2	0							
Observe "Elevator Speech"/Training at Pro Desk for Effectiveness	Yes: 5 Points No: 0 Points	5	5							
TOTAL PRO SALES POINTS		10	8							
Administrative Duties										
All deadlines proactively met and online training completed by assigned deadlines	Yes: 2 Points No: 0 Points	2	2							
Admin Time less/equal 15 hours/week	Yes: 1 Point No: 0 Points	1	1							
Comprehensive market updates provided during monthly communication w/RM (Best Practices, 1 on 1 calls, monthly letter updates)	Yes: 2 Points No: 0 Points	2	2							
TOTAL ADMINISTRATIVE DUTIES POINTS		5	5							
Safety										
Completes All Assigned Safety Courses by Assigned Deadline(s)	Yes: 1 Point No: 0 Points	1	1							
Has All Safety Equipment During Market Walk	Yes: 1 Point No: 0 Points	1	1							
PPG & Lowes Safety Guideline Adherence	Yes: 3 Points No: 0 Points	3	3							
Incurred Preventable Safety Incident(s)	Deduct 5 Points	-5								
TOTAL SAFETY POINTS		5	5							
Bonus Points										
Regional Manager Discretion	i.e. Open territory coverage, Lead regional project, Large Pro success, etc.	5 bonus points								
TOTAL BONUS POINTS		0								
TOTAL MARKET WALK POINTS		100	60							
2016 MARKET WALK RECAP										
		Date:	Q1	Date:	Q2	Date:	Q3	Date:	Q4	ADDITIONAL MARKET WALKS

2016 Market Walk Report

Date: 12/30/16 TM Name: Wally Lawson		Available Points	Actual Points	773	785	1753	Comments	
AREAS OF OPPORTUNITY/FOLLOW UP:								
Exceptional 90-100*								
Excels 80-90								
Successful 70-80								
Marginal 60-70 (Coaching and 60 day follow up Required)								
Unsuccessful Below 60 (Coaching and 30 day follow up Required)								
AREAS OF STRENGTH:								
STORE 1 MARKET WALK NOTES:								
STORE 2 MARKET WALK NOTES:								
STORE 3 MARKET WALK NOTES:								
STORE 4 MARKET WALK NOTES:								
STORE 5 MARKET WALK NOTES:								
STORE 6 MARKET WALK NOTES:								
2016 PLP Discussion		Q1	Q2	Q3	Q4	Comments		
		Date:	Date:	Date:	Date:			

EXHIBIT C

2017 Market Walk Report

	A	B	C	D	E	F	G	H	I	J	K	L	M
	Date: 3/15/17 TM Name: Wally Lawson		Available Points	Actual Points	Store 1	Store 2	Store 3	Store 4	Store 5	Store 6			
Sales Results													
1													
2					2605	1050	1900						
3		Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
4		TM to Goal											
5		Region to Goal											
6		Nation to Goal											
7		Total Comp											
8		Rolling 12 Months to Goal			See Comments								
Sales Planning													
9		Sales Call Summary Review: All Stores visited as specified by RSM	2	2	See Comments								
10		Meeting requirements for Saturday store visits as specified by RSM (previous & current qtr.)	2	2	See Comments								
11		COGNOS reports analyzed, individual store action plans developed, implemented, & impact evaluated (discussion lead by TM)	6	6	See Comments								
12													
13		TOTAL SALES PLANNING POINTS	10	10									
Sales Operations (MAP)													
14		Current sales reports analyzed & Monthly Action Plan (MAP) updated & utilized during store calls	5	0	When asked to get do demo that was a								
15		National Objectives execution (previous month's data)	10	0									
16		Regional Objectives execution* (previous month's data)	2	2									
17		Store Objectives execution (previous month's data)	3	0	Two store objectives according to MAP s								
18													
19		TOTAL SALES OPERATIONS (MAP) POINTS	20	2									
Relationships													
20		Monthly Store Manager/ASM Business Review; Success obtained as result (Observe 1 during market walk)	6	6									
21		Quarterly Market Director communication template review	1	1	See Comments								
22		Quarterly Market Director Meeting recap review	5	5	See Comments								
23		Monthly Meetings with PSI (Observe 1 during market walk)	3	0	Just introducing mtr 1900, we are supp								
24													
25		TOTAL RELATIONSHIP POINTS	15	12									
Merchandising													
26		Color Center full (cards/brochures), clean, & lights working/addressed, drawers organized, & backstock properly managed	1	1									
27		All current POS/Marketing Materials displayed	1	1									
28		Inventory issues addressed using current Inventory Worksheet w/Selected Items Reports or Item Look Up (Observe TM in process)	1	0	worksheets require understanding of g 'item look up' scree								
29													

2017 Market Walk Report

	N	O	P	Q	R
1	Comments				
2					
3	COMMENTS				
4					
5					
6					
7		Met 9-12 mths (10 pts)	10	At Goal	
8		Met 6-9 mths (5 pts)	5	Below Goal	
9					
10					Met 9-12 mths
11					Met 6-9 mths
12					
13					Met 3-5 mths
14		Met 3-5 mths (-5 pts)	-5	Above Goal	Met 3 or less mths
15	our products to				
16	national				
17	being set				
18	preadsheets.				
19					
20					
21					
22					
23	use it to PST in				
24	sed to visit the				
25					
26					
27					
28		Met 3 or less mths (-10 pts)	-10	Y or N	10
				Yes	
29	a descent genesis and the n. TM was			No	5

2017 Market Walk Report

A		B										C		D	E	F	G	H	I	J	K	L	M		
Date: 3/15/17 TM Name: Wally Lawson												Available Points	Actual Points	Store 1	Store 2	Store 3	Store 4	Store 5	Store 6						
1	Liquid Nails cross merchandised in all directed locations w/accurately reported on LN Crossmerchandising Form	0: No										2	0												
30	Corporate Endcap(s)/Drop Zone/Pods Set by Assigned Deadline(s)	2: Yes to (2 points means all stores)										1	1												
31	1/3 representation inside paint desk/corral; Maintained on visit; Attempted if not have	0: No										3	3												
32	Ensure promotional stack outs are set on a timely basis with correct signing	1: Yes or 3: Yes to (3 points means all stores)										1	1												
33	Additional stack outs (paint/stain/Deck Cl) obtained & maintained	0: No										3	3												
34	Mandatory Demo Boards in each store, easily accessible, good shape, assoc. use	0: No										2	0												
35												15	10												
36	TOTAL MERCHANDISING POINTS										15	10													

	N	O	P	Q	R
	Comments				
1	locations of				
30					-5
31					
32					
33					
34					
35					
36					

2017 Market Walk Report

	A	B	C	D	E	F	G	H	I	J	K	L	M
1	Date: 3/15/17 TM Name: Wally Lawson		Available Points	Actual Points	Store 1	Store 2	Store 3	Store 4	Store 5	Store 6			
37	Training												
38	Review previous month's MAP Execution w/Training Roster for consistency; evaluate employee retention in store	0: Not meeting expectations	5	0									accomplished on a february MAP had a court complete; prepped.
39	Current MAP Training Presentation observed - effectiveness & content	0: Not meeting expectations	5	0									
40	Current MAP "Outside the Paint Department" Training observed - effectiveness & content - PSI, Pro Sales	0: Not meeting expectations	4	4									
41	GAP Training Identified & New Hire Training observed - effectiveness & content	0: Not meeting expectations	5	5									
42	Training Roster updated every visit, current employees, & exported to RM by the 1st of each month	0: Not meeting expectations (review accuracy of roster in each store)	4	0									for the previous mo
43	Selling Skills observed for effectiveness & conversion (consumer)	0: Not meeting expectations	2	2									stores were not eve
44	TOTAL TRAINING POINTS			25	11								
45	Pro Sales												
46	Contact Sheet & Sales Tools Available at Pro Desk (Fan Decks, Pro Folders, etc.)	0: No	1	1									
47	Regional Pro Contacts organizational system utilized and updated	0: No	1	0									See Comments
48	Observe "Elevator Speech"/Training at Pro Desk for Effectiveness	0: Not meeting expectations	3	3									
49	Observe lead/job discussion at Pro Desk/Paint Dept.	0: Not meeting expectations	3	3									
50	Observe "Elevator Speech"/Training with PSI and/or PSE for Effectiveness	0: Not meeting expectations	2	2									
51	TOTAL PRO SALES POINTS			10	9								
52	Administrative Duties												
53	Put Regional Direction Here		2		NA	NA							
54	Put Regional Direction Here		5		NA	NA							
55	All deadlines proactively met and online training completed by assigned deadlines		2	2									See Comments
56	Admin Time managed to < +/- 5 hours/week	0: No	1	0									See Comments
57	Comprehensive market updates provided during monthly communication w/RM (Best Practices, 1 on 1 calls, etc.)	0: No	2	2									See Comments
58	Force Outs (review past 90 days)	Lose 5 points if have more than 1/qtr	-5										See Comments
59	TOTAL ADMINISTRATIVE DUTIES POINTS			5	4								
60	Safety												
61	Completes All Assigned Safety Courses by Assigned Deadline(s)												See Comments
62	Has All Safety Equipment During Market Walk		-5										See Comments
63	PPG & Lowes Safety Guideline Adherence												See Comments
64	Incurred Preventable Safety Incident(s)												See Comments
65	TOTAL SAFETY POINTS			-5	0								
66	Bonus Points												

	N	O	P	Q	R
1	Comments				
37					
38	daily basis. The task of Priming boards not				
39					
40					
41	training to be				
42	nth, multiple in present on				
43					
44					
45					
46					
47					
48					
49					
50					
51					
52					
53	Y or N				
54	Y or N				
55					
56	hour mark on a				
57					
58					Met 3-5 mths
59					
60					
61					
62					
63					
64					
65					
66					

2017 Market Walk Report

	A	B	C	D	E	F	G	H	I	J	K	L	M
	Date: 3/15/17		Available Points	Actual Points	Store 1	Store 2	Store 3	Store 4	Store 5	Store 6			
1	TM Name: Wally Lawson		Up to 5 points										
67	Regional Manager: Discretion	i.e. Open territory coverage, Lead regional project, Large Pro success, etc.						See Comments					
68		TOTAL BONUS POINTS		0									
69		TOTAL MARKET WALK POINTS	100	58									
70		2017 MARKET WALK RECAP	Q1 Score	Q2 Score	Q3 Score	Q4 Score							
71													ADDITIONAL WA

	N	O	P	Q	R
1	Comments				
67					
68					
69					
70	MARKET WALKS				
71					

	A	B	C	D	E	F	G	H	I	J	K	L	M
	Date: 3/15/17		Available Points	Actual Points	Store 1	Store 2	Store 3	Store 4	Store 5	Store 6			
1	TM Name: Wally Lawson												
72	Exceptional 90-100												
73	Excels 80-90												
74	Successful 70-80												
75	Marginal 60-70 (Coaching & 60 day follow up required)												
76	Unsuccessful Below 60 (Coaching & 30 day follow up required)												
77					Store 1	Store 2	Store 3	Store 4	Store 5	Store 6			
78													
79													
80													
81													
82													
83													
84													
85	STORE 1 MARKET WALK NOTES:												
86	STORE 2 MARKET WALK NOTES:												
87	STORE 3 MARKET WALK NOTES:												
88	STORE 4 MARKET WALK NOTES:												
89	STORE 5 MARKET WALK NOTES:												
90	STORE 6 MARKET WALK NOTES:												
91	2016 PLP Discussion				Q1/Q2			Q3/Q4					Comm
92					Date:			Date:					

	N	O	P	Q	R
1	Comments				
72					
73					
74					
75					
76					
77					
78					
79					
80					
81					
82					
83					
84					
85					
86					
87					
88					
89					
90					
91	ents				
92					

