

1995

Walter Semidey v. Dot Adventures, Inc. : Brief of Respondent

Utah Court of Appeals

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Jones & Jones; Marti L. Jones; Attorney for Appelants.

Loren D. Martin; Jack L. Schoenhals; Attorneys for Respondants.

Recommended Citation

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UTAH COURT OF APPEALS
BRIEF

UTAH
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DOCKET NO. 950814-CA

IN THE UTAH COURT OF APPEALS

230 South 500 East, #400
Salt Lake City, Utah 84102

WALTER SEMIDEY, et al.,
Plaintiffs/Appellants,

vs.

DOT ADVENTURES, Inc., et al.
Defendants/Respondents

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Case No. 950814-CA

PRIORITY 15

ADDENDUM TO BRIEF OF RESPONDENT

Appeal from the Fourth District Court, Judge Park

ATTORNEY FOR APPELLANTS:

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FILED

MAY - 4 1996

COURT OF APPEALS

IN THE UTAH COURT OF APPEALS

230 South 500 East, #400
Salt Lake City, Utah 84102

WALTER SEMIDEY, et al.,
Plaintiffs/Appellants,

vs.

DOT ADVENTURES, Inc., et al.
Defendants/Respondents

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Case No. 950814-CA

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20. Deposition of Walter Semidey, dated April 21, 1994
21. Deposition of Jose Humberto Bardales, dated April 21, 1994
22. Deposition of Angel Santiago, dated April 20, 1994
23. Hearing Transcript dated August 16, 1994, R 728-756
24. Hearing Transcript dated February 10, 1995, R 757-789
25. Interim order filed February 24, 1995, R 476-474

ADDENDUM "A"

The following material is a synopsis of the interchange between the trial court and Plaintiff's counsel regarding the necessary elements of proof which Plaintiffs would have to present in order to establish a *prima facie* case.

1. The trial court asked Plaintiff's counsel whether she was relying upon any documents or testimony other than those provided with Plaintiffs' memorandum. Plaintiffs' counsel admitted the only documents containing any testimony or evidence were attached to Plaintiffs' memorandum.¹

2. Because Plaintiffs' counsel argued, for the first time, that the depositions were transcribed incorrectly, the trial court asked Plaintiff's counsel why she hadn't raised that objection sooner, and asked what it was that she was trying to say. After a rather lengthy interchange, Plaintiffs' counsel admitted that her objection was not well taken and Defendants had not relied upon any portions of the depositions which Plaintiffs considered to be objectionable.²

3. The trial court then stated to counsel for Plaintiffs that Plaintiffs had not provided sufficient testimony to establish a *prima facie* case, so as to avoid a summary judgment being rendered against them.³

4. The trial court then explained to Plaintiffs' counsel that she needed to come forward with admissible testimony which would support each of the elements of the causes of action which she was pursuing. As an example, the trial court called Plaintiffs' counsel's attention to the fact that

¹ Exhibit 24, Hearing Transcript dated February 10, 1995, R 757-789, at R 773

² Exhibit 24, Hearing Transcript dated February 10, 1995, R 757-789, at R 775-776

³ Exhibit 24, Hearing Transcript dated February 10, 1995, R 757-789, at R 776-777

no special damages had been alleged in the complaint and there was no evidence of any damages having been sustained by the Plaintiffs.⁴

5. In response to the trial court's concerns that Plaintiffs had not established any damages, the following interchange occurred.

MS. JONES: There is substantial and significant damages to the health and well being.

THE COURT: Have you got any doctor expert testimony to that affect?

MS. JONES: To this point, no Your Honor. . . .⁵

6. The trial court then told counsel for Plaintiffs that they needed to provide admissible testimony to support their claims of assault. The following quote from the transcript of hearing demonstrates how carefully the trial court explained the matter to counsel for Plaintiff.

THE COURT: Well, let me draw your attention to the assault elements. The defendant is liable to the plaintiff for assault if one, the defendant acted intending to cause harmful or offensive contact with the plaintiff or imminent apprehension of such contact. Two, as a result the plaintiff was thereby put in imminent apprehension of harm or contact. Three, the plaintiff suffered injuries proximately caused by the defendant's action.⁶

7. After hearing the trial court's concerns about the lack of testimony and evidence provided by Plaintiffs, Plaintiffs' counsel stated:

MS. JONES: I would submit that we can prove those issues on each of those that you have stated each of those issues we can prove. I have nothing further.⁷

⁴ Exhibit 24, Hearing Transcript dated February 10, 1995, R 757-789

⁵ Exhibit 24, Hearing Transcript dated February 10, 1995, R 757-789, at R 781-782

⁶ Exhibit 24, Hearing Transcript dated February 10, 1995, R 757-789, at R 781

⁷ Exhibit 24, Hearing Transcript dated February 10, 1995, R 757-789, at R 783

8. The trial court then stated that even though Plaintiffs' counsel was not entitled to additional time the trial court was going to allow Plaintiffs' counsel an additional 30 days to demonstrate that the Plaintiffs could present a prima facie case, and could establish, with a minimum threshold of evidence each one of the required elements of the various causes of action alleged by Plaintiffs.

THE COURT: I am going to give you some time to demonstrate to this court that you can actually prove some of these. You give me the names of witnesses who will testify that there is some damages there. . . .

I will give you give you 30 days to get that done and to prove to this court that this court should not grant . . . Mr. Martin's Motion for Summary Judgment. . . .⁸

9. The trial judge then indicated that as of the date of the hearing, the Plaintiffs had not met that burden.⁹

The trial court commented upon Plaintiffs' lack of evidence of severe emotional distress and the proximate cause.

22. It is well known that, in a civil suit, damages may not be recovered unless the plaintiff can prove the existence of damages resulting to the plaintiff as a result of a legal wrong inflicted by the defendant. "Wrong without damage, or damage without wrong, does not constitute a cause of action." 22 Am. Jur. 2d Damages §4 (1988). Damages recoverable for a tort are those limited to those damages directly attributable to the tort. Id. §130. The Court notes that all plaintiffs are now employed with different employers and are earning more than they had been paid while employed by DOT. . . .

⁸ Exhibit 24, Hearing Transcript dated February 10, 1995, R 757-789, at R 786-787

⁹ Exhibit 24, Hearing Transcript dated February 10, 1995, R 757-789, at R 777, lines 10-11

23. The only evidence submitted by plaintiffs as to emotional damage suffered by plaintiffs as a result of the searching consists of an evaluation report made by Dr. Juan A. Mejia and an affidavit of Dr. Linda J. Gummow. Both documents are inadmissible as evidence. Under U.R.C.P. 56(b), affidavits are legally admissible evidence in a summary judgment proceeding. The Court notes that Dr. Mejia's evaluation report must be considered hearsay because it is not a sworn affidavit; therefore, it cannot be considered legally admissible evidence. Furthermore, Dr. Mejia's evaluation cannot be admitted into evidence as a statement for purposes of medical diagnosis or treatment under Utah Rules of Evidence 803(4) as an exception to the hearsay rule because the evaluation by Dr. Mejia was performed solely to aid the pursuit of litigation, not for the purpose of diagnosis to promote treatment. See Juan A. Mejia's Confidential Psychological Evaluation at 1, Plaintiffs' Amended Second Objection to Defendants' Motion For Summary Judgment, Exhibit A. As to Dr. Gummow's report, it is inadmissible despite its affidavit form because Dr. Gummow did not personally examine the plaintiffs. Rather she examined the English translations of the plaintiffs' statements and the psychological evaluations of plaintiffs made by Dr. Mejia. Dr. Gummow's affidavit is not based on her personal knowledge or on a direct evaluation of plaintiffs, and is therefore inadmissible as hearsay. Without the testimony of these psychologists, the Court finds plaintiffs have failed to establish emotional damages upon which a cause of action could be sustained.

24. While the Court certainly does not condone defendant's conduct in this matter, it is apparent that such conduct has not appreciably affected the lives of the parties such that it can be reduced to monetary damages. Lacking any evidence that plaintiffs have incurred any monetary or psychological damages resulting from the search conducted by defendants, the Court finds the plaintiffs have no cause of action against defendants. Accordingly, defendants' Motion For Summary Judgment is hereby granted.¹⁰

¹⁰ Exhibit 6, Memorandum Decision filed May 25, 1995, **R 696-685**, at paras. 22, 23, and 24

Tab 1

400-27-1000
JUL 13 3 24 PM '94

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=====

IN THE FOURTH JUDICIAL DISTRICT COURT
FOR THE STATE OF UTAH
150 N. 100 W., PROVO, UTAH 84601

=====

WALTER SEMIDEY, ANGEL SANTIAGO,
HUMBERTO BARDALES, and ROSA
MAZARIEGOS,

Plaintiffs,
vs.

JEANETTE R. LYNTON, /aka/ JEANETTE
ROMERO MARKHAM, /dba/ D.O.T.S.,
DOZENS OF TERRIFIC STAMPS, DOT
ADVENTURES, INC., a Nevada
corporation, MIGUEL ANGEL ESQUIVEL,
MARIA "COOKIE" REYES, HUMBERTO
HERNANDEZ, JOHN DOE I and JANE DOES
I-II,

Defendants.

AMENDED COMPLAINT

930402503

=====

COME the above Plaintiffs, by and through their attorney of
record, Marti L. Jones, and state the following for cause of
action against the Defendants.

JURISDICTION AND VENUE

1. Defendant Jeanette Romero Markham, /aka/ Jeanette R.
Lynton, is and was a resident of Utah, doing business in Utah as
Dozens of Terrific Stamps, (D.O.T.S.) during the period of time
relevant to this case, July 1992 to January 4, 1993.

2. Her primary place of business during the relevant time period was 140 S. Mountain View Drive, in Orem, Utah.

3. In the alternative, Defendant Nevada corporation DOT Adventures, Inc. was doing business in the state of Utah as Dozens of Terrific Stamps, (D.O.T.S.) during the period of time relevant to this case, July 1992 to January 4, 1993.

4. At the time of incorporation and at all times relevant herein, DOT Adventures, Inc. was inadequately capitalized to properly conduct the business it purported to engage in.

5. Defendant Jeanette Lynton at all times relevant herein was the sole officer and director of the organization known as DOT Adventures, Inc. Plaintiffs affirmatively allege that Defendant Jeanette Lynton at all times relevant herein was the alter ego of the entity known as DOT Adventures, Inc.

6. Miguelangel Esquivel is the plant manager of the Orem factory of D.O.T.S., and was so during the relevant time period.

7. Defendant Esquivel is a resident of Utah County, and was so during the relevant time period.

8. Defendant Maria "Cookie" Reyes was a supervisor in the Orem factory of D.O.T.S., and was so during the relevant time period.

9. Defendant Maria "Cookie" Reyes is a resident of Utah County, and was so during the relevant time period.

10. Defendant Humberto Hernandez was a supervisor in the Orem factory of D.O.T.S., and was so during the relevant time period.

11. Defendant Humberto Hernandez is a resident of Utah County, and was so during the relevant time period.

12. The causes of action arose in Orem, Utah County, Utah.

13. This complaint is for a sum of more than \$20,000.00.

FACTS

14. Each of the Plaintiffs named above was employed by the Defendant Jeanette R. Lynton, /dba/ D.O.T.S. Dozens of Terrific Stamps (hereinafter, DOTS), on or around December 16 and 17, 1992.

15. In the alternative, each of the Plaintiffs named above was employed by the Defendant DOT Adventures, Inc., /dba/ D.O.T.S., Dozens of Terrific Stamps, (hereinafter, DOTS, Inc.) on or around December 16 and 17, 1992.

16. At approximately 10:00 a.m. on or around December 16 or 17, 1992, Miguelangel Esquivel, acting within his authority as plant manager, stopped all work within the confines of the DOTS plant, and called all the employees together.

17. Defendant Esquivel indicated that someone in the plant had stolen a \$20.00 bill from one of the plant workers.

18. Defendant Esquivel then told all the workers that no one was to leave the plant until they and their belongings had been searched by a supervisor.

19. When Plaintiff Semidey questioned how Defendant Esquivel planned to prove that a \$20.00 bill found during the search had been stolen, Mr. Esquivel ignored the question.

20. Defendant Esquivel then told the supervisors to take their workers to separate rooms and search them.

21. The supervisors were responsible to insure that no worker left the plant without being searched.

22. A supervisor thereafter physically searched each of the above Plaintiffs and their personal belongings.

FIRST CAUSE OF ACTION
WRONGFUL DETENTION

23. Plaintiffs hereby incorporate by reference all previous allegations of this complaint.

24. Mr. Esquivel's actions, in requiring that all employees be subject to physical search of their person and belongings before being allowed to leave the premises is a violation of Utah Code §76-5-304.

25. Mr. Esquivel intentionally and unlawfully detained each of the above named Plaintiffs, thereby interfering substantially with their liberty.

SECOND CAUSE OF ACTION
ASSAULT

26. Plaintiffs hereby incorporate by reference all previous allegations of this complaint.

27. By requiring that all employees submit to a physical search of their person and belongings before being allowed to leave the premises, Mr. Esquivel intentionally created in all non-supervisory employees the reasonable apprehension of harmful or offensive touching.

THIRD CAUSE OF ACTION
BATTERY

28. Plaintiffs hereby incorporate by reference all previous allegations of this complaint.

29. By requiring all supervisors to physically search the person and property of all employees, Mr. Esquivel intentionally caused the harmful or offensive touching of all non-supervisory employees.

FOURTH CAUSE OF ACTION
FALSE IMPRISONMENT

30. Plaintiffs hereby incorporate by reference all previous allegations of this complaint.

31. Mr. Esquivel's actions, in refusing to allow any employee to leave work prior to submitting to a physical search of their person and belongings constitutes a false imprisonment of all non-supervisory employees.

32. Mr. Esquivel intentionally and unlawfully detained each of the above named Plaintiffs, by unreasonably and wrongfully

restraining them from freely leaving the plant with implied threats of termination of employment if they did not submit to the indignity of a physical search.

FIFTH AND SIXTH CAUSES OF ACTION
INTENTIONAL AND RECKLESS INFLICTION OF EMOTIONAL DISTRESS

33. Plaintiffs hereby incorporate by reference all previous allegations of this complaint.

34. Defendant Esquivel's extreme and outrageous actions, in requiring every employee to submit to the indignity of a physical search, intentionally and recklessly inflicted upon the Plaintiffs in this action severe emotional distress.

35. Defendant Esquivel knew, or should have known, that there was a reasonable likelihood that subjecting all employees to a physical search of their person and property would cause them severe emotional distress.

SEVENTH CAUSE OF ACTION
INTRUSION INTO PHYSICAL PRIVACY

36. Plaintiffs hereby incorporate by reference all previous allegations of this complaint.

37. The physical search of each plaintiff constituted an unwarranted and tortious intrusion into the physical privacy of each plaintiff.

EIGHTH CAUSE OF ACTION
INTRUSION INTO PERSONAL BELONGINGS

38. Plaintiffs hereby incorporate by reference all previous allegations of this complaint.

39. The physical search of the personal belongings of each plaintiff constituted an unwarranted and tortious intrusion into the personal privacy of each plaintiff.

NINTH CAUSE OF ACTION
INTRUSION INTO PERSONAL AFFAIRS

40. Plaintiffs hereby incorporate by reference all previous allegations of this complaint.

41. Defendant Esquivel interviewed Plaintiff Semidey for employment in October of 1992. During that interview Defendant Esquivel asked Plaintiff Semidey if he was a member of the LDS church. When Mr. Semidey responded that he was, Defendant Esquivel asked if he had a valid temple recommend. Defendant Esquivel then asked to see the recommend.

42. Mr. Esquivel's inquiry into Mr. Semidey's religious beliefs and qualifications was a completely unwarranted, unnecessary, and wrongful intrusion into Plaintiff Semidey's private affairs.

WHEREFORE, Plaintiffs pray for judgment against the defendants, jointly and severally, as follows:


A. For damages due to the emotional distress and turmoil caused by Defendants' tortious and wrongful behavior, in particular the mental and emotional distress caused by the physical search and the loss of personal dignity.

B. For punitive damages for Defendants' knowing and reckless indifference toward, and disregard of the rights of their employees.

C. For the specific costs of this suit and attorney's fees as permitted by court rule and/or statute.

D. For such other relief as to the court may seem just and proper.

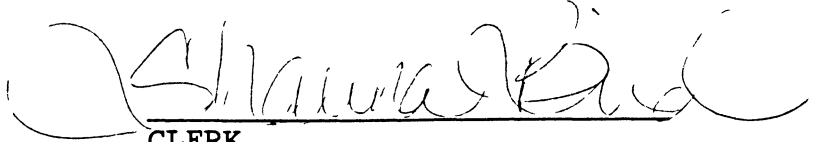
DATED this 29th day of April 1993.



MARTI L. JONES
Attorney for Plaintiffs

CERTIFICATE OF MAILING

I hereby certify that on the 29 day of April, 1994, I mailed a true and correct copy of the foregoing Motion to Amend Complaint, Memorandum in Support of Motion to Amend Complaint, Affidavit of Attorney Marti Jones and Affidavit of Private Investigator JoEllyn Booker, and a copy of the proposed Amended Complaint to Attorneys for Defendants, Loren D. Martin and Jack L. Schoenhals, 1200 Beneficial Life Tower, Salt Lake City, UT 84111, postage prepaid.


CLERK

Tab 2

8-16-94
jm

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Attorneys for Defendants

IN THE FOURTH JUDICIAL DISTRICT COURT
STATE OF UTAH

WALTER SEMIDEY, et al.	:	ORDER
Plaintiffs,	:	
vs.	:	
	:	Civ. No. 930400503 PI
DOT ADVENTURES, INC. et al.,	:	Judge Boyd L. Park
Defendants.	:	
	:	

The above captioned matter came regularly before this Court for hearing on Defendant's, Jeanette R. Lynton's, Motion For Summary Judgment and upon the Motion to Strike brought before this Court by DOT Adventures, Inc. Hearing on the motions was held on August 16, 1994, at the hour of 10:00 am. Present were Jeanette R. Lynton, her counsel, Loren D. Martin, who is also counsel for DOT Adventures, Inc. Also present was Linda Q. Jones, counsel for Plaintiffs.

Having previously entered its Findings Of Facts And Conclusions Of Law, it is hereby ORDERED, ADJUDGED AND DECREED that:

1. Jeanette R. Lynton's Motion For Summary Judgment is granted, dismissing her upon the merits with prejudice.

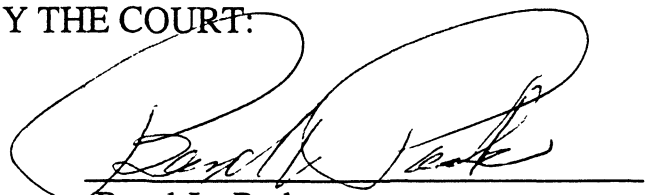
2. The name of Jeanette R. Lynton, /aka/ Jeanette Romero Markham, and the d/b/a of D.O.T.S. (Dozens of Terrific Stamps) shall be stricken from the caption of this matter in all further pleadings.

3. The caption of this matter shall be: Walter Semidey, Angel Santiago, Humberto Bardales, and Rosa Mazariegos vs. Dot Adventures, Inc., Miguelangel Esquivel, Maria "Cookie" Reyes and Humberto Hernandez. The clerk shall make appropriate modifications to reflect the change.

3. DOT Adventures, Inc., Motion To Strike is granted. Any reference in any of the pleadings which makes any allegation that DOT Adventures, Inc., is undercapitalized or that such corporation is the alter ego of Jeanette R. Lynton is ordered stricken. The clerk shall take appropriate action to reflect this Order to Strike, which may include, modification of the pleadings by deletion and interlineation.

DATED this 8 day of ^{September}~~August~~, 1994.

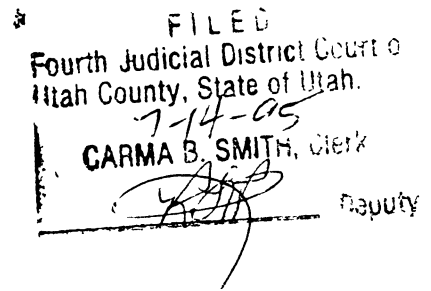
BY THE COURT:


Boyd L. Park
District Judge

Approved as to Form and Content:


~~Linda Q. Jones~~ *Marti L. Jones*
Attorney For Plaintiffs

Tab 3



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Attorneys for Defendants

IN THE FOURTH JUDICIAL DISTRICT COURT
UTAH COUNTY, STATE OF UTAH
125 North 100 West, Provo, Utah 84601

WALTER SEMIDEY, ANGEL SANTIAGO,
HUMBERTO BARDALES, and ROSA
MAZARIEGOS,
Plaintiffs,

vs.

DOT ADVENTURES, INC., MIGUEL ANGEL
ESQUIVEL, MARIA REYES, HUMBERTO
HERNANDEZ, JOHN DOE I AND JAMES
DOES I-II,
Defendants.

ORDER

Civ. No. 930400503 PI
Judge Boyd L. Park

This action was commenced in 1993. The original Complaint was dated July 30, 1993. Defendants were not served until on or about January 5, 1994. By leave of the Court under an Order dated June 13, 1994, Plaintiffs filed an Amended Complaint. Included in the original and amended Complaints was an additional defendant, Jeanette R. Lynton. In August, 1994, Summary Judgment in favor of Ms. Lynton, dismissing her from the case. No action was taken by Plaintiffs against the Order which dismissed Ms. Lynton from the case.

Counsel for Plaintiffs, Marti L. Jones, and counsel for Defendants, Loren D. Martin, were present at all proceedings. This matter came before the Court on Defendants' Motion For Summary Judgment as to all Defendants. Oral arguments on said Motion were heard on February 10, 1995, at which time the Court gave Plaintiffs additional time, until March 13, 1995, to file pleadings which would tend to show why the Court should not grant Defendants' Motion. Defendants were given until March 27, 1995, to file responsive pleadings.

On March 24, 1995, the Court extended Defendants' deadline for filing responsive pleadings to March 31, 1995, because Plaintiffs' pleadings were not received by Defendants until a week after the March 13 deadline.

Plaintiffs filed a Second Objection To Defendants' Motion For Summary Judgment on March 13, 1995, and an Amended Second Objection on March 22, 1995. Defendants' Reply To Plaintiffs' Second Objection was filed with this Court on April 3, 1995. In its Memorandum Decision the Court stated that, "In analyzing the parties' arguments, the Court will disregard Plaintiffs' Second Objection in favor of Plaintiffs' Amended Second Objection."

On April 25, 1995, Defendants filed a Motion To Strike and/or Disregard Portions Of Plaintiffs' Affidavits and an accompanying Memorandum in support thereof. On May 8, 1995, Plaintiffs filed an Objection To Defendants' Motion To Strike and/or Disregard Portions Of Affidavits and an accompanying Memorandum in support thereof.

The Court, having received and reviewed the Motion For Summary Judgment, memorandum in support, memorandum in opposition, reply memorandum, Plaintiffs' amended second objection and Defendants' reply to Plaintiffs' second objection; having received Defendants' motion to strike and/or disregard portions of Plaintiffs' affidavits, memorandum in support, Plaintiffs' objection to Defendants' motion to strike and memorandum in support of objection; having reviewed the applicable laws, all pleadings, being fully advised in the premises,

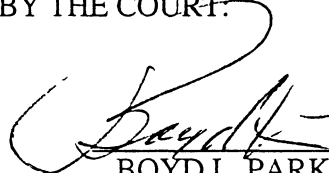
acting under the provisions of Rule 56(c), URCivP, taken in light most favorable to Plaintiffs' position, the Court finds that there is no genuine issue as to any material fact, lacking any evidence that Plaintiffs have incurred any monetary or psychological damages, the Defendants are entitled to judgment as a matter of law as to all alleged causes of action. Plaintiffs, having failed to establish compensatory or general damages, punitive damages may not be awarded.

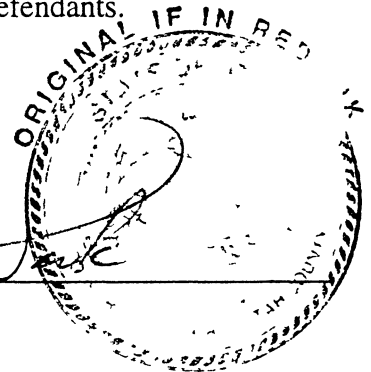
Because the Court has found no genuine issue of material fact exists and Defendants are entitled to summary judgment as a matter of law, the Court need not address Defendants' Motion to Strike and/or to Disregard Portions of Plaintiffs Affidavits.

NOW, THEREFORE, it is hereby ORDERED that Defendants' Motion For Summary Judgment is hereby granted, dismissing all causes of action against all Defendants.

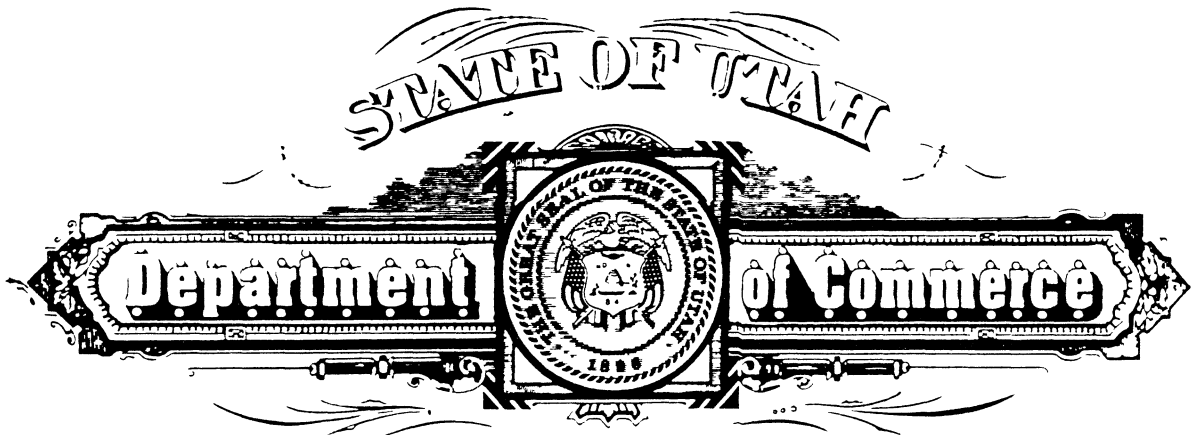
DATED this 14 day of ~~June~~ ^{July}, 1995.

BY THE COURT:


BOYD L. PARK
District Judge



Tab 4



THE UTAH DIVISION OF CORPORATIONS AND COMMERCIAL
CODE HEREBY CERTIFIES THAT the attached is a true, correct, and
complete copy of *entire file* of

DOT ADVENTURES, INC.

and the endorsements thereon, as the same is taken from and
compared with the original filed in the office of the Division on
January 5, 1993, and now remaining on file and of record therein.

AS APPEARS OF RECORD IN THE OFFICES OF THE DIVISION.

File Number: *CO 167454*



Dated this 29th day
of July 19 94

Karla S Woods

Karla T Woods
Director

[Signature] 224



State of Utah

DEPARTMENT OF COMMERCE 3

Division of Corporations & Commercial Code

Application for CERTIFICATE OF AUTHORITY

RECEIVED

Dot Adventures, Inc.
(exact corporate name)

1993 JAN -5 PM 12:02

1. A corporation of the state of Nevada, incorporated 10 day of February, 19 89
2. The corporations period of duration is perpetual (usually perpetual)
3. The address of the corporation in the state of incorporation is:

None - moved to Utah
street address city/state zip

4. The registered agent in Utah is: Jeanette Lynton

The street address of the registered office in Utah is:

140 South Mountain View Dr., Orem Ut. 84058
street address city zip

5. The business purposes to be pursued in Utah are: Distribution of rubber stamps and stamp accessories.
6. The corporation commenced or intends to commence business in Utah on: 8-1-92
7. The names and addresses of the corporation's directors and officers are:

Name	Address	City/State/Zip
Director <u>Jeanette Lynton</u>	<u>140 S. Mountain View Dr.</u>	<u>Orem Utah 84058</u>

Director _____

Director _____

President <u>Jeanette Lynton</u>	<u>140 S. Mountain View Dr.</u>	<u>Orem Utah 84058</u>
----------------------------------	---------------------------------	------------------------

Vice-President Same

Secretary Same

Treasurer Same

8. A certification of Good Standing from the State of Incorporation dated no earlier than ninety (90) days prior to filing with this office is attached to this application.
9. The corporation shall use as its name in Utah Dot Adventures, Inc.

(The corporation shall use its name as set forth at the top of this form unless this name is not available for use in Utah.)

Under penalties of perjury, I declare that this application for Certificate of Authority has been examined by me and is, to the best of my knowledge and belief, true, correct and complete.

By: Jeanette Lynton

Title: PRESIDENT

Dated: August 10 1992

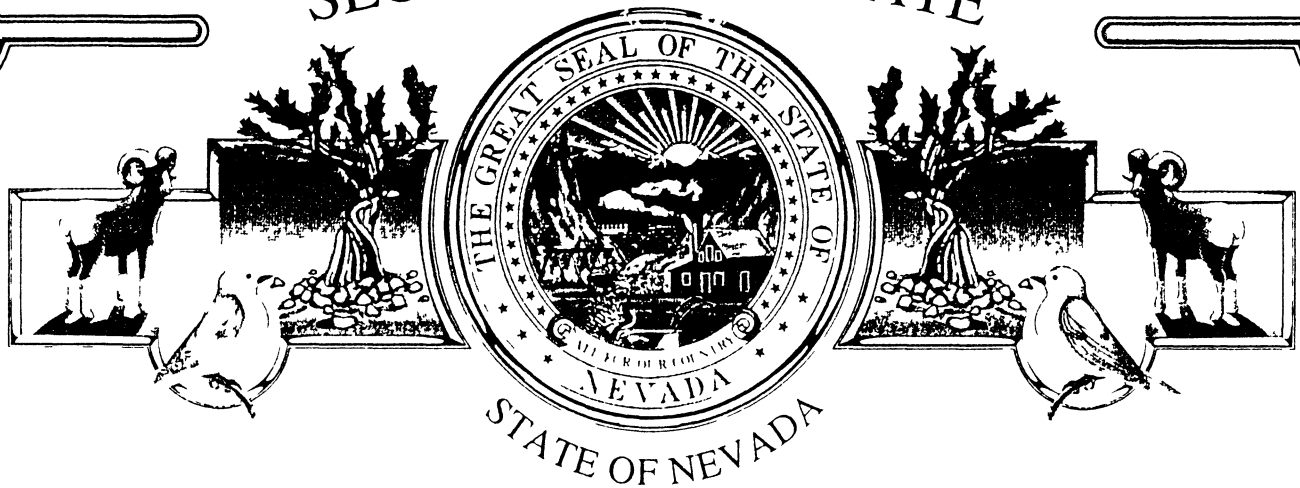
The undersigned hereby accepts appointment as Registered Agent for the above named corporation.

By: Jeanette Lynton
Registered Agent

Filing Fee: \$50.00
Send completed forms in duplicate to:

State of Utah
Division of Corporations
and Commercial Code
160 East 300 South/Box 45801
Salt Lake City, Utah 84145-0801
(801) 530-4849

SECRETARY OF STATE



CERTIFICATE OF CORPORATE STATUS

I, CHERYL A. LAU, the duly elected, qualified and acting Secretary of State of the State of Nevada, do hereby certify that I am, by the laws of said State, the custodian of the records relating to corporations organized under the laws thereof; the revocation of their corporate charters, and their right to transact and carry on their corporate business; and am the proper officer to execute this certificate.

I further certify that, at the date of this certificate, **DOT ADVENTURES** is a corporation duly organized and existing under and by virtue of the laws of the State of Nevada, having fully complied therewith; is entitled to exercise therein all the corporate powers and functions recited in its charter or articles of incorporation, and is in good standing in this State.

IN WITNESS WHEREOF, I have hereunto set my hand
and affixed the Great Seal of State, at my office, in
Carson City, Nevada, this 8th day of December, 1992



Secretary of State

By

Deputy

Tab 5

4th JUDICIAL DISTRICT COURT
MAY 31 11 21 AM '94

Loren D. Martin (2101)
1200 Beneficial Life Tower
Salt Lake City, Utah 84111
Telephone: (801) 538-0066

Jack L. Schoenhals (2881)
1200 Beneficial Life Tower
Salt Lake City, Utah 84111
Telephone: (801) 538-2344

Attorneys for all named defendants.

IN THE FOURTH JUDICIAL DISTRICT COURT
UTAH COUNTY, STATE OF UTAH

WALTER SEMIDEY,
ANGEL SANTIAGO,
HUMBERTO BARDALES, and
ROSA MAZARIEGOS,

Plaintiffs,

vs.

JEANETTE R. LYNTON, /aka/
JEANETTE ROMERO MARKHAM,
/dba/ D.O.T.S., DOZENS OF
TERRIFIC STAMPS (D.O.T.S.),
MIGUELANGEL ESQUIVEL,
JOHN DOES I & II, and
JANE DOES I-III,

Defendants

AFFIDAVIT OF
BRYANT LANCASTER, CPA,
MAY 24, 1994

Civ. No. 930400503 PI

Judge Boyd L. Park

STATE OF UTAH)
 SS.
County of Salt Lake)

I, Briant Lancaster, CPA, having been first duly sworn, depose and say as follows:

1. That I am a Certified Public Accountant licensed to practice in the State of Utah.

2. That I provide CPA services to DOT Adventures, Inc. That as part of such services and in the normal course of business I keep and am responsible for all of the books of the company, including payroll.

3. That the above named Plaintiffs: Walter Semidey, Angel Santiago, Humberto Bardales, and Rosa Mazariegos, have been employees of DOT Adventures, Inc. and were employed in such capacity on or around and during December 16 and 17, 1992.

4. That I have caused true and correct copies of pay checks to each of the Plaintiffs for part of December, 1992, to be attached hereto and made a part hereof.

5. That such paychecks were drawn upon the account of DOT Adventures, Inc., as were previous checks.

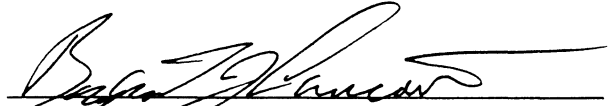
6. That the records of DOT Adventures, Inc., reflect that in the ordinary course of business, such checks were written to the Plaintiffs, delivered to them, presented to the payee bank, and cashed by each of the Plaintiffs.

7. That records of DOT Adventures, Inc., reflect that in the checks written by DOT Adventures, Inc., to the Plaintiffs were for payment for employee services rendered.

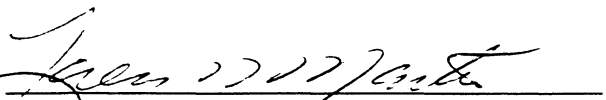
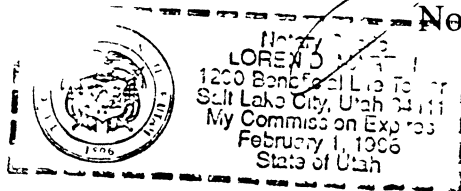
8. That records of DOT Adventures, Inc., reflect that it is a Nevada corporation, doing business in Utah.

9. That records of DOT Adventures, Inc., reflect that on December 16 and 17, 1992, Miguelangel Esquivel, Maria "Cookie" Reyes, Humberto Hernandez, and Jeanette R. Lynton were employees of the corporation

DATED this 25th day of May, 1994.


Bryant Lancaster, CPA
Affiant.

On the 25th day of May, 1994, personally appeared Bryant Lancaster, CPA, who, being first duly sworn, did execute the above affidavit and stated that the information contained in the above affidavit was true and correct.


Notary Public


DOT ADVENTURES INC.

140 MOUNTAIN WAY DRIVE, SUITE 1
OREM, UTAH 84058

OREM OFFICE
CENTRAL BANK
418 NORTH STATE STREET
OREM, UTAH 84057

97-32/1243

1547

DATE

AMOUNT

Pay

THE SUM Four Hundred Sixty and 67/100

12-23-92

*****460.67

TO THE
ORDER
OF

Angel M. Santiago
430 West 200 North Apt #7
Provo, Utah 84601

NON-NEGOTIABLE

AUTHORIZED SIGNATURE

⑆001547⑆ ⑆1243003270101 10550 0⑆

CURRENT PERIOD 12-03-92 to 12-10-92

YEAR-10-DIME** 55# 583-54-6399 **

Reg-Hrs	Reg-Pay	OT-Hrs	OT-Pay	Total
300.00	225.00	32.00	256.00	481.00
32.00	256.00	0.00	0.00	256.00
0.00	0.00	0.00	0.00	0.00
112.00	89.60	557.50	501.75	1407.85
Federal Withheld	-71.50			-71.50
State Withheld	-29.24			-29.24
FICA Tax Withheld	-46.51			-46.51
Net Pay				1214.60

Net Pay

\$460.67

Net Pay

\$2,148.06

DOT ADVENTURES INC.

DOT ADVENTURES INC.

140 MOUNTAIN WAY DRIVE, SUITE 1
OREM, UTAH 84058

OREM OFFICE
CENTRAL BANK
416 NORTH STATE STREET
OREM, UTAH 84057
07-32/1243

15651

Pay

THE SUM Two Hundred Ninety-Seven and 45/100

12-23-92

*****297.45

DATE

AMOUNT

TO THE
ORDER
OF

HODGA DELIJA MAZARIEGOS
1665 NORTH STATE STREET
OREM, UTAH 84057

#001565# 121213003270101 10550 00

NON-NEGOTIABLE
AUTHORIZING SIGNATURE

CURRENT PERIOD 12-05-92 to 12-10-92				YEAR-TO-DATE** 884 960-28-9344 **			
407	HODGA DELIJA MAZARIEGOS			Regular Pay Rate 4.750			
Reg-Hrs	74.500	Reg-Pay	353.88	Reg-Hrs	248.000	Reg-Pay	1,178.01
OT-Hrs	0.000	OT-Pay	0.00	OT-Hrs	0.000	OT-Pay	0.00
DT-Hrs	0.000	DT-Pay	0.00	DT-Hrs	0.000	DT-Pay	0.00
Tot-Hrs	74.500	Tot-Pay	353.88	Tot-Hrs	248.000	Tot-Pay	1,178.01
Federal Withheld			-21.06	Federal Withheld			-63.54
State Withheld			-8.30	State Withheld			-25.07
FICA Tax Withheld			-27.07	FICA Tax Withheld			-90.12

Net Pay

297.45

Net Pay

2999.28

- ADVENTURES INC.

DOT ADVENTURES INC.

140 MOUNTAIN WAY DRIVE, SUITE 1
OREM, UTAH 84058

OREM OFFICE
CENTRAL BANK
418 NORTH STATE STREET
OREM, UTAH 84067
97-32/1243

1533

Pay
1117 SUM Three Hundred Sixty-Seven and 75/100

DATE 12-23-92

AMOUNT *****367.75

OTHER
INDEB
OF

JOSE HUMBERTO BARDALEN
1018 SOUTH COLUMBIA LN
OREM, UTAH 84058

⑈001533⑈ ⑈12430032⑈101 10550 0⑈

NON-NEGOTIABLE
AUTHORIZED SIGNATURE

** CURRENT PERIOD 12-05-92 to 12-18-92				YEAR-TO-DATE** 558 647-03-2431 **			
117	JOSE HUMBERTO BARDALEN						
Reg Hrs	00.000	Reg-Pay	400.00	Reg Hrs	764.500	Reg-Pay	3,706.63
OT Hrs	0.500	OT-Pay	3.75	OT Hrs	1.500	OT-Pay	10.68
DT Hrs	0.000	DT-Pay	0.00	DT Hrs	0.000	DT-Pay	0.00
Tot Hrs	00.500	Tot-Pay	403.75	Tot Hrs	766.000	Tot-Pay	3,717.31
Federal Withheld			-2.07	Federal Withheld			-4.01
State Withheld			-2.24	State Withheld			-12.92
FICA Tax Withheld			-30.09	FICA Tax Withheld			-204.39

Net Pay	\$367.75	Net Pay	\$3,413.39
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DOT ADVENTURES INC.

DOT ADVENTURES INC.

140 MOUNTAIN WAY DRIVE, SUITE 1

OREM, UTAH 84058

OREM OFFICE
CENTRAL BANK
418 NORTH STATE STREET
OREM, UTAH 84057

07/32/1243

1554

Day

1100 SUM Four Hundred Seventeen and 76/100

DATE

12-23-92

AMOUNT

*****417.76

OTHER
PROVEN

WALTER SEMIDEY
430 WEST 200 NORTH, #9
PROVO, UTAH 84601

#001554# 012143003270101 10550 00

NON-NEGOTIABLE
AUTHORIZED SIGNATURE

CURRENT PERIOD 12-05-92 to 12-18-92

YEAR-TO-DATE** 58# 583-44-4854 **

WALTER SEMIDEY				Regular Pay Rate 4.500			
Reg Hrs	80.000	Reg-Pay		Reg-Hrs	423.250	Reg-Pay	1,854.01
OT Hrs	27.750	OT-Pay		OT-Hrs	27.750	OT-Pay	127.31
OT Hrs	0.000	OT-Pay		OT-Hrs	0.000	OT-Pay	0.00
OT Hrs	107.750	Tot-Pay		Tot-Hrs	451.000	Tot-Pay	2,041.32
Federal Withheld				Federal Withheld			-108.50
State Withheld				State Withheld			-68.66
FICA Tax Withheld				FICA Tax Withheld			-156.16

Net Pay

\$417.76

Net Pay

\$1,628.00

DOT ADVENTURES INC.

Tab 6

FILED
Fourth Judicial District Court
of Utah County, State of Utah
CARMA B. SMITH, Clerk
5-25-95 Deputy

**IN THE FOURTH JUDICIAL DISTRICT COURT
UTAH COUNTY, STATE OF UTAH**

WALTER SEMIDEY, et al., vs. DOT ADVENTURES, INC., et al.,	Plaintiffs, Defendants.	MEMORANDUM DECISION CASE NO. 930400503 DATE May 22, 1995 JUDGE BOYD L. PARK
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This matter came before the Court on defendant's Motion For Summary Judgment. Oral arguments were heard on February 10, 1995, at which time the Court gave plaintiffs until March 13, 1995 to file pleadings to prove why the Court should not grant defendants' motion. Defendants were given until March 27, 1995 to file responsive pleadings. On March 24, 1995 the Court extended defendants' deadline for filing responsive pleadings to March 31, 1995 because plaintiffs' pleadings were not received by defendants until a week after the March 13 deadline.

Plaintiffs filed a Second Objection to Defendants' Motion For Summary Judgment on March 13, 1995 and an Amended Second Objection on March 23, 1995. Defendants' Reply to Plaintiffs' Second Objection was filed with this Court on April 3, 1995. In analyzing the parties' arguments, the Court will disregard plaintiffs' Second Objection in favor of plaintiffs' Amended Second Objection.

On April 26, 1995 defendants filed a Motion to Strike and/or to Disregard Portions of Plaintiffs' Affidavits and an accompanying Memorandum in Support. On May 8, 1995 plaintiffs filed an Objection to Defendants' Motion to Strike and/or Disregard Portions of Affidavits and an accompanying Memorandum of Points and Authorities in Support of Plaintiffs' Objection.

The Court, having received and reviewed the motion for summary judgment, memorandum in support, memorandum in opposition, reply memorandum, plaintiffs' amended second objection and defendants' reply to plaintiffs' second objection; having received defendants' motion to strike and/or disregard portions of plaintiffs' affidavits, memorandum in support, plaintiff's objection to defendants' motion to strike and memorandum in support of objection; having heard oral arguments; and having reviewed the applicable law, now makes the following findings and conclusions:

1. This Court has jurisdiction to decide this matter. The incident giving rise to plaintiffs' cause of action allegedly occurred on December 16th or 17th of 1992 at defendants' manufacturing plant in Orem, Utah County, State of Utah. Defendant DOT Adventures, Inc. (hereafter "DOT") is a Nevada corporation doing business in the State of Utah during the time period relevant to this case, July 1992 to January 4, 1993. Defendants Miguelangel Esquivel, Marie Reyes, and Humberto Hernandez were, on December 16th or 17th of 1992, residents of Utah County employed by DOT and working at the manufacturing plant in Orem. Plaintiffs Walter Semidey, Angel Santiago, Humberto Bardales, and Rosa Mazariegos were, on December 16th or 17th of 1992, employed by DOT and working at the manufacturing plant in Orem.

2. At approximately 10:00 a.m. on or around December 16th or 17th, 1992, defendant Esquivel, acting within his authority as plant manager, stopped all work in the plant and called all the employees together, alleging that someone in the plant had stolen a \$20.00 bill from one of the plant workers. Defendant Esquivel then told all the workers that no one was to leave the plant until they and their belongings had been searched by a supervisor. Defendant Esquivel then directed the plant supervisors to take their workers to separate rooms and search them. The supervisors were responsible to insure that no worker left the plant without having first been searched. A supervisor thereafter physically searched each of the named plaintiffs and their personal belongings. No identifiably stolen money was found.

3. Plaintiffs complain that defendant Esquivel's actions, in requiring that all employees be subjected to a physical search of their person and belongings before being allowed to leave the premises, (a) substantially interfered with plaintiffs' liberty and therefore constituted wrongful detention in violation of Utah Code § 76-5-304; (b) intentionally created in all non-supervisory employees the reasonable apprehension of harmful or offensive touching and therefore constituted assault; (c) constituted battery against plaintiffs by intentionally causing the harmful or offensive touching of all non-supervisory employees; (d) constituted false imprisonment of all non-supervisory employees by unreasonably and wrongfully restraining them from freely leaving the plant with implied threats of termination of employment if they refused to submit to the search; (e) intentionally inflicted upon the plaintiffs severe emotional distress; (f) recklessly inflicted upon the plaintiffs severe emotional distress; (g) constituted an intrusion into the physical privacy of each plaintiff; (h) constituted an intrusion into the personal belongings of each plaintiff; and (i) further constituted an intrusion into the personal affairs of plaintiff Semidey by asking, during an October 1992 employment interview, if Semidey was a member of the LDS church and, upon Semidey's affirmative response, by asking if Semidey held a valid temple recommend and asking to see the recommend. *See Amended Complaint ¶¶ 24-42.*

4. In their Answer, defendants deny plaintiffs' allegations and argue (a) that plaintiffs' complaint fails to state a claim upon which relief may be granted; (b) that if defendant Esquivel did act in the manner alleged by plaintiffs, such action was outside the scope and course of his employment with defendant DOT; (c) that plaintiffs have failed to specify special damages as required by U.R.C.P. 9; (d) that the alleged conduct of defendant Esquivel does not constitute assault and/or battery because it was not intended to cause harm to plaintiffs and/or that there was not a substantial certainty that harm would occur; (e) that the alleged conduct of defendant Esquivel was privileged pursuant to Utah Code Ann. §§ 77-7-3, -12 through -14, and/or that the plaintiffs consented and/or were willing to allow the

alleged contact; (f) that the plaintiffs' intentional conduct provoked the alleged conduct on the part of defendant Esquivel; (g) that punitive damages are not appropriate because the alleged conduct of defendant Esquivel was not wanton or malicious; (h) that the plaintiffs were not physically restrained and there was a means of escape known to all the plaintiffs; (i) that defendant Esquivel's conduct, if any, was performed in good faith; (j) that plaintiffs' claims are barred by virtue of plaintiffs' own intentional conduct and/or contributory negligence; and (k) that plaintiffs failed to mitigate their own circumstances and/or to mitigate the damages.

5. In their Memorandum in Support of Motion to Strike and/or to Disregard Portions of Plaintiffs' Affidavits, filed with this Court on April 26, 1995, defendants allege that substantial portions of the affidavits do not contain testimony admissible in evidence, as required by U.R.C.P. 56(e), and that the plaintiffs improperly create a genuine issue of material fact by offering affidavits which contradict prior sworn testimony offered during depositions, which defendants allege establish no cause of action.

6. In their Memorandum in Support of Plaintiffs' Objection to Defendants' Motion to Strike Affidavits, plaintiffs (a) allege that the motion to strike is untimely and legally insufficient; and (b) argue that defendants have failed to prove that the affidavits are legally inadequate under U.R.C.P. 56(e) or that the affidavits contradict the depositions on material issues of fact.

7. Summary judgment is appropriate only when no genuine issue of material fact exists and the moving party is entitled to judgment as a matter of law. *See* U.R.C.P. 56; *Ehlers & Ehlers Architects v. Carbon County*, 805 P.2d 789 (Utah Ct. App. 1991). The Court will first address the issue of summary judgment and, if summary judgment is not appropriate, the Court will then address defendant's Motion to Strike and/or to Disregard Portions of Plaintiffs' Affidavits.

8. In their Memorandum in Support of Motion For Summary Judgment, filed with this Court on October 13, 1994, defendants argue that plaintiffs' first and fourth causes of action (alleging wrongful detention and false imprisonment, respectively) should be dismissed because both are based upon allegations of unlawful detention and because unlawful detention, a criminal offense, is not the basis for a civil cause of action. Furthermore, defendants argue that force or threat of force, coupled with a reasonable apprehension that force will be used, is a necessary element of unlawful detention. *Id.* at 8-10. Since plaintiffs' depositions indicate that the doors remained unlocked, no one used threatening words against the employees, and employees were asked if they objected to being searched and did not do so, *see id.* at 9-10 (citing Deposition of Rosa Mazariegos at 17, 28), defendants argue that no plaintiff was detained or restrained by force or by threat of force and that plaintiffs' first and fourth causes of action should be dismissed.

9. As to the first and fourth causes of action for unlawful detention and false imprisonment, plaintiffs dispute defendants' claim that employees were asked if they objected to being searched. In the Amended English Translations of plaintiffs' Affidavits, plaintiff Semidey stated, "At no time did [defendant Esquivel] ask if anyone objected to being searched. At no time did he indicate that the door was open to whoever wanted to leave." *See* Amended Translation of Affidavit of Walter Semidey, Plaintiffs' Amended Second Objection to Defendants' Motion For Summary Judgment, Exhibit C. Plaintiff Mazariegos also stated that Esquivel had told the employees they could not leave. *See* Translation of Affidavit of Rosa Mazariegos, Plaintiffs' Amended Second Objection, Exhibit C. Plaintiff Santiago stated that Esquivel told the employees "that no one could go back to work without being searched, and that [they] all had to stay in the cafeteria area until everyone had been searched." *See* Amended Translation of Affidavit of Angel Santiago, Plaintiffs' Amended Second Objection, Exhibit C. Plaintiffs also stated they were afraid of losing their jobs if they objected to being searched. Furthermore, plaintiff Semidey stated in his affidavit that

the door was approximately 30 feet away from the employees; plaintiff Mazariegos stated that the door "was a long way away." *See* Affidavits of Walter Semidey and Rosa Mazariegos, Plaintiffs' Amended Second Objection, Exhibit C. Plaintiffs further allege that wrongful detention is a civil cause of action based on the crime of unlawful detention and having the same elements. However, plaintiffs allege that wrongful detention does not require that there be no avenue of escape.

10. Defendants argue that plaintiffs' second and third causes of action (alleging assault and battery, respectively) should be dismissed because an "assault" requires a wrongful act or the threat of bodily harm or violence and "battery" requires a touching with an intent to injure or harm or to cause acts of bodily harm or violence. *See* defendants' Memorandum in Support of Motion For Summary Judgment at 11-14. Again, defendants cite plaintiffs' depositions, which indicate that no threat of violence or harm occurred and that no unlawful or improper act occurred. *See id.* at 13 (quoting Deposition of Rosa Mazariegos at 20-21). Defendants argue that plaintiffs' second cause of action, alleging assault, does not include any allegations supported by testimony or evidence that defendant Esquivel harmed or threaten to harm plaintiffs. Defendants further argue that plaintiffs' third cause of action, alleging battery, does not include any allegations supported by testimony or evidence that defendant Esquivel caused a touching with an intent to injure or harm or to cause acts of bodily harm or violence. For these reasons, defendants argue that plaintiffs' second and third causes of action should be dismissed. In the alternative, defendants argue that plaintiffs consented to be touched and, since consent is a defense to a claim of assault and battery, defendants argue that plaintiffs' second and third causes of action should be dismissed. *Id.* at 15-16.

11. Plaintiffs argue that they did not consent to the search. In their affidavits they explain that they feared objecting to the search because they believed they would lose their jobs if they did not submit. *See* Plaintiffs' Amended Second Objection, Exhibit C. Plaintiffs

further argue that, during the time they had to wait for their turn to be searched, they were each subjected to an apprehension of an immediate offensive touching. Plaintiffs allege that each of them was then personally searched and made to suffer an offensive touching while the supervisors looked for the missing \$20.00 bill.

12. Defendants argue that plaintiffs' fifth and sixth causes of action (alleging intentional and reckless infliction of emotional distress, respectively) should be dismissed because the Complaint does not allege that defendant Esquivel's conduct was intentional or that such conduct was "outrageous and intolerable in that it offended against the generally accepted standards of decency and morality." *Id.* at 16-22 (quoting *Retherford v. AT&T Communications*, 844 P.2d 949, 970-71 (Utah 1992)). Defendants argue that infliction of emotional distress requires these elements because a cause of action for emotional distress may not be based upon mere negligence. *See Samms v. Eccles*, 358 P.2d 344, 347 (Utah 1961); *Reiser v. Lohner*, 641 P.2d 93, 100 (Utah 1982). Defendants further argue that, despite the use of the word "intentional" in the caption to plaintiffs' fifth and sixth causes of action in their Complaint, there is no language in the Complaint which actually alleges that defendant Esquivel's conduct was intentional, nor is there any allegation in the Complaint that defendant Esquivel's conduct was so outrageous and intolerable that it offended against generally accepted standards of decency and morality. Even if the complaint was amended to include such elements, defendants argue that the deposition of Rosa Mazariegos included an admission that she knew the purpose of the search was to find the money and that she was offended thereby. *See* defendants' Memorandum in Support of Motion For Summary Judgment at 20-21 (quoting Deposition of Rosa Mazariegos at 51-52). In the alternative, defendants argue that plaintiffs' fifth and sixth causes of action should be dismissed because none of plaintiffs' depositions indicate that any plaintiffs suffered severe emotional distress requiring medical attention.

13. Defendants also argue that plaintiffs' seventh, eighth, and ninth causes of action (alleging intrusion into physical privacy, intrusion into personal belongings, and intrusion into personal affairs, respectively) should be dismissed. Defendants argue that the invasion of privacy action requires the offending party to search a place that an ordinary person would consider to be a place of seclusion, such as a private residence or an automobile, and that an employer's place of business would not be considered a place of seclusion for employees. *See* defendants' Memorandum in Support of Motion for Summary Judgment at 24. As to plaintiffs' cause of action alleging intrusion into personal affairs, defendants argue that the plaintiffs fail to state a claim upon which relief may be granted. Defendants argue that, in Utah, such an action does not fall within the parameters of the common law tort of invasion of privacy. *See* defendant's Memorandum in Support of Motion for Summary Judgment at 25.

14. Plaintiffs contend that privacy rights of an individual extend not only to a dwelling or an automobile, but also to one's personal effects, such as purses or wallets. Plaintiffs argue that searching these personal effects without reasonable cause is an actionable invasion of privacy. *See* Plaintiffs' Objection to Defendant's Motion for Summary Judgment at 17. The plaintiffs argue that an individual's right to seclusion as in one's home or automobile extends onto an employer's property as well.

15. As to plaintiffs' first cause of action, wrongful detention, the Court finds that plaintiffs have not proven that defendants substantially interfered with plaintiffs' liberty. Plaintiffs knew the location of an exit and made no attempt to leave.

16. As to plaintiffs' second and third causes of action, assault and battery, the Court does not find any evidence that defendants threatened plaintiffs with any violence or harm. According to the Model Utah Jury Instructions, intention to cause harmful or offensive contact or imminent apprehensions of such is one of the elements of assault. *See* M.U.J.I. 10.18 (Assault Elements). The Court finds no evidence that defendant Esquivel intended the

search of plaintiffs to cause harmful or offensive contact, or to cause plaintiffs to be in imminent apprehension of such contact. In fact, the deposition testimony indicates that plaintiffs understood that defendant Esquivel intended the search to recover a fellow employee's stolen property. *See* defendants' Memorandum in Support of Motion For Summary Judgment at 20-21 (citing Deposition of Rosa Mazariegos at 51-52). The Court further finds no evidence that defendant Esquivel intended to cause acts of bodily harm or violence, and no evidence that Esquivel attempted to or threatened to cause injury or harm.

17. As to plaintiffs' fourth cause of action, false imprisonment, the Court again finds no evidence that plaintiffs were confined. Plaintiffs were aware of an exit, and plaintiffs were not physically restrained. Plaintiffs did not attempt to discover whether the door was locked and did not attempt to leave. The Court further finds that defendants did not falsely imprison plaintiffs by any threat of force. The Model Utah Jury Instructions state that "[a] person is restrained when that person is not free, or reasonably believes that that person is not free, to leave a place to which that person has been confined and does not consent to the restraint." M.U.J.I. 10.15 (False Imprisonment). The Court finds that, regardless of whether plaintiffs consented to the search or whether defendant asked if anyone objected to being searched, plaintiffs voluntarily remained and submitted to the search. Even if plaintiffs were afraid of losing their employment, they submitted to the search without objecting or without attempting to leave the premises.

18. As to plaintiffs' fifth cause of action, intentional infliction of emotional distress, the Model Utah Jury Instructions require the elements of outrageous conduct by defendants and an intention to cause emotional distress, or actions taken with reckless disregard of the probability of causing emotional distress. M.U.J.I. 22.1 (Intentional Infliction of Emotional Distress). The Court does not find that defendants' conduct constituted outrageous conduct. Neither does the Court find any evidence that defendants intended to cause emotional distress

or that defendants acted with reckless disregard of the probability of causing emotional distress.

19. As to plaintiffs' sixth cause of action, reckless infliction of emotional distress, the Model Utah Jury Instructions find no liability for the negligent infliction of emotional distress absent a showing that defendants should have realized their conduct involved an unreasonable risk of causing emotional distress or that, if emotional distress were caused, illness or bodily harm might result. M.U.J.I. 22.5 (Negligent Infliction of Emotional Distress - Part 1). The Court finds no evidence that the search was conducted in a manner which would involve an unreasonable risk of causing emotional distress or that any emotional distress might result in illness or bodily harm. Accordingly, the Court does not find any reason why defendants should have realized that such results might occur.

20. As to plaintiffs' seventh and eighth causes of action, intrusion into physical privacy and intrusion into personal belongings, the Court does not find that the search, conducted at plaintiffs' place of employment, constituted an "unreasonable intrusion upon the seclusion of another." *Restatement (Second) of Torts* § 652A(2)(a) (1977). Plaintiffs made no claims that defendants attempted to invade plaintiffs' homes, automobiles, or other areas which could be considered places of seclusion for plaintiffs.

21. As to plaintiffs' ninth cause of action, intrusion into personal affairs, this Court does not find this to fall within the parameters of the common law tort of invasion of privacy recognized in Utah and in the *Restatement of Torts*.

22. It is well known that, in a civil suit, damages may not be recovered unless the plaintiff can prove the existence of damages resulting to the plaintiff as a result of a legal wrong inflicted by the defendant. "Wrong without damage, or damage without wrong, does not constitute a cause of action." 22 *Am. Jur. 2d Damages* § 4 (1988). Damages recoverable for a tort are limited to those damages directly attributable to the tort. *Id.* § 130. The Court notes that all plaintiffs are now employed with different employers and are

earning more than they had been paid while employed by DOT. *See* defendants' Memorandum in Support of Motion For Summary Judgment at 6. Accordingly, the Court finds plaintiffs have not suffered any monetary damages upon which a cause of action could be sustained.

23. The only evidence submitted by plaintiffs as to emotional damage suffered by plaintiffs as a result of the searching consists of an evaluation report made by Dr. Juan A. Mejia and an affidavit of Dr. Linda J. Gummow. Both documents are inadmissible as evidence. Under U.R.C.P. 56(b), affidavits are legally admissible evidence in a summary judgment proceeding. The Court notes that Dr. Mejia's evaluation report must be considered hearsay because it is not a sworn affidavit; therefore, it cannot be considered legally admissible evidence. Furthermore, Dr. Mejia's evaluation cannot be admitted into evidence as a statement for purposes of medical diagnosis or treatment under Utah Rules of Evidence 803(4) as an exception to the hearsay rule because the evaluation by Dr. Mejia was performed solely to aid the pursuit of litigation, not for the purpose of diagnosis to promote treatment. *See* Juan A. Mejia's Confidential Psychological Evaluation at 1, Plaintiffs' Amended Second Objection to Defendants' Motion For Summary Judgment, Exhibit A. As to Dr. Gummow's report, it is inadmissible despite its affidavit form because Dr. Gummow did not personally examine the plaintiffs. Rather, she examined the English translations of the plaintiffs' statements and the psychological evaluations of plaintiffs made by Dr. Mejia. Dr. Gummow's affidavit is not based on her personal knowledge or on a direct evaluation of plaintiffs, and is therefore inadmissible as hearsay. Without the testimony of these psychologists, the Court finds plaintiffs have failed to establish emotional damages upon which a cause of action could be sustained.

24. While the Court certainly does not condone defendants' conduct in this matter, it is apparent that such conduct has not appreciably affected the lives of the parties such that it can be reduced to monetary damages. Lacking any evidence that plaintiffs have incurred any

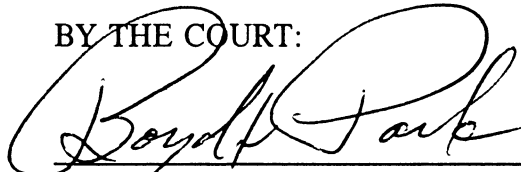
monetary or psychological damages resulting from the search conducted by defendants, the Court finds the plaintiffs have no cause of action against defendants. Accordingly, defendants' Motion For Summary Judgment is hereby granted.

25. Because the Court has found no genuine issue of material fact exists and defendants are entitled to summary judgment as a matter of law, the Court need not address defendants' Motion to Strike and/or to Disregard Portions of Plaintiffs Affidavits.

Counsel for defendants is to prepare, within 15 days of the date hereof, an order consistent with the terms of this decision and submit it to opposing counsel for approval as to form prior to submission to the Court for signature.

Dated at Provo, Utah this 22nd day of May, 1995.

BY THE COURT:


A handwritten signature in cursive script, reading "Boyd L. Park", is written over a horizontal line. Below the line, the name "JUDGE BOYD L. PARK" is printed in a sans-serif font.

cc: Loren D. Martin
Marti Jones

Tab 7

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IN THE FOURTH JUDICIAL DISTRICT COURT
UTAH COUNTY, STATE OF UTAH

WALTER SEMIDEY, ANGEL
SANTIAGO, HUMBERTO
BARDALES, and ROSA
MAZARIEGOS,

Plaintiffs,

vs.

JEANETTE R. LYNTON, /aka/
JEANETTE ROMERO MARKHAM,;
/dba/ D.O.T.S., DOZENS OF
STAMPS, DOT ADVENTURES,
INC., a Nevada Corporation,
MIGUELANGELO EQUIVEL,
MARIA "COOKIE" REYES,
HUMBERTO HERNANDEZ,
JOHN DOE I AND JANE DOES I-II,;

Defendants

MOTION FOR
SUMMARY JUDGMENT
AND
MOTION TO STRIKE

Civ. No. 930400503 PI

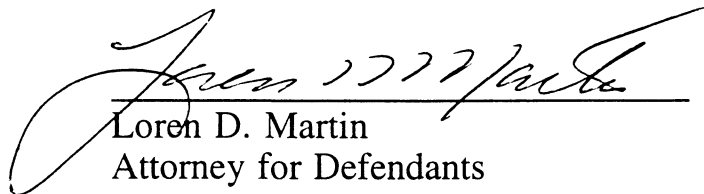
Judge Boyd L. Park

The Defendant, Jeanette R. Lynton, by and through her attorney, Loren D. Martin, hereby moves the above-entitled Court for a Summary Judgment, dismissing her from this case, as DOT Adventure's, Inc., a Nevada Corporation, was just joined as a Defendant.

The DOT Adventures, Inc., moves that the allegation that it is "undercapitalized" and is the alter ego of Jeanette R. Lynton be stricken as slanderous.

This Motion brought under the provisions of Rule 56 of the Utah Rules of Civil Procedure " Summary Judgment" and under the provisions of Rule 4-501 of the Code of Judicial Administration, and supported by accompanying this Motion.

DATED this 11th day of June, 1994.


Loren D. Martin
Attorney for Defendants

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the following:

Motion For Summary Judgment and Motion To Strike;
Memorandum In Support Of Motion Summary Judgment and Motion to Strike;
Affidavit of Jeanette Lynton;
Request For Hearing; and
Motion For Expedited Disposition;

were Hand Deliverd to the following, on the 11th day of April, 1994 to the following:

Law Offices of Linda Q. Jones
Linda Q. Jones,
Marti L. Jones
40 South 100 West, Suite 303
Provo, Utah 84604

Jamie McDaniel

Tab 8

-FILED IN
4TH DISTRICT COURT
STATE OF UTAH
UTAH COUNTY

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ns

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Attorneys for Defendants

IN THE FOURTH JUDICIAL DISTRICT COURT
STATE OF UTAH

WALTER SEMIDEY, ANGEL
SANTIAGO, HUMBERTO
BARDALES, and ROSA
MAZARIEGOS,

Plaintiffs,

vs.

JEANETTE R. LYNTON, /aka/
JEANETTE ROMERO MARKHAM,:
/dba/ D.O.T.S., DOZENS OF
STAMPS, DOT ADVENTURES,
INC., a Nevada Corporation,
MIGUELANGEL ESQUIVEL,
MARIA "COOKIE" REYES,
HUMBERTO HERNANDEZ,
JOHN DOE I AND JANE DOES I-II,:

Defendants

MEMORANDUM IN
SUPPORT OF MOTION FOR
SUMMARY JUDGMENT AND
MOTION TO STRIKE

Civ. No. 930400503 PI

Judge Boyd L. Park

The Defendant, Jeanette R. Lynton, hereinafter referred to as "Ms. Lynton", by and through her attorney, Loren D. Martin, hereby files this Memorandum In Support Of Motion For Summary Judgment as follows:

STATEMENT OF FACTS

1. DOT Adventures, Inc., hereinafter referred to as "DOT", is a Nevada corporation organized under Nevada law on February 10, 1989.
2. During the period of time relevant to this case, July 1992 to January 4, 1993, more specifically on or about December 16 or 17, 1992, DOT was doing business in Utah County, Utah.
3. DOT was registered with the Utah Department of Commerce, Division of Corporations on January 5, 1993, and is a corporation in good standing in both Nevada and Utah.
4. On or about December 16 or 17, 1994, all named Plaintiffs were employed by DOT Adventures, Inc. Such employment is evidenced the by the affidavit of Ms. Lynton enclosed herewith and the copies of paychecks for each of the Plaintiffs.
5. Ms. Lynton is President, Director and principal stockholder of DOT.
6. During the period of time relevant to this case, all other named defendants were employed by DOT.
7. During the period of time relevant to this case, Defendant, Miguelangel Esquivel, hereinafter referred to as "Mr. Esquivel", was the plant manager of the Orem factory of DOT. Mr. Esquivel acted in such capacity as a DOT employee and agent of DOT.¹

¹ Affidavit of Jeanette R. Lynton, July 10, 1994

8. During the period of time relevant to this case, Mr. Esquivel was an employee of DOT.

8. The alleged incident which gives rise to the cause of action occurred on December 16 or 17, 1994, at the DOT factory in Orem. Plaintiffs have alleged that Mr. Esquivel, "acting within his authority as plant manager, stopped all work within the confines of the DOTS plant, and called the employees together.²" Plaintiffs allege that they were told by Mr. Esquivel to submit to a search, resulting from one employee's claim that \$20.00 had been taken by persons unknown. Essentially, the employees, maybe somewhere between 20-50³, were each asked to empty their pockets and show their wallets or purses. Consequently, Plaintiffs have alleged: wrongful detention, assault, battery, false imprisonment, intentional and reckless infliction of emotional distress, intrusion into physical privacy, and intrusion into personal belongings. The allegation has also been that Mr. Esquivel, on one occasion, asked one of the plaintiffs about his religion. Consequently, there is also an allegation of "intrusion into personal affairs."

9. All allegations made against any of the named Defendants is alleged to have arisen from the conduct of Mr. Esquivel.

9. There is no evidence to show that any of the Plaintiffs were ever employed by Ms. Lynton. During all relevant times, Plaintiffs were employed by DOT.⁴

² Amended Complaint, page 3, paragraph 16

³ Deposition of Rosa Mazariegos, April 19, 1994, at page 16. lines 15-22

⁴ See copies of checks attached hereto as Exhibit A

10. Ms. Lynton was not present at any time during the alleged search.⁵ Defendants have taken depositions of all of the Plaintiffs. None stated that Ms. Lynton was present during the alleged search. None stated that they had any reason to believe that Ms. Lynton directed, participated, commanded, nor even knew of the alleged search until some time later.

11. Plaintiffs make no claim that Ms. Lynton was present during any alleged incident.

12. Plaintiffs make no claim that Ms. Lynton commanded, directed, or even knew of the incidents until some time later.

ARGUMENT

POINT I

AS AN EMPLOYEE OF DOT ADVENTURES, INC., MR. ESQUIVEL ACTED AS AN AGENT OF DOT, NOT MS. LYNTON

As a DOT employee and plant manager, Mr. Esquivel acted as an agent of DOT. Even given the allegations in light most favorable to the Plaintiffs, there is no basis in fact or law upon which it can be concluded that Mr. Esquivel, on the dates of December 16 or 17, 1992, acted as an agent of Ms. Lynton.

POINT II

FAILURE OF A CORPORATION TO OBTAIN A UTAH CERTIFICATE OF AUTHORITY DOES NOT IMPAIR ITS CORPORATE VALIDITY

It is not unlawful for a foreign corporation to transact business in Utah. There are certain restrictions. However, Utah statutes provide that:

The failure of a foreign corporation to have authority to transact business in this state does not impair the validity of its

⁵ Deposition of Rosa Mazariegos, April 19, 1994, at page 16, line 24

corporate acts, nor does the failure prevent the corporation from defending any proceeding in this state.⁶

POINT III
AN OFFICER OF A CORPORATION IS NOT
PERSONALLY LIABLE FOR ACTS OF AN EMPLOYEE

An officer of a corporation cannot be held personally liable for the wrongful conduct of the corporation's employees absent personal involvement with the conduct.⁷

Even if a tort had been committed against Plaintiffs by Mr. Esquivel as plant manager of DOT, Ms. Lynton, as a corporate officer is not personally liable unless she participated or directed the conduct.⁸

Personal liability cannot be imposed upon a corporate officer just because she has administrative responsibility.

A director, officer, or agent is not liable for torts of the corporation or of other officers or agents merely because of his office; he is liable for torts in which he has participated or which he has authorized or directed.⁹

Even given the allegations in a light most favorable to the Plaintiffs, Ms. Lynton is not personally liable under a tort/agency theory.

⁶ Utah Code Annotated, §16-10a-1502(6)

⁷ *West v. Costen*, D.C. Va., 558 F.Supp 564, 585 (1983)

⁸ Restatement of Torts §877; *Morgan v. Eaton's Dude Ranch*, 239 N.W.2d 761, 307 Minn. 280 (1976)

⁹ 19 C.J.S., Corporations, §544

POINT IV
ABSENT PROOF OF FRAUD AND FAILURE OF THE CORPORATION,
MS. LYNTON, AS A SHAREHOLDER, CANNOT BE PERSONALLY LIABLE

In almost every situation where a plaintiff has attempted to pierce the corporate veil, asking the court to impose personal liability upon a shareholder, such request has been preceded by a corporate financial failure. DOT is a company which employs more than 70 employees, ships product to 45 states. There is no factual basis upon which the claim may be made that DOT is "undercapitalized."

Plaintiffs allegations of "alter ego" and "undercapitalized" are slanderous. Such allegations are not, as required by Rule 11¹⁰ which requires that allegations be, "well grounded in fact." Nor are such allegations, "warranted by existing law" nor a good faith extension thereof.

The law governing the affairs of corporations is the law of the state is the law of the state under which the corporation was created.¹¹ However, even though the law governing DOT is Nevada, both Nevada and Utah are similar in regard to outside creditors ability to pierce the corporate veil.

Utah law provides that:

In order to disregard the corporate entity, there must a concurrence of two circumstances: (1) there must be such unity of interest and ownership that the separate personalities of the corporation and the individual no longer exist, viz., the corporation is, in fact the alter ego of one or a few individuals; and (2) the

¹⁰ Utah Rules of Civil Procedure, Rule 11

¹¹ 19 C.J.S., Corporations, §§ 1990 et seq.

observance of the corporate form would sanction a fraud, promote injustice, or an inequitable result would follow.¹²

Nevada law stated slightly different:

The basic requisites for the application of the doctrine of alter ego have been well established.

(1) The corporation must be influenced and governed by the person asserted to be its alter ego. (2) There must be such unity of interest and ownership that one is inseparable from the other; and (3) The facts must be such that adherence to the fiction of a separate entity could, under the circumstances, sanction a fraud.¹³

In order to pierce the corporate veil, the Plaintiffs must show that they have some reasonable basis in fact that DOT is undercapitalized. In fact, Utah case law has used the phrase and required that there be facts to show that the corporation has "grossly inadequate capital."¹⁴

The first prong of the test is the "formalities requirement." There is no evidence to show that DOT has not complied with all of the statutory formalities.

Even though Ms. Lynton is the principal shareholder, having substantial ownership of all stock, it must be shown that she clearly disregarded the corporate fiction. Second, it must be shown that the corporation does not have sufficient funds to pay its debts. One key factor which normally triggers the question is the failure of the corporation to pay its debts. There is absolutely no evidence that DOT is "undercapitalized."

¹² *Norman v. Murray First Thrift & Loan Co.*, 596 P.2d 1028, 1030 (Utah 1979); *Messick v. PHD Trucking Service, Inc.*, 678 P.2d 791 (Utah 1984)

¹³ *Bonanza Hotel Gift Shop, Inc., v. Bonanza No. 2*, 596 P.2d 227, 229 (Nevada 1979)

¹⁴ *Salt Lake City Corp. v. James Contractors*, 761 P.2d 42, 47 (Utah App. 1988)

Permitting unfounded accusations to trigger a romp through corporate files and finances would be strongly contrary to public policy.

The very purpose of the corporate structure is the advancement of limited liability of investors with an underlying legislative policy directed to the encouragement of investments. Consequently, the corporate structure should never be lightly disregarded.¹⁵

POINT V
THE HOLDING OF A DBA BY MS. LYNTON IS IMMATERIAL

In the Amended Complaint, the allegation is made that Ms. Lynton had, under her own name, personally registered a dba or D.O.T.S. Dozens of Terrific Stamps.¹⁶ Such allegation is immaterial to the status of the corporation and there is no statement that any of the Plaintiffs were ever employed by Ms. Lynton.

POINT VI
SLANDEROUS AND UNFOUNDED STATEMENTS SHOULD BE STRICKEN

In the Amended Complaint, the allegation is made that "At the time of incorporation and at all times relevant herein, DOT Adventures, Inc. was inadequately capitalized to properly conduct the business it purported to engage in."¹⁷

Such statement is false, has no legal merit, and is slanderous.¹⁸

POINT VII
SUMMARY JUDGMENT IS APPROPRIATE

Summary judgment is appropriate when the pleadings, depositions, affidavits, and admissions submitted in a case show that there is no genuine issue

¹⁵ *West v. Costin, supra*, at 585

¹⁶ Amended Complaint, page 1, paragraph 1

¹⁷ Amended Complaint, page 2, paragraph 4.