A	
RM Market Walk Checklist	
1	PREP
2	
3	Sales Review and Store Visit Planning: Have TM send you most recent Cognos Report
4	Review 12 Month Sales Performance to Goal & Update Market Walk
5	Compare "Sales Call Summary" to Cognos Report
6	Compare "Sales Call Summary" to current Training Roster. Look for inconsistencies and strengths
7	Review Market Director Communications and Previous Meetings
8	Complete: Administrative Duties section on Market Walk Report
9	Identify if annual Safety Ride Along is needed
10	Review Admin Hours & Saturdays Worked
11	Pre Meeting: 1-2hrs - Offsite
12	Review Current Sales: Identify any opportunities
13	Review Previous Market Walk
14	Review Sales vs. Call Summary
15	Review Training Roster vs. Sales and any limitations or inconsistencies
16	Review Current MAP
17	Review Pro Leads
18	Review Safety Performance
19	Set expectations for what you are looking for in the walk. 4 Observations
20	The Walk: 3-4 Stores
21	DAY 1: Identify Observation Opportunities
22	Observe: 1.Meeting w/ ASM or Store Manager
23	Observe: 2.Training - In Aisle
24	Observe: 3.Training - Hands On from current MAP goals
25	Observe: 4.Training - Outside the paint Dept. PSI, Pro Sales, etc.
26	Observe: if training roster is being used after trainings
27	DAY 2: Identify any additional observation needs
28	Merchandising Review- Standard: Color Center, Lights, Stain Displays, Product Behind Desk
29	Merchandising Review- Special: Current Stock outs, End caps, LN Locations, Planogram integrity
30	Training Roster: Test associates for Product knowledge & Verify list vs. current staff
31	Post Walk Review: Offsite
32	Review Sales opportunities
33	Review specific Training Strengths and Opportunities
34	Review Strengths & Opportunities
35	Review Safety performance
36	Set expectations for follow up if needed
37	Email MW to TM & post on The Drop/Export Access version

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16 UNITED STATES DISTRICT COURT
17 CENTRAL DISTRICT OF CALIFORNIA

18 WALLEEN LAWSON,
19 Plaintiff,
20
21 v.
22 PPG ARCHITECTURAL FINISHES,
INC.,
23 Defendant.
24
25
26
27
28

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

[PROPOSED] 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

1 UNITED STATES DISTRICT COURT
2 CENTRAL DISTRICT OF CALIFORNIA

3
4 WALLEN LAWSON,
5 Plaintiff,

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

[PROPOSED] JUDGMENT

6 v.

7 PPG ARCHITECTURAL FINISHES,
8 INC.,

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

9 Defendant.

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

12
13 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

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

18 The Court, having considered the evidence proffered in support of and in
19 opposition to Defendant’s Motion for Summary Judgment or, in the Alternative, Partial
20 Summary Adjudication, having read and considered the supporting, opposition and
21 reply points and authorities, and having heard and considered the arguments of counsel,
22 and for good cause shown, the Court hereby finds that there are no genuine disputes of
23 material fact on at least one required element of each of Plaintiff Wallen Lawson’s
24 claims, and that accordingly, Defendant is entitled to judgment as a matter of law on all
25 causes of action in Plaintiff Wallen Lawson’s Second Amended Complaint.
26 Defendant’s Motion for Summary Judgment is hereby GRANTED.
27
28

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

19
20 WALLEN LAWSON,

21 Plaintiff,

22 vs.

23 PPG ARCHITECTURAL FINISHES,
INC.,

24 Defendant.
25

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

**FIRST AMENDED COMPLAINT
FOR DAMAGES**

DEMAND FOR JURY TRIAL

1 Plaintiff Wallen Lawson states as follows:

2 **NATURE OF THE ACTION**

3
4 1. This action arises from Defendant PPG Architectural Finishes, Inc.’s
5 unlawful treatment of Plaintiff Wallen “Wally” Lawson, who worked for PPG
6 Architectural Finishes as a Territory Manager (“TM”), merchandizing PPG
7 Architectural Finishes’ architectural paint products in Lowe’s home improvement
8 stores. PPG Architectural Finishes engaged in a pattern of unethical and illegal
9 conduct towards Lawson. First, it directed him to “mistint” paint, which as set
10 forth below, amounts to stealing from PPG Architectural Finishes’ customer,
11 Lowe’s. Next, it consistently required him to work substantial hours “off the
12 clock” in violation of the Fair Labor Standards Act (“FLSA”) and the California
13 Labor Code, for which he is entitled to unpaid overtime wages and liquidated
14 damages under the FLSA. Finally, Defendant illegally fired Lawson on September
15 6, 2017 in violation of Cal. Labor Code Section 1102.5, prohibiting retaliation
16 against whistleblowers, after Lawson reported its directive to mistint paint to the
17 company’s ethics hotline.
18
19
20
21

22 **THE PARTIES**

23
24 2. Plaintiff Wallen Lawson is an adult individual residing at 13404
25 Verona, Tustin, California 92782. Lawson was employed by PPG Architectural
26 Finishes as a TM and was fired from employment with PPG on September 6,
27 2017. He covered Lowe’s stores in the vicinity of Orange County, California.
28

1 3. Defendant PPG Architectural Finishes, Inc. (“PPG”) is a
2 Pennsylvania corporation with its principal place of business located in
3 Pittsburgh, Pennsylvania. Defendant maintains its Corporate Headquarters at 400
4 Bertha Lamme Dr., Cranberry Township, PA 16066. At all relevant times, PPG
5 has continuously been an employer engaged in interstate commerce and/or the
6 production of goods for commerce, within the meaning of the FLSA, 29 U.S.C.
7 §§ 206(a) and 207(a).
8

9
10 **JURISDICTION AND VENUE**
11

12 4. This Court has subject matter jurisdiction over Plaintiff’s FLSA
13 claims under 29 U.S.C. § 216(b) and 28 U.S.C. § 1331. This Court has
14 supplemental jurisdiction over the subject matter of Lawson’s California state
15 law claims, under 28 U.S.C. 1367(a), because they are so intertwined with the
16 FLSA claims as to form part of the same case or controversy.
17

18 5. This Court has jurisdiction over the Defendant, because Defendant is
19 an entity having sufficient minimum contacts with the Central District of
20 California so as to render the exercise of jurisdiction over the Defendant by this
21 Court consistent with traditional notions of fair play and substantial justice.
22

23 6. Venue is proper in this district under 28 U.S.C. § 1391.
24

25 7. This Court is empowered to issue a declaratory judgment under 28
26 U.S.C. §§ 2201 and 2202.
27

FACTUAL BACKGROUND

A. PPG retaliated against Plaintiff Lawson for reporting the company's improper practices

8. Sometime in the early summer of 2017, Clarence Moore, the Regional Manager to whom Lawson reported, conducted a conference call during which he instructed Lawson and the other TMs in his region to “mistint” gallons of PPG Architectural Finishes’ “RescueIt” product at Lowe’s stores.

9. Like other paints, RescueIt is shipped to Lowe’s stores in a neutral-colored base formula, and then tinted to the color of the customer’s preference using a tinting machine at the store’s paint counter. If a can of paint is accidentally tinted to the wrong color (i.e. “mistinted”), or a customer does not pick up an order, the tinted paint is placed on a clearance rack and sold at a deep discount—for pennies on the dollar.

10. Upon information and belief, according to an agreement between PPG Architectural Finishes and Lowe’s, Lowe’s can demand that PPG Architectural Finishes repurchase paint that is not sold within a requisite period of time. If a gallon of paint is mistinted, however, it is considered sold to Lowe’s and PPG Architectural Finishes cannot be forced to repurchase it. Further, because the price that Lowe’s pays PPG Architectural Finishes for the paint is higher than that for which it sells mistinted paint on the clearance rack, Lowe’s takes a loss on all mistinted paint sold on the clearance rack.

1 11. At the time Moore instructed his TMs to mistint paint, RescueIt was
2 not selling well and PPG Architectural Finishes expected Lowe's to make a
3 demand that it buy back unsold product.
4

5 12. Moore instructed his TMs that mistinting should be done "on the
6 down-low." He suggested that they offer to cover the paint desk for Lowe's
7 associates when they went on lunch or break, and to use that time to
8 surreptitiously mistint paint.
9

10 13. Moore further instructed his TMs that if caught, they should say that
11 a customer ordered the paint but did not appear to pick it up.
12

13 14. On subsequent conference calls, Moore would ask his TMs how
14 many gallons they were able to mistint, and some TMs would boast about the
15 extent of their mistinting.
16

17 15. Lawson was understandably disturbed by these directives, and
18 refused to mistint paint. He called PPG's ethics hotline to report the scheme on
19 April 18, 2017. This resulted in Lawson being interviewed by PPG Investigator
20 David Duffy.
21

22 16. On July 6, 2017, Moore sent the following text message to his TMs:
23

24 *Effective immediately!! !! Please do not mistint*

25 *Rescue It product any more.*
26

27 17. Moore proceeded to unfairly score Lawson's market walk
28 evaluations in order to give him failing scores, starting with Lawson's July 13,

1 2017 market walk. Moore engaged in the same practice with Lawson's final
2 market walk in late-August 2017. The scores were not based on measurable
3 benchmarks and were entirely left to Moore's arbitrary discretion.
4

5 18. After two such market walks, Moore fired Lawson on September 6,
6 2017.
7

8 19. Perhaps realizing that his scoring of Lawson's market walks might
9 not withstand scrutiny, Moore came up with a second justification for Lawson's
10 firing, contending that Lawson had falsified his training records to make it appear
11 that he was doing more work than he actually was. This justification was
12 fabricated by Moore in order to conceal his true reasons for terminating Lawson.
13

14 20. During Lawson's termination meeting, Moore was present and an
15 HR representative, Andy Mayhew, was on the phone. Lawson explained that he
16 believed the firing was in retaliation for his reporting the mistinting scheme.
17

18 21. Instead of treating Lawson as a protected whistleblower whom he
19 had a duty to protect, the HR representative said that he did not want to hear
20 about this and abruptly got off the phone.
21

22 22. Based upon Lawson's conversations with other TMs, other regions
23 were also directed by their RMs to mistint RescueIt product. It is therefore
24 believed to be a scheme that emanated from a higher level in PPG Architectural
25 Finishes.
26
27
28

1 **B. PPG Architectural Finishes forced Lawson to work “off the clock”**

2 23. PPG Architectural Finishes manufactures paints and stains for
3
4 consumer use and sells paints and stains under the registered trade name,
5 “Olympic” at Lowe’s stores throughout the country.

6 24. PPG Architectural Finishes employs TMs, including Lawson, as
7
8 retail merchandising clerks—responsible for inventory management, event and
9 brand marketing and product training within assigned Lowe’s stores in
10 designated geographic regions.

11 25. As a result of prior class-wide overtime federal court litigation
12
13 involving the TMs, the TMs were properly classified as FLSA non-exempt on
14 January 1, 2012.¹

15 26. Therefore, during the relevant time period, Lawson was properly
16
17 classified as FLSA non-exempt.

18 27. In the process of reclassifying the TMs as non-exempt, PPG
19
20 Architectural Finishes enacted a policy and practice whereby TMs are paid for
21 forty straight-time hours and five overtime hours per week. TMs were at all
22 relevant times expected to complete their job duties in these forty-five hours per
23 week.

24 28. In reality, it takes most TMs a minimum of 50-55 hours per week to
25
26 complete their job duties. This was true of Lawson.

27
28

¹ See *Seymour v. PPG Architectural Finishes, Inc.* 09-CV-01707-JFC (W.D. Pa.).

1
2 29. In April of 2016, PPG Architectural Finishes began requiring TMs
3 to complete merchandising tasks listed on monthly action plans (“MAPs”). This
4 included both in-store tasks and building displays, which usually had to be
5 performed at home. This drastically increased the TMs’ workload.
6

7 30. At the same time, Lowe’s increased pressure on PPG Architectural
8 Finishes to have TMs work more hours in each store.
9

10 31. If TMs do not complete all of their job duties, including those listed
11 on the month’s MAP, they face repercussions ranging from low ratings on their
12 market walk reviews, to loss of bonuses and raises, to termination.
13

14 32. PPG engaged in various machinations to discourage Lawson from
15 submitting more than 45 hours per week, regardless of his actual hours worked.
16 For example, Lawson was told by his regional managers:
17

- 18 a. *“Just get it done”*
19 b. *“Sometimes you have to make sacrifices”*
20 c. *“Tough”*
21

22 33. Some TMs who attempt to record more than 45 hours in a work-
23 week without authorization are subject to discipline. While TMs can seek leave
24 to work extra hours, these requests are disfavored and often denied. TMs are
25 actively discouraged from making them.
26
27
28

1 **FIRST CAUSE OF ACTION**
2 **[Violation of Cal. Labor Code § 1102.5]**

3 34. Lawson re-alleges and incorporates by reference the allegations
4 contained in the paragraphs above as if fully set forth herein.