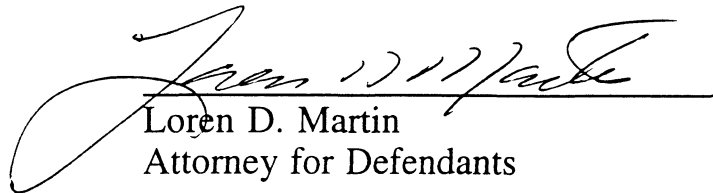
¹⁸ Affidavit of Jeanette Lynton, July 11, 1994.

of material fact and that the moving party is entitled to judgment as a matter of law.¹⁹

CONCLUSION

Jeanette R. Lynton's Motion For Summary Judgment should be Granted.

DATED this 11th day of June, 1994.



Loren D. Martin
Attorney for Defendants

¹⁹ *Salt Lake City Corp. v. James Contractors, supra*, at 45 (Utah App. 1988)

Tab 9

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STATE OF UTAH
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=====

IN THE FOURTH JUDICIAL DISTRICT COURT
FOR THE STATE OF UTAH
150 N. 100 W., PROVO, UTAH 84601

=====

WALTER SEMIDEY, ANGEL SANTIAGO, HUMBERTO BARDALES, and ROSA MAZARIEGOS,	*	
	*	
Plaintiffs,	*	PLAINTIFFS' OBJECTION TO
	*	DEFENDANT LYNTON'S MOTION
vs.	*	FOR PARTIAL SUMMARY
	*	JUDGMENT
	*	
JEANETTE R. LYNTON, /aka/ JEANETTE ROMERO MARKHAM, /dba/ D.O.T.S., DOZENS OF TERRIFIC STAMPS, DOT ADVENTURES, INC., a Nevada corporation, MIGUELANGEL ESQUIVEL, MARIA "COOKIE" REYES, HUMBERTO HERNANDEZ, JOHN DOE I and JANE DOES I-II,	*	
	*	Civ. No. 930400503
	*	
Defendants.	*	Judge Boyd L. Park
	*	

=====

COME the Plaintiffs, by and through their attorney of
record, and hereby object to Defendant Jeanette Lynton's Motion
for Partial Summary Judgment on the following grounds.

PLAINTIFFS' STATEMENT OF DISPUTED
MATERIAL FACTS

1. Plaintiffs dispute Lynton's statement #1, that "DOT
Adventures, Inc., is a Nevada corporation organized under Nevada
law." DOT Adventures (DOT NV) is a Nevada corporation. To the

best of Plaintiffs' knowledge, there is no Nevada corporation named DOT Adventures, Inc. (DOT Inc.). (See Nevada certificate of Incorporation, and a copy of the Utah Registration, Appendix A).¹

2. Plaintiffs dispute Lynton's statement #2 that DOT Inc. was doing business in Utah County between July 1992 and January 4, 1993. As DOT Inc. was not incorporated until January 5, 1993,² when DOT Adventures formally registered this name, it could not possibly have been doing business legally in Utah County prior to that date.

3. Plaintiffs dispute Lynton's statement #4, that "all named Plaintiffs were employed by DOT Adventures, Inc." It is the Plaintiffs' position that they could not possibly have been employed by DOT Inc., because said corporation did not exist until January 5, 1993, when it was properly registered with the State of Utah.

4. Plaintiffs would also dispute Lynton's argument if statements 1, 2, and 4, were re-written to state the proper name of DOT NV. The alleged corporate checks which Lynton submits in support of her Motion bear the name of DOT, Inc., with an Orem

¹ While this may seem like minor hair splitting, based on the case law cited herein, this point is extremely relevant.

² See, in particular, the date of incorporation given on the "Utah Department of Commerce Division of Corporations and Commercial Code Corporation transcript," attached at Appendix A.

address. They are therefore completely unprobative of the involvement of DOT NV as the principal behind the Utah factory.

5. Plaintiffs dispute Lynton's claim #7 that it is an undisputed material fact that Miguelangel Esquivel, (Esquivel) Jeanette Lynton (Lynton) and the Plaintiffs were acting as agents of an alleged Nevada corporation during the period of July 1992 to January 1993 when the causes of action arose. The copies of paychecks given to Esquivel and the Plaintiffs during this period are made out by DOT Inc., and give a Utah address. As stated previously, there is no indication on those checks of the involvement of a Nevada corporation. Lynton has submitted no proof that there was a DOT Adventures, Inc., incorporated in Nevada, and the corporation doing business in Utah under that name was not legally registered until January 5, 1993.

6. It is a disputed material fact whether DOT NV, as a legal non-entity in Utah, had existence in Utah sufficient to allow it to create cognizable agency relationships during the period in question.

7. It is a disputed material fact whether or not DOT NV chose to act illegally in the state of Utah during the period in question.

8. It is a disputed material fact whether Lynton, as President of DOT NV, and the sole officer and director of that

company, knew of the requirement to register and also knew that, during the period in question between August 1992 and January 1993, DOT NV was not registered to do business in Utah as a foreign corporation.

9. It is a disputed material fact whether Lynton /dba/ was acting on her own behalf, rather than on behalf of DOT NV when she established the factory in Orem, Utah, and hired Mr. Esquivel and the plaintiffs as agents.

10. It is a disputed issue of material fact whether Lynton knew that the alleged entity DOT Adventures, Inc., on whose behalf she signed paychecks to Esquivel and the Defendants, had no legal existence prior to January 5, 1993.

INTRODUCTION

The Memorandum in support of Lynton's Motion for Summary Judgment, (Memorandum) alleges six reasons why Lynton's Motion should be granted. Paraphrased, these reasons are:

(a) Mr. Esquivel was an employee and agent of DOT Adventures, Inc., not of Ms. Lynton.

(b) The fact that DOT Adventures, Inc. had failed to register as a foreign corporation does not impair its validity as a corporation.

(c) An officer of a corporation is not personally liable for the acts of corporate employees.

(d) Absent proof of fraud and failure of the corporation, shareholder Lynton is not personally liable.

(e) The fact that Lynton held the dba D.O.T.S., Dozens of Terrific Stamps, is immaterial.

(f) The slanderous and unfounded statements should be stricken.

Lynton's arguments, however, confuse rather than clarify the issues. Point (a) is problematic because, as stated previously, there was no DOT Adventures, Inc., either in Utah or Nevada, of which Esquivel could have been an employee prior to January 5, 1993. Even assuming a minor error in corporate names, the question of precisely whom or what Esquivel was representing is a disputed issue of material fact, not a legal justification for Defendant Lynton's Motion for Summary Judgment. Lynton's second argument, (b) relies on inapplicable law and is inappropriate in a Motion for Summary Judgment on her own behalf. Neither points (c), (d), nor (e) are accurate statements of the applicable law, and point (f) is not a legal argument, but a simple, unsupported, allegation.

Defendant Lynton states as undisputed fact that Mr. Esquivel was an employee and agent of DOT Adventures Inc. during the relevant time period, not of Lynton /dba/ D.O.T.S., Dozens of Terrific Stamps (Stamps). This assertion is, in fact,

impossible, as there was no corporation, either in Utah or in Nevada, with the name of DOT Adventures, Inc. in existence prior to January 5, 1993.

It is this issue, the issue of Esquivel's principal, that forecloses the possibility of Lynton's removal from this case. The crucial question in this Motion for Summary Judgment is the question of Mr. Esquivel's agency--for whom, or what, was he acting during August 1992 to January 1993. Defendant Lynton alleges that because Mr. Esquivel's paychecks bore the corporate logo of DOT Adventures, Inc., that this is proof positive that his actions in Utah were done on behalf of an alleged Nevada corporation with that name. However, Lynton has failed to submit any indication that there actually was or is a Nevada corporation by that name. Furthermore, the address on the alleged corporate checks is a Utah address, not a Nevada address. It is a fact that DOT Adventures, Inc. was not legally "incorporated" (i.e., registered) in the state of Utah until January 5, 1993; as a result, if the corporation DOT NV was indeed acting in the state of Utah, it was doing so illegally. Furthermore, Mr. Esquivel indicated to the plaintiffs, as employees of the factory, that he was working on behalf of Lynton, and that all his actions were authorized by her. (See Appendix C).

Because there are material facts in dispute, Lynton has failed to meet the standard of proof required to prevail on a Motion for Summary Judgment, and her Motion should be denied.

BURDEN OF PROOF

In order to prevail in her Motion for Summary Judgment, Lynton must show that there are no disputed material facts and that she is entitled to judgment as a matter of law. Utah R.Civ. P. 56(c). Summary Judgment is appropriate if the pleadings, depositions, affidavits and admissions submitted in a case show that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law. Salt Lake City Corp. v. James Constructors, 761 P.2d 42 (Utah App. 1988).

ISSUE I. LYNTON DOES NOT HAVE STANDING TO RAISE UTAH CODE §16-10a-1502(6) AS A DEFENSE.

In her Memorandum, Lynton argues that U.C.A. §16-10a-1502(6) is proof that the acts of foreign corporations undertaken without proper authority may still be defended in court. Plaintiffs have no argument with this principle. However, Lynton then argues that because DOT NV³ could defend a lawsuit based on acts prior

³ Throughout her Memorandum and Affidavit, Lynton confuses DOT Adventures, the Nevada corporation, with DOT Adventures, Inc., the Utah name for that Nevada corporation. This is more than a bit confusing, particularly since the Utah registered corporate entity DOT Adventures, Inc. did not exist during the period in question. Unless otherwise noted in this Objection,

to legal registration and formal state recognition of corporate existence, that this is conclusive proof that DOT NV, not she, is liable for any tortious act of Esquivel. On the basis of this twisted argument, Lynton contends that she has no legal liability to the Plaintiffs in this case.

Lynton, it appears, here confuses her corporate hat with her individual hat. She also confuses liability with ability to defend. U.C.A. §16-10a-1502 is the section of the Utah code that discusses the consequences to a foreign corporation of transacting business without authorization. This section describes the penalties to DOT NV--the section says absolutely nothing about individuals who claim to be acting on behalf of unauthorized corporations. The fact that DOT NV may defend an action brought against it says nothing about the legal liability of Lynton. Lynton's citation of this code section, therefore, is completely irrelevant and immaterial to her Motion for Summary Judgment. Hypothetically, had Plaintiffs attempted to bar DOT NV from defending its own corporate actions, DOT NV could have raised this section as a defense. But this hypothetical is not the case before us. Plaintiffs have not attempted to prevent DOT NV from defending, and indeed, have acted affirmatively to join

however, Plaintiffs have assumed that Defendant speaks of the Nevada corporation DOT Adventures when referring to a time when DOT Adventures, Inc. was not in existence.

the Nevada corporation.⁴ Plaintiffs are not, however, convinced by Lynton's self-serving allegations that DOT NV, (Statement of Facts #7) not she, was the principal prior to DOT NV's legal registration with the state of Utah; nor is the submission of paychecks bearing the name of DOT Inc., with an Orem address, probative in any way of Lynton's allegation that Esquivel was acting as the agent of DOT NV.

ISSUE II. LYNTON'S ALLEGATION THAT DOT
ACTED ILLEGALLY IN UTAH IS YET ANOTHER GROUND
FOR LYNTON'S PERSONAL LIABILITY

U.C.A. 16-10a-1501(1) provides that "A foreign corporation may not transact business in this state until its application for authority to transact business is filed by the division." Therefore, Lynton's contention that DOT NV, not she, is liable for the tortious actions of Mr. Esquivel, is tenuously based on the implicit allegation that DOT NV was acting illegally in the state of Utah during the period in question. Under U.C.A. 16-10a-204, however, even if DOT NV is found to be Esquivel's principal, if it is also found at trial that Lynton, as President of DOT NV, was aware of the illegality in DOT NV's status, Lynton may be personally liable precisely because of that knowledge.

⁴ The fact that Plaintiffs also confused DOT Adventures, the Nevada corporation, with DOT Adventures, Inc., the name under which the Nevada corporation now does business in Utah, is indicative of the problems in this case.

Utah Code Annotated § 16-10a-204 states "All persons purporting to act as or on behalf of a corporation, knowing there was no incorporation under this chapter, are jointly and severally liable for all liabilities created while so acting." A corporation is a fictional entity, created by law. Because DOT NV was already incorporated under Nevada law, it did not have to completely re-incorporate under Utah law to become a legally recognizable entity in Utah. However, Chapter 16 of the Utah Code Annotated does require all foreign corporations doing business in Utah to register in order to be recognized as incorporated in Utah.⁵ All DOT NV had to do was to register with the Utah Department of Commerce as a foreign corporation doing business in Utah. In spite of the minimal requirements, DOT NV chose not to become a legally recognizable corporate entity in the state of Utah during the period in question.

Under U.C.A.(1953) § 16-10a-204, where the legal formalities are not followed and an individual purports to act on behalf of a corporation, **knowing** that the legal formalities have not been complied with, that individual may be jointly and severally

⁵ There are some actions which the statute explicitly defines as not doing business. A non-exhaustive list of these action is found in U.C.A.(1953) § 16-10a-1501. The actions of Defendants' in establishing a factory to manufacture rubber stamps and employ more than 70 people (Affidavit of Jeanette Lynton, p. 2) does not qualify as "not doing business."

liable for the liabilities created by those actions. The precursor to this statute was U.C.A. §16-10-139. In Gillham Advertising Agcy., Inc. v. Ipson, 567 P.2d 163, (Utah 1977), the Utah Supreme Court had occasion to apply this precursor in a case quite similar to the one at bar. In Gillham, Ipson, an individual purporting to act as the agent of a Nevada corporation, entered Utah, rented a racecourse, and began to operate the racecourse. Ipson attempted to register as a foreign corporation, but his registration was denied because there was already a Utah corporation with the name he wanted. In the course of doing business in Utah without proper registration, Ipson incurred debts. Later he signed an agreement with certain creditors. Ipson signed that agreement "Bonneville Raceways by Robert K. Ipson, President," in spite of the fact that Ipson was well aware that there was no corporation by that name licensed to do business in Utah. The Utah Supreme Court held that Ipson was personally liable for the debts and liabilities incurred.

Another case applicable to the present situation is that of Sterling Press v. Pettit, 580 P.2d 599, (Utah 1978). In that case, the Utah Supreme Court held two individuals personally liable because they incurred debts using the unregistered trade name of a publishing company. The pay checks which Lynton submitted in support of her Motion for Summary Judgment indicate

that, throughout the period in question, July 1992 to January 4, 1993, Lynton was signing pay checks to Esquivel and the Plaintiffs purportedly on behalf of an unregistered, and thus legally non-existent, Utah corporation.

In Gillham, Ipson at least made an attempt to properly register his foreign corporation. Lynton has not even claimed that such an attempt was made, prior to January 5, 1993. Furthermore, Lynton states in her affidavit that she was the President of DOT Inc. (Presumably DOT NV) during the relevant time period, as well as the keeper of its employment records. The records of the Division of Corporations indicate that Lynton was sufficiently aware of the need to register with the Utah Division of Corporations that she filed an application for the trade name or /dba/ D.O.T.S., Dozens of Terrific Stamps, in August 1992. She also was responsible for registering DOT NV as a foreign corporation in Utah on January 5, 1993. Although not conclusive, this is certainly substantial circumstantial evidence that Lynton knew of the need to register DOT NV and chose not to. There is also substantial evidence that Lynton knew that there was no Utah corporation (or Nevada corporation, for that matter,) with the name that appears on those checks. If this is found to be the case after discovery, Lynton would be legally liable,

under U.C.A. 16-10a-204,⁶ for the actions of the purported corporation's agents, such as those of Esquivel.

Finally, there is testimony in the depositions of the Plaintiffs that Esquivel presented himself as Lynton's agent, and that he presented her as the owner of the company. (See Appendix C: Santiago depo., p. 42, lines 23-25; Semiday depo., pp. 60-61, lines 22-25, 1; Bardales depo., p.13-14, lines 21-25, 1-5; Mazariegos depo., pp. 40-41, lines 21-25, 1.). Although this evidence is not conclusive, due to the Plaintiffs' lack of education, it is probative of the way Esquivel and Lynton presented themselves. Further discovery on these issues is clearly necessary, to determine, for example, whether it was DOT NV, as a Nevada corporation doing business illegally in Utah

⁶ It could be argued that the language of the statute has been changed to be more specific since it was cited in Gillham, and thus no longer applies to foreign corporations that fail to register, so long as they are corporations in good standing in their own state. The language still, however, says "incorporated under this chapter." Arguably, registration is the way in which foreign corporations become incorporated under this chapter. It is the Plaintiffs' position that the language change does not materially change the application of this statute to foreign corporations that fail to register. A close reading of both the new statute and the Commentary to Utah Revised Business Corporation Act, Commentary on section 204, (Attached at Appendix B) indicates that such a reading (i.e., one changing the application of this section to foreign corporations that fail to register) was not intended by the drafters of the code. In any case, the checks submitted by Lynton indicate that she was doing business in Utah as DOT Adventures, Inc., which is not even a Nevada corporation.

through Lynton, or Lynton /dba/, that registered and filed sales and other taxes in Utah for the period of time between August 1992 and January 1993. It is possible, although pure conjecture at this point, that Lynton's failure to register DOT NV in 1992 was an attempt to avoid Utah taxes on the sales and profits of the Orem factory. It does seem more than a little coincidental that the corporation was properly registered on the second day of business, 1993. If, after proper discovery, this were found to be the case, it would be manifestly unjust to permit Lynton to avoid corporate and other taxes by not properly registering the foreign corporation, and then to allow her to also avoid personal liability for the consequent debts and liabilities.

Minutes of corporate director's meetings and other documents indicating that Lynton was authorized by the corporation to act illegally on its behalf would also provide relevant information on these disputed issues. Plaintiffs asked for copies of those minutes in their First Request for Production of Documents. Defendants refused to supply the minutes on the grounds they were irrelevant. For the reasons stated above, these documents are not irrelevant, and Defendant Lynton's Motion for Summary Judgment should be denied to allow Plaintiffs to complete discovery on these issues.

ISSUE III. LYNTON'S MEMORANDUM
MISSTATES THE LAW APPLICABLE TO THE ALTER
EGO THEORY OF PIERCING THE CORPORATE VEIL

Lynton also makes a number of arguments that depend upon a finding by this Court that DOT NV was, in actuality, a legitimate, legal, corporate actor in the state of Utah. Lynton's arguments, that an officer of a corporation is not personally liable for the acts of corporate employees, and that absent proof of fraud and failure of the corporation, shareholders are not personally liable for tortious actions of employees, depend entirely on a finding that there was a legal corporate actor behind which the corporate directors may shield themselves. As has been argued above, the actual legal existence of Lynton's alleged corporate actor is a material disputed fact. Without that legal corporation, there is no need for Plaintiffs to resort to the alter ego theory.

However, Plaintiffs will assume, strictly for the sake of this section of their Objection, that the Court does eventually find that DOT NV was acting as a corporation, although illegally, in the State of Utah. Even if this were true, DOT NV's failure to observe the corporate formalities would be sufficient to establish the first prong of the alter-ego theory under Utah

law.⁷ The Utah Supreme Court examined the alter ego theory in some detail in Messick v. PHD Trucking Service, Inc., 678 P.2d 791 (Utah 1984). In Messick the Court examined the traditional two prong test for determining whether a corporation is the "alter ego" of an individual or individuals. As Defendant Lynton states in her Memorandum, the first prong of this argument is commonly known as the "formalities" argument. Defendant Lynton further states in her Memorandum that "there is no evidence to show that DOT has not complied with all of the statutory formalities." (Memorandum, p.7). This assertion is completely contrary to Lynton's own allegations and admitted facts. In her statement of Undisputed Facts, paragraphs 1, 2, and 3, Lynton clearly indicates that DOT NV did not comply with the statutory formalities for formal recognition under Utah law until January 5, 1993, after the claims in this case had arisen. Thus, on the

⁷ Lynton appears to argue, or at least propose, in her Memorandum in Support that the law applicable to determining whether DOT is Lynton's alter ego is Nevada law, rather than Utah law. In general, the internal affairs of a corporation, . . . are governed by the state of incorporation. Loveridge v. Dreagoux, 678 F.2d 870, 878 (10th Cir. 1982). The external affairs of a corporation, however, are subject to general conflicts principles, and depend on the issues and the nature and location of the controversy. Since the causes of action in the present suit arose in the state of Utah the alter ego theory to be applied in this case is that of Utah, rather than Nevada. However, in determining whether normal corporate formalities have been followed, Nevada's law would determine most of those formalities.


basis of her own statements, Lynton and DOT NV do not pass the "statutory formalities" prong of the alter-ego test. In Messick, the Utah Supreme Court found that "a mere showing of the corporation's failure to observe said statutory formalities" is sufficient to establish the first prong. Id., at 794. The second prong is, according to the Utah Supreme Court "addressed to the conscience of the court, and the circumstances under which it will be met will vary with each case." Due to the relative lack of formal discovery on these issues, Plaintiffs have no way of knowing, without completing discovery, the reasons for DOT's failure to properly register, and thus whether the second prong is met. This is, therefore, another disputed issue of material fact. The failure to register may have been mere oversight, or it may have been a deliberate choice. All of these issues, however, are disputed subject to further discovery and therefore are sufficient to defeat a Motion for Summary Judgment on Lynton's behalf at this time.

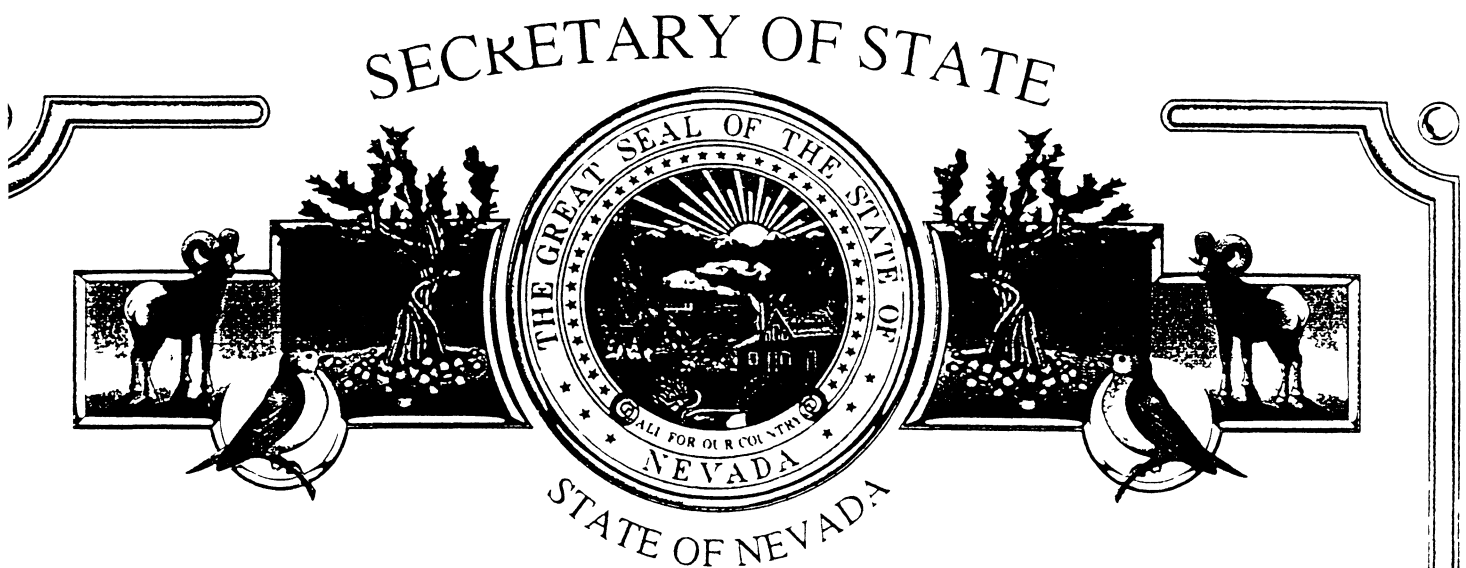
CONCLUSION

Lynton's Motion for Summary Judgment is unwarranted and should be denied. There are disputed issues of material fact which preclude a determination that DOT NV was the legal principal behind Lynton and Esquivel, and that therefore DOT NV, and not Lynton, is legally liable. There are also disputed

issues of material fact regarding whether or not Lynton's illegal actions allegedly taken on behalf of DOT NV were done with the knowledge that DOT NV was not properly registered as a corporate entity in Utah. Finally, there are disputed issues of material fact as to whether Lynton's actions in Utah under the unincorporated name of DOT Adventures, Inc. qualify for any corporate privilege. Therefore, Plaintiffs respectfully ask this Court to deny Lynton's Motion for Summary Judgment.

DATED this 16th day of July, 1994.


MARTI L. JONES
ATTORNEY FOR PLAINTIFFS



CERTIFICATE OF CORPORATE STATUS

I, CHERYL A. LAU, the duly elected, qualified and acting Secretary of State of the State of Nevada, do hereby certify that I am, by the laws of said State, the custodian of the records relating to corporations organized under the laws thereof; the revocation of their corporate charters, and their right to transact and carry on their corporate business; and am the proper officer to execute this certificate.

I further certify that, at the date of this certificate, **DOT ADVENTURES** is a corporation duly organized and existing under and by virtue of the laws of the State of Nevada, having fully complied therewith; is entitled to exercise therein all the corporate powers and functions recited in its charter or articles of incorporation, and is in good standing in this State.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Great Seal of State, at my office, in Carson City, Nevada, this 8th day of December, 1992

Secretary of State

By

Deputy



ation that may be included in the articles may be sub-divided into three general classes:

- (a) Provisions that under the Revised Act may be elected only by specific inclusion in the articles of incorporation. A list of these provisions is set forth in part e of this comment.
- (b) Provisions that under the Revised Act may be elected by specific inclusion in either the articles of incorporation or the bylaws, and the draftsman elects to include the provision in the articles. A list of provisions that may be elected in either the bylaws or the articles is set forth in part f of this comment.
- (c) Other provisions not referred to in the Revised Act that the draftsman decides should be included in the articles of incorporation. This includes but is not limited to any provision that the Revised Act requires or permits to be set forth in the bylaws. See section 202(2)(c).

7. Self-dealing transactions

When subsidiaries or corporate joint ventures are being formed, special consideration should be given to the inclusion of provisions designed to limit or avoid the unexpected application of the doctrines of corporate opportunity and conflict of interest. While this type of clause will not provide total protection, it may be given limited effect, for example, by shifting the burden of proving unfairness or "exonerating" an arrangement from "adverse influences."

e. Options in Revised Act That May Be Elected Only in the Articles of Incorporation.

1. Options with respect to directors

- (a) Provisions eliminating or limiting, with certain exceptions, the liability of the directors to the corporation or its shareholders for monetary damages (section 841) (the Revised Act actually permits such a provision to be included in the bylaws or in a separate resolution, provided that it is approved by the same shareholder vote that would be required to include the provision in the articles of incorporation).
- (b) Election of directors by cumulative voting may be authorized (section 728).
- (c) Election of directors by greater than plurality of vote may be authorized (section 728).
- (d) Directors may be elected by classes of shares (section 804).
- (e) Power to remove directors without cause may be restricted or eliminated (section 808).
- (f) Terms of directors may be staggered so that all directors are not elected in the same year (section 806).
- (g) Power to fill vacancies may be limited to the shareholders (section 810).
- (h) Power to indemnify directors, officers, and employees may be limited (part 9).
- (i) Special voting groups of shareholders may be authorized (section 725).

- (c) Quorums for voting by voting groups of shareholders may be prescribed (section 726).
 - (d) Greater than majority vote may be required for action by voting groups of shareholders (sections 727 and 1021).
- #### 3. Options with respect to shares
- (a) Shares may be divided into classes and classes into series (sections 601 and 602).
 - (b) Cumulative voting for directors may be permitted (section 728).
 - (c) Distributions may be restricted (section 640).
 - (d) Share dividends may be restricted (section 623).
 - (e) Voting rights of classes of shares may be limited or denied (section 601).
 - (f) Classes of shares may be given more or less than one vote per share (section 721).
 - (g) Shares may be redeemed at the option of the corporation or the shareholder (section 601).
 - (h) Reissue of redeemed shares may be prohibited (section 631).
 - (i) Shareholders may be given preemptive rights to acquire unissued shares (section 630).
 - (j) Redemption preferences may be ignored in determining lawfulness of distributions (section 640).

f. Options in Model Act that May Be Elected Either in the Articles of Incorporation or in the Bylaws.

1. Options with respect to directors

- (a) Provisions eliminating or limiting, with certain exceptions, the liability of directors to the corporation or to shareholders for monetary damages, provided that the provision is approved by the same vote of shareholders as would be required to include the provision in the articles of incorporation (section 841).
- (b) Number of directors may be fixed or changed within limits (section 803).
- (c) Qualifications for directors may be prescribed (section 802).
- (d) Power to compensate directors may be restricted or eliminated (section 811).
- (e) Notice of regular or special meetings of board of directors may be prescribed (section 822).
- (f) Power of board of directors to act without meeting may be restricted (section 821).
- (g) Quorum for meeting of board of directors may be increased or decreased (down to one-third) from majority (section 824).
- (h) Action at meeting of board of directors may require a greater than majority vote (section 824).
- (i) Power of directors to participate in meeting without being physically present may be prohibited (section 820).
- (j) Board of directors may create committees and specify their powers (section 825).
- (k) Power of board of directors to amend bylaws may be restricted (sections 1020 and 1022).

- (d) Procedure for treating beneficial owner of street name shares as record owner may be prescribed (section 723).
- (c) Transfer of shares may be restricted (section 627).

Section 203. Incorporation

Section 203(1) provides that the existence of a corporation begins when the articles of incorporation are filed, unless a delayed effective date is specified under section 123. Part I contains detailed rules for the filing and effective dates of documents, all of which are applicable to articles of incorporation and other documents. These filing rules simplify the process of creating a corporation in several respects.

a. What to File.

Section 120 requires that only one document (which may be an executed original or an appropriate copy of the executed original) and an exact or conformed copy of the document need be delivered to the Division for filing. This delivery must be accompanied by the applicable filing fee.

b. Nature of Filing.

Section 125 provides that the Division files the articles by stamping them "filed" and recording the date and time of acceptance; the Division retains the articles of incorporation and returns the exact or conformed copy to the appropriate party along with a receipt for the fee. The return of this copy and the fee receipt establishes that the articles have been filed in the form of the copy.

c. Certificate of Incorporation Eliminated.

Section 125 provides that approval by the Division is in the form of return of the copy of the articles with a fee receipt rather than a certificate of incorporation, as is the practice prescribed in the Prior Act. See the commentary to section 125.

d. Precise Time of Incorporation

Section 203(1) ties the precise time of incorporation to the date and time stamped on the articles. Section 123 provides in turn that this is the date and time the articles are accepted by the Division. The creators of the corporation may, however, specify that the corporation's existence will begin on a later date than the date of filing, and at a precise time on the filing date or the later effective date, to the extent permitted by section 123.

e. Conclusiveness of Division's Action on Question of Individual Liability for Corporate Actions.

Under section 203(2) the filing of the articles of incorporation as evidenced by return of the stamped copy of the articles with the fee receipt is conclusive proof that all conditions precedent to incorporation have been met, except in proceedings brought by the state. Thus the filing of the articles of incorporation is conclusive as to the existence of limited liability for persons who enter into transactions on behalf of the

a "corporation" knowing that articles have not been filed. Section 204 may protect some of these persons to a limited extent, however; see the Commentary to that section.

Section 204. Liability for Preincorporation Transactions

Earlier versions of the Model Act, the Prior Act, and the statutes of many other states, have long provided that corporate existence begins only with the acceptance of articles of incorporation by the filing agency. Many states also have statutes that provide expressly that those who prematurely act as or on behalf of a corporation are personally liable on all transactions entered into or liabilities incurred before incorporation. A review of recent case law indicates, however, that even in states with such statutes courts have continued to rely on common law concepts of de facto corporations, de jure corporations, and corporations by estoppel that provide uncertain protection against liability for preincorporation transactions. These cases caused a review of the underlying principles represented in earlier versions of the Model Act and the adoption of a slightly more flexible or relaxed standard.

Incorporation under modern statutes is so simple and inexpensive that a strong argument may be made that nothing short of filing articles of incorporation should create the privilege of limited liability. A number of situations have arisen, however, in which the protection of limited liability arguably should be recognized even though the simple incorporation process established by modern statutes has not been completed.

a. The strongest factual pattern for immunizing participants from personal liability occurs in cases in which the participant honestly and reasonably but erroneously believed the articles had been filed. In *Cranston v. International Business Machines Corp.*, 234 Md. 477, 200 A 2d 33 (1964), for example, the defendant had been shown executed articles of incorporation some months earlier before he invested in the corporation and became an officer and director. He was also told by the corporation's attorney that the articles had been filed, but in fact they had not been filed because of a mix-up in the attorney's office. The defendant was held not liable on the "corporate" obligation.

b. Another class of cases, which is less compelling but in which the participants sometimes have escaped personal liability, involves the defendant who mails in articles of incorporation and then enters into a transaction in the corporate name; the letter is either delayed or the filing officer refuses to file the articles after receiving them or returns them for correction. E.g., *Cantor v. Sunshine Greenery, Inc.*, 165 N.J. Super. 411, 398 A 2d 571 (1979). Many state filing agencies adopt the practice of treating the date of receipt as the date of issuance of the certificate even though delays and the review process may result in the certificate being backdated. The finding of nonliability in cases of this second type can be considered an extension of this principle by treating the date of original mailing or original filing as the date of incorporation.

c. A third class of cases in which the participants sometimes have escaped personal liability involves situations where the third person has urged immedi-

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Also present: Miguelangel Esquivel
Jeanette R. Lynton

I N D E X

Page

WITNESS

Angel Santiago

Examination by Mr. Martin

3

1 A He wasn't specific "all the time."

2 Q Did you tell him that you would be there forever?

3 A What I answered.

4 Q Yes?

5 A It was fine.

6 Q That you stay in the company forever?

7 A He told me, "Angel, you do a good job. You are going
8 to have your position there." He didn't say any date nor when
9 I was going to finish, that I was going to stay there.

10 Q Then some day he tells you your work is finished?

11 A Uh-huh.

12 Q Is that unlawful, do you believe?

13 A No.

14 Q Are we in agreement that it would be lawful for you
15 to leave at any time "employment" and also legal for the
16 company to say your work is finished?

17 A For the company?

18 Q Yes.

19 A For the company, yes.

20 Q Do you understand that there is a difference between
21 the company and Jeanette Lynton, a difference?

22 A What do you mean, "there is a difference"?

23 Q Going back to the heart of the matter, you are listed
24 here--

25 MS. JONES: I am going to object to this question

1 because I think it calls for a legal conclusion.

2 Q (By Mr. Martin) Very good. You are listed here and
3 Jeanette R. Lynton is listed here in opposition to you,
4 personally.

5 A What do you mean?

6 Q This is you versus Jeanette Lynton, not D.O.T.S.

7 A Who does D.O.T.S. belong to?

8 Q The stockholder or holders.

9 A And not to Jeanette?

10 Q Yes.

11 A Does it belong to her?

12 Q The stock--

13 A I don't know. The stock or the company.

14 Q Were you employed by the company?

15 A Sure.

16 Q Did you receive payment and a check from the company
17 named D.O.T.S.?

18 A Uh-huh.

19 Q Was Jeanette Lynton present during the checking?

20 A No.

21 Q Do you have any reason to say that you may have some
22 real action against Jeanette Lynton?

23 A When a person is responsible for a company and, in
24 this case, Jeanette presents herself as the owner of the
25 company, and those persons are responsible for the things that

1 happen in the company but there is more than one person, all of
2 them are responsible for what happens in a company.

3 Q You believe that the person is individually liable
4 for all of the business of the company?

5 MS. JONES: Objection, I think that calls for a legal
6 conclusion.

7 Q (By Mr. Martin) I am asking what he believes.

8 A Concerning what--

9 Q Do you believe that an owner of a company, a
10 corporation, is personally liable under the law?

11 A Concerning what, concerning the employees?

12 Q Yes.

13 A Sure.

14 Q This is the problem.

15 A Why?

16 Q Because it is a corporation by which he was employed.
17 The corporation paid you?

18 MS. JONES: I didn't understand that as a question.

19 MR. MARTIN: It was a question.

20 Q (By Mr. Martin) Counsel has objected to what I said
21 and interrupted, stopping her client from responding, because
22 she thought that it was not a question. The question is: Were
23 you employed by Jeanette Lynton or the company, the corporation
24 named D.O.T.S.?

25 A D.O.T.S. was the one that contracted me.

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The Translator: Mr. Grant Andersen

Also Present: Ms. Denise Farnsworth
 Ms. Jeanette R. Lynton
 Mr. Miguelangel Esquivel

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I N D E X

<u>Witness</u>	<u>Page</u>
<u>WALTER SEMIDEY</u>	
Examination by Mr. Martin	3

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1 translate a whole sentence at once, not just little bits
2 and chunks.

3 Q Very good.

4 THE TRANSLATOR: I told him thanks for the
5 suggestion.

6 Q (By Mr. Martin) You were offended by the
7 checking, true?

8 A (By the translator) Yes.

9 Q Why no telephone call, letter, personal
10 communication to any person in the company from any
11 person who had felt offended to even make a small
12 suggestion of the offense? Isn't this also an offense?

13 A (By the translator) Because there was no
14 trusting communication between the manager of the
15 company.

16 Q Meaning Mr. Esquivel?

17 A (By the translator) Uh-huh. Even to
18 eventually -- to Jeanette that was on the other side of
19 this.

20 Q Pick up the telephone and call her on the
21 phone. Why not?

22 A (By the translator) I tell you again.
23 Because we've always been told you have to follow this
24 pattern. In order to get up to Ms. -- he's using a
25 title to address Jeanette -- you have to go through

1 Miguel first to get to her.

2 Q Even when you're no longer employed by the
3 company, why no phone call after? Why no contact? Such
4 anger is instilled in these people that you feel that
5 these people and this conduct is making no offense but
6 is totally justified. Fear?

7 A (By the translator) I didn't understand
8 what you just said.

9 THE TRANSLATOR: And I said I didn't either.

10 Q (By Mr. Martin) Someone as an observer, a
11 neutral observer, could maybe say that this complaint
12 now against the company is some vendetta. Why would you
13 say that it would not appear some vendetta?

14 A (By the translator) I just wanted to make
15 sure of what my legal rights were. That's why I'm here,
16 just for that. If I had come and asked you for legal
17 advise, I would still be here.

18 Q You mean from the first time you asked me
19 legal advise you would have been living here or -- I
20 don't know.

21 THE TRANSLATOR: No, that's --

22 Q (By Mr. Martin) What isn't, what is a
23 complaint?

24 A (By the translator) That's why I'm here,
25 for the legal thing. I'm not looking for illegalities.

A P P E A R A N C E S

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For the Defendants Jeanette R. Lynton and Miguelangel Esquivel	Mr. Loren D. Martin Attorney at Law 1200 Beneficial Life Tower 36 South State Street Salt Lake City, Utah 84111
The Translator:	Mr. Grant Andersen
Also Present:	Ms. Denise Farnsworth Ms. Jeanette R. Lynton Mr. Miguelangel Esquivel

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I N D E X

<u>Witness</u>	<u>Page</u>
<u>JOSE HUMBERTO BARDALES</u>	
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--o0o--

E X H I B I T S

<u>Number</u>	<u>Description</u>	<u>Marked</u>
1	Drawing	34

--o0o--

1 THE TRANSLATOR: I'm having a little trouble
2 with the word "liability." Any helpers?

3 MR. MARTIN: Liability means --

4 THE TRANSLATOR: I said personal
5 responsibility is the way --

6 Q (By Mr. Martin) Okay. "Responsibility" is
7 not the same as "liability."

8 THE TRANSLATOR: (Reading from dictionary)
9 Liabilities, duties -- let me just find it real quick
10 before reading all this. It says "responsabilidad" a
11 whole lot in here.

12 MR. MARTIN: Maybe this is part of our
13 problem.

14 THE TRANSLATOR: "Responsibilidad" is a lot
15 broader, I think. It covers a lot broader spectrum of
16 meaning.

17 MR. MARTIN: Yes.

18 THE TRANSLATOR: I don't know.

19 MR. MARTIN: I think so. Let me explain --

20 A (By the translator) The question that I
21 understood was if the corporation is immune from
22 complaints.

23 Q (By Mr. Martin) Ah, the reverse. Has
24 anyone ever told you it's the reverse that's true? A
25 corporation may be liable, under the law, and the

1 individual owner is not. Have you ever heard this
2 before?

3 A (By the translator) No.

4 THE TRANSLATOR: The word "liable,"
5 jurisprudential definition --

6 Q (By Mr. Martin) Ah. That's part of the
7 problem. Do you know or believe that Jeanette Lynton as
8 an individual did anything wrongful to you personally,
9 by her own choice? Translate that please, if you can.

10 MS. JONES: Yeah. I'm waving because he
11 asked you something, and when he asks you something you
12 need to translate it back rather than answering. You're
13 having conversations with him.

14 MR. MARTIN: Maybe. You haven't said
15 anything yet.

16 A (By the translator) Let's go back a little
17 bit and we'll get it.

18 Q (By Mr. Martin) Do you have any reason or
19 do you believe that Jeanette Lynton as an individual did
20 something wrongful to you intentionally?

21 A (By the translator) Well, to the point that
22 I realized when I was working there, the person that
23 most represented -- oh, not represented -- the person
24 that stood as the owner of the company. However, the
25 person that was always there was Miguelangel.

1 And what I understand, that if Jeanette
2 Lynton was the only -- I always realized that
3 Mr. Miguelangel was under the direction of
4 Ms. Jeanette. If there were any people above Jeanette,
5 we never knew about it. We never realized it.

6 Q Part of the deposition purpose is to ask a
7 question, and you listen to the question to respond and
8 answer or give an answer to the question on what you
9 know --

10 A (By the translator) Right. I understand
11 that. But it also must be understood that I'm going to
12 answer the way I'm receiving it, because it's not a
13 direct discussion. It's through an interpreter. And I
14 know by my experience that some things will be lost or
15 changed.

16 Q Very good.

17 Then did Jeanette Lynton ever arrest you or
18 confine you or prevent you from freely moving from one
19 place to another?

20 A No.

21 A (By the translator) No. While we were
22 working there, she was never directly in charge of us.
23 Rather, Mr. Miguelangel.

24 Q So the answer is no.

25 A (By the translator) No. Directly from her,

1 no. Something that we were always told that --
2 Miguelangel told us, told all of us, that anything that
3 he might say would be as if Mrs. Jeanette had said it
4 and that he had all of her approbation or approval to do
5 anything in the company. He repeated that many times,
6 and many ears heard it.

7 Q Then I ask you the same question about
8 Miguelangel, Mr. Esquivel.

9 A (By the translator) What was the question
10 about him?

11 Q The question: Did Mr. Esquivel ever arrest
12 you, detain you, or stop you by force from freely moving
13 from one place to the other? Si or no?

14 A (By the translator) I'm going to answer the
15 question concerning a specific case in which I felt
16 that, yes, I was restricted, and it was on one occasion
17 when \$20 had been lost, which was the quantity that was
18 told to all of us had been lost.

19 Q One moment. Is there only one occasion,
20 then, in which you believe that Mr. Esquivel arrested,
21 detained, or forcibly prevented you from moving with
22 freedom?

23 A (By the translator) I understand that if he
24 was in the company it was in order to have someone that
25 was directing the company, and so --

A P P E A R A N C E S

For the Plaintiffs: Ms. Marti Jones
Attorney at Law
Law Offices of Linda Q. Jones
40 South 100 West, #33
Provo, Utah 84601
(801) 373-0276

For the Defendants Mr. Loren D. Martin
Jeanette R. Lynton Attorney at Law
and Miguelangel Esquivel 1200 Beneficial Life Tower
36 South State Street
Salt Lake City, Utah 84111

The Translator: Ms. Elvia George

Also Present: Ms. Denise Farnsworth
Ms. Jeanette R. Lynton
Mr. Miguelangel Esquivel

--o0o--

I N D E X

Witness	Page
ROSA MAZARIEGOS	
Examination by Mr. Martin	3

--o0o--

E X H I B I T S

Number	Description	Marked
1	Drawing by witness	39

--o0o--

1 A (By the translator) Yes.

2 Q Was there any meeting which you attended for
3 any good purpose?

4 A (By the translator) I don't remember.

5 Q Is there anything that you think positive
6 about the company?

7 A (By the translator) Positive in which form?

8 Q In any form.

9 A (By the translator) The only one thing that
10 it bothers me was the offenses from him. The rest I
11 feel it's okay.

12 Q "Him," meaning Esquivel.

13 A (By the translator) Yes.

14 Q Everyone else is good?

15 A (By the translator) I never had problems
16 with anybody there.

17 Q Do you have problems with Jeanette Lynton?

18 A (By the translator) No.

19 Q Why in your court papers do you complain
20 against Jeanette Lynton?

21 A (By the translator) I haven't complained
22 about her. Maybe she's there because she's the owner.

23 Q Owner of what?

24 A (By the translator) Maybe she is the owner.
25 I think she is, because she went a couple of times there

1 to where we work, and I know she is her.

2 Q Do you comprehend the difference between a
3 corporation and a person?

4 A (By the translator) I know that when it is
5 a company there's several owners.

6 Q Do you think Mr. Esquivel is also an owner?

7 A (By the translator) No.

8 Q Do you think that an owner of a company is
9 personally liable?

10 MS. JONES: I'm going to object, because I
11 think that calls for a legal conclusion.

12 MR. MARTIN: I understand. I'm asking what
13 she believes.

14 A (By the translator) What is "liable"?

15 MS. JONES: No, you said it right, but you
16 didn't finish what he said.

17 A (By the translator) I think so.

18 Q (By Mr. Martin) Do you ever hear about the
19 word "limitados"?

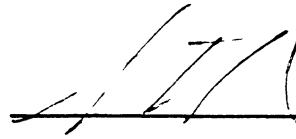
20 A (By the translator) I understand that a
21 limit is something that only goes so far.

22 Q Did you intend to complain against the
23 company? Did you intend to complain against the company
24 or Jeanette Lynton as an individual?

25 A (By the translator) I never have had

CERTIFICATE OF MAILING

I hereby certify that on the 21st day of July, 1994, I mailed a true and correct copy of the foregoing PLAINTIFFS' OBJECTION TO DEFENDANT LYNTON'S MOTION FOR SUMMARY JUDGMENT and REQUEST FOR ORAL ARGUMENT to Counsel for Defendants, Loren D. Martin, 1200 Beneficial Life Tower, Salt Lake City, UT 84111, postage prepaid.



Tab 10

AS

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Post Office Box 11590
Salt Lake City, Utah 84147-0590
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Attorneys for Defendants

IN THE FOURTH JUDICIAL DISTRICT COURT
FOR THE STATE OF UTAH

WALTER SEMIDEY, et al.,	:	DEFENDANTS' REPLY
	:	MEMORANDUM IN SUPPORT OF
Plaintiffs,	:	DEFENDANT LYNTON'S
	:	MOTION FOR PARTIAL
vs.	:	SUMMARY JUDGMENT
	:	
JEANETTE R. LYNTON, et al.,	:	Civ. No. 930400503 PI
	:	Judge Boyd L. Park
Defendants.	:	
	:	

The Defendant, Jeanette R. Lynton, by and through her attorney, Loren D. Martin, submits herewith the following Reply Memorandum In Support of Defendant Lynton's Motion For Partial Summary Judgment.

FACTS WHICH ARE NOT THE SUBJECT OF A GENUINE DISPUTE

The following facts are established by admissible evidence and are not the subject of a genuine dispute:

DOTS ADVENTURES is a Nevada corporation.

1. DOT ADVENTURES is a Nevada Corporation which was incorporated under the laws of the State of Nevada on February 10, 1989.¹

DOT ADVENTURES is a Nevada corporation qualified to do business in Utah as DOT ADVENTURES, INC.

2. The Nevada Corporation, DOT ADVENTURES was duly registered as a foreign corporation doing business within the State of Utah on January 5, 1993.²

Plaintiffs were employed and were paid wages by the corporation.

3. The Plaintiffs were paid their wages by checks bearing the name "DOT ADVENTURES, INC."³

At the time and place of the alleged conduct, Mr. Esquivel was employed by and being paid wages by the corporation.

4. Mr. Esquivel was paid wages by checks bearing the name "DOT ADVENTURES, INC."⁴

¹ See certified copy of Nevada Articles of Incorporation attached hereto and marked as Exhibit 1. See also Plaintiffs' Memorandum in which they admit that DOT Adventures is a Nevada corporation, and the first exhibit attached to Plaintiff's "Objection to Defendant Lynton's Motion For Partial Summary Judgment."

² See certified copy of State of Utah Department of Commerce Certificate of Registration attached hereto and marked as Exhibit 2. Plaintiffs admitted in their Memorandum that DOT Adventures qualified and/or registered to do business in Utah on January 5, 1993. See copy of computer print-out from the Utah Department of Commerce attached to Plaintiff's Memorandum, establishing the date of registration.

³ For examples, see copies of checks attached to the Affidavit of Jeanette R. Lynton filed in support of Defendant's initial Memorandum In Support Of Motion For Summary Judgment.

⁴ For example, see copy of check attached to the Affidavit of Jeanette R. Lynton filed in support of Defendant's initial Memorandum In Support Of Motion For Summary Judgment.

Mr. Esquivel, plant manager, was an agent acting in behalf of a principal.

5. The Plaintiffs allege that Mr. Esquivel, "acting within his authority as plant manager, stopped all work within the confines of the DOTS plant, and called the employees together."⁵

6. The Plaintiffs claim that the alleged conduct of Mr. Esquivel occurred at the plant located in Orem, Utah, while Plaintiffs were on the premises as employees of the plant.⁶

DEFENDANTS DISAGREE WITH "PLAINTIFFS'
"STATEMENT OF DISPUTED MATERIAL FACTS"

Plaintiffs' pleading entitled: "Plaintiffs' Objection To Defendant Lynton's Motion For Partial Summary Judgment" contains a so-called "Statement of Disputed Material Facts." However, the Statement does not comply with Rule 56(e) as quoted below.

Defendants disagree with Plaintiffs' so-called "Statement of Disputed Material Facts," and respond by reference to Plaintiffs' paragraph numbers as follows:

1. There is no genuine issue of fact as to the corporate status of DOT ADVENTURES. DOT ADVENTURES is a Nevada corporation authorized to do business in Utah under the name of DOT ADVENTURES, INC. See certified copies of documents from the State of Utah and the State of Nevada attached hereto as Exhibits 1 & 2.

2. There is no genuine issue of fact as whether or not DOT ADVENTURES has been transacting business in Utah as DOT ADVENTURES, INC.

⁵ See Plaintiffs' Amended Complaint, page 3, paragraph 16.

⁶ See Plaintiffs' Amended Complaint.

DOT ADVENTURES has been transacting business in Utah since 1992. It is not unlawful or illegal for a foreign corporation to transact business in Utah. No foreign corporation automatically loses its corporate status by transacting business in Utah, whether its formally qualified not. Plaintiffs' arguments to the contrary have no legal merit and are not supported by any admissible evidence. The remainder of Plaintiffs' allegations in this paragraph constitute nothing but unsupported argument.

3., 4., 5., 6., 7., 8., 9., 10. Plaintiffs' allegations in these paragraphs are not supported by references to admissible sworn testimony and/or evidence and constitute nothing more than mere allegations or unsupported argument of counsel.

ARGUMENT

POINT NO. 1

THERE IS NO GENUINE ISSUE OF A MATERIAL FACT WHICH
PRECLUDES THE COURT FROM GRANTING DEFENDANTS'
MOTION FOR PARTIAL SUMMARY JUDGMENT.

Rule 56(e), URCivP, provides as follows:

Supporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein. Sworn or certified copies of all papers . . . referred to in an affidavit shall be attached thereto or served therewith. . . . When a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of his pleading, but his response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. If he does not so respond, summary judgment, if appropriate, shall be entered against him.

Defendants' Motion, Memorandum and Reply Memorandum in Support of their Motion for Partial Summary Judgment are supported by certified copies of official state documents, references to the pleadings on file with the Court, sworn testimony contained the Affidavit of Jeanette R. Lynton and official business records of the corporation identified and attached to the Affidavit of Jeanette R. Lynton in her capacity as President and custodian of records of the corporation.

Certified copies of documents from the State of Nevada demonstrate that DOT ADVENTURES, a Nevada corporation was incorporated in Nevada on February 10, 1989. Certified copies of documents from the State of Utah demonstrate that DOT ADVENTURES qualified to do business in Utah under the name DOT ADVENTURES, INC.

The sworn testimony of Jeanette R. Lynton demonstrates that the Plaintiffs were employed by DOT ADVENTURES, a corporation and were paid their wages by corporate payroll check, bearing the name DOT ADVENTURES, INC.

The sworn testimony of Jeanette R. Lynton demonstrates that the Mr. Esquivel, plant manager, was employed by DOT ADVENTURES, a corporation and was paid wages by corporate payroll check, bearing the name DOT ADVENTURES, INC.

Copies of corporate payroll checks were supplied, identified and attached to the Affidavit of Jeanette R. Lynton, the president of DOT ADVENTURES.⁷

The alleged acts about which Plaintiffs complain all occurred after DOT ADVENTURES was formed and incorporated.

⁷ For examples, see copies of checks attached to the Affidavit of Jeanette R. Lynton filed in support of Defendant's initial Memorandum In Support Of Motion For Summary Judgment.

Plaintiffs have not provided any testimony or admissible evidence to demonstrate that there is a genuine issue of fact regarding any of the foregoing matters.

Plaintiffs admit and allege that Mr. Esquivel was "acting within his authority as plant manager . . ." when he performed the alleged acts of which Plaintiffs complain.

POINT NO. 2
JEANETTE R. LYNTON IS NOT PERSONALLY LIABLE
FOR POTENTIAL CORPORATE DEBTS OR JUDGMENTS

There is no allegation that Jeanette R. Lynton knew of the alleged conduct until after the event. There is no allegation that Jeanette R. Lynton commanded or directed the alleged conduct or was in any manner personally involved in the same.

It is hornbook law that an officer, director or stockholder of a corporation is not personally liable for corporate debts or non-directed and unknown acts of agents of the corporation, even a non-complying foreign corporation.⁸

POINT NO. 3
DOT ADVENTURES DID NOT LOSE ITS CORPORATE STATUS BY
ITS FAILURE TO REGISTER IN UTAH ON AN EARLIER DATE.

Utah law specifically recognizes the corporate status of a foreign corporation doing business within the State. The Revised Business Corporation Act, §16-10a-1502(6), U.C.A., states that:

The failure of a foreign corporation to have authority to transact business in this state does not impair the validity of its corporate acts, nor does the failure prevent the corporation from defending any proceeding in this state.

⁸ Fletcher, Cyclopedia of Corporations (1960 Rev) Vol. 17 §8524, pp. 748-751.

Admittedly DOT ADVENTURES did not register to do business in Utah until January 5, 1993. Yet, its failure to register earlier did not effect or "impair the validity of its corporate acts." Plaintiffs' argument to the contrary lacks merit.

The Utah Statute is consistent with long established common law. The Restatement, Conflict of Laws, Second, Section 296 states that:

An organization formed in one state will be considered a corporation within the meaning of a statute or rule of another state.

The status of DOT ADVENTURES as a corporation is not in question, and the Utah Statute cited above is controlling law on the issue.

However, notwithstanding controlling statutory law, Plaintiffs have cited several cases which they allege are applicable. An examination of the cases cited by Plaintiffs demonstrates they are easily distinguishable from the case at hand.

*Gillham Advertising Agency, Inc., v. Ipson*⁹, is not applicable. In *Gillham*, the Defendant, Ipson, "personally" leased a racetrack, "began operating it", contacted Gillham for advertising services to promote the racing activity "which he personally was conducting," and "advanced money in connection therewith." Consequently, Ipson became personally liable for the debt incurred.

Later, purportedly acting as president of a suspended Nevada corporation known as Bonneville Raceways Park, Ipson signed an agreement with Gillham which "set forth with particularity how and when the debt would be paid,"¹⁰ but the agreement did not constitute a novation, exonerating Ipson from personal liability.

⁹ *Gillham Advertising Agency, Inc., v. Ipson*, 567 P.2d 163 (Utah 1977)

¹⁰ *Id.* at 165.

The Supreme Court stated¹¹:

There is no question but that the debt is Ipson's. When he failed to pay, a paper was prepared to set forth with particularity how and when the debt would be paid. The paper did not extinguish the debt owed by Ipson; it merely stated how and under what circumstances it would be paid. There is no evidence or claim that there was a novation whereby the corporation would owe the debt and Ipson would be released from paying it.

Plaintiffs cite *Sterling Press v. Pettit*.¹² That case is not applicable. In *Sterling*, the defendants became liable to plaintiff for the publishing costs of a magazine called "The Utah Equestrian." After incurring the debt, the Defendants signed and delivered a check made payable to Plaintiff on an account bearing the name "Investor's Publishing Company." The defendants did not affix their signatures on the check, indicating that they were doing so in any representative capacity. The check was presented twice for payment but was not paid by the bank. Two months after the complaint was filed against the Defendants for writing a bad check, the Defendants registered the name "Investor's Publishing Company," as a d/b/a of International Land Corporation, a foreign corporation. Defendants then argued that the check was really drawn on the corporate account of International Land Corporation and they shouldn't therefore be personally liable for the amount of the check.

The Utah Supreme Court disagreed, stating that since the check in question bore only the names of the defendants and the name of a non-existent company and unregistered d/b/a, the defendants were personally liable.¹³

¹¹ *Id.* at 164.

¹² *Sterling Press v. Pettit*, 580 P.2d 599 (Utah 1978)

¹³ *Id.* at 600.

The cases cited by Plaintiffs are not applicable, are easily distinguishable and are not controlling. The controlling law is the Utah Revised Corporation Act.

POINT NO. 4
THERE IS NO EVIDENCE UPON WHICH THE COURT COULD
CONCLUDE THAT DOT ADVENTURES IS THE ALTER EGO OF
JEANETTE R. LYNTON.

Plaintiffs also cite *Messick v. PHD Trucking Service, Inc.*,¹⁴ in which the Utah Supreme Court reviewed an alter-ego theory "characterized as "reverse-pierce-of-the-corporate-veil," or "reverse pierce" theory by which an "insider" may pierce the corporate veil to prevent a party outside the corporation from using the entity as a shield to defraud the insider.

In *Messick*, although the Utah Supreme Court restated the two prong test generally applicable to alter-ego claims, the Court determined that there was no proof that the corporate entity should be disregarded.¹⁵

In *Messick*, the Utah Supreme Court quoted from an earlier Utah case and stated¹⁶:

In order to disregard the corporate entity, there must be a concurrence of two circumstances: (1) there must be such unity of interest and ownership that the separate personalities of the corporation and the individual no longer exist, viz., the corporation is, in fact, the alter ego of one or a few individuals; and (2) the observance of the corporate form would sanction a fraud, promote injustice, or an inequitable result would follow.

¹⁴ *Messick v. PHD Trucking Service, Inc.*, 678 P.2d 791, (Utah 1984)

¹⁵ *Id.* at 794.

¹⁶ *Id.* at 794

There is no evidence before the Court upon which the Court could conclude that Plaintiffs can demonstrate that they can meet either of the two prongs of the two prong test.

There is no evidence to show that DOT ADVENTURES has not complied with all of the corporate formalities and is other than a corporation in good standing in both Utah and Nevada. There is no evidence that DOT ADVENTURES has failed to pay all of its debts and obligations.

There is not even a suggestion of evidence that acknowledgment by the Court that DOT ADVENTURES is a corporation in good standing which conducts an ongoing business would may result in the sanction of a fraud, promote injustice, or that to do so would cause an inequitable result to follow.

Lacking any evidence to support Plaintiffs' claims, the Court cannot find, from a factual standpoint, that Plaintiffs have demonstrated there is an issue of fact as to whether DOT ADVENTURES, Inc. was Jeanette Lynton's alter-ego.

Lacking any factual evidence, Plaintiffs rely upon argument and allegations of counsel to the effect that the failure of DOT ADVENTURES, a Nevada corporation, to register in Utah in a timely manner constitutes evidence that the corporate form has been disregarded. However, *Messick* does not support Plaintiffs' claim in this regard. Furthermore, the Utah Code Ann. §16-10a-1502(6) specifically provides that failure to register does not invalidate the corporation's existence or status.

Plaintiffs' unsupported arguments that DOT ADVENTURES, INC., is the alter ego of Jeanette R. Lynton are without any factual support and are without merit.

POINT NO. 5
PLAINTIFFS' ARGUMENT THAT "DOT ADVENTURES" IS NOT
THE SAME AS "DOT ADVENTURES, INC." DOES NOT CREATE A
GENUINE ISSUE OF A MATERIAL FACT

The certified copy of the DOT ADVENTURES, INC. file from The Utah Division Of Corporations And Commercial Code, attached hereto and marked as Exhibit 2, conclusively establishes that DOT ADVENTURES, the Nevada corporation, is the same corporate entity as DOT ADVENTURES, INC.

Plaintiffs have made a series of unsupported claims that "DOT ADVENTURES", a Nevada corporation is not the same as "DOT ADVENTURES, INC." There is no evidence to support the Plaintiffs' argument. The claims of Plaintiff in this regard are nothing but unsupported rhetoric, constitute mere allegations of counsel and are wholly without merit.

The only distinction and the reason for the difference in the name is that the Utah Revised Business Corporation Act requires the use of "Inc."¹⁷ in the name. Nevada law does not.¹⁸ Hence, the name of the Nevada corporation in Utah must be DOT ADVENTURES, INC.

CONCLUSION

A. Since Plaintiffs have produced no testimony or evidence to support their arguments in this regard, their "mere allegations," as contained in their pleadings do not create an issue of fact under Rule 56, URCivP.

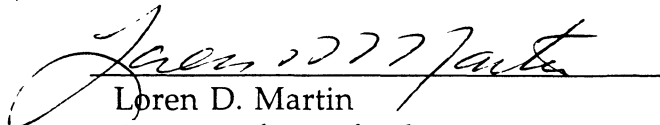
B. There is no genuine issue of a material fact which precludes the Court from ruling upon Defendant Lynton's Motion for summary judgment.

¹⁷ The Utah Revised Business Corporation Act, §16-10a-401(1)(a)

¹⁸ Nevada Revised Statutes, NRS, 78.035.

THEREFORE, Jeanette R. Lynton respectfully submits that she is entitled to summary judgment against Plaintiffs as requested in her Motion.

DATED this 5th day of August, 1994.


Loren D. Martin
Attorney for Defendants

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the following:

Response To Plaintiffs' Objection To Defendant Lynton's Motion For Partial Summary Judgment was mailed, postage prepaid in the U.S. Mail on the 5 day of August, 1994 to the following:

Law Offices of Linda Q. Jones
Linda Q. Jones,
Marti L. Jones
40 South 100 West, Suite 303
Provo, Utah 84604



FILED
RECEIVED
SECRETARY OF STATE
STATE OF NEVADA

FEB 10 1969

FRANKLIN B. DELAPLA, SECRETARY OF STATE

1123-89

ARTICLES OF INCORPORATION

OF

DOT ADVENTURES

FILING FEE: \$75.00
LAUGHLIN ASSOCIATES, INC.,
1000 E. WILLIAM STREET,
SUITE #100
CARSON CITY, NEVADA 89701

FIRST. The name of the corporation is:

DOT ADVENTURES

SECOND. Its principal office in the State of Nevada is located at 1000 East William Street, Suite 100, Carson City, Nevada 89701, that this corporation may maintain an office, or offices, in such other place within or without the State of Nevada as may be from time to time designated by the Board of Directors, or by the By-Laws of said corporation, and that this Corporation may conduct all Corporation business of every kind and nature, including the holding of all meetings of Directors and Stockholders, outside the State of Nevada as well as within the State of Nevada

THIRD. The objects for which this Corporation is formed are: To engage in any lawful activity, including, but not limited to the following:

(A) Shall have such rights, privileges and powers as may be conferred upon corporations by any existing law.

(B) May at any time exercise such rights, privileges and powers, when not inconsistent with the purposes and objects for which this corporation is organized.

(C) Shall have power to have succession by its corporate name for the period limited in its certificate or articles of incorporation, and when no period is limited, perpetually, or until dissolved and its affairs wound up according to law.

(D) Shall have power to sue and be sued in any court of law or equity.

(E) Shall have power to make contracts.

(F) Shall have power to hold, purchase and convey real and personal estate and to mortgage or lease any such real and personal estate with its franchises. The power to hold real and personal estate shall include the power to take the same by devise or bequest in the State of Nevada, or in any other state, territory or country.

(G) Shall have power to appoint such officers and agents as the affairs of the corporation shall require, and to allow them suitable compensation.

(H) Shall have power to make bylaws not inconsistent with the constitution or laws of the United States, or of the State of Nevada, for the management, regulation and government of its affairs and property, the transfer of its stock, the transaction of its business, and the calling and holding of meetings of its stockholders.

(I) Shall have power to wind up and dissolve itself, or be wound up or dissolved.

(J) Shall have power to adopt and use a common seal or stamp, and alter the same at pleasure. The use of a seal or stamp by the corporation on any corporate documents is not necessary. The corporation may use a seal or stamp, if it desires, but such use or nonuse shall not in any way affect the legality of the document.

(K) Shall have power to borrow money and contract debts when necessary for the transaction of its business, or for the exercise of its corporate rights, privileges or franchises, or for any other lawful purpose of its incorporation; to issue bonds, promissory notes, bills of exchange, debentures, and other obligations and evidences of indebtedness, payable at a specified time or times, or payable upon the happening of a specified event or events, whether secured by mortgage, pledge or otherwise, or unsecured, for money borrowed, or in payment for property purchased, or acquired, or for any other lawful object.

(L) Shall have power to guarantee, purchase, hold, sell, assign, transfer, mortgage, pledge or otherwise dispose of the shares of the capital stock of, or any bonds, securities or evidences of the indebtedness created by, any other corporation or corporations of the State of Nevada, or any other state or government, and, while owners of such stock, bonds, securities or evidences of indebtedness, to exercise all the rights, powers and privileges of ownership, including the right to vote, if any.

(M) Shall have power to purchase, hold, sell and transfer shares of its own capital stock, and use therefor its capital, capital surplus, surplus, or other property or fund.

(N) Shall have power to conduct business, have one or more offices, and hold, purchase, mortgage and convey real and personal property in the State of Nevada, and in any of the several states, territories, possessions and dependencies of the United States, the District of Columbia, and any foreign countries.

(O) Shall have power to do all and everything necessary and proper for the accomplishment of the objects enumerated in its certificate or articles of incorporation, or any amendment thereof, or necessary or incidental to the protection and benefit of the corporation, and, in general, to carry on any lawful business necessary or incidental to the attainment of the objects of the corporation, whether or not such business is similar in nature to the objects set forth in the certificate or articles of incorporation of the corporation, or any amendment thereof.

(P) Shall have power to make donations for the public welfare or for charitable, scientific or educational purposes.

(Q) Shall have power to enter into partnerships, general or limited, or joint ventures, in connection with any lawful activities.

FOURTH. That the total number of voting common stock authorized that may be issued by the Corporation is TWENTY-FIVE HUNDRED (2,500) shares of stock without nominal or par value and no other class of stock shall be authorized. Said shares without nominal or par value may be issued by the corporation from time to time for such considerations as may be fixed from time to time by the Board of Directors.

FIFTH. The governing board of this corporation shall be known as directors, and the number of directors may from time to time be increased or decreased in such manner as shall be provided by the By-Laws of this Corporation, providing that the number of directors shall not be reduced to less than one (1).

000

The name and post office address of the first Board of Directors shall be one (1) in number and listed as follows:

<u>NAME</u>	<u>POST OFFICE ADDRESS</u>
Lewis E. Laughlin	1000 East William Street, Suite 100 Carson City, Nevada 89701

SIXTH. The capital stock, after the amount of the subscription price, or par value, has been paid in, shall not be subject to assessment to pay the debts of the incorporation.

SEVENTH. The name and post office address of the Incorporator signing the Articles of Incorporation is as follows:

<u>NAME</u>	<u>POST OFFICE ADDRESS</u>
Lewis E. Laughlin	1000 East William Street, Suite 100 Carson City, Nevada 89701

EIGHTH. The resident agent for this corporation shall be:

LAUGHLIN ASSOCIATES, INC.

The address of said agent, and, the principal or statutory address of this corporation in the state of Nevada, shall be:

1000 East William Street, Suite 100
Carson City, Nevada 89701

NINTH. The corporation is to have perpetual existence.

TENTH. In furtherance and not in limitation of the powers conferred by statute, the Board of Directors is expressly authorized:

Subject to the By-Laws, if any, adopted by the Stockholders, to make, alter or amend the By-Laws of the Corporation.

To fix the amount to be reserved as working capital over and above its capital stock paid in; to authorize and cause to be executed, mortgages and liens upon the real and personal property of this Corporation.

By resolution passed by a majority of the whole Board, to designate one (1) or more committees, each committee to consist of one or more of the Directors of the Corporation, which, to the extent provided in the resolution, or in the By-Laws of the Corporation, shall have and may exercise the powers of the Board of Directors in the management of the business and affairs of the Corporation. Such committee, or committees, shall have such name, or names, as may be stated in the By-Laws of the Corporation, or as may be determined from time to time by resolution adopted by the Board of Directors.

When and as authorized by the affirmative vote of the Stockholders holding stock entitling them to exercise at least a majority of the voting power given at a Stockholders meeting called for that purpose, or when authorized by the written consent of the holders of at least a majority of the voting stock issued and outstanding, the Board of Directors shall have power and authority at any meeting to sell, lease or exchange all of the property and assets of the Corporation, including its good will and its corporate franchises, upon such terms and conditions as its board of Directors deems expedient and for the best interests of the Corporation.

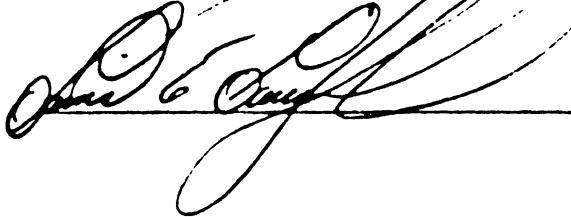
ELEVENTH. No shareholder shall be entitled as a matter of right to subscribe for or receive additional shares of any class of stock of the Corporation, whether now or hereafter authorized, or any bonds, debentures or

securities convertible into stock, but such additional shares of stock or other securities convertible into stock may be issued or disposed of by the Board of Directors to such persons and on such terms as in its discretion it shall deem advisable.

IXTELETH. No director or officer of the Corporation shall be personally liable to the Corporation or any of its stockholders for damages for breach of fiduciary duty as a director or officer involving any act or omission of any such director or officer; provided, however, that the foregoing provision shall not eliminate or limit the liability of a director or officer (i) for acts or omissions which involve intentional misconduct, fraud or a knowing violation of law, or (ii) the payment of dividends in violation of Section 78.300 of the Nevada Revised Statutes. Any repeal or modification of this Article by the stockholders of the Corporation shall be prospective only, and shall not adversely affect any limitation on the personal liability of a director or officer of the Corporation for acts or omissions prior to such repeal or modification.

THIRTEENTH. This Corporation reserves the right to amend, alter, change or repeal any provision contained in the Articles of Incorporation, in the manner now or hereafter prescribed by statute, or by the Articles of Incorporation, and all rights conferred upon Stockholders herein are granted subject to this reservation.

I, THE UNDERSIGNED, being the Incorporator hereinbefore named for the purpose of forming a Corporation pursuant to the General Corporation Law of the State of Nevada, do make and file these Articles of Incorporation, hereby declaring and certifying that the facts herein stated are true, and accordingly have hereunto set my hand this 21st day of January, 1987.




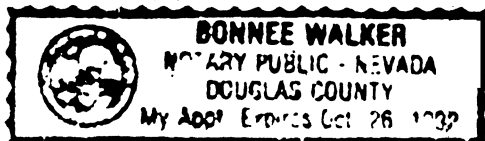
STATE OF NEVADA)
CARSON CITY) SS:

On this 21st day of January, 1987, in Carson City, Nevada, before me, the undersigned, a Notary Public in and for Carson City, State of Nevada, personally appeared:

Lewis E. Laughlin

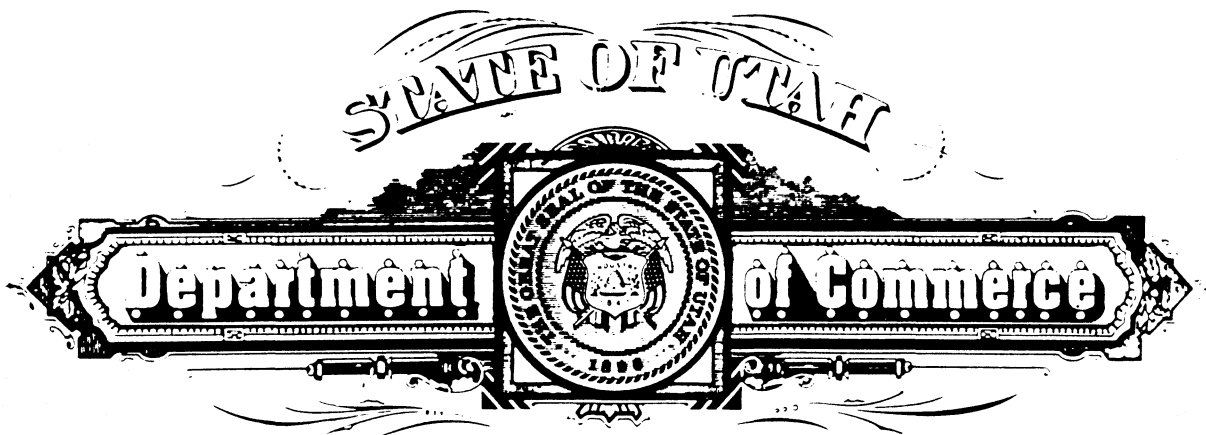
Known to me to be the person whose name is subscribed to the foregoing document and acknowledged to me that he executed the same.


Notary Public



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SECRETARY OF STATE



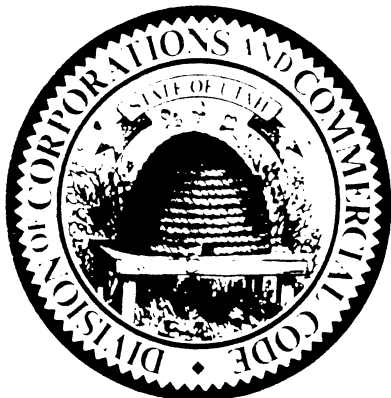
THE UTAH DIVISION OF CORPORATIONS AND COMMERCIAL
CODE HEREBY CERTIFIES THAT the attached is a true, correct, and
complete copy of *entire file* of

DOT ADVENTURES, INC.

and the endorsements thereon, as the same is taken from and
compared with the original filed in the office of the Division on
January 5, 1993, and now remaining on file and of record therein.

AS APPEARS OF RECORD IN THE OFFICES OF THE DIVISION.

File Number: *CO 167454*



Dated this 29th day
of July, 19 94.