5 35. California Labor Code § 1102.5(a), prohibits employers from
6 discharging, retaliating, or in any manner discriminating against an employee
7 for disclosing information to a person with authority over the employee, or to
8 another employee who has authority to investigate, discover, or correct the
9 violation or noncompliance, if the employee has reasonable cause to believe
10 that the information discloses a violation of state or federal law, or a violation
11 or noncompliance with a state or federal rule or regulation.
12
13
14

15 36. Labor Code § 1102.5(c), prohibits employers from retaliating
16 against an employee for refusing to participate in an activity that would result
17 in a violation of state or federal statute, or a violation or noncompliance with
18 a state or federal rule or regulation.
19

20 37. Lawson complained to PPG's ethics hotline that he was instructed
21 by his Regional Manager, Moore, to mistint paint in Lowe's stores. Because
22 mistinting the paint amounted to theft from Lowe's, it violated California law.
23

24 38. In retaliation for reporting his employer's unlawful conduct and
25 practices to the employer's ethics hotline, and for opposing and refusing to
26 participate in what he reasonably believed to be unlawful conduct by his
27
28

1 employer, PPG Architectural Finishes terminated Plaintiff's employment, citing
2 unfounded allegations that Lawson had falsified his training roster.
3

4 39. As a proximate result of Defendant's actions, Plaintiff has
5 suffered and continues to suffer damages in an amount according to proof.
6

7 **SECOND CAUSE OF ACTION**
8 **[Wrongful Termination in Violation of Public Policy]**

9 40. Lawson re-alleges and incorporates by reference the allegations
10 contained in the paragraphs above as if fully set forth herein.

11 41. Under California law, no employee, whether an at-will employee,
12 or employee under a written or other employment contract, can be terminated
13 for a reason that is in violation of a fundamental public policy. California
14 courts have interpreted a fundamental public policy to be any articulable
15 constitutional, statutory, or regulatory provision that is concerned with a
16 matter affecting society at large rather than a purely personal or proprietary
17 interest of the employee or employer. The public policy must be
18 fundamental, substantial, and well established at the time of Plaintiff's
19 discharge.
20
21

22 42. It was and is the public policy of the State of California, as set
23 forth in California Labor Code § 1102.5, that an employer may not retaliate
24 or in any manner discriminate against an employee for making an oral or
25
26
27
28

1 written complaint regarding illegal activity to a governmental agency or their
2 employer.

3
4 43. Lawson was discharged from his employment on the pretext that
5 he falsified his roster. In fact, PPG's decision to terminate Lawson's
6 employment was motivated in substantial part by Lawson's complaint to his
7 employer about his manager's directive to mistint paint, which amounted to
8 theft from Lowe's, and for Lawson's refusal to participate in the illegal
9 activity.
10

11
12 44. In terminating Lawson for these reasons and under the
13 circumstances alleged herein, Lawson believes and alleges that PPG violated
14 the fundamental public policies embodied in section 1102.5 of the California
15 Labor Code.
16

17 As a proximate result of PPG's actions, Plaintiff has suffered and
18 continues to suffer damages in an amount according to proof.
19

20 **THIRD CAUSE OF ACTION**
21 **[Fair Labor Standards Act, 29 U.S.C. § 201, *et seq.*]**

22 45. Lawson re-alleges and incorporates by reference the allegations
23 contained in the paragraphs above as if fully set forth herein.
24

25 46. PPG Architectural Finishes has been, and continues to be, an
26 employer engaged in interstate commerce and/or the production of goods for
27 commerce, within the meaning of the FLSA, codified at 29 U.S.C. § 201, *et seq.*
28

1 47. PPG Architectural Finishes employed Lawson within the meaning of
2 the FLSA.

3
4 48. PPG Architectural Finishes had a policy and practice of refusing to
5 pay any compensation, including straight time and overtime compensation, to
6 Lawson for hours worked in excess of forty-five hours per workweek, and
7
8 discouraging him from reporting such hours.

9 49. While Lawson typically worked fifty-five hours per week, he was
10 actively discouraged by his regional managers, including Moore, from reporting
11
12 more than forty-five hours per week.

13 50. At the same time, PPG Architectural Finishes' management knew
14 that TMs, including Lawson, regularly found it necessary to work far more than
15
16 forty-five hours per workweek in order to accomplish all of their job
17
18 expectations.

19 51. As a result of PPG Architectural Finishes' willful failure to
20
21 compensate Lawson for all the hours worked, at a rate not less than one and one-
22
23 half times the regular rate of pay for work performed in excess of forty hours in a
24
25 workweek, PPG Architectural Finishes violated the FLSA, including
26
27 §§ 207(a)(1) and 215(a).

28 52. As a result of PPG Architectural Finishes' active discouragement of
Lawson from recording more than 45 hours per workweek, PPG Architectural
Finishes has failed to make, keep and preserve records with respect to Lawson

1 sufficient to determine the wages, hours, and other conditions and practices of
2 employment in violation of the FLSA, including §§ 211(c) and 215(a).
3

4 53. The foregoing conduct, as alleged, constitutes a willful violation of
5 the FLSA within the meaning of the statute, 29 U.S.C. § 255(a).
6

7 54. Lawson is entitled to recover from PPG Architectural Finishes his
8 unpaid wages, as well as overtime compensation, an additional amount – equal to
9 the unpaid wages and overtime – as liquidated damages, reasonable attorneys’
10 fees, and costs and disbursements of this action, under § 216(b) of the FLSA.
11

12 55. Lawson also requests further relief as described below.
13

14 **FOURTH CAUSE OF ACTION**
15 **[Cal. Labor Code §§ 510, 558, and 1194 *et seq.*,**
16 **and Wage Order No. 7-2001]**

17 56. Lawson re-alleges and incorporates by reference the allegations
18 contained in the paragraphs above as if fully set forth herein.

19 57. During the statute of limitations period, PPG Architectural Finishes
20 required Lawson to work in excess of eight hours per workday and forty hours
21 per workweek. However, PPG Architectural Finishes failed to fully pay the
22 overtime wages that Lawson earned.
23

24 58. California Labor Code § 510 and the applicable Wage Order require
25 that an employer compensate all work performed by an employee in excess of
26 eight hours per workday and forty hours per workweek, at one and one-half times
27 the employee’s regular rate of pay.
28

1 59. California Labor Code § 1194 states that any employee receiving
2 less than the applicable legal overtime compensation is entitled to recover in a
3 civil action the unpaid balance of the full amount of his overtime compensation,
4 including interest thereon, reasonable attorneys' fees, and costs of suit.
5

6 60. During all relevant times, PPG Architectural Finishes knowingly
7 and willfully failed to pay overtime earned and due to Lawson. PPG
8 Architectural Finishes' conduct deprived Lawson of full and timely payment for
9 all overtime hours worked in violation of the California Labor Code.
10

11 61. Lawson also requests further relief as described below.
12

13 **FIFTH CAUSE OF ACTION**
14 **Failure to Reimburse for Business Expenses**
15 **[California Labor Code § 2802]**

16 62. Lawson re-alleges and incorporates by reference the allegations
17 contained in the paragraphs above as if fully set forth herein.
18

19 63. California Labor Code § 2802 provides that "[a]n employer shall
20 indemnify his or her employee for all necessary expenditures or losses incurred
21 by the employee in direct consequence of the discharge of his or her duties."
22

23 64. In order to discharge his duties, Lawson incurred necessary and
24 reasonable expenses that were not reimbursed by PPG Architectural Finishes.
25

26 65. Lawson incurred these expenses because he had to use his home
27 internet to fulfill his duties. PPG Architectural Finishes did not pay any portion
28 of this cost.

1 66. PPG Architectural Finishes has violated and continues to violate
2 Wage Order No. 7, Labor Code § 2802, and *Cochran v. Schwan's Home Service,*
3
4 *Inc.*, 228 Cal.App.4th 1137 (Cal. App. 2014) because TMs must use their home
5 internet to perform their job duties and PPG Architectural Finishes fails to
6 reimburse the TMs a reasonable percentage of their internet bill.
7

8 67. PPG Architectural Finishes' conduct deprived Lawson of these
9 reimbursements.

10 68. Lawson also requests further relief as described below.
11

12 **SIXTH CAUSE OF ACTION**
13 **Unfair Competition Law Violations**
14 **[Cal. Business & Professions Code § 17200 et seq.]**

15 69. Lawson re-alleges and incorporates by reference the allegations
16 contained in the paragraphs above as if fully set forth herein.

17 70. California Business & Professions Code § 17200 et seq. prohibits
18 unfair competition in the form of any unlawful, unfair, deceptive, or fraudulent
19 business practices.
20

21 71. PPG Architectural Finishes committed unlawful, unfair, deceptive,
22 and/or fraudulent acts as defined by the California Business & Professions Code,
23 § 17200. PPG Architectural Finishes' unlawful, unfair, deceptive, and/or
24 fraudulent business practices include, without limitation, failing to pay overtime
25 wages, failing to timely pay all wages earned, failing to keep required payroll
26 records, and failure to reimburse for business expenses, in violation of California
27
28

1 law and/or the FLSA.

2 72. As a result of this unlawful and/or unfair and/or fraudulent business
3
4 practice, PPG Architectural Finishes reaped unfair benefits and illegal profits at
5 the expense of Lawson.

6 73. PPG Architectural Finishes must disgorge these ill-gotten gains and
7
8 restore Lawson all wrongfully withheld wages, including, but not limited to
9 overtime compensation.

10 74. Lawson also requests further relief as described below.

11

12 **PRAYER FOR RELIEF**

13 WHEREFORE, Lawson respectfully requests that this Court grant the
14 following relief:

15

16 i. Issuance of a declaratory judgment that the practices complained of
17 herein are unlawful under the FLSA and California law;

18

19 ii. Enjoin PPG Architectural Finishes from violating the FLSA and
20 California law as alleged above;

21

22 iii. Award of back pay and benefits, front pay and benefits, compensatory
23 damages, emotional distress, and civil penalty for PPG Architectural
24 Finishes' retaliation against Lawson;

25

26 iv. Award of back pay and benefits, front pay and benefits, general
27 damages, and exemplary damages for defamation;

27

28 v. Award of unpaid wages, as well as all overtime compensation, due

1 under the FLSA and California law;

2 vi. Award of liquidated damages as a result of PPG's willful failure to pay
3 for all wages and overtime compensation due under the FLSA;

5 vii. Award of damages in the amount of unreimbursed business expenses;

6 viii. Award of pre-judgment and post-judgment interest;

7
8 ix. Award of costs and expenses of this action, together with reasonable
9 attorneys' and expert fees; and,

10 x. Such other relief as this Court deems just and proper.
11

12 **JURY TRIAL DEMANDED**

13 Plaintiff Lawson demands a trial by jury on claims so triable.
14

15 Dated: June 18, 2018

Respectfully submitted,

17 **HKM Employment Attorneys LLP**

18
19 /s/ Mamta Ahluwalia

20 Mamta Ahluwalia (CA State Bar No. 245992)

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24 *Attorneys for Plaintiff Wallen Lawson*
25
26
27
28

ACCO,(JPRx),APPEAL,CLOSED,DISCOVERY,MANADR,PROTORD
UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA (Southern Division – Santa Ana)
CIVIL DOCKET FOR CASE #: 8:18-cv-00705-AG-JPR

Wallen Lawson v. PPG Industries, Inc.
Assigned to: Judge Andrew J. Guilford
Referred to: Magistrate Judge Jean P. Rosenbluth
Case in other court: 9th CCA, 19-55802
Cause: 15:0002(a) Fair Labor Standards Act

Date Filed: 04/25/2018
Date Terminated: 06/26/2019
Jury Demand: Plaintiff
Nature of Suit: 710 Labor: Fair Standards
Jurisdiction: Federal Question

Plaintiff

Wallen Lawson

represented by **Andrew J Horowitz**
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V.

Defendant

PPG Industries, Inc.
TERMINATED: 06/22/2018

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Defendant

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ATTORNEY TO BE NOTICED

Date Filed	#	Docket Text
04/25/2018	<u>1</u>	COMPLAINT with filing fee previously paid (\$400 paid on 04/25/2018, receipt number 2699HEPL), filed by Plaintiff Wallen Lawson. (Attorney Mamta Ahluwalia added to party Wallen Lawson(pty:pla))(Ahluwalia, Mamta) (Entered: 04/25/2018)
04/25/2018	<u>2</u>	CIVIL COVER SHEET filed by Plaintiff Wallen Lawson. (Ahluwalia, Mamta) (Entered: 04/25/2018)
04/25/2018	<u>3</u>	Request for Clerk to Issue Summons on Complaint (Attorney Civil Case Opening) <u>1</u> filed by Plaintiff Wallen Lawson. (Ahluwalia, Mamta) (Entered: 04/25/2018)
04/25/2018	<u>4</u>	NOTICE of Interested Parties filed by Plaintiff Wallen Lawson, (Ahluwalia, Mamta) (Entered: 04/25/2018)
04/26/2018	<u>5</u>	NOTICE OF ASSIGNMENT to District Judge Andrew J. Guilford and Magistrate Judge Jean P. Rosenbluth. (esa) (Entered: 04/26/2018)
04/26/2018	<u>6</u>	NOTICE TO PARTIES OF COURT-DIRECTED ADR PROGRAM filed. (esa) (Entered: 04/26/2018)
04/26/2018	<u>7</u>	21 DAY Summons issued re Complaint <u>1</u> as to defendant PPG Industries, Inc. (esa) (Entered: 04/26/2018)
04/26/2018	<u>8</u>	NOTICE OF PRO HAC VICE APPLICATION DUE for Non-Resident Attorney Andrew J. Horowitz. A document recently filed in this case lists you as an out-of-state attorney of record. However, the Court has not been able to locate any record that you are admitted to the Bar of this Court, and you have not filed an application to appear Pro Hac Vice in this case. Accordingly, within 5 business days of the date of this notice, you must either (1) have your local counsel file an application to appear Pro Hac Vice (Form G-64) and pay the applicable fee, or (2) complete the next section of this form and return it to the court at cacd_attyadm@cacd.uscourts.gov . You have been removed as counsel of record from the docket in this case, and you will not be added back to the docket until your Pro Hac Vice status has been resolved. (esa) (Entered: 04/26/2018)
04/26/2018	<u>9</u>	NOTICE OF PRO HAC VICE APPLICATION DUE for Non-Resident Attorney Bruce C. Fox. A document recently filed in this case lists you as an out-of-state attorney of record. However, the Court has not been able to locate any record that you are admitted to the Bar of this Court, and you have not filed an application to appear Pro Hac Vice in this case. Accordingly, within 5 business days of the date of this notice, you must either (1) have your local counsel file an application to appear Pro Hac Vice (Form G-64) and pay the applicable fee, or (2) complete the next section of this form and return it to the court at cacd_attyadm@cacd.uscourts.gov . You have been removed as counsel of record from the docket in this case, and you will not be added back to the docket until your Pro Hac Vice status has been resolved. (esa) (Entered: 04/26/2018)
04/26/2018	<u>10</u>	NOTICE OF PRO HAC VICE APPLICATION DUE for Non-Resident Attorney Patrick Leo McGuigan. A document recently filed in this case lists you as an out-of-state attorney of record. However, the Court has not been able to locate any record that you are admitted to the Bar of this Court, and you have not filed an application to appear Pro Hac Vice in this case. Accordingly, within 5 business days of the date of this notice, you must either (1) have your local counsel file an application to appear Pro Hac Vice (Form G-64) and pay the applicable fee, or (2) complete the next section of this form and return it to the court at cacd_attyadm@cacd.uscourts.gov . You have been removed as counsel of record from the docket in this case, and you will not be added back to the docket until your Pro Hac Vice status has been resolved. (esa) (Entered: 04/26/2018)
04/28/2018	<u>11</u>	APPLICATION of Non-Resident Attorney Patrick L. McGuigan to Appear Pro Hac Vice on behalf of Plaintiff Wallen Lawson (Pro Hac Vice Fee - Fee Paid, Receipt No. 0973-21666748) filed by Plaintiff Wallen Lawson. (Attachments: # <u>1</u> Proposed Ord

		er) (Ahluwalia, Mamta) (Entered: 04/28/2018)
04/28/2018	<u>12</u>	APPLICATION of Non-Resident Attorney Bruce C. Fox to Appear Pro Hac Vice on behalf of Plaintiff Wallen Lawson (Pro Hac Vice Fee – Fee Paid, Receipt No. 0973-21666749) filed by Plaintiff Wallen Lawson. (Attachments: # <u>1</u> Proposed Order) (Ah luwalia, Mamta) (Entered: 04/28/2018)
04/28/2018	<u>13</u>	APPLICATION of Non-Resident Attorney Andrew J. Horowitz to Appear Pro Hac Vice on behalf of Plaintiff Wallen Lawson (Pro Hac Vice Fee – Fee Paid, Receipt No. 0973-21666750) filed by Plaintiff Wallen Lawson. (Attachments: # <u>1</u> Proposed Order) (Ahluwalia, Mamta) (Entered: 04/28/2018)
04/28/2018	<u>14</u>	APPLICATION of Non-Resident Attorney Qiwei Chen to Appear Pro Hac Vice on behalf of Plaintiff Wallen Lawson (Pro Hac Vice Fee – Fee Paid, Receipt No. 0973-21666756) filed by Plaintiff Wallen Lawson. (Attachments: # <u>1</u> Proposed Order) (Ahlu walia, Mamta) (Entered: 04/28/2018)
04/30/2018	<u>15</u>	ORDER by Judge Andrew J. Guilford: Granting <u>11</u> Non-Resident Attorney Patrick L. McGuigan APPLICATION to Appear Pro Hac Vice on behalf of Plaintiff Wallen Lawson, designating Mamta Ahluwalia as local counsel. (mt) (Entered: 04/30/2018)
04/30/2018	<u>16</u>	ORDER by Judge Andrew J. Guilford: Granting <u>12</u> Non-Resident Attorney Bruce C. Fox APPLICATION to Appear Pro Hac Vice on behalf of Plaintiff Wallen Lawson, designating Mamta Ahluwalia as local counsel. (mt) (Entered: 04/30/2018)
04/30/2018	<u>17</u>	ORDER by Judge Andrew J. Guilford: Granting <u>13</u> Non-Resident Attorney Andrew J. Horowitz APPLICATION to Appear Pro Hac Vice on behalf of Plaintiff Wallen Lawson, designating Mamta Ahluwalia as local counsel. (mt) (Entered: 04/30/2018)
04/30/2018	<u>18</u>	ORDER by Judge Andrew J. Guilford: Granting <u>14</u> Non-Resident Attorney Qiwei Chen APPLICATION to Appear Pro Hac Vice on behalf of Plaintiff Wallen Lawson, designating Mamta Ahluwalia as local counsel. (mt) (Entered: 04/30/2018)
05/15/2018	<u>19</u>	PROOF OF SERVICE Executed by Plaintiff Wallen Lawson, upon Defendant PPG Industries, Inc. served on 5/2/2018, answer due 5/23/2018. Service of the Summons and Complaint were executed upon Kaitlyn Mannix- CSC – Person Authorized to Accept Service of Process in compliance with statute not specified by personal service. Original Summons NOT returned. (Attachments: # <u>1</u> Exhibit Proof of Service of Summons and Complaint, # <u>2</u> Affidavit Proof of Service of Notice of Filing POS)(Ahluwalia, Mamta) (Entered: 05/15/2018)
05/15/2018	<u>20</u>	PROOF OF SERVICE filed by Plaintiff Wallen Lawson, re Pro Hac Vice Application Due (G-109) – optional html form,,, <u>8</u> , Pro Hac Vice Application Due (G-109) – optional html form,,, <u>9</u> , APPLICATION of Non-Resident Attorney Bruce C. Fox to Appear Pro Hac Vice on behalf of Plaintiff Wallen Lawson (Pro Hac Vice Fee – Fee Paid, Receipt No. 0973-21666749) <u>12</u> , Pro Hac Vice Application Due (G-109) – optional html form,,, <u>10</u> , APPLICATION of Non-Resident Attorney Qiwei Chen to Appear Pro Hac Vice on behalf of Plaintiff Wallen Lawson (Pro Hac Vice Fee – Fee Paid, Receipt No. 0973-21666756) <u>14</u> , Order on Motion to Appear Pro Hac Vice <u>16</u> , Order on Motion to Appear Pro Hac Vice <u>15</u> , Order on Motion to Appear Pro Hac Vice <u>18</u> , APPLICATION of Non-Resident Attorney Andrew J. Horowitz to Appear Pro Hac Vice on behalf of Plaintiff Wallen Lawson (Pro Hac Vice Fee – Fee Paid, Receipt No. 0973-21666750) <u>13</u> , Order on Motion to Appear Pro Hac Vice <u>17</u> , APPLICATION of Non-Resident Attorney Patrick L. McGuigan to Appear Pro Hac Vice on behalf of Plaintiff Wallen Lawson (Pro Hac Vice Fee – Fee Paid, Receipt No. 0973-21666748) <u>11</u> served on 05/15/2018. (Ahluwalia, Mamta) (Entered: 05/15/2018)
05/23/2018	<u>21</u>	ANSWER to Complaint (Attorney Civil Case Opening) <u>1</u> filed by Defendant PPG Industries, Inc.. (Attachments: # <u>1</u> Notice of Interested Parties)(Attorney Karin Morgan Cogbill added to party PPG Industries, Inc.(pty:dft))(Cogbill, Karin) (Entered: 05/23/2018)
05/23/2018	<u>22</u>	APPLICATION of Non-Resident Attorney Theodore A. Schroeder to Appear Pro Hac Vice on behalf of Defendant PPG Industries, Inc. (Pro Hac Vice Fee – Fee Paid, Receipt No. 0973-21803507) filed by Defendant PPG Industries, Inc.. (Attachments: # <u>1</u> Proposed Order) (Attorney Rachael Sarah Lavi added to party PPG Industries, Inc.(pty:dft)) (Lavi, Rachael) (Entered: 05/23/2018)