Korla S. Woods

Korla T. Woods
Director, Division of
Corporations and Commercial Code

000

231



Application for
CERTIFICATE OF AUTHORITY

Dot Adventures, Inc.
(exact corporate name)

1993 JAN -5 1112 02

1. A corporation of the state of Nevada, incorporated 10 day of February, 19 89.
2. The corporations period of duration is perpetual (usually perpetual).
3. The address of the corporation in the state of incorporation is:

None - moved to Utah
street address city/state zip

4. The registered agent in Utah is: Jeanette Lynton

The street address of the registered office in Utah is:

140 South Mountain View Dr., Orem Ut. 84058
street address city zip

5. The business purposes to be pursued in Utah are: Distribution of rubber stamps and stamp accessories.

6. The corporation commenced or intends to commence business in Utah on: 8-1-92

7. The names and addresses of the corporation's directors and officers are:

	Name	Address	City/State/Zip
Director	Jeanette Lynton	140 So Mountain View Dr.	Orem Utah 84058

Director

Director

President	Jeanette Lynton	140 So. Mountain View Dr.	Orem Utah 84058
-----------	-----------------	---------------------------	-----------------

Vice-President Same

Secretary Same

Treasurer Same

8. A certification of Good Standing from the State of Incorporation dated no earlier than ninety (90) days prior to filing with this office is attached to this application.

9. The corporation shall use as its name in Utah Dot Adventures, Inc.

(The corporation shall use its name as set forth at the top of this form unless this name is not available for use in Utah.)

Under penalties of perjury, I declare that this application for Certificate of Authority has been examined by me and is, to the best of my knowledge and belief, true, correct and complete.

By: Jeanette Lynton

Title: PRESIDENT

Dated: August 18 1992

The undersigned hereby accepts appointment as Registered Agent for the above named corporation.

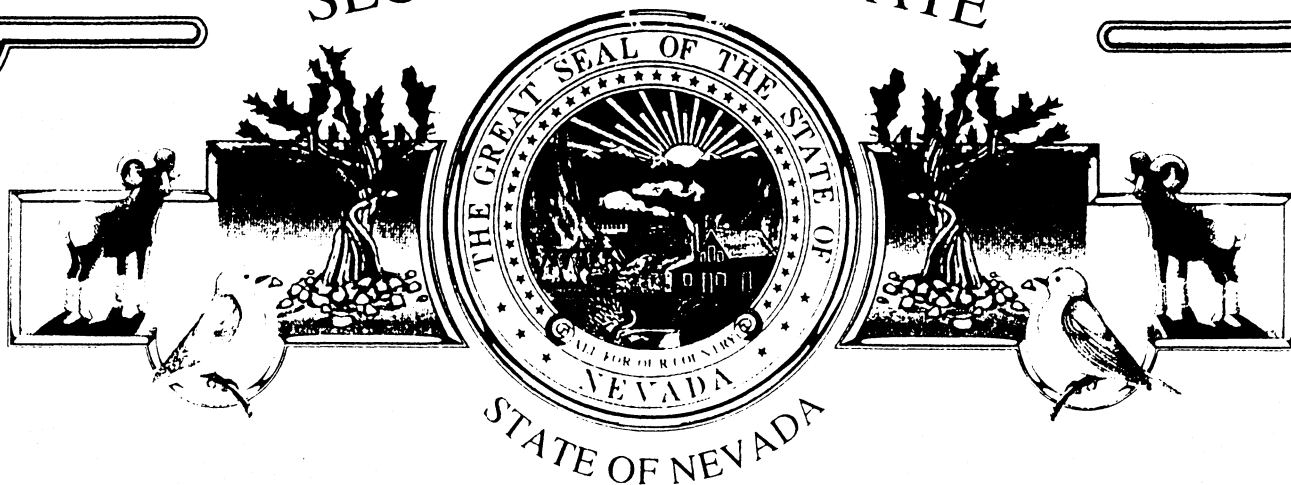
By: Jeanette Lynton

Registered Agent

Filing Fee: \$50.00
Send completed forms in duplicate to:

State of Utah
Division of Corporations
and Commercial Code
160 East 300 South/Box 45801
Salt Lake City, Utah 84145-0801
(801) 530-4849

SECRETARY OF STATE



CERTIFICATE OF CORPORATE STATUS

I, CHERYL A. LAU, the duly elected, qualified and acting Secretary of State of the State of Nevada, do hereby certify that I am, by the laws of said State, the custodian of the records relating to corporations organized under the laws thereof; the revocation of their corporate charters, and their right to transact and carry on their corporate business; and am the proper officer to execute this certificate.

I further certify that, at the date of this certificate, **DOT ADVENTURES** is a corporation duly organized and existing under and by virtue of the laws of the State of Nevada, having fully complied therewith; is entitled to exercise therein all the corporate powers and functions recited in its charter or articles of incorporation, and is in good standing in this State.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Great Seal of State, at my office, in Carson City, Nevada, this 8th day of December, 1992



A handwritten signature in cursive script, appearing to read "Cheryl A. Lau".

Secretary of State

By A handwritten signature in cursive script, appearing to read "Coni Smith".

Deputy

Tab 11

FILED IN
4TH DISTRICT COURT
STATE OF UTAH
UTAH COUNTY

OCT 13 11 44 AM '94

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Attorneys for Defendants

IN THE FOURTH JUDICIAL DISTRICT COURT
UTAH COUNTY, STATE OF UTAH

WALTER SEMIDEY, et al.,	:	MEMORANDUM IN SUPPORT OF
	:	MOTION FOR SUMMARY
Plaintiffs,	:	JUDGMENT-FAILURE TO STATE
	:	CAUSE OF ACTION
vs.	:	
	:	
DOT ADVENTURES, INC., et al.,	:	Civ. No. 930400503 PI
	:	
Defendants.	:	Judge Boyd L. Park
	:	

Defendants, DOT Adventures, Inc., Miguelangel Esquivel, Marie Reyes, and Humberto Hernandez, by and through their attorney, Loren D. Martin, submit the following Memorandum In Support Of Motion For Summary Judgment as follows:

STATEMENT OF FACTS

1. Defendant, DOT Adventures, Inc., (hereinafter referred to as "DOT"), is a Nevada corporation qualified to do business in

Utah.¹

2. The incident, giving rise to Plaintiffs' cause of action, allegedly occurred on December 16th or 17th of 1992, at the Defendant's manufacturing plant in Orem.²

3. Defendants, Miguelangel Esquivel, Marie Reyes and Humberto Hernandez, on December 16th or 17th of 1992, were employed by DOT, working at the manufacturing plant in Orem.

4. Plaintiffs, Walter Semidey, Angel Santiago, Humberto Bardales, and Rosa Mazariegos, on December 16th or 17th of 1992, were employed by DOT, working at the manufacturing plant in Orem, hereinafter referred to as the "Plant."

5. DOT's business is the design, manufacture and marketing of a large variety of small rubber stamps used by purchasers to decorate personal communications.

6. The manufacture and shipment of such rubber stamps is accomplished at the Plant.

7. At the time and place of the incident, Miguelangel Esquivel, hereinafter referred to as "Mr. Esquivel," was employed by DOT as manager of the manufacturing plant,³ employed to oversee

¹ Findings of Fact and Conclusions of Law, Hearing, August 16, 1994, paragraphs 1 & 2

² Findings of Fact and Conclusions of Law, Hearing, August 16, 1994, paragraph 3

³ Plaintiffs' Amended Complaint, page 3, paragraph 16

and efficiently manage the ongoing daily manufacture and shipment of DOT products.

8. At the time and place of the incident, Marie Reyes, hereinafter referred to as "Mrs. Reyes" and Humberto Hernandez, hereinafter referred to as "Mr. Hernandez" were employed by DOT as supervisors, acting under the authority and direction of Mr. Esquivel.⁴

9. The incident giving rise to Plaintiffs' cause of action, hereinafter referred to as the "Incident", occurred on either December 16th or 17th, 1992.

10. The Incident is alleged to have happened and is described by Plaintiffs as follows:

a. At approximately 10:00 a.m., Mr. Esquivel gave instructions that all work at the Plant would stop and that all employees were to gather to the lunch area of the Plant.⁵

b. At the lunch area, Mr. Esquivel indicated to everyone that he had received information that twenty dollars (\$20.00) had been reported stolen from one of the

⁴ Plaintiffs' Amended Complaint, pages 2-3, paragraphs 8 and 10

⁵ Plaintiffs' Amended Complaint, page 3, paragraph 16

plant workers.⁶

c. At the lunch area, Mr. Esquivel gave directions that all employees would be checked or searched. Plaintiffs prefer to use the term searched. Defendants prefer to use the term checked.

d. Mr. Esquivel stated that if anyone objected, he or she was to indicate that objection or raise their hand. No person objected. No person raised their hand.⁷

e. Mr. Esquivel gave instructions that all male employees were to individually, one at a time, go to the men's room with Mr. Hernandez. The female employees were to go to the women's room with Mrs. Reyes.

f. The male Plaintiffs report that in the rest room they were asked to show their pockets, wallets and inside of shoes.

g. While none of her clothing was removed, the female employee, Rosa Mazariegos, alleges that she was also asked to loosen her bra and that Mrs. Reyes touched her, running her fingers along and inside the lower line of

⁶ Plaintiffs' Amended Complaint, page 3, paragraph 17

⁷ Deposition of Rosa Mazariegos, page 31, lines 14-17

her bra.⁸ Rosa Mazariegos did not say at that time that she objected to the procedure or the alleged touching.⁹ No other person has described any similar touching and none is alleged.

h. Mrs. Reyes said that if the incident had been ordered by the police, such actions would have been lawful. Whereas, she believes that the same action ordered by Mr. Esquivel constituted an unlawful and actionable offense.¹⁰

i. As the checking was completed, Mr. Esquivel told everyone to go back to work. Everyone went back to work.

j. No person stated that there was, at any time, any indication made, verbal or otherwise, that anyone would be prevented or restrained from leaving the Plant. The doors remained unlocked. No guard was posted. No person was ever told that they would not be permitted to leave. Not one of the Plaintiffs ever left. No identifiably stolen money was ever found.

10. Although Plaintiffs allege that they were told that no

⁸ Deposition of Rosa Mazariegos, page 43, lines 7 through
24

⁹ Deposition of Rosa Mazariegos, page 37, line 28

¹⁰ Deposition of Rosa Mazariegos, page 57, line 23, through
page 58, line 6

one was to leave,¹¹ no door was ever locked or barred.¹² None of the Plaintiffs made any attempt to leave. None were ever restrained. No guard was ever posted. No physical show of force or restraint were ever made. There is no claim that there was any indication that any restraint would be used to prevent anyone from leaving. No person was ever told that they would not be permitted to leave. In fact, Plaintiff, Walter Semidey, stated in his deposition that no one ever stated that he would be prohibited from leaving.¹³

11. Until the formal Complaint was filed with the Court and served, no Plaintiff ever objected about the incident to any DOT supervisor or officer. No objection was ever received by DOT until the formal Complaint was filed more than six months later. By that time, all Plaintiffs were employed under different circumstances with a different employer. All Plaintiffs report that they are presently earning more than they had been previously paid by DOT.

12. In none of their depositions did any Plaintiff claim that there was any force used. There was no physical pain caused. The checking was not done with anger. None of the Plaintiffs stated that they ever had any fear that they would be injured in any way.

¹¹ Plaintiffs' Amended Complaint, page 4, paragraph 18

¹² Deposition of Rosa Mazariegos, page 53, lines 13-14

¹³ Deposition of Walter Semidey, page 109, lines 17-19

13. In their depositions, none of the Plaintiffs stated that they had any fear nor were they given any reason to fear injury. They had no fear of injury and there is no statement that any injury was intended. Plaintiff, Walter Semidey, fairly described the reason for this action when he acknowledged that, "The sole reason for us being here is the feeling of offense as a result of this conduct, meaning the search incident."¹⁴

14. In none of their depositions did any of the Plaintiffs claim that anyone ever said that if they did not consent to the checking, retaliation would be taken against them. Plaintiffs acknowledge that they all are presently earning more money with their new employment that they were when working for DOT. There has been no physical injury or loss. None has been claimed.

ARGUMENT

Defendants herewith respond to each Cause of Action alleged in Plaintiffs' Amended Complaint as follows:

POINT 1

PLAINTIFFS' FIRST AND FOURTH CAUSES OF ACTION SHOULD BE DISMISSED.

Unlawful detention, a criminal offense, is not the basis for a civil cause of action.

The Utah Code Ann. §76-5-403 provides as follows:

(1) A person commits unlawful detention if he

¹⁴ Deposition of Walter Semidey, page 115, lines 14-17

knowingly restrains another unlawfully so as to interfere substantially with his liberty.

(2) Unlawful detention is a class B misdemeanor.

"Wrongful Detention," under the Utah Criminal Code, §76-5-304, is a crime, but the Utah Criminal Code does not establish a civil liability or a civil penalty.

In order to establish "unlawful detention" a person must demonstrate that force or the threat of force coupled with a reasonable apprehension of the use of force were utilized to detain or restrain the person.

In Mildon v. Bybee, 13 Utah 2d 400, 375 P.2d 458 (1962), a claim of malicious prosecution was made against a Deputy Sheriff, who armed with a warrant of arrest for one person, mistakenly took another into custody and drove away with him in the officer's car. In reviewing a directed verdict of no cause of action, the Utah Supreme Court equated false imprisonment with unlawful detention and stated:

Nevertheless, false imprisonment occurs whenever there is an unlawful detention or restraint of another against his will.

(Id. at 459.)

In Hepworth v. Covey Bros. Amusement Co., 97 Utah 205, 91 P.2d 507, the Utah Supreme Court said:

We wish to invite attention to a distinction in the law which we believe has been confused in the briefs. False arrest may be committed only by one who has legal authority to arrest or who has pretended legal authority to arrest. False imprisonment may be committed by anyone who imprisons without a legal right. . . .

"Any exercise of force, or express or implied threat

of force, by which in fact the other person is deprived of his liberty, compelled to remain where he does not wish to remain or go where he does not wish to go, is an imprisonment. * * * The essential thing is the restraint of the person. * * * If the words of conduct are such as to induce a reasonable apprehension of force, and the means of coercion are at hand, a person may be as effectually restrained and deprived of liberty as by prison bars. * * *" 11 R.C.L. 793, 794, sec. 5.

(Id. at 509.)

From the foregoing cases, one must conclude that in order for the restraint to be "unlawful", the restraint must be imposed with force or with the threat of force coupled with a reasonable apprehension that force will be used if the person being restrained does not comply.

In the case at hand, regardless of the Criminal Statute, the Plaintiffs must demonstrate, as a matter of fact, that they were "unlawfully detained." According to the rule of law in Hepworth cited above, the Plaintiffs must demonstrate that they were restrained and deprived of liberty by force or the threat and a reasonable apprehension of force.

The depositions of the Plaintiffs demonstrate that no Plaintiff was detained or restrained by force or the threat of force. When asked if anyone had locked the doors so she could not leave or if anyone had used threatening words, Rosa Mazariegos' response was: "No."¹⁵ In fact, Rosa Mazariegos testified that Mr.

¹⁵ Deposition of Rosa Mazariegos, pg. 28, lines 13-18.

Esquivel asked if any person objected to being checked or searched and no one raised their hand.¹⁶

In the case at hand, since no Plaintiff was detained or restrained by force or by the threat of force, Plaintiffs cannot demonstrate, as a matter of fact or law, that they were "unlawfully" detained and therefore have a claim of false imprisonment.

Plaintiffs' First Cause of Action is for "Wrongful Detention"¹⁷ and in support thereof the Complaint alleges that Defendant Esquivel unlawfully detained the Plaintiffs. The Plaintiffs' Fourth Cause of Action is for "False Imprisonment"¹⁸ and in support thereof the Complaint alleges that Defendant Esquivel "unlawfully detained" the Plaintiffs. Plaintiffs' First and Fourth Causes of action against the Defendants, are one and the same. The Plaintiffs' Fourth Cause of Action must therefore be dismissed, as a matter of law.

¹⁶ Deposition of Rosa Mazariegos, pg. 17, lines 7-16.

¹⁷ See Complaint, paragraphs 15-17, pg. 3.

¹⁸ See Complaint, paragraphs 22-24, pg. 3.

POINT 2

PLAINTIFFS' SECOND CAUSE OF ACTION FOR ASSAULT AND
PLAINTIFFS' THIRD CAUSE OF ACTION FOR BATTERY MUST BE
DISMISSED.

An "assault" requires a threat of force and bodily harm coupled
with a wrongful act.

In 6A C.J.S. Assault & Battery §2, at pages 316-317, the
definition of assault is as follows:

An assault may be defined as any intentional,
unlawful offer of corporal injury to another by force, or
force unlawfully directed toward the person of another,
under such circumstances as create a well founded fear of
imminent peril, coupled with the apparent present ability
to effectuate the attempt if not prevented. Also the
term has been defined as an unlawful attempt, coupled
with the present ability, to commit a violent injury on
the person of another; an attempt or offer, with force or
violence, to do a corporal hurt to another, whether from
malice or wantonness, under such circumstances as denote,
at the time, an intention to do it, coupled with a
present ability to effectuate such intention.

In State v. Barkas, 91 Utah 574, 65 P.2d 1130 (1937) the Utah
Supreme Court, in accord with the foregoing definition stated:

It is too elemental to require argument, that to point a
loaded revolver at another to frighten or wound him
constitutes an assault

(Id. at 1132.)

To constitute an "assault" there must be a wrongful act. In
6A C.J.S. Assault & Battery §8, at pg. 328, citing the Utah case of
Ganaway v. Salt Lake Dramatic Association, 17 Utah 37, 53 P. 830,
the following comment is found:

There can, however, be no assault or assault and

battery without a wrongful act. It is not every touching or laying on of hands that constitutes an assault and battery; to gently touch another for the purpose of doing a lawful act does not amount to an assault and battery; the touching of, or injury to, another must be done in an angry, revengeful, rude, or insolent manner so as to render the act unlawful. Similarly, an accidental hurt, in which the actor is blameless, does not amount to a battery.

A cause of action for battery is based upon an allegation and the establishment of intent, malice, anger, etc. In 6A C.J.S. Assault & Battery §8, at pg. 329 the following is found:

Generally, intent is an essential element in an action for assault and battery. More precisely, it is the rule that intent is the gist of the action only where the battery was committed in the performance of an act not otherwise unlawful; or as it is sometimes stated, there is no assault and battery unless the touching was with intent to injure, or unless defendant was otherwise engaged in a trespass or other unlawful transaction at the time of the act complained of. . . .

There can, however, be no assault or assault and battery without a wrongful act. . . .

Utah is in accord with the common law cited above to the effect that there must be intent to injure or harm in order to constitute an assault or a battery. In Morgan v. Pistone, 25 Utah 2d 63, 475 P.2d 839 (1970), the Utah Supreme Court held that a doctor who touched a minor, young lady neighbor, to emphasize his point of view was not guilty of an assault or battery. The Court stated:

Plaintiff, a minor female at the time of the alleged terrifying touching, and an adult at time of the trial, said one thing, and defendant, an adult male, said another, i.e., that he touched simply to call attention

by way of explanation that he, a doctor, disliked the degradation attendant on plaintiff's repeated suggestions that his role in society best could be described by the sound of a duck. . . .

On such highly emotional and controversial evidence the jury apparently believed the doctor was put upon with greater force and vigor, by the plaintiff's unkind, opprobrious epithets than was the plaintiff by the gentle touching designed only to warn, not to wound. Hence we cannot say that the jury erred in finding that there was not that kind of intentional touching amounting to a technical battery.

(Id. at 839-840.)

In the case at hand, Rosa Mazariegos testified in her deposition that she was in fact touched, but in no way was pain or harm inflicted. She testified as follows:

- Q. Did anyone push you?
A. (By the translator) How -- what do you mean?
Q. Push with the hands.
A. (By the translator) No.
Q. Did anyone hit you?
A. (By the translator) No.
Q. Did anyone hit you?
A. (By the translator) No.
Q. Did anyone cause you pain?
A. (By the translator) Physical pain --
Q. Yes.
A. (By the translator) or moral?
Q. Physical pain.
A. (By the translator) No.¹⁹

The sworn testimony of the Plaintiffs fails to reveal or demonstrate any threat of violence or harm, any unlawful or improper act, or other such conduct as is necessary to demonstrate

¹⁹ Deposition of Rosa Mazariegos, pgs. 20, lines 15-25 and page 21, lines 1-2.

that the Plaintiffs were subjected to an "assault," or a "battery."

Plaintiff's Complaint, Second Cause of Action for Assault does not allege a wrongful act or the threat of bodily harm or violence.

The Complaint alleges:

19. By requiring that all employees submit to a physical search of their person and belongings before being allowed to leave the premises, Mr. Esquivel intentionally created in all non-supervisory employees the reasonable apprehension of harmful or offensive touching.²⁰

Absent an allegation, supported by testimony or evidence that Defendant Esquivel engaged in any threats and/or acts of bodily harm or violence, the Plaintiffs' Third Cause of Action must be dismissed.

Plaintiff's Complaint, Third Cause of Action for Battery does not allege an intent to injure or harm. The Complaint alleges:

19. By requiring all supervisors to physically search the person and property of all employees, Mr. Esquivel caused the harmful or offensive touching of all non-supervisory employees.²¹

Absent an allegation, supported by testimony or evidence that Defendant Esquivel caused a touching with an intent to injure or harm, or cause acts of bodily harm or violence, the Plaintiffs' Third Cause of Action must be dismissed.

²⁰ Plaintiffs' Complaint, Para. 19.

²¹ Plaintiffs' Complaint, Para. 21.

POINT NO. 3

PLAINTIFFS GAVE THEIR CONSENT TO BE TOUCHED, AND CONSENT IS AN ABSOLUTE DEFENSE TO A CLAIM OF ASSAULT AND BATTERY, AND PLAINTIFFS' SECOND AND THIRD CAUSES OF ACTION MUST BE DISMISSED.

In 6A C.J.S. Assault & Battery §16, at pgs. 337-338 the defense of consent is set forth as follows:

It is a defense to an action for assault or an assault or battery that the injured party consented to, or participated in, the acts causing the injury, and such consent may be either express or implied. This is the rule at least in cases where life and limb are not exposed to serious danger in the common course of things, and where the damaged inflicted have not exceeded the bounds of the consent or invitation. . . .

It is a general rule that one cannot maintain an action for a wrong occasioned by an act to which he has consented, under the familiar maxim "volenti non fit injurie," except where the act involves the life or person, or a breach of the peace, or amounts to a public offense.²²

According to the Restatement of Torts:

(1) Consent is willingness in fact for conduct to occur. It may be manifested by action or inaction and need not be communicated to the actor.

(2) If words or conduct are reasonably understood by another to be intended as consent, they constitute apparent consent and are as effective as consent in fact.²³

In the case at hand, the sworn deposition testimony of the

²² 74 Am Jur 2d, Torts, §49

²³ Restatement, Torts 2d §892

Jose Humberto Bardales demonstrates he did not object to being searched and consented to the search. He stated:

I had this coat on. I was wearing a coat. I opened it in the way that I had it opened so that he could see the pockets and tell that there wasn't anything there.

I asked him if he wanted me to do anything else. I asked him if he wanted me to take off my shoes or anything else. He said, No, that was sufficient. Then I left, and the next person went in.²⁴

Since the Plaintiffs gave their consent to be searched, and in at least one instance invited the search, Defendants have established their Defense of Consent and the Plaintiffs' Second and Third Causes of Action must be dismissed.

POINT 4

PLAINTIFFS' FIFTH AND SIXTH CAUSES OF ACTION —INTENTIONAL AND RECKLESS INFLICTION OF EMOTIONAL DISTRESS

In Samms v. Eccles, 11 Utah 2d 289, 358 P.2d 344 (1961), the Utah Supreme Court established the rule of law concerning claims for emotional distress. The Court stated:

Our study of the authorities, and of the arguments advanced, convinces us that, conceding such a cause of action may not be based upon mere negligence, the best considered view recognizes an action for severe emotional distress, though not accompanied by bodily impact or physical injury, where the defendant intentionally engaged in some conduct toward the plaintiff, (a) with the purpose of inflicting emotional distress, or (b) where any reasonable person would have known that such would result; and his actions are of such a nature as to be considered outrageous and intolerable in that they

²⁴ Deposition of Jose Humberto Bardales, pg. 40, lines 20-25 and pg. 41, lines 1-2.

offend against the generally accepted standards of decency and morality. This test seems to be a more realistic safeguard against false claims than to insist upon finding some other attendant tort, which may be of minor character, or fictional.

(Id. at 347.)

Samms v. Eccles, goes so far as to say that even though a person's conduct may be extremely offensive to another person, that in and of itself is not sufficient to create a cause of action in Utah. In Samms v. Eccles the Court said:

We quite agree with the idea that under usual circumstances the solicitation to sexual intercourse would not be actionable even though it may be offensive to the offeree.

(Id. at 347.)

The landmark case of Samms v. Eccles has been followed in numerous Utah cases. See Russell v. Thompson Newspapers, Inc., 200 Utah Adv. Rep. 15, 842 P.2d 896 (1992). In Reiser v. Lohner, 641 P.2d 93 (Utah 1982), citing Samms v. Eccles, the Utah Supreme Court stated:

It is well established in Utah that a cause of action for emotional distress may not be based upon mere negligence.
. . .

. . .
In the instant case, there is not so much as an allegation that defendants intended in any way to harm plaintiffs or any one of them. The summary judgment was therefore proper. [Emphasis added.]

(Id. at 100.)

In White v. Blackburn, 128 Utah Adv. Rep. 20, 787 P.2d 1315,

(1990), the Utah Court of Appeals stated:

To support a cause of action for intentional infliction of emotional distress, appellant must show the following elements: (1) outrageous conduct by the defendant; (2) the defendant's intent to cause, or the reckless disregard of the probability of causing, emotional distress; (3) severe emotional distress; and (4) an actual and proximate causal link between the tortious conduct and the emotional distress. . . .

(Id. at 21.)

In Retherford v. AT & T Communications, 200 Utah Adv. Rep. 22, 844 P.2d 949 (1992), the Utah Supreme Court stated:

To sustain her claim for intentional infliction of emotional distress, Retherford must show that (i) Gailey's, Randall's, Johnson's, and Bateson-Hough's conduct was outrageous and intolerable in that it offended against the generally accepted standards of decency and morality; (ii) they intended to cause, or acted in reckless disregard of the likelihood of causing, emotional distress; (iii) Retherford suffered severe emotional distress; and (iv) their conduct proximately caused Retherford's emotional distress. . . .

(Id. at 33.)

In Sperber v. The Galigher Ash Company, 71 Utah Adv. Rep. 3, 747 P.2d 1025 (1987), the Utah Supreme Court stated:

Although Sperber does not allege that Galigher Ash Co. discharged him with the purpose of inflicting emotional distress upon him, he does assert that the company's conduct was "intentional, malicious and in reckless and wanton disregard of the effect of such conduct . . ." or, in other words, that Galigher Ash knew that its conduct would cause emotional distress. To state a claim, however, a plaintiff must additionally allege conduct on the part of the defendant that is outrageous and intolerable to the extent that it offends societal standards of morality and decency.

(Id. at 4.)

In the case at hand the Plaintiffs complaint alleges as follows:

26. Defendant Esquivel's extreme and outrageous actions, in requiring every employee to submit to the indignity of a physical search, intentionally and recklessly inflicted upon the Plaintiffs in this action severe emotional distress.

27. Defendant Esquivel knew, or should have known, that there was a reasonable likelihood that subjecting all employees to a physical search of their person and property would cause them severe emotional distress.²⁵

Intention to harm is a prerequisite under Reiser v. Lohner. Under the rule established in Reiser v. Lohner, the complaint must allege intentional conduct in order to state a claim for relief for severe emotional distress. In the alternative, if intention to harm is not alleged, the plaintiff must allege that any reasonable person would have known the conduct was "of such a nature as to be considered outrageous and intolerable in that they offend against the generally accepted standards of decency and morality."²⁶

Liability for emotional distress does not extend to mere insults, indignities, threats, annoyances, petty oppression, or other trivialities. There is no occasion for the law to intervene

²⁵ Plaintiffs' Complaint, paragraphs 26 and 27.

²⁶ Samms v. Eccles, at page 347.

in every case where some one's feelings are hurt.²⁷

In the case at hand, while the caption in the Fifth and Sixth Causes of Action contains the word "INTENTIONAL," there is no language in the complaint which claims the conduct of Esquivel was intentional. Paragraph 27 clearly refers only to negligent conduct; and, under the rule in Samms v. Eccles and Reiser v. Lohner negligent conduct, even reckless negligent conduct is not sufficient to sustain a claim for emotional distress in Utah. There is no allegation in the complaint that the conduct was so "outrageous and intolerable" that it offended "against the generally accepted standards of decency and morality."

The complaint must therefore be dismissed because the complaint fails to allege that Defendant Esquivel intended to harm the Plaintiffs and/or that Esquivel's conduct was so offensive that it was "against the standards of decency and morality."

Even if the complaint was amended to include such claims, the testimony would not support such claims. The testimony of Rosa Mazariegos on this issue included an admission that she knew the purpose of the checking was to find the money and that she was offended because of the inquiry. Her testimony was as follows:

Q. Do you believe that the purpose of the checking was to offend you as an individual person, solo?

²⁷ Restatement, Torts 2d, Emotional Distress, Comment to §46.

A. (By the translator) I think they wanted to know who had the money.

Q. It's "yes" or "no."

A. (By the translator) Both things, to offend and to find the money. If they check it's because they think they have the money.

Q. The question is to offend -- a plan to offend everyone or to offend only you.

A. (By the translator) I don't know they were looking for money, and they check everybody, and that is what offends.²⁸

In none of the depositions did any of the Plaintiffs claim that they suffered severe emotional distress. None of the Plaintiffs sought medical attention. None of the Plaintiffs complained at the time. Plaintiffs describe the Incident as offensive, nothing more.

The deposition testimony of the parties compels a finding of fact that Esquivel's conduct was motivated by a sincere desire to protect the employees from theft by their fellow employees; and, to recover stolen property for one of the employees. The testimony does not and would not support a finding that Esquivel acted with an intent to harm or injure the Plaintiffs and/or that his conduct offended against the "standards of decency and morality."

Plaintiffs' complaint lacks the requisite allegation of intentional conduct and/or offense against standards of decency and morality. Plaintiffs' complaint, Fifth and Sixth Causes of Action

²⁸ Deposition of Rosa Mazariegos, pg. 51, lines 22-25 and pg. 52, lines 1-10.

for Intentional and Reckless Infliction of Emotional Distress must be dismissed.

POINT 5

PLAINTIFFS' SEVENTH, EIGHTH, AND NINTH CAUSES OF ACTION MUST BE DISMISSED.

In 77 C.J.S. Right of Privacy and Publicity §10, the following is found:

The elements of the tort of invasion of privacy by means of intrusion and seclusion have been variously defined. The tort has been described as consisting of an invasion or interference by physical intrusion or some other form of investigation or examination, into a place where plaintiff has secluded himself, or into his private or secret concerns, that would be highly offensive to an ordinary, reasonable person. Other authorities have stated that the elements are intrusion, which may consist of watching, spying, prying, besetting, overhearing, or some other similar conduct, intrusion upon plaintiff which concerns those aspects of himself, his home, his family, his personal relationships, and his communications which one normally expects will be free from exposure to defendant, substantial and unreasonable intrusion, and an intentional act or course of conduct by defendant. Still other authorities have simply stated the elements of the tort as the existence of secret and private subject matter, the right in plaintiff to keep that subject matter private, and the obtainment by defendant of information about that subject matter through unreasonable means.

In Cox v. Hatch, 87 Utah Adv. Rep. 3, 761 P.2d 556 (1988) the Utah Supreme Court examined the Restatement of Torts (1977) regarding the torts of invasion of privacy as follows:

Invasion of privacy as a common law tort has evolved over the years into four separate torts. The Restatement (Second) of Torts (1977) defines four different types of invasion of privacy. Section 652A of the Restatement

states:

(1) One who invades the right of privacy of another is subject to liability for resulting harm to the interests of another.

(2) The right of privacy is invaded by

(a) unreasonable intrusion upon the seclusion of another, as stated in §652B; or

(b) appropriation of the other's name or likeness, as stated in §652C; or

(c) unreasonable publicity given to the other's private life, as stated in §652D; or

(d) publicity that unreasonably places the other in a false light before the public, as stated in §652E.

(Id. at 6.)

In Cox v. Hatch, the Utah Supreme Court held that the publication of the photograph of a person with Senator Hatch did not constitute an invasion of privacy. The court stated:

In sum, we hold that pictures of public officials and candidates for public office taken in public or semi-public places with persons who either pose with them or who inadvertently appear in such pictures may not be made the basis for an invasion of privacy or abuse of personal identity action. . . .

(Id. at 6.)

Defendants have been unable to identify any other Utah case law on the subject. Defendants therefore conclude that the only causes of action for intrusion into privacy which have been recognized by the Utah Courts are those set forth in the Restatement cited and quoted in Cox v. Hatch.

Plaintiffs' Seventh and Eighth Causes of Action.

In the case at hand, the Plaintiffs' complaint, Seventh and Eighth Causes of Action are based upon claims that the Defendant Esquivel caused the Plaintiffs' bodies and belongings to be searched, while they were at their place of employment. Neither of the two causes of action fall within the only available category, i.e. "unreasonable intrusion upon the seclusion of another."

Plaintiffs were asked to go to the men's and women's rest rooms, respectively and were searched. All the Plaintiffs describe the search as occurring in the rest rooms. The testimony as contained in the depositions of the Plaintiffs demonstrate that the only conduct complained of consisted of the search and/or offer to search the Plaintiffs while they were at their place of employment. There are no claims and no evidence of any attempt by Defendants to invade the Plaintiffs' personal residences, automobiles or anything which could be remotely considered to be a place of Plaintiffs' "seclusion."

Even if Plaintiffs were to amend their complaint to state a cause of action, as recognized in Utah, the deposition testimony would not support a claim that Defendants' conduct is actionable.

Plaintiffs' Seventh and Eighth Causes of Action must be dismissed for failure to state a claim upon which relief may be granted.

Plaintiffs' Ninth Cause of Action.

Plaintiffs' Ninth Cause of Action is based upon a claim that the Defendant Esquivel inquired into the religious affiliation of the Plaintiff Semidey and asked whether Semidey had a "valid temple recommend."²⁹ Plaintiffs allege that such conduct constituted an "unwarranted, unnecessary, and wrongful intrusion into Plaintiffs Semidey's private affairs."³⁰

Again, referring to Cox v. Hatch and the Restatement, such conduct does not fall within the parameters of the common law tort of invasion of privacy recognized in Utah and in the Restatement.

Since Plaintiffs' Ninth Cause of Action fails to state a claim for relief which is recognized in either Utah common law or in the Restatement, the complaint fails to state a claim upon which relief may be granted, and it must be dismissed.

CONCLUSION

Utah law does not provide a cause of action or remedy for conduct which another deems improper, rude, anti-social, impolite or nothing more than transient and personally offensive.

Plaintiffs' Complaint fails to state claims upon which relief may be granted under recognized common law in Utah.

Even if Plaintiffs' Complaint were to be amended, the

²⁹ Plaintiff's Complaint, paragraph 33.

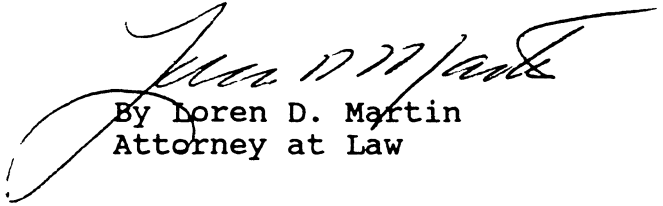
³⁰ Plaintiff's Complaint, paragraph 34.

deposition testimony of Plaintiffs fails to demonstrate that Plaintiffs could sustain a cause of action even if the causes of action were properly stated.

Plaintiffs' Complaint, First, Second, Third, Fourth, Fifth, Sixth, Seventh, Eighth and Ninth Causes of Action must be dismissed, no cause of action.

DATED this 11th day of ~~September~~^{October}, 1994.

LOREN D. MARTIN, P.C.



By Loren D. Martin
Attorney at Law

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the following:

Motion For Summary Judgment; and
Memorandum In Support Of Motion Summary Judgment;

were placed in the U.S. Mail, postage prepaid on the 11th day of ~~September~~, 1994, addressed to the following:
Utah

Law Offices of Linda Q. Jones
Linda Q. Jones,
Marti L. Jones
40 South 100 West, Suite 303
Provo, Utah 84604

Jamie S. McDaniel

Tab 12

2-1-17 PM 1:53
[Signature]

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IN THE FOURTH JUDICIAL DISTRICT COURT
FOR THE STATE OF UTAH
150 N. 100 W., PROVO, UTAH 84601

=====

WALTER SEMIDEY, ANGEL SANTIAGO,	*	
HUMBERTO BARDALES, and ROSA	*	
MAZARIEGOS,	*	PLAINTIFFS' OBJECTION TO
	*	DEFENDANT'S MOTION
Plaintiffs,	*	FOR SUMMARY JUDGMENT
vs.	*	
	*	
	*	
DOT ADVENTURES, INC., et. al.	*	Civ. No. 930400503 PI
	*	Judge Boyd L. Park
Defendants.	*	
	*	

=====

COME the Plaintiffs, by and through their attorney of
record, and hereby object to Defendant's Motion for Summary
Judgment on the following grounds.

STATEMENT OF DISPUTED FACTS

1. The DOTS company hired primarily (85%-95%) non-English
speaking hispanic workers. These workers were also primarily
members of the L.D.S. religion. (Affidavits of Plaintiffs,
Attachments A, B, C, and D).

2. The principal language in the plant for verbal communication of any kind was Spanish. (Affidavits of Plaintiffs, Attachments A, B, C, and D).