05/24/2018	<u>23</u>	ORDER by Judge Andrew J. Guilford: Granting <u>22</u> Non-Resident Attorney Theodore A. Schroeder APPLICATION to Appear Pro Hac Vice on behalf of Defendant PPG Industries Inc, designating Rachael Lavi as local counsel. (lwag) (Entered: 05/24/2018)
05/24/2018	<u>24</u>	ORDER RE: EARLY MEETING OF PARTIES AND SCHEDULING CONFERENCE: Scheduling Conference set for 7/16/2018 at 09:00 AM. (gga) (Entered: 05/24/2018)
05/24/2018	<u>25</u>	NOTICE of Deficiency in Electronically Filed Pro Hac Vice Application RE: APPLICATION of Non-Resident Attorney Theodore A. Schroeder to Appear Pro Hac Vice on behalf of Defendant PPG Industries, Inc. (Pro Hac Vice Fee – Fee Paid, Receipt No. 0973-21803507) <u>22</u> . The following error(s) was/were found: Local Rule 5-4.3.4 Application not hand-signed. Other error(s) with document(s): Please note, that electronic, image or stamp signature is not allowed. (lt) (Entered: 05/24/2018)
06/11/2018	<u>26</u>	REQUEST for Leave of Bruce Fox and Leo McGuigan to Appear for Scheduling Conference Telephonically filed by Plaintiff Wallen Lawson. Request set for hearing on 7/16/2018 at 09:00 AM before Judge Andrew J. Guilford. (Attachments: # <u>1</u> Proposed Order Proposed Order) (Ahluwalia, Mamta) (Entered: 06/11/2018)
06/18/2018	<u>27</u>	STIPULATION to Amend Complaint (Attorney Civil Case Opening) <u>1</u> filed by Plaintiff Wallen Lawson. (Attachments: # <u>1</u> Proposed Order)(Horowitz, Andrew) (Entered: 06/18/2018)
06/20/2018	<u>28</u>	ORDER Granting Leave to File First Amended Complaint by Judge Andrew J. Guilford. The Court, having reviewed the Stipulation <u>27</u> regarding the agreement to allow Plaintiff to file its First Amended Complaint, hereby orders, this 20th day of June, 2018, that Plaintiff has leave to file his First Amended Complaint, without the need of a formal motion. The Plaintiff shall file his First Amended Complaint within five days of this signed Order. Defendant will have 21 days from the date of the filing and service of the First Amended Complaint to file a responsive pleading or challenge thereto. IT IS SO ORDERED. (dro) (Entered: 06/20/2018)
06/22/2018	<u>29</u>	First AMENDED COMPLAINT against Defendant All Defendants amending Complaint (Attorney Civil Case Opening) <u>1</u> , filed by Plaintiff Wallen Lawson(Ahluwalia, Mamta) (Entered: 06/22/2018)
06/29/2018	<u>30</u>	ORDER by Judge Andrew J. Guilford granting <u>26</u> Motion for Leave for Bruce C. Fox and Patrick L. McGuigan to Appear telephonic for Plaintiff Wallen Lawson (dro) (Entered: 06/29/2018)
07/06/2018	<u>31</u>	JOINT REPORT Rule 26(f) Discovery Plan <i>Joint Report of Early Meeting of Counsel [Rule 26(F)]</i> ; estimated length of trial 5-7 days, filed by Defendant PPG Architectural Finishes, Inc... (Cogbill, Karin) (Entered: 07/06/2018)
07/13/2018	<u>32</u>	ANSWER to Amended Complaint/Petition <u>29</u> <i>Defendant's Answer to Plaintiff's First Amended Complaint</i> filed by Defendant PPG Architectural Finishes, Inc..(Attorney Karin Morgan Cogbill added to party PPG Architectural Finishes, Inc.(pty:dft))(Cogbill, Karin) (Entered: 07/13/2018)
07/16/2018	<u>33</u>	MINUTES OF Scheduling Conference held: Discovery cut-off 4/23/2019. Final Pretrial Conference set for 7/8/2019 at 8:30 am. Jury Trial set for 7/23/2019 at 9:00 am. Court Reporter: Alex Joko. (lb) (Entered: 07/18/2018)
07/16/2018	<u>34</u>	SCHEDULING ORDER SPECIFYING PROCEDURES (lb) (Entered: 07/18/2018)
11/20/2018	<u>35</u>	Joint STIPULATION for Extension of Time to Amend filed by Plaintiff Wallen Lawson. (Attachments: # <u>1</u> Exhibit Proposed Second Amended Complaint, # <u>2</u> Proposed Order to Modify Scheduling Order to Allow Filing of Second Amended Complaint)(Ahluwalia, Mamta) (Entered: 11/20/2018)
11/27/2018	<u>36</u>	ORDER AMENDING SCHEDULING ORDER FOR FILING OF THE SECOND AMENDED COMPLAINT AND DEFENDANT'S RESPONSE THERETO <u>35</u> by Judge Andrew J. Guilford, 1. Plaintiff shall file the Second Amended Complaint (a copy of which was attachedas Exhibit A to the Parties' Joint Stipulation), within five days of this signed Order. 2. Defendant will have 30 days from the date of the filing of the Second Amended Complaint to file a responsive pleading thereto. (es) (Entered: 11/27/2018)

		11/27/2018)
11/28/2018	<u>37</u>	SECOND AMENDED COMPLAINT against DEFENDANT PPG Architectural Finishes, Inc. amending Amended Complaint/Petition <u>29</u> , Complaint (Attorney Civil Case Opening) <u>1</u> , filed by Plaintiff Wallen Lawson(Ahluwalia, Mamta) (Entered: 11/28/2018)
12/04/2018	<u>38</u>	NOTICE of Appearance filed by attorney Michael W M Manoukian on behalf of Defendant PPG Architectural Finishes, Inc. (Attorney Michael W M Manoukian added to party PPG Architectural Finishes, Inc.(pty:dft))(Manoukian, Michael) (Entered: 12/04/2018)
12/28/2018	<u>39</u>	ANSWER to Amended Complaint/Petition <u>37</u> Defendant PPG Architectural Finishes, Inc.'s Answer to Plaintiff's Second Amended Complaint for Damages filed by Defendant PPG Architectural Finishes, Inc.(Cogbill, Karin) (Entered: 12/28/2018)
03/15/2019	<u>40</u>	NOTICE OF MOTION AND MOTION for Protective Order for Prohibiting Plaintiff From Seeking Written Discovery and Deposition Testimony filed by Defendant PPG Architectural Finishes, Inc.. Motion set for hearing on 4/4/2019 at 10:00 AM before Magistrate Judge Jean P. Rosenbluth. (Attachments: # <u>1</u> Declaration of Karin Cogbill, # <u>2</u> Exhibit A-K to the Declaration of Karin Cogbill, # <u>3</u> Memorandum Stipulation Regarding PPG's Motion for Protective Order, # <u>4</u> Proposed Order)(Cogbill, Karin) (Entered: 03/15/2019)
03/18/2019	<u>41</u>	Amended STIPULATION for Protective Order filed by Defendant PPG Architectural Finishes, Inc.(Cogbill, Karin) (Entered: 03/18/2019)
03/18/2019	<u>42</u>	DECLARATION of Andrew J. Horowitz re Stipulation for Protective Order <u>41</u> filed by Defendant PPG Architectural Finishes, Inc.. (Attachments: # <u>1</u> Exhibit)(Cogbill, Karin) (Entered: 03/18/2019)
03/18/2019	<u>43</u>	NOTICE OF MOTION AND MOTION to Compel Production of mobile phone messages and Defendant's contracts and communications with Lowe's filed by Plaintiff Wallen Lawson. Motion set for hearing on 4/11/2019 at 10:00 AM before Magistrate Judge Jean P. Rosenbluth. (Attachments: # <u>1</u> Proposed Order, # <u>2</u> Memorandum Stipulation, # <u>3</u> Exhibit Exhibits to Stipulation)(Horowitz, Andrew) (Entered: 03/18/2019)
03/18/2019	<u>44</u>	NOTICE OF MOTION AND Amended MOTION for Protective Order for Prohibiting Plaintiff From Seeking Written Discovery and Deposition Testimony filed by Defendant PPG Architectural Finishes, Inc., PPG Industries, Inc.. Motion set for hearing on 4/11/2019 at 10:00 AM before Magistrate Judge Jean P. Rosenbluth. (Cogbill, Karin) (Entered: 03/18/2019)
03/18/2019	<u>45</u>	EX PARTE APPLICATION to Shorten Time for Hearing on re MOTION for Protective Order for Prohibiting Plaintiff From Seeking Written Discovery and Deposition Testimony <u>40</u> , Amended MOTION for Protective Order for Prohibiting Plaintiff From Seeking Written Discovery and Deposition Testimony <u>44</u> to March 21, 2019 filed by Defendant PPG Architectural Finishes, Inc.. (Attachments: # <u>1</u> Declaration of Michael W. M. Manoukian In Support of Defendant's Ex Parte Application for An Order Shortening Time to Hear PPG's Motion for Protective Order, # <u>2</u> Proposed Order In Support of Defendant's Ex Parte Application for An Order Shortening Time to Hear PPG's Motion for Protective Order) (Manoukian, Michael) (Entered: 03/18/2019)
03/19/2019	<u>46</u>	OPPOSITION to EX PARTE APPLICATION to Shorten Time for Hearing on re MOTION for Protective Order for Prohibiting Plaintiff From Seeking Written Discovery and Deposition Testimony <u>40</u> , Amended MOTION for Protective Order for Prohibiting Plaintiff From <u>45</u> Seeking Written Discovery and Deposition Testimony filed by Plaintiff Wallen Lawson. (Attachments: # <u>1</u> Declaration of Andrew J. Horowitz, Esq., # <u>2</u> Exhibit Exhibits to Declaration)(Horowitz, Andrew) (Entered: 03/19/2019)
03/20/2019	<u>47</u>	MINUTES (IN CHAMBERS) Order Denying Defendant's Ex Parte Application by Magistrate Judge Jean P. Rosenbluth. Defendant's ex parte application for an order shortening time is DENIED, and the motions will be heard together on April 11 as calendared. Defendant has not asked that the depositions be stayed until its motion can

		be heard. (See document for details.) <u>45</u> (sbou) (Entered: 03/20/2019)
03/22/2019	<u>48</u>	STIPULATION for Order Modify Scheduling Order to Extend Deadline for Expert Disclosures filed by Plaintiff Wallen Lawson. (Attachments: # <u>1</u> Proposed Order)(Horowitz, Andrew) (Entered: 03/22/2019)
03/22/2019	<u>49</u>	ORDER AMENDING SCHEDULING ORDER <u>48</u> by Judge Andrew J. Guilford. The Court, having reviewed the Stipulation regarding the agreement to extend the deadline for the service of expert disclosures, hereby orders that the deadline for expert disclosures pursuant to Fed. R. Civ. P. 26(a)(2)(D)(i) is extended to April 8, 2019. All other dates and deadlines in the scheduling order shall remain unchanged. (es) (Entered: 03/22/2019)
03/28/2019	<u>50</u>	SUPPLEMENT to MOTION to Compel Production of mobile phone messages and Defendant's contracts and communications with Lowe's <u>43</u> filed by Plaintiff Wallen Lawson. (Attachments: # <u>1</u> Declaration of Andrew J. Horowitz, Esq., # <u>2</u> Exhibit Exhibits to Declaration)(Horowitz, Andrew) (Entered: 03/28/2019)
03/28/2019	<u>51</u>	SUPPLEMENT to Amended MOTION for Protective Order for Prohibiting Plaintiff From Seeking Written Discovery and Deposition Testimony <u>44</u> filed by Plaintiff Wallen Lawson. (Horowitz, Andrew) (Entered: 03/28/2019)
04/01/2019	<u>52</u>	REQUEST for Leave to file A Response to Plaintiff's Supplemental Memorandum in Opposition to Motion for Protective Order filed by Defendant PPG Architectural Finishes, Inc.. Request set for hearing on 4/11/2019 at 10:00 AM before Judge Andrew J. Guilford. (Attachments: # <u>1</u> Exhibit) (Cogbill, Karin) (Entered: 04/01/2019)
04/02/2019	<u>53</u>	Joint STIPULATION for Protective Order filed by Defendant PPG Architectural Finishes, Inc..(Manoukian, Michael) (Entered: 04/02/2019)
04/08/2019	<u>54</u>	JOINT PROTECTIVE ORDER by Magistrate Judge Jean P. Rosenbluth. NOTE: CHANGES MADE BY THE COURT. re Stipulation for Protective Order <u>53</u> . (sbou) (Entered: 04/08/2019)
04/11/2019	<u>55</u>	NOTICE of Appearance filed by attorney Karin Morgan Cogbill on behalf of Defendant PPG Architectural Finishes, Inc. (Cogbill, Karin) (Entered: 04/11/2019)
04/11/2019	<u>56</u>	MINUTES OF (IN COURT): Defendant's Motion for Protective Order and Plaintiff's Motion to Compel Production held before Magistrate Judge Jean P. Rosenbluth. Case is called. Counsel make their appearances. Court addresses parties. Argument heard. For the reasons stated on the record at the hearing, the Court. DENIES Defendant's Request for Leave to File a Response to Plaintiff's Supplemental Memorandum (docket entry <u>52</u>). GRANTS IN PART AND DENIES IN PART Plaintiff's motion to compel (docket entry <u>43</u>) as follows. GRANTS IN PART AND DENIES IN PART Defendant's motion for a protective order (docket entries <u>40</u> and <u>44</u>). (See document for details.) Court Recorder: CS 04/11/19. (sbou) (Entered: 04/11/2019)
05/13/2019	<u>57</u>	NOTICE OF MOTION AND MOTION for Summary Judgment as to Plaintiff's Second Amended Complaint filed by Defendant PPG Architectural Finishes, Inc.. Motion set for hearing on 6/10/2019 at 10:00 AM before Judge Andrew J. Guilford. (Attachments: # <u>1</u> Memorandum, # <u>2</u> Statement of Uncontroverted Facts and Conclusions of Law In Support of Motion for Summary Judgment, # <u>3</u> Declaration of Karin M. Cogbill, # <u>4</u> Declaration of David Duffy, # <u>5</u> Declaration of Clarence Moore, # <u>6</u> Proposed Order Proposed Judgment) (Cogbill, Karin) (Entered: 05/13/2019)
05/20/2019	<u>58</u>	MEMORANDUM in Opposition to NOTICE OF MOTION AND MOTION for Summary Judgment as to Plaintiff's Second Amended Complaint <u>57</u> filed by Plaintiff Wallen Lawson. (Attachments: # <u>1</u> Supplement Statement of Genuine Disputes of Fact, # <u>2</u> Declaration of Wallen A. Lawson, # <u>3</u> Declaration of Andrew J. Horowitz, Esq.)(Horowitz, Andrew) (Entered: 05/20/2019)
05/27/2019	<u>59</u>	REPLY Reply Brief in Support of Motion for Summary Judgment NOTICE OF MOTION AND MOTION for Summary Judgment as to Plaintiff's Second Amended Complaint <u>57</u> filed by Defendant PPG Architectural Finishes, Inc.. (Attachments: # <u>1</u> Declaration Declaration of Michael W. Manoukian in support of Motion for Summary Judgment, # <u>2</u> Exhibit Exhibit A to Declaration of Michael Manoukian, # <u>3</u> Supplement Defendant PPG's Response to Plaintiff's Statement of Genuine Disputes of Fact)(Cogbill, Karin) (Entered: 05/27/2019)

05/31/2019	<u>60</u>	MINUTE ORDER [IN CHAMBERS] ORDER CONTINUING HEARING ON MOTION FOR SUMMARY JUDGMENT (DKT. 57) by Judge Andrew J. Guilford: For reasons of calendar management and judicial economy, the Court CONTINUES the hearing on Defendant's motion for summary judgment from June 10, 2019 to June 17, 2019 at 10:00 am. (es) (Entered: 05/31/2019)
06/17/2019	61	MINUTES OF Hearing on Defendant's Motion for Summary Judgment as to Plaintiff's Second Amended Complaint <u>57</u> held before Judge Andrew J. Guilford: Motion hearing held. The Court hears oral argument from the parties. The Court takes the Motion under submission. Order to issue. Court Reporter: Miriam Baird. Attorneys for Plaintiff: Bruce Fox, Andrew Horowitz; Attorneys for Defendant: Theodore Schroeder, Karen Cogbill. Courtroom Deputy: Melissa Kunig; Time in Court: 0:36. THERE IS NO PDF DOCUMENT ASSOCIATED WITH THIS ENTRY. TEXT ONLY ENTRY. (mku) (Entered: 06/18/2019)
06/21/2019	<u>62</u>	MINUTES [IN CHAMBERS] ORDER REGARDING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT by Judge Andrew J. Guilford: The Court GRANTS Defendant's motion for summary judgment. The Court will separately sign and file Defendant's proposed judgment. (See document for further details.) (es) (Entered: 06/21/2019)
06/24/2019	<u>63</u>	TRANSCRIPT ORDER as to Plaintiff Wallen Lawson for Court Reporter. Court will contact Maureen Boyd at maureen.boyd@obermayer.com with further instructions regarding this order. Transcript preparation will not begin until payment has been satisfied with the court reporter. (Fox, Bruce) (Entered: 06/24/2019)
06/26/2019	<u>64</u>	JUDGMENT by Judge Andrew J. Guilford, 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. <u>62</u> (MD JS-6, Case Terminated). (es) (Entered: 06/26/2019)
07/02/2019	<u>65</u>	TRANSCRIPT for proceedings held on 6/17/19 11:10 a.m.. Court Reporter/Electronic Court Recorder: Miriam Baird, phone number mvb11893@aol.com. Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Electronic Court Recorder before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Notice of Intent to Redact due within 7 days of this date. Redaction Request due 7/23/2019. Redacted Transcript Deadline set for 8/2/2019. Release of Transcript Restriction set for 9/30/2019. (Baird, Miriam) (Entered: 07/02/2019)
07/02/2019	66	NOTICE OF FILING TRANSCRIPT filed for proceedings 6/17/19 11:10 a.m. re Transcript <u>65</u> THERE IS NO PDF DOCUMENT ASSOCIATED WITH THIS ENTRY. (Baird, Miriam) TEXT ONLY ENTRY (Entered: 07/02/2019)
07/03/2019	<u>67</u>	TRANSCRIPT ORDER as to Defendant PPG Industries, Inc. for Court Reporter. Court will contact Karin Cogbill at kcogbill@littler.com with further instructions regarding this order. Transcript preparation will not begin until payment has been satisfied with the court reporter. (Cogbill, Karin) (Entered: 07/03/2019)
07/10/2019	<u>68</u>	APPLICATION to the Clerk to Tax Costs against Plaintiff Wallen Lawson filed by Defendant PPG Architectural Finishes, Inc.. (Cogbill, Karin) (Entered: 07/10/2019)
07/12/2019	<u>69</u>	NOTICE OF APPEAL to the 9th Circuit Court of Appeals filed by Plaintiff Wallen Lawson. Appeal of Judgment, <u>64</u> , Order on Motion for Summary Judgment, <u>62</u> . (Appeal Fee - \$505 Fee Paid, Receipt No. 0973-24075918.) (Attachments: # <u>1</u> Exhibit Representation Statement)(Horowitz, Andrew) (Entered: 07/12/2019)
07/12/2019	<u>70</u>	NOTIFICATION from Ninth Circuit Court of Appeals of case number assigned and briefing schedule. Appeal Docket No. 19-55802 assigned to Notice of Appeal to 9th Circuit Court of Appeals, <u>69</u> as to Plaintiff Wallen Lawson. (es) (Entered: 07/15/2019)
07/31/2019	<u>71</u>	BILL OF COSTS. Costs Taxed in amount of \$7406.15 in favor of Defendant and against Plaintiff. RE: APPLICATION to the Clerk to Tax Costs against Plaintiff Wallen Lawson <u>68</u> (kr) (Entered: 07/31/2019)

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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

HONORABLE ANDREW J. GUILFORD, JUDGE PRESIDING

WALLEN LAWSON,)
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Plaintiff,)
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Vs.) No. SACV18-00705-AG
)
)
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ARCHITECTURAL FINISHES, INC.,)
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Defendant.)
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_____)

REPORTER'S TRANSCRIPT OF PROCEEDINGS
MOTION HEARING
SANTA ANA, CALIFORNIA
MONDAY, JUNE 17, 2019

MIRIAM V. BAIRD, CSR 11893, CCRA
OFFICIAL U.S. DISTRICT COURT REPORTER
411 WEST FOURTH STREET, SUITE 1-053
SANTA ANA, CALIFORNIA 92701
MVB11893@aol.com

A P P E A R A N C E S

**IN BEHALF OF THE PLAINTIFF,
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- AND -

THEODORE A. SCHROEDER
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1 SANTA ANA, CALIFORNIA; MONDAY, JUNE 17, 2019; 11:10 A.M.

2 ---

3
4
5 THE CLERK: Item 17, SACV18-00705, Wallen Lawson
6 vs. PPG Architectural Finishes, Inc.,

7 MR. HOROWITZ: Andrew Horowitz for the plaintiff.

8 THE COURT: Is your microphone on? Pull it closer
9 to you.

10 Go ahead.

11 MR. HOROWITZ: Andrew Horowitz for the plaintiff.

12 MR. FOX: Bruce Fox on behalf of the plaintiff,
13 Your Honor.

14 THE COURT: All right.

15 MR. SCHROEDER: Good morning, Your Honor.

16 Karin Cogbill and Ted Schroeder on behalf of the
17 defendant.

18 THE COURT: Karin Cogbill and --

19 MR. SCHROEDER: Ted Schroeder, Your Honor.

20 THE COURT: All right.

21 We've issued our tentative. I will hear from the
22 plaintiff, please.

23 MR. HOROWITZ: Thank you, Your Honor. The most
24 important thing that I think that we need to address with the
25 tentative is on the Friday of the week that we were briefing

1 summary judgment, which was due on a Monday -- right here.
2 It was Friday, May 17th. Our brief was due on May 20th. We
3 received from the -- from defendant an untimely production of
4 three warning e-mails that were sent to similarly situated
5 territory managers. And those -- together with the
6 representation that those three territory managers had not
7 been put at any point on performance improvement plans,
8 contrary to what Clarence Moore testified months earlier in
9 his deposition.

10 Due to the fact that we were scrambling to get our
11 brief out in a week, we did not fully analyze that or include
12 it in our brief. And I would respectfully make an oral
13 motion for leave to file a supplemental memorandum on that
14 point attaching the late-produced e-mails.

15 THE COURT: Well, how difficult is it to file a
16 timely declaration under 56(d) requesting more time?

17 MR. HOROWITZ: Your Honor, I suppose there's more
18 than one way to skin the cat --

19 THE COURT: Okay. From my perspective, Counsel --

20 MR. HOROWITZ: Sure.

21 THE COURT: 14 single-spaced pages. You now want
22 to redo the analysis? You could have filed the day your
23 opposition was due a 56(d) declaration saying give me more
24 time. I noticed in your statement just now you said you
25 received an untimely response. Sounds to me like a 56(d)

1 request. What do I do with my 14 single-spaced pages? Throw
2 it away? More documents? I mean, what do we do? Is that
3 efficient when you could have just asked for time?

4 MR. HOROWITZ: Your Honor --

5 THE COURT: What do you say?

6 MR. HOROWITZ: It's on a very narrow but very
7 critical issue, which, quite frankly, I -- I -- upon reading
8 your tentative, I see that the Court is placing more emphasis
9 on than, you know, I had originally believed necessary.

10 THE COURT: Okay. Continue.

11 MR. HOROWITZ: But basically, what these three
12 e-mails show is that while other territory managers had sales
13 numbers that were in a range similar to that of Mr. Lawson,
14 they were not put on PIPs. They were not terminated.
15 Mr. Lawson was, as you know, put on a PIP and terminated.
16 That, by definition, is disparate treatment. We also submit
17 that is evidence of pretext.

18 THE COURT: Well, I mean, gosh, I have trouble with
19 your statement that you didn't realize it was important until
20 the Court issued its tentative. I mean, pretext? These are
21 the key issues. These are -- if you read plaintiff's papers,
22 it's the key thrust. Not surprisingly, it's one of the key
23 thrusts of our tentative. So I'm -- I'm having trouble with
24 that.

25 MR. HOROWITZ: Well, Your Honor, there are so much

1 other evidence of pretext here. There is a case that I would
2 like to cite for you. It is Burch vs. Regents of the
3 University of California, 433 F. Supp. 2d 1110 Eastern
4 District of California 2006, saying that where a defendant
5 proffers a proverbial bag full of legitimate reasons, and the
6 plaintiff manages to cast doubt on some of them, a reasonable
7 jury could not essentially infer that the remaining reasons
8 are untrue. Therefore, it's not necessary for a plaintiff to
9 cast doubt on absolutely every single reason on summary
10 judgment.

11 THE COURT: What's the name of that case again?

12 MR. HOROWITZ: Burch, B-u-r-c-h.

13 THE COURT: I'm just -- I'm wondering, why is it
14 not in your opposition? Again, 14 single-spaced pages. If
15 you could observe our chambers last week as we worked to
16 respond to everyone, and we provided you with the longest
17 because it required the longest. Now you want us to redo
18 that and analyze Burch?

19 MR. HOROWITZ: Your Honor, I was guided in
20 considering whether or not to seek leave to file a sur-reply
21 by Your Honor's various opinions suggesting that oral
22 argument is the correct venue for these types of issues.