3. Defendant Esquivel was plant manager for DOTS. During his initial employment interview with Plaintiff Semidey, Mr. Esquivel required Mr. Semidey to show him a current L.D.S. temple recommend. Mr. Esquivel implied to Mr. Semidey that this was in order to determine whether he should be hired. (Semidey Affidavit, Attachment A).

4. In his capacity as plant manager, and by virtue of his authority, Mr. Esquivel regularly, from two to four or more times a week to twice a day, would stop all work on the factory floor, and call all workers to the cafeteria area. Thereafter, Mr. Esquivel would deliberately and intentionally harangue and otherwise verbally abuse and insult the ethnic and religious sensibilities of the plaintiffs and other factory workers. (Affidavits of Plaintiffs, Attachments A, B, C, and D).

5. Defendant Esquivel, in his tirades to plant workers, regularly and repeatedly called the workers thieves, robbers, and crooks. Mr. Esquivel also regularly and repeatedly accused the plant workers of being wetbacks. (Affidavits of Plaintiffs, Attachments A, B, C, and D).

6. Defendant Esquivel also regularly accused the plant workers of not paying their tithing (a principle of the LDS religion). Mr. Esquivel in his sermons would indicate to the factory workers that their lives were not going well because they were not obedient to the commandments of God. (Affidavits of Plaintiffs, Attachments A, B, C, and D).

7. Mr. Esquivel's harangues often lasted more than one hour. (Mazariegos Affidavit, Attachment B).

8. On or around December 16 or 17, 1992, Mr. Esquivel, following previous custom, again gathered all factory workers together. (Complaint; Affidavits of Plaintiffs, Attachments A, B, C, and D).

9. The precise time of day is disputed. (Bardales Affidavit; Attachment C).

10. This time, Mr. Esquivel excused the four or five non-hispanic workers. (Affidavits of Semidey, Mazariegos, Santiago, Attachments A, B, and D).

11. Mr. Esquivel spoke in Spanish to the remaining workers. (Plaintiff's Affidavits, Attachments A, B, C, and D.) Mr. Esquivel told them that a co-worker had complained to him that she was missing \$20.00. (Plaintiff's Affidavits, Attachments A, B, C, and D).

12. Mr. Esquivel then stated "I am going to do something that I know is against the law. I am going to search you all." (Semidey Affidavit; Mazariegos Affidavit; Bardales Affidavit; Attachments A, B, and C).

13. Some of the Plaintiffs remember that Mr. Esquivel then continued "If anyone objects, let him raise his hand, and we will know who the thief is." (Mazariegos Affidavit; Bardales Affidavit; Attachments B and C). Another Plaintiff does not remember that Mr. Esquivel ever asked such a question, or stated such a thing. (Semidey Affidavit; Attachment A).

14. None of the factory workers raised their hands to object, because none wanted to be branded a thief in front of the others, and because they knew they would lose their employment. (Plaintiffs' Affidavits; Attachments A, B, C, and D).

15. Mr. Esquivel then instructed the female and male supervisors to take each individual, one at a time, into the bathrooms to search them. (Plaintiffs' Affidavits; Attachments A, B, C, and D).

16. Mr. Esquivel also instructed the supervisors and the workers that no one was to return to their assigned work area without being searched. (Mazariegos Affidavit; Attachment B).

17. Mr. Esquivel's demand that the plaintiffs and other factory workers submit to this search was a deliberate and

calculated insult, intended to humiliate and outrage their sensibilities. (Plaintiffs' Affidavits; Attachments A, B, C, and D).

18. In the alternative, Mr. Esquivel acted in deliberate and intentional disregard of the emotional distress and humiliation caused by his insulting behavior and accusations. Given that Mr. Esquivel is of Mexican origin, he knew or should have known that the statements he made and the forced search of the Hispanic factory workers would result in emotional distress and humiliation, even physical illness.

19. These instructions gave rise in each plaintiff to the apprehension of an immediate offensive touching. (Plaintiffs' Affidavits; Attachments A, B, C, and D).

20. The male supervisor did not physically touch most of the male workers.

21. One of the female supervisors had each woman undo her pants, undo her bra, and loosen her shirt, so the supervisor could place her hands under the shirt and waistband and physically run her hands around the mid-riff and waist of each woman. (Mazariegos Affidavit, Attachment B).

22. This female supervisor also physically ran a pencil through the hair of the women she searched. (Mazariegos Affidavit, Attachment B).

23. Plaintiffs did not consent to this procedure, but allowed it to happen through fear. (Plaintiffs' Affidavits, Attachments A, B, C, and D).

24. Plaintiffs suffered extreme outrage, emotional distress, and mental stress due to this treatment. (Semidey Affidavit; Mazariegos Affidavit; Bardales Affidavit; Santiago Affidavit; Affidavits of Matilde Mazariegos, Pastora Mazariegos, Maira Bardales and Diana Semidey; Attachments A, B, C, D, E, F, G, and H).

25. Plaintiff Rosa Mazariegos became physically and emotionally ill. As a result, she was unable to engage in remunerative employment for some 2 and 1/2 months. (Mazariegos Affidavit; Affidavits of Matilde Mazariegos and Pastora Mazariegos; Attachments B, E, and F).

ARGUMENT

Introduction

Standard of Review: In order to prevail upon their Motion for Summary Judgment, Defendants must demonstrate that there are no material disputed facts, and that they are entitled to judgment as a matter of law. Utah R.Civ. P. 56(c) In determining whether there are material disputed facts, the facts and all reasonable inferences drawn therefrom must be viewed in the light most favorable to the nonmoving party. Smith v. Batchelor, 832

P.2d 467, 468 (Utah 1992). This standard is particularly important where, as here, discovery has not been completed and all witnesses have not provided affidavits. In fact, Defendants have, to this point, completely failed, by Interrogatory or other means to even request the names and addresses of Plaintiffs' proposed witnesses.

Furthermore, although the depositions of the Plaintiffs have been taken, formal objections have been raised regarding the adequacy of interpretation, and thus the accuracy of the deposition transcripts as rendered in English. Formal objection has also been raised to the adequacy of the changes Plaintiffs' counsel has submitted for the record.

Summary: Defendants have failed to meet their burden of proof, i.e., to prove that there are no material disputed facts and that they are entitled to judgment as a matter of law. Plaintiffs have alleged facts, disputed and undisputed, sufficient to permit them to prevail at trial on each of their causes of action.

Defendants' Motion is predicated upon the Court's accepting their characterization of the following disputed facts:

(1) Defendants deny that Plaintiffs were unlawfully detained or falsely imprisoned. On the contrary, Plaintiffs contend that they were restrained from returning to their

normal work stations, and forced to remain in the cafeteria area of their workplace until they submitted to a physical search. Plaintiffs' sworn affidavits indicate that Mr. Esquivel unlawfully forced them to enter the restroom of their employer and submit to an illegal search of their person and belongings.

(2) Defendants argue that Plaintiffs' causes of action for assault and battery must be dismissed because there was no "force" or "bodily harm." Plaintiffs Verified Complaint shows that indeed, they were threatened with, apprehensive of, and in some cases forced to submit to offensive contact of another with their person.

(3) Defendants contend that Plaintiffs "consented" to the assault and battery to which they were submitted. Plaintiffs dispute this characterization of their actions; they were coerced into submission.

(4) Defendants argue that Mr. Esquivel's actions can not be considered "outrageous and intolerable . . . [sufficient] to offend against the generally accepted standards of decency and morality." The abuse Plaintiffs suffered at the hands of their employer, DOTS and its representative Mr. Esquivel, was indeed outrageous and

intolerable, and offensive to generally accepted standards of decency and morality.

(5) Finally, Defendants allege that Plaintiffs' claims for invasion of privacy should also be dismissed because there was no actionable invasion of privacy. The search of the Plaintiffs' personal belongings, pockets, and persons, as well as the request to see Mr. Semiday's temple recommend, are actionable invasions of personal space and personal, private, facts.

The determination of each of these issues requires the adjudication of material facts. Some of these issues are mixed fact and law, where the jury must determine what was "reasonable" under the circumstances, and how the conduct of the parties is to be measured under that standard.¹ Therefore each of these issues must be presented to the jury, and a summary judgment for the Defendants can not be granted.

¹ See Johnson v. Skaggs, 668 P.2d 565 (Utah 1983), where the Utah Supreme Court reversed a summary judgment because issues of reasonableness remained that had to be determined by the jury.

Issue I: Plaintiffs' Allegations Establish a Prima Facie Case of False Imprisonment. Plaintiffs' Allegations also Establish a Prima Facie Case of Wrongful Detention

The elements of a prima facie case for False Imprisonment under Utah law require that the Plaintiffs allege (and prove at trial) that:

By the exercise of force, or the express or implied threat of force, [they were] compelled to remain where [they] do not wish to remain or to go where [they] do not wish to go. The essential thing is the restraint of the person. If the words or conduct are such as to induce a reasonable apprehension of force, and the means of coercion are at hand, a person may be as effectually restrained and deprived of liberty as by prison bars. Hepworth v. Covey Bros. Amusement Co., 91 P.2d 507.

In Hepworth, two individuals acting as floorwalkers for a ballroom required two patrons to accompany them across the ballroom floor to a room near the entrance of the ballroom. There was no evidence of force, other than the authority of the individuals, in their capacity as floorwalkers. This case was tried to a jury, and the jury found for the Plaintiff. On appeal, the verdict was upheld.

Plaintiffs herein state that Defendant Esquivel was their plant manager, and habitually harrassed and intimidated them. They have stated that he was angry. They have further stated that he required them to remain away from their normal work area, and that he required them, one by one, to enter a bathroom and submit to a search. Plaintiffs have stated that the nearest exit

was some thirty feet away, and that it was closed. Whether there was a reasonable exit and whether there was a substantial threat of force are questions for a jury to decide, after presentation of all the evidence. These disputed issues of fact preclude a summary judgment for the Defendants.

Defendants allege that a criminal cause of action, i.e., that established in the Utah Code for Wrongful Detention, cannot serve as the basis for a civil cause of action. Defendants cite no legal support for this statement, which is clearly contrary to law. For example, it is common tort law that violation of a statute is "negligence per se."² In the case of the Utah statute, it is clear that Utah legislators chose to make criminal an act somewhat less than the normal standard for false imprisonment. Utah Code §76-5-304 states that "a person commits unlawful detention if he knowingly restrains another unlawfully so as to interfere substantially with his liberty." Whether or not Plaintiffs were falsely imprisoned, Mr. Esquivel did, unquestionably, knowingly restrain them, unlawfully, so as to interfere substantially with their liberty. This is prima facie evidence of Mr. Esquivel's (and DOT's) negligence, at a minimum.

² See, for example, Dan Dobbs, Torts and Compensation, at 118, West Publishing Co. (St. Paul, 1985); Marshall Shapo, Tort and Injury Law, 207-217, Mathew Bender & Co. (New York, 1990).

It is not unreasonable to require Defendants to pay the damages caused by their unlawful acts.

Issue II: Plaintiffs' Allegations and Testimony Establish a Prima Facie Case of Assault and/or Battery.

Defendants contend that Plaintiffs' allegations and testimony are insufficient to state a cognizable claim for either assault or battery. Defendants rely for their argument upon definitions of assault and battery that are criminal in nature, such as the definition given in 6A C.J.S. (cited in Defendants' Memorandum, p.12.) The tort of assault differs from the crime. The definition of assault in Tort, as opposed to criminal law, is expressed succinctly in §10 of Prosser and Keeton on Torts, 1984:

The interest in freedom from apprehension of a harmful **or offensive** contact with the person, as distinguished from the contact itself, is protected by an action for the tort known as assault. [emphasis added].

Prosser and Keeton define battery in §8 as:

A harmful **or offensive** contact with a person, resulting from an act intended to cause the plaintiff or a third person to suffer such a contact, or apprehension that such a contact is imminent, is a battery. [emphasis added].³

³ For similar definitions, both of which clearly state "offensive touching" as one possibility, see the definitions found in the Restatement on Torts, §§ 18 and 21.

Mr. Esquivel's actions, in requiring Plaintiffs to submit to a search of their person and their belongings created in their minds the apprehension of an immediate offensive touching. Plaintiff Mazariegos was touched, offensively, in a manner to which she did not consent. (Mazariegos Affidavit; Attachment B).

Defendants further argue that Mr. Esquivel did not have the necessary intent to cause harm. It is clear in the law of Torts that the relevant intent is not the intent to cause harm. Rather, "it is enough that [the actor] intend to inflict either an offensive or harmful contact, or to bring about an apprehension of such contact." Id., §20, Comment on Subsection (1). Mr. Esquivel obviously intended to bring about an apprehension of offensive physical contact when he told Plaintiffs they were going to be searched.

As a second argument for the dismissal of Plaintiffs' claims for assault and battery, Defendants argue that any claim is barred because Plaintiffs consented to the search. Plaintiffs did not consent. Rather, Plaintiffs were coerced into submission. Comment c to §892 of the Restatement (Second) of Torts, (1977) explains:

If a reasonable person would not understand from the words or conduct that consent is given, the other is not justified in acting upon the assumption that consent is given even

though he honestly so believes; and there is no apparent consent.

§892B of the Restatement expands upon the topic of consent, and indicates three areas in which consent, although obtained, is invalid. The third of these is the case of consent obtained under duress. Assuming, solely for the sake of this argument, that Plaintiffs did consent to Mr. Esquivel's tortious actions, they did so under duress. The comment on duress does not attempt a definition of the type of duress that might vitiate consent. Rather, the comment indicates that

[It is not] certain that the duress must be of a type to which a person of ordinary firmness or a reasonable person would yield, though this may be important in determining whether the other party's will was actually overborne. Age, sex, mental capacity, **the relation of the parties and antecedent circumstances** all may be significant. The type of conduct to which the other party consents is also important. Id., §892B, Comment on Subsection (3) [emphasis added].

Any determination of whether or not Plaintiffs consented, and whether or not that consent was voided due to duress is a determination of fact, and must be decided by a jury. Defendants allege Plaintiffs consented. Plaintiffs state that they did not consent. Defendants assert that Mr. Esquivel properly interpreted Plaintiffs' inaction as consent. This is a disputed issue of fact, and as such must be determined by a jury, in the context of all the factual circumstances. Furthermore, precisely

what all the factual circumstances were also requires a factual determination. Facts must be determined by a jury. Therefore, Defendants' Motion for Summary Judgment on these issues must be denied.

Issue III: Plaintiffs' Allegations and Testimony Are Sufficient To Establish a Prima Facie Case of Intentional Infliction of Emotional Distress.

Retherford v. AT&T Communications, 844 P.2d 949 (Utah 1992) is a case directly on point. In that case, the Utah Supreme Court held that evidence of emotional stress--Plaintiff's psychologist told her not to return to work in her previous environment--and evidence that Defendant's employees had "shadowed her movements, intimidated her with threatening looks and remarks, and manipulated circumstances at work in ways that made her job more stressful," was sufficient to state a cause of action. In the present case, relatives of the Plaintiffs support with their affidavits the intense emotional and physical suffering caused to the Plaintiffs by Mr. Esquivel's behavior. As causative actions, Plaintiffs allege that Mr. Esquivel systematically abused his position as plant manager to verbally and emotionally abuse Plaintiffs and compel them to submit to an unlawful search of their persons and possessions. A second case of interest, on these facts, is Contreras v. Crown Zellerbach Corp., 565 P.2d 1173 (Wash 1977). In that case, the Washington

Supreme Court, En Banc, determined that allegations by a Mexican-American that his employer had permitted other employees to engaged in deliberate taunts, slander, and racial epithets, and that this behavior on the part of his employer and co-worker had caused him to suffer severe emotional distress, due to the humiliations and public exposure to scorn and ridicule, was sufficient to state a cause of action for what Washington calls the Tort of Outrage--the Restatement (Second) of Torts §46, Definition of Intentional Infliction of Emotional Distress. This case is, of course, not controlling on this court, but it is instructive, given the similarity of circumstances.

Under the terms of these cases, Plaintiffs have alleged sufficient conduct and harm to meet the requirements of a prima facie case. For purposes of this Motion, Plaintiffs' factual allegations, supported by their affidavits and the affidavits of other family members, must be taken as true and Defendants' Motion for Summary Judgment on these causes of action must also be denied.

Issue IV: Plaintiffs' Allegations and Testimony State a Prima Facie Case for Invasion of Privacy by Unreasonable Intrusion upon the Seclusion of Another.

Defendants contend that the allegations in Plaintiffs' complaint and testimony are insufficient to demonstrate an "unreasonable" intrusion upon their seclusion. Plaintiffs'

personal belongings were physically searched, their pockets were examined, and in at least two cases, their persons were physically handled. Defendants contend that an actionable "intrusion into Plaintiffs' seclusion" is limited to intrusion upon Plaintiffs in the privacy of their own homes or automobiles. It is the Plaintiffs' contention that the privacy rights of an individual extend not merely to a dwelling or automobile, but also to such personal effects as purses and wallets. Plaintiffs further contend that, without reasonable cause, the subsection of these personal effects to physical search is an actionable invasion of privacy. The Restatement (Second) of Torts, as cited in Defendants' Memorandum and in Cox v. Hatch, 761 P.2d 556 (Utah 1988), establishes a cause of action for unreasonable intrusion upon the seclusion of another. The key term in this statement is unreasonable. Plaintiffs contend that the physical search they and their belongings were subjected to was an unreasonable intrusion upon their seclusion. Again, this is a question of fact--was the search an unreasonable intrusion, or was it not. In Johnson v. Skaggs, cited above in footnote 1, the Utah Supreme Court overturned the grant of Defendant's Motion for Summary Judgement because the issue of reasonableness needed to be determined by a jury. Here, as there, whether Defendants' intrusion into Plaintiffs affairs was reasonable is a material

issue. Because this is a disputed issue of material fact, Defendant's Motion for Summary Judgment should not be granted.

Defendants also argue that Mr. Esquivel's request to see Plaintiff Semiday's L.D.S. Temple Recommend was not an unreasonable intrusion into his personal seclusion. From the beginning of the establishment of the United States, it has been a tenet of public life that an individual's private religious beliefs and affairs are among the most personal of interests. Defendant Esquivel's question as to whether or not Mr. Semiday had a temple recommend, and his request to see that recommend, are comparable to asking a Catholic individual when he or she last went to confession. For a secular employer to base an employment decision on determinations of status or worthiness made by a separate and distinct religious organization is clearly against well established state and federal law and policy. This is not a case where Plaintiffs voluntarily chose to work for a religious organization, nor is it the case of a religious organization with a valid interest in staffing its activities with its own members. Rather, this is a private, secular, factory, producing rubber stamps for commercial sale. There is strong public policy, both Federal and State, against basing employment decisions on religious or racial grounds. Plaintiffs do not contend that they were discriminated against. Rather,


they contend that Defendant Esquivel deliberately sought out for employment, by means of invasive personal questions in employment interviews, individuals such as themselves. It is the Plaintiffs' contention that, due primarily to their minority status, their limited ability to communicate in English, and their limited employment skills, Defendants deliberately hired them, knowing that they would be easily manipulated, controlled, and harrassed. The issue is one that must be decided ultimately by a jury: Given all the circumstances, was Mr. Esquivel's question and request an unreasonable invasion of Mr. Semiday's privacy?

CONCLUSION

Because there are numerous material disputed facts that must be resolved by the jury, and because Defendants' contention that cannot state a cognizable claim for relief is manifestly false, Plaintiffs object to Defendants' Motion for Summary Judgment on all counts.

Wherefore: Plaintiffs request that this Court deny said Motion and calendar a pre-trial scheduling conference to set this matter for trial.


DATED this 1 day of ^{November}~~October~~, 1994.


MARTI L. JONES
ATTORNEY FOR PLAINTIFFS

CERTIFICATE OF MAILING

I do hereby certify that on this 1 day of November, 1994, I did mail a true and correct copy of the above and foregoing PLAINTIFF'S OBJECTION TO DEFENDANT'S MOTION FOR SUMMARY JUDGEMENT to Plaintiff's attorney, postage prepaid, addressed as follows:

Loren D. Martin
Attorney at Law
P.O. Box 11590
Salt Lake City, Utah 84147-0590



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IN THE FOURTH JUDICIAL DISTRICT COURT
FOR THE STATE OF UTAH
150 N. 100 W., PROVO, UTAH 84601

=====

WALTER SEMIDEY, ANGEL SANTIAGO,	*	
HUMBERTO BARDALES, and ROSA	*	AFFIDAVIT OF WALTER
MAZARIEGOS,	*	SEMIDEY
	*	
Plaintiffs,	*	
vs.	*	
	*	Civ. No. 930400503 PI
DOT ADVENTURES, INC., et. al.	*	Judge Boyd L. Park
	*	
Defendants.	*	
	*	

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COUNTY OF UTAH)
)ss
STATE OF UTAH)

VIENE Walter Semidey, quejante en el caso arriba titulado, y dice lo siguiente:

Yo entre a trabajar en la compania de DOTS alrededor del primero de Septiembre, 1992. Antes de ser contratado, tuve una entrevista con el gerente de la planta, quien se llamaba MiguelAngel Esquivel. Durante esta entrevista el me pregunto si yo era miembro de la iglesia Mormona. Yo le conteste que si, yo era miembro. Entonces, me pregunto que si yo tenia recomendacion para el templo. Le dije que si, lo tenia, y me lo pidio. Yo pense que era una cosa extrana, porque nunca en mi vida me habian

pedido mi recomendacion en una entrevista del empleo, pero queria el trabajo, asi que se la di para que la pudiera ver. Yo no sabia que el hecho de preguntar eso era contra la ley.

Estuve trabajando en la empresa de DOTS unos tres meses. Durante mi tiempo alli, observe cosas que nunca en mi vida habia visto. Por ejemplo, cada vez que el Sn. Esquivel se molestaba con cualquier persona o cualquier departamento, el reunia a toda la planta. Casi siempre estuvo enojado, y nos hablaba en voz fuerte o nos gritaba. El hablaria de que habia tenido que mandar a descansar algunas personas. Varias veces nos dijo que si pagabamos nuestros diezmos, y no habia trabajo o teniamos que descansar unos dias, deberiamos ir con nuestro obispo a pedir ayuda, porque la iglesia tenia responsabilidad de compensarnos los dias de descanso cuando estabamos pagando diezmos. Muchas veces nos hablo duro y fuerte, acusandonos de ser rateros y rateras. En una ocasion nos amenazo con registrarnos a todos al salir del trabajo, porque segun el alguien estaba robando los sellos.

Ademas de rateros, tambien nos acusaba de ser mentirosos. Nos decia que la mayoria de nosotros eran ilegales. Eso de acusar a la gente de ser ilegales el lo utilizaba como amenaza. Para mi, era manera de recordarles a las personas que no tenian libertad, y que el podia con una llamada causarles muchos

problemas. De esta manera solia controlar a la gente, y hacer que ellos se portaban de acuerdo con lo que el queria.

Pero la ofensa mas grande para mi fue el dia en que nos registro a todos. Ese dia el mando descansar al departamento donde trabajaban las pocas mujeres americanas que habian en la fabrica. Las mando a todas en ese departamento a sus casas. Despues, nos reunio a los demas. Eramos entre treinta y cuarenta personas y todos eramos gente hispana. Nos informo de un robo de veinte dolares, y nos dijo que el iba hacer algo que estaba fuera de la ley, pero que lo iba hacer, que era registrarnos a todos. En ningun momento pregunto si alguien se oponia a ser revisado. En ningun momento indico que la puerta estaba abierto a quien queria salir. Ademias, la puerta estaba bastante lejos, como treinta pies, de donde estabamos sentados. Despues de eso el salio del area y nos dejo con los supervisores. Habia dos grupos de mujeres. Algunas fueron revisadas en el bano de arriba, otras fueron revisadas abajo en una oficina. A los hombres, nos reviso todos arriba en el bano de los hombres. Yo estaba molesto, nervioso y enojado. Casi no lo podia creer. Me preguntaba y volvía a preguntarme, ¿como era que ellos iban a saber la diferencia entre el billete de veinte que se habian perdido y un billete de veinte que tal vez yo tenia en mi cartera? No captaba entender como pensaban comprobar algo. Me sentia ansioso y atemorizado. Creia que me iban a revisar todo mi cuerpo. Creia

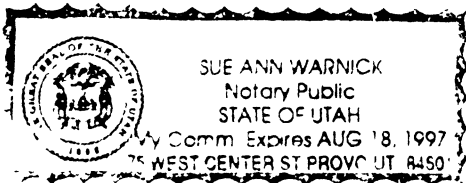
que me iban hacer quitar mi ropa, y que me iban a tocar en todas las partes de mi cuerpo. Yo no queria ser revisado, pero no veia manera de librarme de alli.

Al entrar en el bano, yo pregunte a mi supervisor como iba a saber que el billete en mi cartera era el veinte que se habian perdido. El no sabia que contestarme. Despues de la revision me sentia avergonzado y humillado. Me sentia destrozado emocionalmente. Me enojaba con mi esposa y mis hijos. Me sentia muy molesto, muy defensivo, muy agresivo. Dure asi varios dias, como una semana, hasta despues de la Navidad. El registro no habia tenido ningun resultado. Yo no sabia que si esto iba a volver a pasar o no. No me podia calmar hasta que me despideron del trabajo. Aunque tambien la manera en que me despidio me molesto, despues, al no tener que regresar alli diariamente, y vivir bajo la amenaza de otra revision, yo empecé a calmerme, y a sentirme mejor.

DATED this 31 day of October, 1994.


WALTER SEMIDEY

In the County of Utah, State of Utah, on this 31 day of October, 1994, before me the undersigned notary, personally appeared Walter Semidey, "who is personally know to me" or "who proved to me his/her identity through documentary evidence in the form of N/A" to be the person who signed the preceding document in my presence and who swore or affirmed to me that the signature is voluntary and the document truthful.



Residing at:

My commission expires:

Sue Ann Warnick
Notary Public
Utah County, Utah
August 18, 1997

LAW OFFICES OF LINDA Q. JONES
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=====

IN THE FOURTH JUDICIAL DISTRICT COURT
FOR THE STATE OF UTAH
150 N. 100 W., PROVO, UTAH 84601

=====

WALTER SEMIDEY, ANGEL SANTIAGO,	*	TRANSLATION OF
HUMBERTO BARDALES, and ROSA	*	AFFIDAVIT OF WALTER
MAZARIEGOS,	*	SEMIDAY
	*	
Plaintiffs,	*	
vs.	*	
	*	
DOT ADVENTURES, INC., et. al.	*	Civ. No. 930400503 PI
	*	Judge Boyd L. Park
	*	
Defendants.	*	
	*	

=====

COUNTY OF UTAH)
)ss
STATE OF UTAH)

COMES Walter Semiday, Plaintiff in the above entitled case,
and states the following:

I began working at the DOTS company around the first of
September, 1992. Before I was hired, I had an interview with the
plant manager, whose name was MiguelAngel Esquivel. During this
interview he asked me if I was a member of the Mormon (LDS)
church. I answered yes, that I was a member. Then he asked me
if I had a temple recommend. I told him that yes, I did, and he
asked to see it. I thought this was a strange thing, because
never in my life had someone asked to see my temple recommend in

an employment interview, but I wanted the job, so I gave it to him so that he could see it. I did not know that it was against the law to ask this question.

I worked in the DOTS business some three months. During my time there, I observed things that I had never seen before. For example, every time that Mr. Esquivel got angry with some person or some department, he would gather together the entire plant. Almost always he was angry, and he would speak to us in a strong voice or yell at us. He would say that he had had to lay off some people. Many times he told us that if we paid our tithing, and there wasn't work or we were laid off for a few days, we should go to our bishop and ask for help, because the church had the responsibility to compensate us for the days we were laid off if we were paying our tithing. Many times he spoke to us hard and strong, accusing us of being robbers. In one occasion he threatened that he was going to search us all as we left work, because, he said, someone was stealing the stamps.

Besides robbers, he also accused us of being liars. He would say that the majority of us were illegals. This, of accusing the people of being illegals, he used as a threat. As I saw it, it was a way of reminding the people that they were not free, and that he could with one phone call cause them many problems. This way he habitually controlled the people, and made them behave the way he wanted them to.

But the greatest offense, for me, was the day that they searched us all. That day he laid off the department where the few American women worked. He sent everyone in that department home. After, he gathered the rest of us together. We were between thirty and forty people, and all of us were Hispanic people. He informed us of a robbery of twenty dollars, and told us that he was going to do something that was against the law, but that he was going to do it, that was, to search us all. At no time did he ask if anyone objected to being searched. At no time did he indicate that the door was open to whoever wanted to leave. Furthermore, the door was quite distant, around thirty feet, from where we were seated. After that he left the area and left us with the supervisors. There were two groups of women. Some were searched in the upstairs bathroom, others were searched below in an office. The men, we were all searched upstairs in the men's bathroom. I was upset, nervous, and angry. I almost couldn't believe it. I asked myself and kept asking myself, how it was that they were going to know the difference between the twenty dollar bill that had been lost and a twenty dollar bill that maybe I had in my wallet? I could not understand how they thought to prove anything. I felt anxious and threatened. I believed that they were going to search my entire body. I believed that they were going to make me take off my clothes, and that they were going to touch me in every part of my body. I did

not want to be searched, but I did not see any way to liberate myself from there.

Upon entering the bathroom, I asked my supervisor how he was going to know that the bill in my wallet was the twenty that had been lost. He did not know what to answer. After the search I felt ashamed and humiliated. I felt emotionally destroyed. I got angry with my wife and my children. I felt very upset, very defensive, very aggressive. I continued this way for some days, like a week, until after Christmas. The search had not had any result. I did not know if this was going to happen again or not. I was not able to calm down until I was let go from work. Even though the way in which I was let go upset me, afterwards, when I didn't have to return there on a daily basis, and live under the threat of another search, I began to calm down and to feel better.

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=====

IN THE FOURTH JUDICIAL DISTRICT COURT
FOR THE STATE OF UTAH
150 N. 100 W., PROVO, UTAH 84601

=====

WALTER SEMIDEY, ANGEL SANTIAGO,	*	
HUMBERTO BARDALES, and ROSA	*	AFFIDAVIT OF ROSA
MAZARIEGOS,	*	MAZARIEGOS
	*	
Plaintiffs,	*	
vs.	*	
	*	Civ. No. 930400503 PI
DOT ADVENTURES, INC., et. al.	*	Judge Boyd L. Park
	*	
Defendants.	*	
	*	

=====

COUNTY OF UTAH)
)ss
STATE OF UTAH)

VIENE Rosa Mazariegos, quejante en el caso arriba titulado,
y dice lo siguiente:

Yo entre a trabajar en la compania de los sellos a
principios de Noviembre, 1992. De pronto empeze a sentir mal.
El gerente de la fabrica se llamaba MiguelAngel Esquivel. El dia
en que empeze a trabajar el gerente nos reunio a todos y nos
empezo a gritar, y decirnos groserias. Nos decia que eramos un
atajo de flojos y araganes. Decia "Estoy seguro que alla, en el
otro lado de donde son, ustedes lo han pasando cortando nopales.
Se que vienen aqui para hacerse grandes."

Despues de unos dias llegue a comprender que ese mismo, de las reuniones y los gritos y los groserias, el Sn. Esquivel hacia casi todo los dias, y a veces dos veces al dia. Entre otras cosas, solia decirnos "Estoy seguro que no pagen los diezmos. Se que por eso les va mal." Tambien nos decia "Estoy seguro de que son unos hipocritas. Adelante me sonrian, y atras hablen de me, estoy seguro." Nos acusaba de no tener entrada al templo de la iglesia. Nos acusaba de ser mojados y decia que el sabia quienes eran los ilegales.

Pero lo peor de la situacion era que despues de pasar hasta mas de una hora gritandonos, el Sn. Esquivel vendria a donde yo y los demas estaban trabajando, y nos acusaba de estar flojos porque estabamos bajos en la produccion. Tambien todos los dias mandaba una u otra de las mujeres latinas a limpiar el cuarto del perro. El Sn. tenia un perro. Lo traia a la fabrica, donde lo metia en un cuarto con alfombra. Todos los dias el Sn Esquivel mandaria decir que una u otra mujer fuera a limpiar el popo del perro, o banar al perro. El sabia de lo insultante que fue, para una mujer hispana, trabajadora, verse obligado recoger el popo de un perro que pertenecia a otra persona. Una vez me toco hacerlo. Aunque tuve una mesa llena de trabajo, la supervisora me dijo que tenia que dejar lo que estaba haciendo para ir a levantar el popo del perro y lavar bien con detergente a la alfombra.

Por la presion, de ser atacado y maldicho, de ser insultado y humillado constantemente, yo no podia dormir bien. Aunque comia algo, no me gustaba la comida como antes. No tenia sabor. Tenia dolores de cabeza casi todo los dias. A pesar de todo esto, lo mas grave de todo fue el dia en que nos revisio.

Ese dia, nos reunio como siempre en el area de la cafeteria. El area de la cafeteria era unos diez metros de la entrada a la fabrica. Empezo a gritarnos. Decia "Se ha perdido un dinero. Todos aqui son unos rateros y rateras. De aqui nadia va a salir si no se deja revisar." Tambien dijo "El que no se deja revisar, es porque tiene el dinero." Despues nos dijo que todos teniamos que entrar al bano uno por uno con la supervisora. Yo no quise que me revisara, pero tenia miedo de oponerme, por las acusaciones y gritos que vendria sobreme, y por que no veia manera de salir. Por estas razones, y porque nos habia dicho que no podiamos salir, y estaba bastante lejos la puerta, yo otra vez me veia obligado a someterme. Cuando me toco entrar al bano la supervisora me hizo desabotonar mis pantelones y soltar mi blusa. Tambien me hizo desabrocharme el brasier. Despues, ella metio sus manos debajo de mi blusa, y me toco todo el area de mi cinturon y hasta debajo de mi brasier. Despues me dijo que me quitara mis zapatos y calcetines, y que me subiera las piernas de mis pantelones arriba de mis rodillas. A final de todo ella

metio un lapiz en mi cabello y me reviso todo el cabello con el lapiz.

Yo llegue a mi casa destrozada. Tuve un flujo de sangre que no era normal, pero que me venia a causa de los nervios y temores. Estuve casi histerico. No podia dormir en toda la noche. Aun asi no queria perder el trabajo, y regrese al trabajo, aunque andaba con muchos nervios y mucho coraje. A unos pocos dias despues intente hablar con el Sn. Esquivel, para decirle de lo mal que era la revision. Ese mismo dia me boto del trabajo.

Al salir del trabajo empeze a calmarme de los nervios, aunque dure otros meses sin sentirme con las fuerzas emocionales suficiente para volver a buscar trabajo. Durante todo este tiempo mi hermana me cuidaba con te de tila, y otros remedios caseras, para ayudarme a calmar y reestablecerme.

DATED this 31 day of October, 1994.

Rosa Delia Mazariegos
ROSA DELIA MAZARIEGOS

In the County of Utah, State of Utah, on this 31 day of October, 1994, before me the undersigned notary, personally appeared Rosa Delia Mazariegos "who is personally know to me" or "who proved to me his/her identity through documentary evidence in the form of GA. DL A1318836 to be the person who signed the preceding document in my presence and who swore or affirmed to me that the signature is voluntary and the document truthful.



JAY KNIGHT Notary Public
NOTARY PUBLIC - STATE of UTAH
ZIONS FIRST NAT'L BANK
406 N. STATE STREET
OREM, UT 84057
COMM EXP 5-13-98

Residing at:

Open

My commission expires:

5-13-28

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IN THE FOURTH JUDICIAL DISTRICT COURT
FOR THE STATE OF UTAH
150 N. 100 W., PROVO, UTAH 84601

=====

WALTER SEMIDEY, ANGEL SANTIAGO,	*	TRANSLATION OF
HUMBERTO BARDALES, and ROSA	*	AFFIDAVIT OF ROSA
MAZARIEGOS,	*	MAZARIEGOS
	*	
Plaintiffs,	*	
vs.	*	
	*	
DOT ADVENTURES, INC., et. al.	*	Civ. No. 930400503 PI
	*	Judge Boyd L. Park
	*	
Defendants.	*	
	*	

=====

COUNTY OF UTAH)
)ss
STATE OF UTAH)

COMES Rosa Mazariegos, Plaintiff in the above entitled case,
and states the following:

I began to work in the stamp company the beginning of
November, 1992. Almost immediately I began to feel bad. The
manager of the factory was called MiguelAngel Esquivel. The day
that I began to work the manager gathered everyone and began to
yell at us and tell us insulting things. He told us that we were
a pack of slackers and lazybones. He said "I am certain that

there, on the other side from where you are from, you all spent your time cutting cactus.¹ You came here to become great."

After some days I came to understand that this same thing, the meetings and the yelling and the insults, Mr. Esquivel did almost every day, and sometimes twice a day. Among other things, he would say to us "I am certain that you don't pay your tithing. I know that's why things go badly for you." He would also say to us "I am certain that you are a bunch of hypocrites. To my face you smile at me, but behind my back you tell tales of me, I am certain." He would accuse us of not being able to enter the temple of the church. He would accuse us of being wetbacks and say that he knew who the illegals were.

But the worst of the situation was that after spending up to over an hour yelling at us, Mr. Esquivel would come to where I and the rest were working, and accuse us of being lazy because we were low in production. Also every day he would send one or another of the Latin women to clean the dog's room. The man had a dog. He would bring it to the factory, where he would put it in a carpeted room. Every day Mr. Esquivel would send an order telling one woman or another to go clean up the dog poop, or wash the dog. He knew how insulting it was, for an Hispanic woman, a worker, to be obligated to clean up dog poop of a dog that

¹ This expression is idiomatic, somewhat the equivalent of "All you could do was clean toilets" in English.

belonged to another person. One time it came to me to do it. Even though I had a table full of work, the supervisor told me that I had to leave what I was doing to go and pick up the dog poop and wash the carpet with detergent.