23 THE COURT: Well, oral argument is a correct venue
24 to present a new case, but it's not the correct venue -- the
25 Burch case, what is the year of the Burch case?

1 MR. HOROWITZ: 2006, Your Honor.

2 THE COURT: Yeah. Go ahead.

3 MR. HOROWITZ: I don't think this is a wholly new
4 argument. I think it's part and parcel of the arguments
5 we're making in our brief. This is just one more case
6 supporting that, Your Honor.

7 THE COURT: Okay. Go ahead.

8 MR. HOROWITZ: The other issue that needs to be
9 raised here is a contention that we disputed in our brief and
10 in our counter statement of facts that HR made the decision
11 to terminate Mr. Lawson. The decision to terminate
12 Mr. Lawson was made by Mr. Moore effectively. The -- while
13 there were HR and Mr. Lawson's supervisor involved, all of
14 the information that went into that decision came from
15 Mr. Moore. It's Cat's Paw case essentially. If Your Honor
16 is familiar with that. U.S. Supreme Court case Staub vs.
17 Proctor Hospital from 2011. It addresses that. Where you
18 have a biased supervisor whose driving the train even though
19 on paper somebody else is in charge.

20 Realistically, the more senior you go, you may be
21 signing off on things, but you're not as directly involved,
22 and at a certain point, you have to rely on information from
23 your subordinates.

24 THE COURT: Okay.

25 MR. HOROWITZ: The case is simply recognizing and

1 articulating that basic fact of life. That also seemed to be
2 a centerpiece of the Court's tentative ruling. So I wanted
3 to address that.

4 Now, more importantly, though, PPG does not
5 dispute, at least for the purpose of summary judgment that
6 Mr. Lawson approached Mr. Moore and said that he thought that
7 what he had been instructed to do was illegal. It was
8 unethical, quote, no way would he do it. He compared himself
9 to John Dean. He related an anecdote --

10 THE COURT: I accept that as undisputed. That's a
11 very strong portion of your case. I have a question on that,
12 though. It got me to thinking. If someone becomes a
13 legitimate whistleblower, I think the defense for the purpose
14 of this summary judgment is not contesting, as you have just
15 suggested, they are not contesting. Does that mean the
16 person is unfireable despite poor performance? That's what I
17 come down to.

18 MR. HOROWITZ: Your Honor, respectfully, I think
19 we're asking the wrong question. I mean, that's the question
20 that the jury has to figure out. I think it's inappropriate
21 for summary judgment.

22 THE COURT: Well, you just raised the issue.

23 MR. HOROWITZ: Correct.

24 THE COURT: You said, the defense didn't contest
25 the whistleblower status. My responding question is, does

1 that mean whistleblowers can never be fired? You said that's
2 the wrong question. I think it's actually the key question
3 right on point. I'm not understanding. Go ahead.

4 MR. HOROWITZ: Your Honor, it is ultimately the
5 question that the jury has to figure out. The question
6 before Your Honor at this point is whether a reasonable jury
7 could believe that the reason was that he was a whistleblower
8 and not poor performance. But no, certainly whistleblowers
9 are not unfireable.

10 Also, PPG did not take certain reasonable steps
11 here to protect Mr. Lawson. They -- they focused on this
12 idea that they were going to protect his identity, but
13 realistically that was impossible because Mr. Duffy knew who
14 he was. And then unbeknownst to Mr. Duffy, Mr. Lawson also
15 had this conversation with Mr. Moore, which Mr. Moore then
16 didn't tell anybody about. The company should have been
17 doing is exercising extra oversight of Mr. Moore's decisions
18 around Mr. Lawson, and, perhaps, putting somebody else in
19 charge of Mr. Lawson. They did none of that.

20 And it -- then they cry ignorance when, you know,
21 we have disputed issues of material fact that a jury could
22 believe that Mr. Moore knew. Mr. Moore made that decision
23 that Mr. Lawson was the whistleblower. We -- nobody else was
24 put on a PIP. Nobody else was fired. Certainly, Mr. Lawson
25 was not put on a PIP until after he blew the whistle. It was

1 actually a week after. So timing is also very critical.

2 THE COURT: Ah, yes. Timing is critical. Wasn't
3 the bad performance identified before the whistle-blowing?
4 Isn't at that timing issue?

5 MR. HOROWITZ: Well, there's multiple issues of
6 performance that were identified at different times. I mean,
7 what the time --

8 THE COURT: What's the -- what's the word for
9 inadequate performance in the reviews?

10 MR. HOROWITZ: I'm not sure I'm following?

11 THE COURT: Didn't he receive reviews for
12 inadequate performance?

13 MR. HOROWITZ: We -- we can --

14 THE COURT: Let me get --

15 MR. HOROWITZ: There was a market walk -- two
16 market walks where he received what PPG claims, you know, I
17 will not dispute were lower reviews.

18 THE COURT: Unsuccessful.

19 MR. HOROWITZ: Unsuccessful.

20 THE COURT: Were there not, quote, unsuccessful,
21 unquote, reviews before the whistle-blowing.

22 MR. HOROWITZ: Yes. His reviews got worse after.

23 THE COURT: Did the, quote, unsuccessful, end
24 quote, reviews apply to the other three you've identified
25 here today?

1 MR. HOROWITZ: They had similar sales numbers,
2 which was of the major --

3 THE COURT: That doesn't answer my question.
4 That's why, gosh, it's frustrating.

5 MR. HOROWITZ: Yeah --

6 THE COURT: Build up 14 single-spaced page opinion
7 and having you get into answers that were not particularly
8 clear in response to my question. Didn't the plaintiff here
9 have unsuccessful reviews before the bad performance, and
10 what was the status of unsuccessful reviews concerning the
11 three other people you identified?

12 MR. HOROWITZ: Well, I would have more information
13 about those three other people if we -- they -- they had
14 timely produced those documents so that we could have taken
15 follow-up discovery. Now -- but I think at a certain point,
16 the question is regardless of his existing supposed
17 performance issues, would he have then be put on a
18 performance improvement plan? Would he have then been given
19 a 40 on his August 2017 market walk, which was lower than his
20 earlier market walks, and then been terminated.

21 Now, it raises the question should somebody who has
22 some existing performance issues not be entitled to
23 whistleblower protection? If they --

24 THE COURT: I don't think anyone is arguing that.

25 MR. HOROWITZ: Well --

1 THE COURT: If I were to ask the defendant -- I'll
2 ask the defendant.

3 MR. HOROWITZ: Sure.

4 THE COURT: Do you think once you have an
5 inadequate performance review, there is no whistleblower
6 protection for you?

7 MS. COGBILL: No, Your Honor. You will -- if you
8 are a whistleblower, you are entitled to protection.
9 However, it does not override your poor performance and the
10 company's ability to manage and discipline poor performance.

11 THE COURT: Yeah. Go ahead.

12 MR. HOROWITZ: I agree with everything Ms. Cogbill
13 just said.

14 The issue is that the analysis of pretext can't end
15 at his performance reviews that were before his
16 whistle-blowing. If we compare those reviews to the reviews
17 that followed, they became much, much worse. There's no
18 other explanation for that that has been offered by anybody
19 as to what changed. Remember, this is a guy who had a score
20 of 92 a few months earlier on his market walk. Got the
21 highest one in the country. Got an award.

22 I will also note on his August market walk the one
23 that was a 40, PPG had a rubric that if -- that the market
24 walk -- they've been -- it's attached to both parties' brief.
25 A very detailed spreadsheet that has rubrics of points for

1 each thing. The regional manager has to fill it in.

2 Mr. Moore utilized every form of discretion that he
3 could on the August market walk to make it as low as possible
4 in ways that he didn't on the earlier market walks. If you
5 just read it, it looks like it wasn't a fair assessment.
6 He -- he -- he has one force-out, which means that he forgot
7 to clock out of store before leaving. He gets docked five
8 points. The rubric says if there are more than three
9 force-outs -- three or more force-outs in the relevant time
10 period, then you get docked points. Mr. Moore elected to
11 dock him for one force-out.

12 There are other similar things like that that,
13 quite frankly, in summary judgment is difficult to sort
14 through. It's the kind of thing that is going to require
15 detailed witness testimony.

16 THE COURT: Okay. Anything further?

17 MR. HOROWITZ: Yeah. I mean, I think I'll sum up.
18 This case is -- all these issues I'm talking about are
19 credibility issues. Your Honor stated --

20 THE COURT: No.

21 MR. HOROWITZ: Sorry.

22 THE COURT: Wait. Is there any dispute that there
23 were poor evaluations before the whistle-blowing? That's not
24 a credibility issue. That's undisputed.

25 MR. HOROWITZ: No.

1 THE COURT: I don't know what no means. Hold on.
2 I don't know what no means. Go ahead.

3 MR. HOROWITZ: The --

4 THE COURT: You're telling me no, it is disputed
5 or --

6 MR. HOROWITZ: It is not disputed. Look, his
7 reviews are numerical. They are what they say. We cannot
8 dispute that. The effect of them, whether they are
9 circumstantial evidence that his later reviews were not pre-
10 textual, is an inferential issue. All reasonable disputed
11 inferences need to be construed in our favor in summary
12 judgment. That comes down to credibility.

13 THE COURT: Okay. Anything further?

14 MR. HOROWITZ: No, Your Honor. Thank you.

15 THE COURT: Let's hear from the defense. By the
16 way, I see we are 11:30 on our 10:00 o'clock calendar. There
17 are still people in the court. Are there attorneys waiting
18 for a matter?

19 MR. HOROWITZ: Your Honor, my co-counsel and the
20 plaintiff.

21 THE COURT: Thank you. Welcome, sir.

22 Continue. Please.

23 MS. COGBILL: Yes, Your Honor. So let me first --
24 let me take the arguments raised by plaintiff's counsel in
25 order in which they were raised. The first is this

1 representation for the first time that there was an untimely
2 production by defendant that somehow would have changed the
3 outcome of the Court's ruling.

4 First, I -- I take issue with any allegation that
5 there was untimely production. Plaintiff's counsel certainly
6 has not put anything before the Court to show that the
7 documents that were produced had previously been requested,
8 and would somehow, therefore, been untimely in their
9 production. That is more of a discovery issue. As the Court
10 noted, plaintiff's counsel has a month since these documents
11 were produced to bring that to the Court's attention if he
12 felt it would change the outcome of the motion.

13 Those documents speak to, as plaintiff's counsel
14 noted, sales numbers. His representation is that those other
15 territory managers had similar sales number as the plaintiff
16 but was not -- but not put on a PIP. Unfortunately,
17 plaintiff doesn't have those documents here. They're not
18 before the Court. I can assure you that, as the Court has
19 already questioned, the sales numbers were all that those
20 related to. They were not consistent with Mr. Lawson who had
21 missed eight months of sales numbers and six of them being
22 consecutive before he was placed on the PIP. Those don't
23 talk at all to the --

24 THE COURT: Hold on. Slow down just a little bit.

25 MS. COGBILL: Yes.

1 The second argument that was raised, which is this
2 notion that defendant has offered this, you know, bag full of
3 legitimate reasons, and that plaintiff has somehow come up
4 with evidence to dispute one of those legitimate reasons.
5 The reasons offered for his termination remain consistent
6 with what the PIP says. Right. The poor market walk scores
7 and the sales numbers. That has remained consistent
8 throughout this whole entire time. The Court properly
9 addressed it in its tentative that that is not a change in
10 inconsistencies.

11 The third point that plaintiff's counsel raised was
12 this notion that HR made the decision to terminate. That is
13 not what the Court noted in the tentative. That's not what
14 defendant argued. Instead, it was HR who made the decision
15 to place plaintiff on a PIP. That remains undisputed. As
16 the Court has noted, that decision to place him on a PIP was
17 made before any alleged protected activity occurred.
18 Following three low market walk scores and eight months of
19 missed sales, as well as some other issues with the training
20 roster and consistencies and missing other monthly
21 objectives.

22 With respect to the protected activity question and
23 the whistleblower, plaintiff is correct that PPG for purposes
24 of summary judgment motion does not dispute that Lawson made
25 statements to Moore. Those statements, however, were made

1 after decision to place him on a PIP had already occurred.
2 At best, that only addresses a prima facie case that does not
3 overcome the legitimate business reasons and plaintiff's
4 failure to establish pretext.