Because of the pressure, of being attacked and degraded, of being insulted and humiliated constantly, I was unable to sleep well. Although I ate somewhat, food didn't interest me like before. It had no flavor. I had headaches almost every day. In spite of all this, the worst of everything was the day that they searched us.

That day, he gathered us like always in the cafeteria area. The cafeteria area was about ten meters from the entrance to the factory. He began to yell at us. He said "Some money has been lost. Everyone here is a bunch of robbers. From here no one leaves if they are not searched." He also said "Whoever does not let themselves be searched, it is because they have the money." Then he told us that we all had to enter the bathroom one by one with the supervisor. I did not want to be searched, but I was afraid to object, because of the accusations and yelling that would come upon me, and because I didn't see any way out. For those reasons, and because he had told us that we could not leave, and the door was a long way away, I again saw myself obligated to submit. When it was my turn to enter the bathroom the supervisor made me unbutton my pants and loosen my blouse.

She also made me undo my bra. Then she stuck her hands under my blouse and ran her hands all over the area of my waist and even under my bra. Then she told me to take off my shoes and socks, and to roll my pant legs up above my knees. Last of all, she stuck a pencil in my hair and searched through all my hair with the pencil.

When I got home I was devastated. I had a bloody discharge that wasn't normal, but that was caused by my nerves and fear. I was almost hysterical. I couldn't sleep all night long. But even so, I didn't want to lose my job, and I returned to work, although I was very nervous and angry. A few days later I tried to speak with Mr. Esquivel, to tell him how wrong the search had been. That same day he fired me.

Upon leaving work I began to calm down, although it was some months before I felt sufficient emotional strength to return to look for work. During all this time my sister took care of me, with linden tea and other home remedies, to help me calm down and recover.

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=====

IN THE FOURTH JUDICIAL DISTRICT COURT
FOR THE STATE OF UTAH
150 N. 100 W., PROVO, UTAH 84601

=====

WALTER SEMIDEY, ANGEL SANTIAGO,	*	
HUMBERTO BARDALES, and ROSA	*	AFFIDAVIT OF ANGEL
MAZARIEGOS,	*	SANTIAGO
	*	
Plaintiffs,	*	
vs.	*	
	*	Civ. No. 930400503 PI
DOT ADVENTURES, INC., et. al.	*	Judge Boyd L. Park
	*	
Defendants.	*	
	*	

=====

COUNTY OF UTAH)
)ss
STATE OF UTAH)

VIENE Angel Santiago, quejante en el caso aqui titulado, y dice lo siguiente:

Empeze a trabajar por la compania DOTS en el otono del ano 1992. Trabaje por la compania por unos cuatro meses. Durante este tiempo el majordomo de la fabrica acostumbraba a insultarnos a la gente casi diario. El nos reunia y se pondria a dicirnos cosas como "Ustedes son unos ladrones, son rateros, son unos malagradecidos, son unos habladores por que hablan mal de la empresa." Tambien nos dicia que eramos unos flojos a trabajar. Nos decia que no pagabamos diezmos, y que por eso las cosas iban

mal en la empresa. Ademas nos acusaba de ser mojados, y nos decia que si venia la migra nos llevaria a todos. Una vez llego a dicirnos que estaba harto de los chismes de la gente, y que eramos unos vochinchosos.

El dia de la revision el Senor Esquivel nos reunia como siempre. Estaba muy enojado. Otra vez comenzo a insultarnos a todos. Dicia que eramos unos rateros, y que habia llegado al colmo y que el tendria que revisarnos a todos. Antes habia mandado a las mujeres americanas a sus casas.

El Senor Esquivel decia que nos iba a revisar uno por uno, que tendriamos que entrar al bano con el supervisor, quien nos revisaria. Esto fue el colmo de los insultos. En mi paiz, de Puerto Rico, nadia puede revisar a otro persona sin que tiene un order de cateo. Aun con orden de cateo, la revision tiene que ser hecho por un oficial del gobierno. Humillar a otra persona de este manera, revisarles y acusarles de ser rateros, es de lo peor. Esta contra la ley que un jefe abusa de su poder para insultar y revisar a la gente asi.

Pero yo ya habia quejado antes, de otro jefe. Habia ido con Job Service y me habian dicho que no podian hacer nada; que aqui en Utah los jefes podian correr a la gente cuando les daba la gana, y que no habia nada que se podian hacer. Entonces, cuando Esquivel nos exigia que fueramos revisados, yo creia que si me opusiera a ser revisado, me iba a correr del trabajo ese mismo

dia. Esquivel tambien nos dijo que nadia podia regresar al trabajo sin ser revisado, y que todos teniamos que quedarnos en el area de la cafeteria hasta que todos habian sido revisado. Eran mas de cuarenta personas. No queria ser revisado, pero oponerme significaba perder el trabajo.

Los dos banos estaban arriba, y al subir las escaleras uno por uno los demas personas en la cafeteria nos veia, y nos decia que ibamos a ser revisado, que nos iba a tocar, que nos iba a palpar todo. Yo me sentia humillado y ofendido. Tambien sentia sin poder de oponerme. Pense que no habia remedio, que nadia me creyria, aunque tambien sabia que no era justo y tal vez estaba contra la ley.

DATED this 30 day of Octubre, 1994.

Angel Santiago
ANGEL SANTIAGO

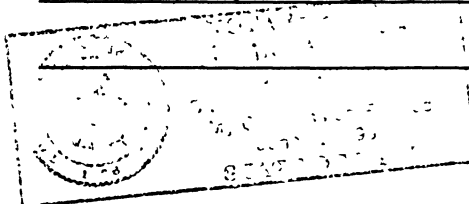
In the County of Utah, State of Utah, on this 31 day of October, 1994, before me the undersigned notary, personally appeared Angel Santiago, "who is personally know to me" or "who proved to me his/her identity through documentary evidence in the form of Utah Drivers License" to be the person who signed the preceding document in my presence and who swore or affirmed to me that the signature is voluntary and the document truthful.

Virginia Jensen
Notary Public

Residing at:

Utah

My commission expires:



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=====

IN THE FOURTH JUDICIAL DISTRICT COURT
FOR THE STATE OF UTAH
150 N. 100 W., PROVO, UTAH 84601

=====

WALTER SEMIDEY, ANGEL SANTIAGO,	*	TRANSLATION OF
HUMBERTO BARDALES, and ROSA	*	AFFIDAVIT OF ANGEL
MAZARIEGOS,	*	SANTIAGO
	*	
Plaintiffs,	*	
vs.	*	
	*	
DOT ADVENTURES, INC., et. al.	*	Civ. No. 930400503 PI
	*	Judge Boyd L. Park
	*	
Defendants.	*	
	*	

=====

COUNTY OF UTAH)
)ss
STATE OF UTAH)

COMES Angel Santiago, Plaintiff in the above entitled case,
and states the following:

I began to work for the company DOTS in the fall of 1992. I worked for the company for about four months. During this time the manager of the factory customarily insulted the people almost daily. He would gather us together and begin saying things to us like "You are a bunch of thieves, robbers, ungratefult; you are talebearers because you speak badly of the company." He would also tell us that we were a bunch of lazy workers. He would say that we didn't pay our tithing, and because of this things went

badly in the company. What's more, he would accuse us of being wetbacks, and would tell us that if immigration came they would take us all away. One time he even told us that he was sick of people's gossip, and that we were a bunch of scandlemongers.

On the day of the search Mr. Esquivel gathered us together like always. He was very angry. Once again he began to insult us all. He said that we were a bunch of robbers, that this was the last straw,¹ and that he was going to have to search us all. Before this he had sent the American women to their homes.

Mr. Esquivel said that they were going to search us one by one, that we would have to enter the bathroom with the supervisor, who would search us. This was the height of insult. In my country, Puerto Rico, no one can search another person unless he has a search warrant. Even with a search warrant, the search has to be made by a government official. To humiliate another person this way, by searching them and accusing them of being robbers, is the worst. It is against the law for a boss to abuse his power by insulting and searching people like this.

But I had already complained before, about another boss. I had gone to Job Service and they had told me that they could not do anything; that here in Utah bosses could fire people whenever they wanted to, and that there was nothing they could do.

¹ This is an idiomatic expression. It literally says "things had become too much," but carries the stronger meaning of "this was the last straw."

Therefore, when Esquivel demanded that we be searched, I believed that if I objected to being searched, he was going to fire me that same day. Esquivel also told us that no one could go back to work without being searched, and that we all had to stay in the cafeteria area until everyone had been searched. There were more than forty people. I did not want to be searched, but to object would mean losing my job.

The two bathrooms were upstairs, and while climbing the stairs one by one the rest of the other people in the cafeteria were looking at us and telling us that we were going to be searched, that it was going to be our turn, that they were going to palpate everything. I felt humiliated and offended. I also felt powerless to object. I thought that there was no alternative, that no one would believe me, although I also knew that it was not right and that it might be against the law.

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=====

IN THE FOURTH JUDICIAL DISTRICT COURT
FOR THE STATE OF UTAH
150 N. 100 W., PROVO, UTAH 84601

=====

WALTER SEMIDEY, ANGEL SANTIAGO,	*	
HUMBERTO BARDALES, and ROSA	*	AFFIDAVIT OF HUMBERTO
MAZARIEGOS,	*	BARDALES
	*	
Plaintiffs,	*	
vs.	*	
	*	Civ. No. 930400503 PI
DOT ADVENTURES, INC., et. al.	*	Judge Boyd L. Park
	*	
Defendants.	*	
	*	

=====

COUNTY OF UTAH)
) ss
STATE OF UTAH)

VIENE Humberto Bardales, quejante en el caso aqui titulado,
y dice lo siguiente:

Empeze a trabajar para la compania DOTS el primero de agosto
del ano 1992. Trabaje por la compania por unos cinco meses.
Durante este tiempo el gerente, MiguelAngel Esquivel me maltrato
moralmente e emocionalmente.

Frecuentemente, un minimo de dos veces por semana y muchas
veces mas, el solia reunir a todo el personal para llevar a cabo
unas reuniones con el unico objetivo de maltratar y maldicer a
los trabajadores. Nos acusaba de varias cosas, con intencion de

ofendernos por sus ofensivas palabras. Solia decir que los empleados eramos unos rateros, que el sabia que estabamos robando los sellos. Tambien dicia que el estaba investido de la autoridad que la Senora Jeanette Lynton le habia otorgado para hacer lo que el quisiera con los empleados. Basandose en que muchos empleados eran Mormones, el dicia que deberiamos pagar nuestros diezmos para siguiier en el trabajo. Tambien nos amenezaba con decir que si nos despidia, tendriamos que ir a pedir ayuda de nuestros obispos para que nos daria de comer.


Sobre todo, lo mas insultante, y la experiencia que tuvo mayor impacto negativo de forma emocional y sicologicamente fue cuando el Senor Esquivel nos reunio una tarde despues del almuerzo para decirnos que una companera de trabajo se le habian perdido \$20.00 de su cartera, y que el iba a encontrar al ladron. El Sn Esquivel fue muy enojado. Grito a todos "Ustedes son unos rateros y rateras." Grito que estaba cansado de tratarnos. En seguida, el autorizo al Senor Humberto Hernandez, quien era un empleado de su confianza para que registrara a todos los hombres, uno por uno, en forma individual en el bano de los hombres. A las mujeres, se les iba a registrar de forma igual por la Senora Maria Reyes en el bano de las mujeres y la Sna Suleika iba a registrar a otra grupo de las mujeres en un cuarto del mismo edificio. Al fin el Sn. Esquivel dijo, "Yo se que esto es algo indebido, pero de todos modos lo voy hacer para encontrar a un

ladron o una ladrona." Tambien dijo que "El que no se dejara registrar era el ladron."

De esta forma se procedio a revisar unos cuarenta personas, cada quien yendo en su turno para ser registrado. Se nos dijo que teniamos que llevar con nosotros nuestros abrigos y nuestros utencilios de portar nuestros alimentos. Yo sentia amenazado. Sabia que me iba a palpar fisicamente, y tocarme. No queria que me revisara. Tampoco queria que me llegaran a nombrar el ladron. Sabia que si me fuera oponer, iba a perder el trabajo y que todos iban a decir que era el ladron.

Esta experiencia fue uno de los peores de mi vida. Me dejo muy nervioso y me sentia deprimido. Me enojaba con mi esposa sin razon. Estuve muy emocional y inestable por alrededor de un mes despues de dejar la compania. Aun estoy sospechoso de la gente, en particular mis supervisores, y me es dificil confiar y llevar me bien con ellos.

DATED this 31 day of Oct, 1994.



HUMBERTO BARDALES

In the County of Utah, State of Utah, on this 31 day of OCTOBER, 1994, before me the undersigned notary, personally appeared JOSE HUMBERTO BARDALES "who is personally know to me" or "who proved to me his/her identity through documentary evidence in the form of UTAH DRIVER LICENSE # 151955217 to be the person who signed the preceding document in my presence and

who swore or affirmed to me that the signature is voluntary and the document truthful.

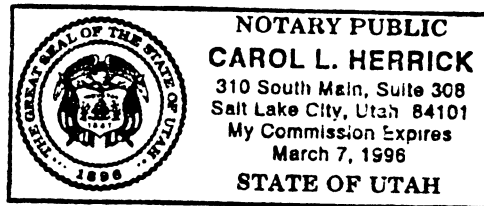
Carol L. Herrick
Notary Public

Residing at:

Payson Utah

My commission expires:

3-7-96



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=====

IN THE FOURTH JUDICIAL DISTRICT COURT
FOR THE STATE OF UTAH
150 N. 100 W., PROVO, UTAH 84601

=====

WALTER SEMIDEY, ANGEL SANTIAGO,	*	TRANSLATION OF
HUMBERTO BARDALES, and ROSA	*	AFFIDAVIT OF HUMBERTO
MAZARIEGOS,	*	BARDALES
	*	
Plaintiffs,	*	
vs.	*	
	*	Civ. No. 930400503 PI
DOT ADVENTURES, INC., et. al.	*	Judge Boyd L. Park
	*	
Defendants.	*	
	*	

=====

COUNTY OF UTAH)
)ss
STATE OF UTAH)

COMES Humberto Bardales, Plaintiff in the above entitled case, and states the following:

I began to work for the DOTS company the first of August of 1992. I worked for the company for some five months. During this time the manager, MiguelAngel Esquivel, mistreated me morally and emotionally.

Frequently, a minimum of two times a week and many times more, he would gather all the personnel together to carry out meetings with the sole object of mistreating and censuring the workers. He would accuse us of many things, with the intention

of offending us with his offensive words. He habitually told us that we the workers were a bunch of robbers, that he knew that we were robbing the stamps. He also would say that he had been invested with the authority that Mrs. Jeanette Lynton had given him to do whatever he wanted with the employees. Basing himself on the fact that many of the employees were Mormon, he would say that we needed to pay our tithing to continue in the work. He also threatened us that if he sent us away, we would have to go to ask help from our bishops in order to have enough to eat.

Above all, the most insulting, and the experience that had the most negative emotional and psychological impact was when Mr. Esquivel gathered us together one afternoon after lunch to tell us that a work companion had lost \$20.00 from her purse, and that he was going to find the thief. Mr. Esquivel was very angry. He shouted at everybody "You are a bunch of robbers." He yelled that he was tired of dealing with us. Immediately he authorized Mr. Humberto Hernandez, who was an employee he trusted, for him to search all the men, one by one, individually, in the men's bathroom. For the women, they were to be searched in like manner by Mrs. Maria Reyes in the women's bathroom and Mrs. Suleika was going to search another group of women in a room in the same building. At the end, Mr. Esquivel said "I know that this is something wrong, but in any case I am going to do it to find a thief." He also said, "whoever did not permit himself to be

searched was the thief."

In this way they proceeded to search some forty people, each one going in his turn to be searched. They told us that we had to bring with us our coats and our lunch bags or boxes. I felt threatened. I knew that I was going to be physically patted and touched. I did not want them to search me. I knew that if I objected, I was going to lose my job, and that everyone was going to say that I was the thief.

This experience was among the worst of my life. It left me very nervous and depressed. I got angry with my wife without reason. I was very emotionally unstable for around a month after I left the company. Even now I am suspicious of people, in particular my supervisors, and it is difficult for me to confide in them and get along easily with them.

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=====

IN THE FOURTH JUDICIAL DISTRICT COURT
FOR THE STATE OF UTAH
150 N. 100 W., PROVO, UTAH 84601

=====

WALTER SEMIDEY, ANGEL SANTIAGO,	*	
HUMBERTO BARDALES, and ROSA	*	AFFIDAVIT OF MATILDA
MAZARIEGOS,	*	MAZARIEGOS
	*	
Plaintiffs,	*	
vs.	*	
	*	Civ. No. 930400503 PI
DOT ADVENTURES, INC., et. al.	*	Judge Boyd L. Park
	*	
Defendants.	*	
	*	

=====

COUNTY OF UTAH)
)ss
STATE OF UTAH)

VIENE Matilda Mazariegos, y dice lo siguiente:

Yo soy hermana de Rosa Mazariegos, quejante en el caso arriba titulado. Yo he vivido en la misma casa con mi hermana Rosa aqui en Provo por mas de cinco anos.

Despues de que ella empezo a trabajar en los sellos, su caracter cambio mucho. Antes, ella era de caracter alegre, muy resuena. Llegaba a la casa despues del trabajo tranquilo y calmada, y se ponia hacer el quehacer de la casa. Pero cuando trabajaba en los sellos, casi siempre llegaba enojada y con muchos nervios. Llegaba con dolores de cabeza, y le era difcil

terminar con lo que tenia que hacer. Tambien empezo actuar de manera amargada y triste. Se enojaba con nosotros, y muchas veces no queria hacer sus quehaceros, ni comer.

Yo me acuerdo del dia que llego Rosa a la casa y nos dijo que ese dia en el trabajo le habia revisado. Rosa llego a la casa enojado y muy nerviosa. No se podia calmar. No podia comer, ni tampoco podia dormir bien. Despues de salir de la compania en Diciembre, se empezo a calmar un poco, pero duro otros dos o tres meses antes de que podia relajarse lo suficiente para volver a trabajar.

DATED this 31 day of October, 1994.

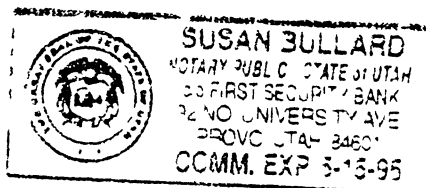
Matilde Mazariegos
MATILDE MAZARIEGOS

In the County of Utah, State of Utah, on this 31 day of October, 1994, before me the undersigned notary, personally appeared MATILDE MAZARIEGOS "who is personally know to me" or "who proved to me his/her identity through documentary evidence in the form of CA Drivers License to be the person who signed the preceding document in my presence and who swore or affirmed to me that the signature is voluntary and the document truthful.

Susan Bullard
Notary Public

Residing at: Provo, UT

My commission expires: 5-15-95



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IN THE FOURTH JUDICIAL DISTRICT COURT
FOR THE STATE OF UTAH
150 N. 100 W., PROVO, UTAH 84601

=====

WALTER SEMIDEY, ANGEL SANTIAGO,	*	TRANSLATION
HUMBERTO BARDALES, and ROSA	*	AFFIDAVIT OF MATILDA
MAZARIEGOS,	*	MAZARIEGOS
	*	
Plaintiffs,	*	
vs.	*	
	*	
DOT ADVENTURES, INC., et. al.	*	Civ. No. 930400503 PI
	*	Judge Boyd L. Park
	*	
Defendants.	*	
	*	

=====

COUNTY OF UTAH)
)ss
STATE OF UTAH)

COMES Matilda Mazariegos, and states the following:

I am the sister of Rosa Mazariegos, plaintiff in the above entitled case. I have lived in the same house with my sister Rosa, here in Provo, for more than five years.

After she began to work in the stamps, her character changed a great deal. Before, she had a happy character, very cheerful. She would arrive hom from work tranquil and calm, and set about the chores of the house. But when she worked in the stamps, she would almost always arrive angry and nervous. She would come home with headaches, and it was difficult for her to finish the

things she had to do. She also began to act sour and sad. She would get angry with us, and many times she did not want to do her chores, nor eat.

I remember the day that Rosa arrived home and told us that that day at work they had searched her. Rosa arrived home angry and very nervous. She could not calm down. She couldn't eat, nor could she sleep well. After leaving the company in December, she began to calm down somewhat, but it was another two or three months before she could relax enough to return to work.

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IN THE FOURTH JUDICIAL DISTRICT COURT
FOR THE STATE OF UTAH
150 N. 100 W., PROVO, UTAH 84601

=====

WALTER SEMIDEY, ANGEL SANTIAGO,	*	
HUMBERTO BARDALES, and ROSA	*	AFFIDAVIT OF PASTORA
MAZARIEGOS,	*	ESPERANZA MAZARIEGOS
	*	
Plaintiffs,	*	
vs.	*	
	*	Civ. No. 930400503 PI
DOT ADVENTURES, INC., et. al.	*	Judge Boyd L. Park
	*	
Defendants.	*	
	*	

=====

COUNTY OF UTAH)
)ss
STATE OF UTAH)

VIENE Pastora Esperanza Mazariegos, y dice lo siguiente:

Yo soy hermana de Rosa Mazariegos, quejante en el caso arriba titulado. Yo he vivido en la misma casa con mi hermana Rosa aqui en Provo por mas de cinco anos.

Despues de que ella empezo a trabajar en los sellos, su caracter cambio mucho. Un dia ella llego y me dijo que ese dia ademas de su trabajo normal el Senor, su jefe, le habia mandado limpiar el popo de un perro que tenia alli. Antes, ella era de character alegre, muy resuena. Llegaba a la casa despues del trabajo tranquilo y calmada. Le gustaba bailar con el radio, y

tambien cantar. Tambien le gustaba bromear.

Pero mientras trabajaba en los sellos, casi siempre llegaba enojada y con muchos nervios. Tambien llegaba casi siempre con dolores de cabeza. Yo la veia con muchos nervios, y le hacia que tomara te de tila para calmarse los. Tambien le hacia masajes casi todo los nochos, y le ponía la pomada Vicks en la cabeza para que se relajara y para que se calmara.

Despues del dia de la revision, Rosa llego a un grado peor de nervios. Yo me preocupaba por que temia que iba a traumatizarse por tantos nervios. No podia dormir. Comio poco, y le caia mal la comida. Despues de salir de la compania se empezo a calmar un poco, pero seguia con los nervios por unos meses despues.

DATED this 31 day of October, 1994.

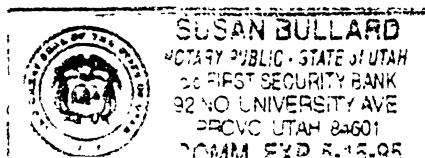
Pastora Esperanza Mazariegos
PASTORA ESPERANZA MAZARIEGOS

In the County of Utah, State of Utah, on this 31 day of October, 1994, before me the undersigned notary, personally appeared PASTORA E. MAZARIEGOS "who is personally know to me" or "who proved to me his/her identity through documentary evidence in the form of CA Drivers License" to be the person who signed the preceding document in my presence and who swore or affirmed to me that the signature is voluntary and the document truthful.

Susan Bullard
Notary Public

Residing at: Provo, UT

My commission expires: 5-15-95



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=====

IN THE FOURTH JUDICIAL DISTRICT COURT
FOR THE STATE OF UTAH
150 N. 100 W., PROVO, UTAH 84601

=====

WALTER SEMIDEY, ANGEL SANTIAGO,	*	TRANSLATION
HUMBERTO BARDALES, and ROSA	*	AFFIDAVIT OF PASTORA
MAZARIEGOS,	*	ESPERANZA MAZARIEGOS
	*	
Plaintiffs,	*	
vs.	*	
	*	Civ. No. 930400503 PI
DOT ADVENTURES, INC., et. al.	*	Judge Boyd L. Park
	*	
Defendants.	*	
	*	

=====

COUNTY OF UTAH)
)ss
STATE OF UTAH)

COMES Pastora Esperanza Mazariegos, and states the following:

I am the sister of Rosa Mazariegos, plaintiff in the above entitled case. I have lived in the same house with my sister Rosa here in Provo for more than five years.

After she began to work in the stamps, her character changed significantly. One day she arrived home and told me that that day, in addition to her normal work, the Master, her boss, had sent her to clean the dog poop of the dog that he had there. Before, she was a happy person, very cheerful. She would arrive

home from work tranquil and calm. She liked to dance with the radio, and sing. She also like to joke.

But while she worked in the stamps, almost always she would arrive home angry and very nervous. Also, she almost always arrived with a headache. I noticed that she was extremely nervous, and I made her take linden tea to help her calm them. I also gave her massages almost every night, and rubbed Vick's vapor rub on her head so she would relax and calm down.

After the day of the search, Rosa became even more nervous. I was worried, because I was afraid she would make herself sick because of her nerves. She could not sleep. She would only eat a little, and it wouldn't sit well with her. After she left the company she began to calm down a bit, but she continued extremely nervous for some months afterwards.

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=====

IN THE FOURTH JUDICIAL DISTRICT COURT
FOR THE STATE OF UTAH
150 N. 100 W., PROVO, UTAH 84601

=====

WALTER SEMIDEY, ANGEL SANTIAGO,	*	
HUMBERTO BARDALES, and ROSA	*	AFFIDAVIT OF DIANA
MAZARIEGOS,	*	SEMIDEY
	*	
Plaintiffs,	*	
vs.	*	
	*	
DOT ADVENTURES, INC., et. al.	*	Civ. No. 930400503 PI
	*	Judge Boyd L. Park
	*	
Defendants.	*	
	*	

=====

COUNTY OF UTAH)
)ss
STATE OF UTAH)

VIENE Diana Semidey, y dice lo siguiente:

Yo soy la esposa de Walter Semidey, quejante en el caso arriba titulado. Yo me acuerdo del dia en que llego Walter a la casa a decirme que ese dia habian revisado a todos los trabajadores hispanos. Despues de ese dia, su caracter y manera de ser cambio mucho. Antes era de caracter calmado, casi siempre feliz, y no se molestaba de mucho. Despues de ese dia casi siempre andaba tenso, muy nervioso, y con mucha agresion. Se enojaba diariamente conmigo o con nuestros hijos. Ese ano no

pasamos la Navidad como en otros anos, por que Walter no se sentia con interes. Por una parte estaba enojado y con mucha agresion. Por otra parte estaba deprimido, y no tenia interes en hacer nada de lo que normalmente haciamos. Walter duro asi hasta que lo despidieron de la empresa. Despues, a unos dias, empezo a calmarse y reestablecerse.

DATED this 31 day of October, 1994.

Diana Semidey
DIANA SEMIDEY

In the County of Utah, State of Utah, on this 31 day of October, 1994, before me the undersigned notary, personally appeared Diana Semidey, "who is personally know to me" or "who proved to me his/her identity through documentary evidence in the form of N/A" to be the person who signed the preceding document in my presence and who swore or affirmed to me that the signature is voluntary and the document truthful.

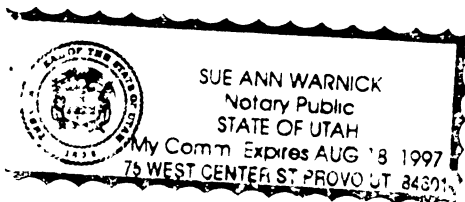
Sue Ann Warnick
Notary Public

Residing at:

Utah County, Utah

My commission expires:

August 18, 1997



LAW OFFICES OF LINDA Q. JONES
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=====

IN THE FOURTH JUDICIAL DISTRICT COURT
FOR THE STATE OF UTAH
150 N. 100 W., PROVO, UTAH 84601

=====

WALTER SEMIDEY, ANGEL SANTIAGO,	*	TRANSLATION OF
HUMBERTO BARDALES, and ROSA	*	AFFIDAVIT OF DIANA
MAZARIEGOS,	*	SEMIDEY
	*	
Plaintiffs,	*	
vs.	*	
	*	
DOT ADVENTURES, INC., et. al.	*	Civ. No. 930400503 PI
	*	Judge Boyd L. Park
	*	
Defendants.	*	
	*	

=====

COUNTY OF UTAH)
)ss
STATE OF UTAH)

COMES Diana Semidey, and states the following:

I am the wife of Walter Semidey, a plaintiff in the above entitled case. I remember the day that Walter arrived home to tell me that that day they had searched all the Hispanic workers. After that day, his character and way of being changed a great deal. Before his character was calm, almost always happy, and there wasn't much that upset him. After that day, he was almost always tense, nervous, and very aggressive. Daily he would get angry with me or with our children. That year we didn't spend Christmas like we had in other years, because Walter wasn't

interested. On the one hand, he was angry and very aggressive. On the other hand, he was depressed, and he wasn't interested in doing the things that we normally did. Walter stayed like this until he was laid off from work. Afterwards, some days later, he began to calm down and stabilize himself.

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=====

IN THE FOURTH JUDICIAL DISTRICT COURT
FOR THE STATE OF UTAH
150 N. 100 W., PROVO, UTAH 84601

=====

WALTER SEMIDEY, ANGEL SANTIAGO,	*	
HUMBERTO BARDALES, and ROSA	*	AFFIDAVIT OF MAIRA
MAZARIEGOS,	*	BARDALES
	*	
Plaintiffs,	*	
vs.	*	
	*	
DOT ADVENTURES, INC., et. al.	*	Civ. No. 930400503 PI
	*	Judge Boyd L. Park
	*	
Defendants.	*	
	*	

=====

COUNTY OF UTAH)
)ss
STATE OF UTAH)

VIENE Maira Bardales, y dice lo siguiente:

Yo soy la esposa de Humberto Bardales, quejante en el caso arriba titulado. Nos casamos el seis de Abril de 1990. En la temporada importante por fines de este queja, habiamos estado casados unos dos anos. Humberto empezo a trabajar en los sellos el primero de Agosto. Desde el principio, habia un cambio marcado en su comportamiento. Antes, era una persona feliz, calmado, tranquilo. Despues de trabajar alli, llegaba muy enojado a la casa. Al principio, no me queria decir lo porque. Despues me empezo a contar del tratamiento que recibia en la

compania. El empezo a buscar otro trabajo, e incluso, fue a Job Service unos veces, pero no encontro nada.

El dia de la revision me conto al llegar en casa. Pude ver que fue una experiencia humillante para el. Le sentio pena y verguenza decirmelo. Despues de eso el paso una temporada de unos quince dias muy deprimido y con mucho rabia. Se enojaba conmigo y con nuestra hija diariamente. Cuando dejo de trabajar en los sellos, tardo un tiempo un reestablecerle completamente como antes. Aun asi, empezo a mejorar su aspecto emocional desde el dia en que salio de ese empresa.

DATED this 31 day of 10, 1994.

Maira Bardales
MAIRA BARDALES

In the County of Utah, State of Utah, on this 31 day of OCTOBER, 1994, before me the undersigned notary, personally appeared MAIRA MARLENY BONILLA, "who is personally know to me" or "who proved to me his/her identity through documentary evidence in the form of UTAH IDENTIFICATION CARD # 151954685 to be the person who signed the preceding document in my presence and who swore or affirmed to me that the signature is voluntary and the document truthful.

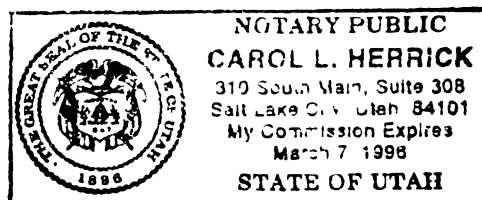
Carol L Herrick
Notary Public

Residing at:

Payson Utah

My commission expires:

3-7-96



LAW OFFICES OF LINDA Q. JONES
LINDA Q. JONES, #5732
MARTI L. JONES, #5733
Attorneys for Plaintiffs
40 South 100 West, Suite 303
Provo, Utah 84604
Telephone: (801) 373-0276

=====

IN THE FOURTH JUDICIAL DISTRICT COURT
FOR THE STATE OF UTAH
150 N. 100 W., PROVO, UTAH 84601

=====

WALTER SEMIDEY, ANGEL SANTIAGO,	*	TRANSLATION
HUMBERTO BARDALES, and ROSA	*	AFFIDAVIT OF MAIRA
MAZARIEGOS,	*	BARDALES
	*	
Plaintiffs,	*	
vs.	*	
	*	
DOT ADVENTURES, INC., et. al.	*	Civ. No. 930400503 PI
	*	Judge Boyd L. Park
	*	
Defendants.	*	
	*	

=====

COUNTY OF UTAH)
)ss
STATE OF UTAH)

COMES Maira Bardales, and states the following:

I am the wife of Humberto Bardales, plaintiff in the above titled case. We were married the sixth of April of 1990. In the time period important for the ends of this complaint, we had been married some two years. Humberto began to work in the stamps the first of August. From the beginning, there was a noticable change in his behavior. Before, he was a happy, calm, tranquil person. After working there, he would arrive home angry. In the beginning, he did not want to tell me why. Later he began to tell me of the treatment that he received in the company. He

began to look for other work, and even went to Job Service a couple of times, but he didn't find anything.

The day of the search he told me about it when he got home. I could see that it had been a humiliating experience for him. He was pained and embarrassed to tell me about it. After this he was very depressed and angry for some fifteen days. He would get angry with me and with our daughter on a daily basis. When he stopped working in the stamps, it took a while for him to reestablish himself completely like before. But even then, his emotions began to get better from the day that he stopped working in that company.

Tab 13

95 FEB 24 AM 11:19

This matter came before the Honorable Boyd L. Park, Judge presiding, for hearing on, February 10, 1995, in regard to Defendant's Motion for Summary Judgment. Attending were Marti L. Jones, counsel for the Plaintiffs, and Jeanette Lynton, President of DOT Adventures, Inc., and her counsel, Loren D. Martin. Having reviewed the pleadings and heard argument, the Court Orders the following:

1. The Court grants Plaintiff until March 13, 1995, to show any basis they may have as to why this matter should continue, and that full Summary Judgment as requested by Defendant's should not be granted as to all remaining alleged causes of action. As a minimum, Plaintiff shall provide the following:

a) a list of witnesses for trial and a proffer as to what each witness will say, including the specifics as to what they will say about their damages, along with supporting corroboration or expert witnesses, if any;

b) any tangible evidence that would support Plaintiff's claim for damages; and

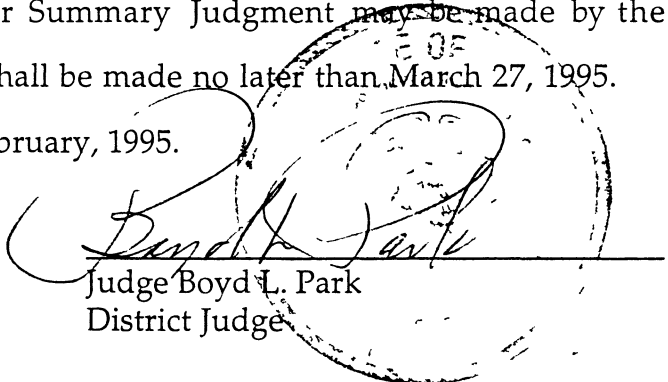
c) any appropriate testimony to be presented at trial.

All documents which Plaintiffs may wish to file with the Court for further consideration shall be received and filed on or before close of business on March 13, 1995.

2. Defendant shall have until March 27, 1995, to reply.

3. If any party feels further oral argument is needed, the respective party shall make such request. If no further hearing is requested, a decision regarding Defendant's Motion for Summary Judgment may be made by the Court. Any request for hearing shall be made no later than March 27, 1995.

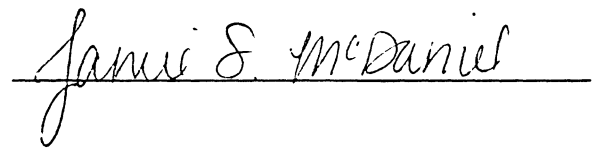
DATED this ²⁴15th day of February, 1995.


Judge Boyd L. Park
District Judge

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing ORDER REGARDING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT, was mailed, postage fully prepaid, on the 15th day of February, 1995 to the following:

Law Offices of Linda Q. Jones
Linda Q. Jones,
Marti L. Jones
40 South 100 West, Suite 303
Provo, Utah 84604

A handwritten signature in cursive script, reading "Jami E. McDaniel", is written over a horizontal line.

Tab 14

FILED
Fourth Judicial District Court
of Utah County, State of Utah
CARMA B. SMITH, Clerk
3-13-99 Deputy
BM

LAW OFFICES OF LINDA Q. JONES
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IN THE FOURTH JUDICIAL DISTRICT COURT
UTAH COUNTY, STATE OF UTAH

=====

WALTER SEMIDEY, ANGEL SANTIAGO,	*	PLAINTIFFS' SECOND
HUMBERTO BARDALES, and ROSA	*	OBJECTION TO DEFENDANTS'
MAZAREIGOS,	*	MOTION FOR SUMMARY
	*	JUDGMENT
Plaintiffs,	*	
	*	
vs.	*	Civ. No. 930400503
	*	
JEANETTE R. LYNTON, et., al.	*	Judge Boyd L. Park
	*	

=====

COME the Plaintiffs, by and through their attorney of
record, and hereby submit the following Second Objection to
Defendants' Motion for Summary Judgment.

INTRODUCTION

This Memorandum is filed in accordance with the Court's
Order to provide proof of damages, argument in support of why
Plaintiff's affidavits and those of the relatives should be
allowed as evidence, given that their depositions have been
taken, a list of additional proposed witnesses, with a synopsis
of their proposed testimony, and any additional evidence and
arguments as to why Defendants' motion for Summary Judgment
should not be granted. The evidence of damages will be referred
to in the body of this Memorandum, and will be attached in

Appendix A. The required list of proposed witnesses and their proposed testimony will be attached as Appendix B. This leaves two issues to be addressed in the body of this memo: The initial question of why Plaintiffs' affidavits should be considered as evidence, and the second issue of additional evidence and arguments against Defendants' Motion for Summary Judgment.