5 The next argument that PPG somehow failed to take
6 steps necessarily to protect Lawson, the notion here, again,
7 that Mr. Duffy knew the identity of Mr. Lawson. Again, even
8 if that was to be accepted as true for purposes of the
9 summary judgment motion, there is no evidence that Mr. Duffy
10 shared that knowledge with anybody else. Separately, the
11 Court, although we would disagree, did find that there was
12 sufficient evidence from which a jury could find that
13 Mr. Lawson had knowledge. That, again, has already been
14 addressed by the Court. Already dismissed by the Court
15 business of the evidence of legitimate --

16 THE COURT: You said dismissed.

17 MS. COGBILL: Well --

18 THE COURT: Hold -- one at a time. Say what you
19 mean by dismissed.

20 MS. COGBILL: Sorry. What I mean by dismissed is
21 that it was not determinative for purposes of denying the
22 motion for summary judgment.

23 THE COURT: Correct. Go ahead.

24 MS. COGBILL: So --

25 THE COURT: It actually was I think accepted by the

1 Court and found without effect on the Court's ultimate
2 decision.

3 MS. COGBILL: Correct, Your Honor.

4 THE COURT: Go ahead.

5 MS. COGBILL: Yes.

6 THE COURT: I just want to be clear because the
7 argument was made by the plaintiff. It wasn't dismissed by
8 the Court. It was handled by the Court, ruled on by the
9 Court, found by the Court, and found over -- found to be
10 overcome by the other facts. Go ahead.

11 MS. COGBILL: That is correct. So this -- let me
12 get to this notion that PPG somehow had this obligation to
13 treat plaintiff differently, right, because it knew or should
14 have known that he had engaged in protected activity. That's
15 exactly the opposite. The company should have treated the
16 plaintiff the same as it treated all of its employees, right,
17 when managing performance issues.

18 That's exactly what it did here. Most importantly,
19 there is zero evidence in the record that Mr. Moore or PPG
20 treated Mr. Lawson differently with respect to the market
21 walks than it did other territory managers or with respect to
22 placing him on a PIP than it did other territory managers.

23 That just goes to the final notation which was that
24 this August market walk and that Moore exercised its
25 discretion to not give him additional bonus points or to take

1 off points because of the lock-out. The Court already
2 thoroughly addressed that in its tentative. We would submit
3 on that piece of it.

4 THE COURT: All right. Anything further?

5 MR. HOROWITZ: Yes, Your Honor. Thank you.

6 Your Honor, I am going to respond first to the last
7 thing that counsel said regarding PPG's obligations to
8 protect the plaintiff.

9 Remember that this is a whistleblower case
10 involving a substantial perhaps nationwide corporate fraud.
11 There's a public policy issue here that is much more so than
12 would be in play in; for example, a Title VII retaliation
13 case. Where somebody like Mr. Lawson who sticks his neck out
14 to tell the company that his manager is instructing him to
15 commit a crime, is somebody who is deserving of the company's
16 protection. The fact that the company did not afford him
17 that protection isn't an issue of being treated differently.
18 It is something that the company was obligated to do both to
19 protect him and to encourage other people like him to come
20 forward in the future. And the fact that PPG did not do
21 that, quite frankly, speaks volumes about the company's
22 overall motives here.

23 I'll also note that PPG has identified essentially
24 three different sets of reasons for his termination and
25 bounced between them -- shifted between them at different

1 times, because all of these reasons have problems with them
2 for PPG. So they abandon one and try to come up with another
3 one.

4 So first the sales numbers are low. We talked
5 about that already. I mean, they were not firing other
6 people for low sales numbers, at least not in this region.
7 So then they did these market walk evaluations. When the --
8 when they -- then Mr. Lawson complained that the market walk
9 evaluations were unfair to HR. So then the HR, who is Andy
10 Mayhew together with Mr. Moore come up with this
11 justification that Mr. Lawson is falsifying his training
12 roster. And Mr. Mayhew even tried to claim at his deposition
13 that Mr. Lawson admitted to doing the same. When
14 cross-examined on that, he admitted no, falsification is
15 my -- as in Andrew Mayhew's word. Mr. Lawson did not say
16 that. All he said is that he made some clerical errors on
17 his training roster. We all know there's a difference
18 between intentionally falsifying a company document and
19 putting some numbers in the wrong place.

20 Obviously, the company has a right to enforce
21 certain standards. If you're terminating somebody because
22 they falsified something, they better have actually have
23 falsified -- that's a very serious accusation. When
24 Mr. Lawson tried to rebut that at his termination meeting, he
25 was told it doesn't matter what the reason was. You're being

1 fired anyway. That is prima facie pretext. We try to find a
2 reason that suits our -- our needs for the preordained
3 outcome. It's the tail wagging the dog.

4 To respond to the issue about who made the decision
5 to put Mr. Lawson on the PIP. There's disagreement on PPG's
6 own witnesses about that. Mr. Mayhew says it was it was
7 Mr. Moore. That it was discretionary. Mr. Moore says that
8 no, there's was a policy that was dictated if your sales
9 numbers are this, you have to be on a PIP. Mr. Lawson, who
10 had never heard that before, he was outraged called
11 Mr. Mayhew. Mr. Mayhew said no, there is no such policy.
12 We -- we don't have a policy that says that you automatically
13 need to be put on a PIP.

14 Then the timing is just after when he blew the
15 whistle. And P -- the only evidence of when the decision to
16 put him on the PIP was is what PPG's witnesses say. There
17 are no documents. Certainly, Mr. Lawson wasn't told until he
18 was actually put on the PIP, which Mr. Moore admitted in his
19 deposition. There was no advance notice to Mr. Lawson.
20 That's a huge issue of credibility is whether PPG's witnesses
21 are telling the truth or not on that point.

22 You know, finally, I just want to go full circle
23 here. There's four basic factual and credibility disputes
24 here. One is that Mr. Lawson is telling Mr. Moore that what
25 he's asking to do is illegal and calling him out on it. And

1 Mr. Moore aggressively expresses displeasure with that and
2 ends the conversation. Then he now -- Mr. Moore denies that
3 that occurred.

4 Mr. Moore denies to this day, including at his
5 deposition, that he instructed anybody to mis-tint paint.
6 All 14 of Mr. Moore's direct reports said that he gave them
7 instruction. Then not only that, but PPG never confronted
8 Mr. Moore with that. They never said okay, admitted. All 14
9 of your reports are saying you did this. They wait months
10 and months and months until after Mr. Lawson is fired. Then
11 they give him a warning that doesn't even say that he gave
12 that order, which, again, goes to the outrageousness of what
13 PPG is doing and their motive. And -- along with the fact
14 that they never told Lowe's that this fraud occurred even
15 though they did an investigation and found out that it had a
16 national scope.

17 You know, the fact that they -- a national fraud
18 happened, Mr. Lawson reported it, and then they're hiding it
19 from the victim of the fraud, that's certainly motive enough
20 to retaliate against somebody. So when you put all these
21 things together, it's -- there's a lot of inferences that
22 could be made that retaliation occurred.

23 THE COURT: All right. The defense to respond?

24 MS. COGBILL: Your Honor, only to the extent that
25 the Court has questions. I think all of these arguments were

1 presented in opposition. The Court addressed them when it
2 issued its tentative.

3 THE COURT: Well, it does strike me that the
4 arguments were adequately presented in the papers and
5 actually adequately presented during the opening statement.
6 I would like to give the defense an opportunity to respond to
7 the serious charges of misconduct. Did you have a guy
8 messing with the tinting? Is he still employed? What is the
9 situation?

10 MS. COGBILL: Yeah. Yes, Your Honor. I'm happy to
11 address that. The -- what's -- what has been discovered is
12 that there was an allegation raised that Mr. Moore had
13 directed his territory managers to engage in mis-tinting.
14 That's what the investigation found. The investigation was
15 supported that the territory managers did, in fact, did do
16 that.

17 The focus of the investigation was to determine --
18 then game to determine to the extent what -- was this
19 actually happening and to what extent, and does it need to be
20 stopped. With respect to whether this is fraud on Lowe's or
21 some illegal activity, that is disputed. Mr. Moore was
22 issued a written warning. Mr. Moore's employment was
23 terminated when the company lost the contract with Lowe's.
24 Subsequently to that, Mr. Moore was able to find new
25 employment with PPG.

1 THE COURT: All right. Anything further from
2 anyone?

3 MR. HOROWITZ: Your Honor, I will echo
4 Ms. Cogbill's comment. I'm happy to respond to any
5 questions, otherwise I have nothing further.

6 THE COURT: We had quite an extensive oral argument
7 here.

8 I appreciate Mr. Lawson's attendance, sir. I'm
9 sure this is important to Mr. Lawson and also to the defense.
10 We've reviewed the papers pretty carefully. I guess it's the
11 fourth time I said 14 single-spaced pages. We received
12 additional argument here today. I do believe it is important
13 enough that I need to take the matter under submission and
14 think for a moment about the additional arguments we have
15 received. I don't want to get behind on my tentatives. I
16 have taken a few under submission today, which isn't
17 particularly like me.

18 So I will say we will issue our final ruling on
19 this on Friday. I'll consider the arguments that have been
20 made. All right. Any further questions?

21 MS. COGBILL: Your Honor, from a scheduling
22 perspective, as you may be aware, this case is set for trial.
23 Today is the parties' date to file joint exhibit lists,
24 witness lists --

25 THE COURT: So you should be all ready to do that.

1 MS. COGBILL: We are. Does the Court still want
2 those. Friday is the day to file motions in limine.

3 THE COURT: Yes. When I rule on Friday, all
4 deadlines will be extended by the five days between now and
5 then.

6 MS. COGBILL: Okay.

7 THE COURT: Actually, let me be more specific. Any
8 deadlines coming due between now and Friday, including
9 Friday, will be extended for five days after Friday.

10 MS. COGBILL: Does that include today's deadline's
11 as well?

12 THE COURT: Yes.

13 MS. COGBILL: Thank you.

14 THE COURT: Is everyone from Pittsburgh?

15 MR. HOROWITZ: Your Honor, myself and Mr. Fox are
16 from Pittsburgh.

17 MR. SCHROEDER: As am I, Your Honor.

18 MS. COGBILL: I'm from California, Northern
19 California.

20 THE COURT: Okay. So I hope my ruling has been
21 clear about deadlines. Also, I'd always say with trial
22 approaching, I'd raise the issue of settlement, as I would do
23 at the pretrial conference. Have there been settlement
24 discussions?

25 MR. HOROWITZ: Your Honor, not directly. We do

1 have a mediation scheduled.

2 THE COURT: When is the mediation scheduled?

3 MR. HOROWITZ: I believe next week.

4 THE COURT: Okay. Well, since you're all gathered
5 here today, as you leave, talk about getting this case ready
6 for trial. And I -- I order both of you to raise the issue
7 of settlement and see where we're going. Perhaps, you can
8 save the expense of the mediator, depending on how the
9 tentative comes out.

10 The Chinese say uncertainty provides opportunity.
11 The fact that I didn't issue the order today creates
12 uncertainty. We'll see what happens. The order will come
13 out one way or the other on Friday. Thank you all.

14 MR. HOROWITZ: Thank you, Your Honor.

15 (Proceedings concluded at 11:48 a.m.)

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CERTIFICATE

I HEREBY CERTIFY THAT THE FOREGOING IS A TRUE AND CORRECT
TRANSCRIPT OF THE STENOGRAPHICALLY RECORDED PROCEEDINGS IN
THE ABOVE MATTER.
FEES CHARGED FOR THIS TRANSCRIPT, LESS ANY CIRCUIT FEE
REDUCTION AND/OR DEPOSIT, ARE IN CONFORMANCE WITH THE
REGULATIONS OF THE JUDICIAL CONFERENCE OF THE UNITED STATES.

/s/ Miriam V. Baird

07/02/2019

MIRIAM V. BAIRD
OFFICIAL REPORTER

DATE

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Supreme Court of California

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