ARGUMENT

Issue 1: Plaintiffs' Affidavits

Plaintiffs' Affidavits are legally admissible evidence in a Summary Judgment proceeding. Utah Rule of Civil Procedure 56(b), (c). Where depositions have been taken, affidavits will not be allowed to dispute previous testimony. In additions depositions given under oath and with the possibility of cross-examination, are generally given more evidentiary weight than affidavits. However, where the affidavits discuss areas and issues not discussed in the depositions, or discuss those issues in more depth or detail than was sought or permitted in the depositions, the evidence offered by the affidavits must be considered in that light. This is precisely the reason why, in considering this Motion for Summary Judgment, the Plaintiffs' Affidavits **must** be considered in addition to their depositions.

As a discovery tool, depositions can be used in many ways. A party may chose to use depositions to elicit the opposing party's strongest case. Or depositions may be used as a forum

for discovering other information. Depending upon how they are used, depositions may or may not be the equivalent of testimony at trial. Generally, however, there are significant differences, not the least of which is that the deposing party, in this case the opposing party, is in charge of direct questioning. A Plaintiff, or for that matter, a Defendant, is under no duty to present their own case when they are being deposed by an opposing party. Neither is a Plaintiff required to know or fully understand the legal theories involved in bringing a lawsuit. That, presumably is why they hire attorneys. In this case, the Plaintiffs' causes of action, for Assault, Battery, False Imprisonment, Wrongful Detention, and various claims for Invasion of Privacy, were set forth in some detail in their Verified Complaint. In response to Plaintiffs' Complaint, Defendants filed an Answer, denying that "the intent to cause and offensive contact [was sufficient to] qualify for the intentional tort of Assault and/or Battery," and claiming a number of inapplicable statutory defenses, including the statute privileging a reasonable detention in a shoplifting situation. Defendants' next course of action was to schedule the Plaintiffs' depositions. Each Plaintiff's deposition took between three and five hours. However, the transcripts are comparatively short, slightly more than fifty pages each. Of those pages, approximately sixteen pages of Mr. Semiday's deposition (pp. 33-

45; 60-62;) was directed at discovering the factual basis for the causes of action. Even more notable is the fact that not one question was asked about Mr. Semiday's individual cause of action for breach of privacy in his employment interview. Mr. Santiago's deposition slightly more relevant material, approximately twenty six pages, (pp.22-25; 29-40; 45-47; 49-55) but this is still less than half of the deposition. Mr. Bardales' deposition contains still more relevant information, this time approximately thirty pages. But even these estimates are broad, and include several questions regarding the legal nature of the Plaintiffs' case, questions which the Plaintiffs did not and do not have the knowledge to answer. Of the four depositions, Ms. Mazariegos' contains the highest percentage of relevant material. However, Ms. Mazariegos' deposition also contains the highest number of errors in translation--of the fifty-six total pages, thirty eight, or more than 62%, have significant errors in translation, frequently several errors to a page. The errors and omissions in the translations materially change the detail and accuracy of the information imparted in her deposition.

By law, the subject of any deposition has the substantive right to review the transcript for error. Utah Rule of Civil Procedure 30(e). However, in this case, given the limitations on the Plaintiffs' competence in the English language, this

substantive right is rendered illusory. One way to remedy this problem would be to require a transcript of the Spanish testimony. That way, the Plaintiffs could review the transcript in a language in which they were literate. For obvious reasons, this solution is practically unworkable. To date, the courts have established no solution to this problem. In this case the Plaintiffs' attorney was one of the few people with the bilingual abilities necessary to review the video taped records and make the necessary corrections to the English language transcript. Therefore, that review was done, in order to correct the transcript. On July 17 1994 Plaintiffs' attorney filed lists of the requested corrections to each deposition, based on her understanding that such corrections in translation would be allowed. The Defendants objected to those corrections, on the basis that the Plaintiffs did not personally review the deposition transcripts and determine the errors for themselves. Defendants have, to date, made no claim that the corrections were inaccurate, merely that they were made by the attorney, not the deponent. Again, the rules of civil procedure require that the witness be allowed to correct the transcript. That right is, in the present case, illusory without some variation in the procedure. Therefore, so long as Defendants object to those corrections, Plaintiffs' will be forced to object to any use of the mistranslated portions of the transcripts.

Plaintiffs are willing to stipulate to the accuracy of the depositions, if the corrections are accepted as indicated. Without those corrections, however, Plaintiffs will maintain their objections to the depositions. Even if the corrections are made as asked for, however, this Court should actively consider the affidavits Plaintiffs submitted in support of their Objection to Defendants' Motion for Summary Judgment. This is so because of the limited questioning regarding the facts and substantial confusion created on several occasions by the defense attorney's questions and the translation process. By analogy, the syntactically confuse and mistranslated deposition testimony may be an accurate picture of what the cross-examination might look like, while the affidavits present a more accurate picture of what Plaintiffs' direct testimony will be.

Therefore, because the depositions as transcribed are inaccurate and because they contain limited testimony regarding the actual issues of the case, Plaintiffs' Affidavits should be actively considered as supplemental testimony in determining whether or not to grant Defendants' Motion for Summary Judgment. Again, the only substantive legal basis for not accepting the Affidavits as evidence in support of Plaintiffs' claims would be a claim that the Affidavits materially contradict the deposition testimony. No such claim has been raised, and therefore the

affidavits must be considered as evidentiary support for Plaintiffs' Objection to Defendants' Motion for Summary Judgment.

Issue II: Additional Considerations

Plaintiffs have alleged nine specific causes of action in their complaint. Five of those causes of action are intentional torts. Three of the causes of action are for invasions of privacy. For each of these eight causes of action Plaintiffs have established a prima facie case, by their own testimony and that of others. In each case, that prima facie case presents issues of disputed material fact that can only be decided by a jury by a trial on the merits.

Wrongful Detention. Plaintiffs' first cause of action is for Wrongful Detention. Wrongful detention is a civil cause of action, based on the crime of unlawful detention. The elements of wrongful detention are a **knowing, unlawful, restraint of a person that interferes substantially with his liberty.**

Plaintiffs have stated, in their Verified Complaint, Depositions, and Affidavits, that the Defendant Miguelangel stated prior to beginning the search that what he was doing was illegal. (Semiday Deposition, pp. 41; 44; Bardales Deposition, p. 23; Affidavits of Semiday and Bardales). That statement indicates knowledge of illegality, a presumably knowledge of the offensiveness of the act--given that society had declared it illegal, it may presumably be considered highly offensive to reasonable people.

The fact that wrongful detention is also a crime provides the element of unlawfulness. Finally, Plaintiffs have also testified that they were compelled to remain in the cafeteria area of the plant where they worked until they submitted to entering a bathroom with a supervisor to be physically searched. (Bardales deposition, p.23; Affidavit of Mazariegos;). Until everyone ~~in~~ the plant had submitted they were not allowed to return to their normal work positions. Defendants have argued that this was not substantial interference with liberty because Plaintiffs could have walked out of the plant. However, wrongful detention does not require that there be no avenue of escape. In Orem City v. Fillmore, (Case # 93 10 0350), a Utah Fourth Circuit case involving the crime of Unlawful Detention, the Defendant prevented someone else from backing out of a parking space by intentionally placing his car behind the parked car. Even though the individual in the car was in no way prevented from getting out and walking away, the Defendant was convicted of this crime on June 7, 1993.

The defense has also argued that one cannot create a civil cause of action from a crime. This is simply not true. Criminal law protects the interests of the society at large.¹ As a

¹ See, for example, Privacy in the Workplace, Jon D. Bible and Darien A. McWhirter, pp. 4-8 (Quorum Books, Westport Conn.) 1990; The American Law of Torts, Stuart M. Speiser, Charles F. Krause, and Alfred W. Gans. (Clark, Boardman, Callaghan, New York) 1991, §26:3.

result, the standard of proof in a criminal case is always higher than that of a civil case. However, criminal cases are brought on behalf of the state, not the individual, and the money damages available in a civil case are not available in criminal cases.Id. Therefore, as a matter of public policy, the existence of a crime, particularly an intentional crime, presupposes a parallel civil cause of action for damages caused by the unlawful actions of the defendant(s).

Assault. The elements of a prima facie case for civil assault are **an act, made with the intention to inflict a harmful or offensive contact, that places another in apprehension of an immediate harmful or offensive contact.** Restatement 2d. Torts §21. The interest that is protected by this cause of action is a purely mental interest, and requires no evidence of actual damages.² The Plaintiffs in this case have testified that Defendant Esquivel, acting in his capacity as plant manager, required each of them to submit to a physical search.(Depositions and Affidavits of each Plaintiff). Esquivel stated that the search was illegal.(Semiday Deposition, pp. 41; 44; Bardales Deposition, p. 23; Affidavits of Semiday and Bardales). The fact that he knew the search was illegal is prima facie evidence that he also knew it would cause offensive contact to the plaintiffs.

² The Law of Torts, 2nd ed. Fowler V. Harper, Fleming James, Jr., and Oscar S. Gray. (Little, Brown & Co, Boston) 1986. Interference with the person, § 3.4.

Furthermore, Defendant Esquivel's intent may also be inferred from other circumstances of this case, such as the relationship between the harm he was allegedly preventing, i.e., the stolen twenty dollar bill, and the action he took to remedy the harm. A jury might well find on the facts of this case that Esquivel's primary intent was to give offense to the forty hispanic members of his workforce. For example, the fact that Esquivel apparently made no attempt to limit his questioning to individuals with some proximity or ability to take the twenty dollars, and the fact that no theft would have been provable even if the physical search had found a twenty dollar bill,³ might well be interpreted by a jury as proof positive that Esquivel's only intent was to cause offense. For all of the above reasons, it would be more than reasonable for a jury to find that, when he required the plaintiffs to submit to a physical search, Defendant Esquivel acted intentionally to create in the Plaintiffs and their co-workers the apprehension of an offensive touching. The Plaintiffs have further testified that Esquivel's action had that specific effect, and did indeed place them in apprehension of an immediate offensive touching. (Affidavits of Semiday, Santiago, Bardales).

³ See, for example, Plaintiff Semiday's question regarding how a twenty dollar bill in his wallet could be distinguished from that allegedly stolen. Semiday Deposition, pp. 40-41.

Defendants argue, in counter to this cause of action, that the mere threat of an offensive contact is not sufficient to permit a recovery. This would be a nice theory, except that it is clearly contrary to the law of civil assault.⁴ The case law and the Restatement 2d Torts clearly recognize a cause of action for the right to be free of the apprehension of offensive bodily contact.

Defendants have also raised the affirmative defense of consent, arguing that Plaintiffs have no cause of action for assault because none of them objected to the search, and all of them voluntarily permitted themselves to be searched. The Plaintiffs have specifically disputed this assertion, contending that they did not consent, but rather that they were coerced into submission. The issue of consent is, except in extraordinary cases, an issue for the jury to decide. In this case, the basic facts may be interpreted in more than one way. A jury might find that because none of the Plaintiffs objected they therefore consented--the doctrine of implied consent. However, this same doctrine requires the trier of fact to determine whether the conduct of the Plaintiffs in this case may reasonably be understood as consent. Restatement 2d Torts §892 Furthermore, the trier of fact will also be required to determine whether that implied consent was given under duress. According to §892B of

⁴ See, for contrary definitions: ; See also,

the Restatement, "duress is constraint of another's will by which he is compelled to give consent when he is not in reality willing to do so." In determining the existence of duress, the Restatement requires that the age, sex, mental capacity, relation of the parties and any antecedent circumstances be considered. Therefore, it would be quite reasonable for a jury to find that, given the power of Defendant Esquivel to fire the Plaintiffs at will, given their limited job skills and the limited alternative jobs available to them, given Esquivel's previous implicit threats against any who might be illegal aliens, and given Esquivel's explicit statement that whoever did object was presumably the thief, (Mazariego Affidavit)⁵ no reasonable person could interpret the Plaintiffs' submission to be searched as an express or implied consent sufficient to privilege the Defendants' actions. Because the facts are susceptible of more than one interpretation, the issue of consent must, by consistent court rulings, be determined by the jury. Because consent is an absolute defense to all of the causes of action alleged in this complaint, this discussion is applicable to each of the remaining causes of action.

⁵ This is also in her deposition, as properly translated.

Battery. The elements of a civil cause of action for battery applicable to this case⁶ are the intentional infliction of a harmful or offensive contact to the person of another.⁷ These elements have been alleged in at least two of the searches. The physical search of Rosa Mazariegos was full of offensive contacts, from the hands run around her midriff to the pencil that was used to poke through her hair. (Mazariegos Deposition, Affidavit). Given, as has already been shown, that Esquivel clearly intended, at a minimum, an illegal and presumably offensive contact, all of the elements of a Battery are present. This is also true in the case of Mr. Semiday, where the individual conducting the search removed Mr. Semiday's shoes and socks, although the element of offensive touching is not as pervasive as it is in the case of Ms. Mazariegos. (Semiday Deposition, p. 41)

As discussed above, consent is an absolute defense to a claim for battery, and thus the issue of whether Plaintiffs

⁶ In order to simplify the issues, I have deliberately avoided the complicated phrasing of the hornbooks, intended to include cases of transferred intent or intent merely to cause apprehension, but not actual harm. It does not appear to me that these additional elements contribute anything to the present discussion, therefore I have avoided them where possible.

⁷ See, for example, Restatement 2d. Torts §18; Handbook on the Law of Torts 5th Ed., William Prosser and Paige Keeton, West Publishing Co. 1988, pp. 39, §9.

consented to the battery or were coerced is an issue of fact for the jury.

False Imprisonment. The applicable elements of the tort of False Imprisonment are an action, intended to confine another within boundaries fixed by the actor, a resulting confinement, and a conscious awareness of the confinement. Restatement 2d, Torts, §35. A confinement results, according to the Restatement, where there is no reasonable means of escape. Id. §36. According to the Restatement, it is unreasonable for someone to refuse to utilize a means of escape of which he is himself aware where it only entails a slight inconvenience or the minor risk of nominal liability. However, escape is not required, even where the means exist, "if the circumstances are such as to make it offensive to a reasonable sense of decency or personal dignity." Id. In the first place, in this case, any individual worker who sought to escape would have had to walk a distance of some thirty feet from the cafeteria area to the door. Given the distance, it was impossible to tell whether the door had been locked, and whether escape was a real, or merely illusory possibility. Furthermore, escape or attempted escape in the circumstances of this case would, in all probability, have entailed a loss of employment, defamation, and possibly deportation, given Defendant Esquivel's previous threats. Granted, under Utah law, the individual would have had a cause of action for wrongful termination in violation

of public policy.⁸ The question presented by this remedy, however, is the question of whether the individual falsely imprisoned under these circumstances is required to object and suffer the consequences before being able to obtain redress. Is it reasonable to require that this means of escape be utilized before a cause of action may be stated? Or is it more reasonable to determine that the Plaintiffs were effectively confined to the cafeteria area by Mr. Esquivel's combined threats and behavior, and that no reasonable means of escape existed? Because reasonable men could differ on this question, and because the parties to this case do differ on this issue, this is another issue that must be determined by the trier of fact.

Intentional Infliction of Emotional Distress. This is, according to the Restatement, a comparatively new tort action. However, it is one that the Utah courts have expressly recognized.⁹ The elements of this cause of action have been

⁸ See, for example, Berube v. Fasion Place Mall, where it was held that forcing an employee to consent to a polygraph might raise such a cause of action.

⁹ See, for example, Matter of Estate of Grimm, 784 P.2d 1238, (Utah App. 1989) Utah Court of Appeals held that evidence was sufficient to present a jury question as to whether Defendants were liable for intentional infliction of emotional distress; Pentecost v. Harward, 699 P.2d 696 (Utah 1985), In reversing the lower court's grant of Summary Judgment to the defendant, the Utah Supreme Court held that material issues of fact existed as to whether a the self help actions of a landlord's agent raised a claim for intentional infliction of emotional distress.

stated by the Utah Supreme Court as **the intentional causing of severe emotional distress through extreme and outrageous conduct.** Pentecost, supra note 6, at 700. This definition was set forth in a case with facts quite analogous to those of the instant case. In Pentecost, a landlord's agent resorted to self help, rather than legal process, in evicting the Plaintiff and her children and seizing their personal belongings, allegedly as compensation for non-payment of rent. As in the present case, the agent's self-help remedies were illegal. The Plaintiff also alleged that the actions taken by the agent were intentional and malicious. While the Plaintiffs in the present case have not specifically alleged that Mr. Esquivel's actions were malicious, the facts they have alleged, including a demonstrated pattern of hiring almost exclusively hispanic individuals with limited English capability, (arguably a substantially more vulnerable population than the average white anglo-saxon); the ongoing verbal harrassment and accusations; the complete lack of probable cause for the search; and the complete lack of probability that the search would do anything except offend and demoralize a vulnerable population, could well support a finding of deliberate, malicious intent to debase and demean the Plaintiffs and the other workers. Because reasonable men could differ on the outrageousness of the Defendants' actions, in compelling nearly forty hispanic immigrant workers, legal and illegal, to

submit to a fruitless and baseless search of their persons and property, this is yet another factual issue which must be determined by a jury.

Invasion of Privacy. The causes of action alleged by the Plaintiffs all involve the specific area of privacy labelled intrusion into private affairs. The Restatement 2d Torts §652B defines the specific elements of the tort of Intrusion upon Seclusion as the **intentional intrusion, physically or otherwise, upon the solitude or seclusion of another or his private affairs or concerns, where the intrusion would be highly offensive to a reasonable person.** In this case, the Plaintiffs have alleged that Defendants' search of their coats, bags, wallets, purses, and lunch sacks were all invasive intrusions in their personal belongings--belongings wherein the Plaintiffs had a legitimate expectation of privacy. A search of an individual's wallet is, in fact, one of the specific examples cited in this section of the Restatement. The search of an individual's purse, coat pockets, pants pockets, and lunch sack are parallel invasions of personal items and personal privacy. Again, a jury might find that the Plaintiffs' alleged consent will bar recovery on this cause of action. On the other hand, a jury might also find that the broad based, coercive nature of the search, without reasonable cause, raises the level of offensiveness of the invasion and would permit a recovery on this cause of action.

The invasion of physical privacy occasioned by the illegal search, and the invasion of the psychological privacy of Mr. Semiday when he was required to show his temple recommend, are equally offensive invasions of areas of restricted personal interest. It is also important, in determining the offensiveness of this request, to note that the fact that an LDS church member does or does not have a temple recommend is indicative of even more personal, intensely private facts, than the simple question may indicate. An answer to that question provides an employer with information regarding sexual habits, smoking and drinking habits, the individual's financial affairs, and involvement with the LDS Church. A reasonable person may consider any or all of this question deeply private and personal. More than one court has specifically held that the invasion of privacy claim is specifically a claim for injury to emotions and mental suffering. See, for example, Froelick v. Adair, 213 Kan. 357, 516 P.2d 993, 995. For more specific details regarding these violations, and the express issues of public policy that prohibit such violations, see Privacy in the Workplace, supra, n.1, pp.64-66, and 83. This volume also has an entire chapter devoted to the legality of workplace searches of employee's persons and property. The authors reach the conclusion, at the end of this chapter, that "the legality of a search hinges essentially on the manner, scope, justification and location of it. Searches of


people attract greater judicial scrutiny than inspections of places, given the higher level of intrusiveness involved. . . . the central issue usually boils down to whether the employee had a reasonable expectation of privacy in the area in question." Id. p.169. Again, it is the Plaintiffs' position that they had a reasonable expectation of privacy regarding their wallets, their purses, the pockets of their clothing, and the personal possessions, including lunch bags, which they brought to work. The search in this case is not comparable to a locker or desk search. The Plaintiffs were told that they were going to be physically searched, along with their belongings. Although the level of actual intrusion then depended upon the supervisor doing the searching, the fact that some were forced to submit to more invasive searches does not obviate the fact that the privacy interests of each Plaintiff, in his or her person and property, were invaded.

CONCLUSION

The Defendants' Motion for Summary Judgment on all counts must be denied. For each cause of action, there are facts in evidence at this time that would support differing perspectives on whether the Plaintiffs' protected interests, in freedom from apprehension of an offensive touching, freedom from an offensive touching, freedom from false imprisonment and wrongful detention and freedom from invasions of privacy, had been violated.

Plaintiffs have attached, as stated previously, the reports of two psychologists. One report deals specifically with the harm caused to the Plaintiffs in this case, the other report deals with the nature of the psychological damages, and how they are comparable to the psychological damages caused by sexual harrassment and other forms of abusive conduct. These reports, coupled with the Affidavits and the unchallenged portions of the depositions, as well as the Affidavits of the Plaintiffs' family members, give substantial support to the Plaintiffs' contention that they each suffered psychological distress, depression, embarrassment and humiliation due to the forced search. These affidavits also support a finding that Ms. Mazariegos suffered severe psychological distress, sufficient to upset her menstrual cycle, causing continual bleeding, and cause severe migraine headaches. For all of the above reasons, therefore, Plaintiffs respectfully request that this court deny Defendants' Motion for Summary Judgment.

DATED this 13th day of March, 1995.


MARTI L. JONES
ATTORNEY FOR PLAINTIFFS

APPENDIX A

CONFIDENTIAL PSYCHOLOGICAL EVALUATION OF JOSE
HUMBERTO BARDALES; ROSA D. MAZARIEGOS; ANGEL
M. SANTIAGO AND WALTER SEMIDAY. EVALUATION
DONE BY JUAN A. MEJIA, PH.D.

AFFIDAVIT OF LINDA GUMMOW, PH.D.

Juan A. Mejia, Ph.D.

Licensed Clinical Psychologist

136 East South Temple, Suite 2200
Salt Lake City, Utah 84111-1121
(801) 328-4500
FAX (801) 328-4565

CONFIDENTIAL PSYCHOLOGICAL EVALUATION

Clients: Jose Humberto Bardales
Rosa D. Mazariegos
Angel M. Santiago
Walter Semidey
Dates of evaluation: February 18 & 19, 1995
Date of report: March 10, 1995
Evaluator: Juan A. Mejia, Ph.D.
Referred by: Marti L. Jones, Attorney
Method of evaluation: Clinical interviews; Minnesota Multiphasic
Personality Inventory (MMPI); Incomplete
Sentences Blank; and Projective Drawings.

Mr. Bardales, Ms. Mazariegos, Mr. Santiago, and Mr. Semidey were referred by their attorney, Ms. Jones, for a psychological evaluation in connection to their lawsuit against DOT Adventures Inc., being heard at the Fourth Judicial District Court by Judge Boyd L. Park. Specifically, Ms. Jones was interested in an assessment of emotional damage to the plaintiffs, if any, in connection to events in this case. Available in preparing this report were affidavits by all four plaintiffs in this case as well as affidavits by some of their family members.

The first time I saw the plaintiffs, on February 18, 1995, I explained to Mr. Bardales, Ms. Mazariegos, Mr. Santiago, and Mr. Semidey the nature and purpose of the evaluation I was conducting of them. I further explained that I would be rendering my opinions in a report that would be sent to their attorney, Ms. Jones, but that the judge and defendants in their case would have likely access to this report. As such, I explained that the information that they discussed with me was not confidential. They all appeared to understand these principles of confidentiality, and we proceeded with the evaluation.

Since Spanish is the primary language for all four plaintiffs, all testing and interviewing was conducted in Spanish. Although they came together, they were interviewed and tested individually.

The four plaintiffs worked at DOT Adventures Inc. According to the information they provided in this evaluation and in their affidavits, they were subjected to frequent talks by the manager, Mr. Esquivel, in which he made insulting comments to the workers, calling them "thieves" and "lazy," and talking about their paying tithing to the LDS Church. A major event occurred in December 1992 reportedly when somebody lost a 20 dollar bill, and Mr. Esquivel had everybody searched after allegedly letting non-Hispanic workers go. Also, the three male plaintiffs were involved in an incident a few days later in which they complained about being shortchanged in their paychecks for overtime pay that they had accrued, but was not included in their paychecks. Mr. Esquivel reportedly was very upset about their demands, but paid them as he reportedly had originally offered.

JOSE HUMBERTO BAPDALES

Mr. Bardales is a 26 year, 4 month old married Hispanic male. He is a polite young man who came nicely dressed. He wears his hair very short, as if he had shaved his head recently. He looks younger than his chronological age.

Mr. Bardales was born on October 26, 1968, in Puerto Cortez, a small coastal town in Honduras. He is the second of 11 siblings. His parents divorced when he was four. He was raised by his mother, who remarried when he was 11. He described his father as 'very quiet, gentle' and reported a good relationship with him, with frequent contact after the divorce. He described his mother as "very compassionate and helpful." He reported a good relationship with his stepfather, whom he described as "a good man." He reported good relationships with his siblings.

Mr. Bardales graduated from high school in 1985 in Honduras. He described himself as a good student who typically obtained grades ranging from 85% to 95% in the grading system. After high school, he obtained a certificate in Electricity and Mechanics from a technical institute in Honduras.

Mr. Bardales is currently attending English as a Second Language classes which he said are helpful. He reported adequate English language skills, with better receptive abilities than expressive abilities.

At 19, Mr. Bardales served an LDS mission in Tegucigalpa which he regarded as a good experience. At 22, he married a 21 year old woman. They have a three year old daughter. They emigrated to the United States in 1991.

Besides his work at DOTS, Mr. Bardales has worked at a lumberyard, Deseret Industries, and a frozen food production facility. He described himself as a very good worker.

Mr. Bardales reported being in good health. He denied ever using alcohol or illegal drugs.

Mr. Bardales reported always having had "a positive attitude" towards life. He has "many" friends whom he sees frequently. However, most of his time is spent at home, with his family.

Mr. Bardales indicated that he was humiliated by the frequent talks. He was especially humiliated when he was searched for the 20 dollar bill. He said that the male supervisor who searched him checked his billfold and the pockets in his clothing and coat.

He complained about being shortchanged in pay some days later. He is convinced that he was then terminated because he complained.

Mr. Bardales indicated that the emotional trauma that he experienced at that time was exacerbated because it happened around

Christmas. He said that at the time he was very nervous, depressed, irritable, and suspicious of others. He said that he continues to have some suspiciousness of others, especially in the workplace. He said that he "forced himself" to overcome his negative feelings because he felt that they were impacting his relationship with his wife and young daughter. The affidavit from his wife corroborated his report of depressive and anxiety symptomatology. From their descriptions, it appeared that he was acutely depressed and anxious for about three months after this incident.

ROSA D. MAZARIEGOS

Ms. Mazariegos is a 51 year, 4 month old divorced Hispanic female. She appeared very upset about the circumstances around this case, often talking about them as if they had just occurred. She also came across as a person with strong religious beliefs; she often mentioned the LDS Church as a source of emotional support.

Ms. Mazariegos was born on November 12, 1943, in Ciudad del Anima, Honduras. She is the third of five siblings. Her father was a security guard, and her mother was a housewife. She described her father as "a very patient gentleman, without vices," and her mother as "very religious, a beautiful mother." She reported good relationships among family members.

Ms. Mazariegos completed six years of formal education in Honduras, reportedly two years short of the requirements for a high school diploma in Honduras. She described herself as a good student. She said that she had to discontinue her education due to poverty. In Honduras, secondary education is not free and her parents were unable to pay her tuition.

Ms. Mazariegos reported minimal English language skills. She has recently began attending English as a Second Language classes. She reported minimal English language skills.

At 19, Ms. Mazariegos married a 19 year old man. They have five children who are now 32, 28, 26, 19, and 18. They separated after 15 years because of his drinking. She obtained a divorce one year ago. She said that she never remarried because she did not want her daughters to grow up with a stepfather.

In 1986, Ms. Mazariegos came to this country with her two youngest daughters; her eldest daughter already lived here. Since then, her sisters have joined her in this country. Currently, she is living with two of her sisters and her youngest daughter. She said her goals in life are to "find her companion to be sealed in the Temple" and "to go preach the Gospel;" she expects to achieve these goals after her youngest daughter marries.

Besides her work at DOTS, Ms. Mazariegos has worked in the fields, caring for children, at Deseret Industries, and as a seamstress. She described herself as a good worker.

Ms. Mazariegos reported being in good health. She denied ever using alcohol or illegal drugs.

Ms. Mazariegos said that she is happy with her life, in spite of the stress involved in having to raise her daughters on her own. She reported occasional sleep disturbance due to her concern over her daughters' welfare. She has four good friends whom she sees weekly. Her leisure activities include reading and dancing.

Ms. Mazariegos was traumatized not only by the events that the other plaintiffs related, but also because she reportedly was forced to clean dog droppings from a carpet at an office. She said that Mr. Esquivel brought a dog to work, and made a different Hispanic female worker clean after the dog relieved himself on the carpet and also wash the dog. She is convinced that he was well aware that these requests were humiliating to the women.

When Ms. Mazariegos was searched for the 20 dollar bill, the female supervisor reportedly made her undo her pants and bra, pull her blouse out of her pants, take off her shoes and socks, and roll up her pants above her knees. After feeling various parts of her body, the supervisor ran a pencil through Ms. Mazariegos' hair. Ms. Mazariegos said that she was devastated by this experience. She reported post traumatic stress-like symptomatology immediately after the search, including stress induced menstrual flow, sleep disturbance, and appetite disturbance. A few days later, when she went to talk to Mr. Esquivel about what had happened, "as a fellow Mormon," she reportedly was fired from the job. Ms. Mazariegos said that she knew Mr. Esquivel previous to working at the stamp factory because they had attended the same LDS chapel. Thus, in addition to the reported emotional trauma inflicted by Mr. Esquivel through his harangues and the search, she was further distressed and disappointed because it was being perpetrated by someone who shares her LDS faith.

From Ms. Mazariegos' report as well as from the reports contained in her sisters' affidavits, Ms. Mazariegos was quite depressed and anxious while working at the stamp factory. Also, she appeared to continue to exhibit depressive and anxiety symptomatology for about three months after these events.

ANGEL M. SANTIAGO

Mr. Santiago is a 42 year old Hispanic male. He came casually dressed. He came across as being characteristically reserved, although he appeared to be very open in this evaluation.

Mr. Santiago was born on February 14, 1953, in Ponce, an urban center in Puerto Rico. He is the third of seven siblings. He described his father as "a very passive man, to the point that my mother lost her patience with him often." He described his mother as a "hard working, strict" woman. He reported good relationships among family members.

Mr. Santiago completed high school in Puerto Rico. He described himself as a good student, with grades from A to C. After high school, he received training as a plumber.

Mr. Santiago reported little oral English language abilities and no written English language skills. He has received some English as a Second Language instruction, but with limited benefit.

At 25, Mr. Santiago married an 18 year old woman. They have three children who are now 14, 13, and 10. They divorced after 13 years of marriage. After the divorce, he decided to come to the U. S. mainland looking for 'something different, a change;' his two sons came with him, and his daughter remained with his ex-wife. At 40, he married a 23 year old Caucasian American woman. This marriage lasted only six months. According to him, his second wife was unable to get along with his children and insisted that he send them to Puerto Rico; he opted for a divorce. He is currently seeing a woman in her 30s, with whom he reported a good relationship.

In Puerto Rico, he worked as a plumber, but he has quit this occupation because he found out that he did not like to do it. In Utah, besides the work at DOTS, he has worked as a machine operator and as a janitor. Mr. Santiago described himself as a good worker.

Mr. Santiago reported being in good health. He denied ever using alcohol or illegal drugs.

Mr. Santiago said that he is happy with his life, in spite of the stress involved in raising his two sons as a single father. He reported occasional sleep disturbance, due to his concern over his children. He said that he has 'many' friends, whom he sees frequently, but most of his time is spent with his children.

When he was searched, the male supervisor made him empty his pockets and checked his billfold. Mr. Santiago was extremely upset about this search, saying that it caused him sleep disturbance, and feelings of insecurity and helplessness. He felt 'trapped' because he was unsure if he could get another job. He was angry because he felt that what Mr. Esquivel had done was illegal and insulting.

Mr. Santiago said that there was talk at DOTS about a few workers who were particularly upset about the search, including the three male plaintiffs. When he was among one of the workers who, a few days later, complained about being shortchanged in their pay, he was promptly terminated. He said that at the time that he was terminated, he was told by his supervisor that he was "rebellious." Mr. Santiago reported depressive and anxiety symptomatology for some months after these events.

WALTER SEMIDEY

Mr. Semidey is a 43 year old Hispanic male. He is a visibly overweight man who came casually dressed. He appeared to be assertive and at times he spoke for the group.

Mr. Semidey was born on March 2, 1953, in Coamo, a small town in Puerto Rico, but grew up in Ponce, an urban center in Puerto Rico. He is the youngest of two siblings. He reported an uneventful childhood with good relationships among family members.

Mr. Semidey graduated from high school in 1971 in Puerto Rico. He described himself as a good student, who typically obtained grades of B and C. After high school, he completed one year of an electronic training program, but discontinued it due to financial difficulties.

Mr. Semidey received English as a Second Language instruction when he first arrived in the U. S. mainland, but discontinued it once he obtained a job. He reported limited expressive skills, but better receptive English language skills.

At 23, Mr. Semidey married a 20 year old woman. They have three children who are now 18, 17, and 15. He reported very good relationships with his wife and children. He came to the U. S. mainland with his family in 1991, seeking better opportunities.

Besides his work at DOTS, Mr. Semidey has worked as a maintenance worker, dishwasher, and assembly worker. He is interested in carpentry. He described himself as a good worker.

Mr. Semidey reported asthma since childhood, for which he uses inhalers. He reported sleep apnea; he sleeps with a machine which ensures that his brain will receive enough oxygen.

Mr. Semidey reported a past pattern of alcohol abuse. He quit drinking in August, 1986, when he converted to the LDS faith.

Mr. Semidey reported a history of past acute depressive episodes. One episode occurred in 1984 when his 57 year old mother and his 35 year old sister died from cancer the same year. His depression was so acute that it included psychotic-like symptoms. The other episode was about five years ago, when he lost a job, causing considerably difficult financial circumstances for him and his family. At that time, his depression was so acute that it included suicide-like ideation. At the time of this evaluation, he was under significant emotional stress due to the recent loss of his job; his wife, who worked at the same place, also lost her job. He is convinced that their terminations were unfairly based on discrimination. He has "three or four" friends, whom he sees frequently, but he said that most of his time is spent with his wife and children.

In talking about the events regarding the 20 dollar bill search, Mr. Semidey was so upset that he talked about these events as if they had occurred a few days ago. During the search itself, Mr. Semidey said that the supervisor made him take his socks and shoes off. He said that he was furious that he was "treated like a thief without being one." He asked the supervisor who was searching him how the stolen 20 dollar bill could be differentiated

from other 20 dollar bills. When his wallet was searched, there was a 20 dollar bill there, but nothing was said to him. Mr. Semidey said that he was emotionally devastated immediately following the search. He reported depressive and anxiety symptomatology for several months following these events, including irritability with his wife and children. His wife's affidavit corroborated that he was irritable and depressed, with symptoms of anhedonia, immediately following these events.

Mr. Semidey was also among the workers who complained about being shortchanged in their pay a few days later. The supervisors acknowledged that the workers were underpaid, and they paid out the appropriate amount following the complaints. Mr. Semidey believes that he was fired because of this complaint. His firing occurred a few days after these events, around Christmas, which made it even more traumatic for him. He said that they told him that he was let go because there was no work, but he said that he worked at a department where there had never been any shortage of work in the previous nine months. He believes that he was identified as one of a group of workers who were particularly upset about the search and being underpaid, and that his firing was in retaliation for it.

RESULTS OF PSYCHOLOGICAL TESTING

A. Intellectual functioning

There is no standardized test of intelligence in English or Spanish with a normative population that adequately represents these four plaintiffs' backgrounds and could thus be used validly with them. In all of their cases, their intelligence is estimated to be in the Average range, with an estimated IQ of at least 100. In all of their cases, their verbal and written performance during this evaluation as well as their reported school history are consistent with this level of estimated intelligence.

B. Personality functioning

Each one of the plaintiffs was administered the Spanish language versions of the MMPI and the Rotter's Incomplete Sentences Blank. Each one also completed the Man/Woman/House/Tree Projective Drawings.

JOSE HUMBERTO BARDALES

Mr. Bardales' obtained MMPI validity profile indicated that he presented a technically questionable set of responses. Given that his cultural background as a Honduran is significantly different to the background of the MMPI normative population, this obtained questionable validity is not unexpected. As it is often seen in the MMPIs of Hispanic clients, the noted tendency was toward minimization of psychopathology.

In spite of his minimization, his obtained MMPI clinical profile was still able to detect clinical problems, most likely

depression and anxiety. There is nothing of clinical significance previous to the traumatic events at DOTS that would predispose them to clinical depression and anxiety. One interpretation of his obtained MMPI clinical profile is that he was acutely depressed and anxious at the time of the search, which has left him vulnerable to depression and anxiety at this time.

His responses to the Incomplete Sentences Blank reflected: strong family orientation; strong religious beliefs; and positivistic attitude. His Projective Drawings reflected extroversion.

ROSA D. MAZARIEGOS

Ms. Mazariegos' MMPI validity profile indicated that she presented a technically questionable set of responses. Given that her cultural background as a Honduran is significantly different to the background of the MMPI normative population, this obtained questionable validity is not unexpected. As it is often seen in the MMPIs of Hispanic clients, the noted tendency was toward minimization of psychopathology.

Her obtained MMPI clinical profile was within normal limits, with no indication of psychopathology. This obtained profile could be due to her tendency toward minimization.

Her responses to the Incomplete Sentences Blank reflected: strong family orientation; strong religious beliefs; desire to meet a marriage mate; ruminations about injustice; and self perception as honest. Her Projective Drawings reflected attention to detail.

ANGEL M. SANTIAGO

Mr. Santiago's obtained MMPI validity profile indicated that he presented a valid set of responses. His obtained MMPI clinical profile was within normal limits, with no indication of psychopathology.

His responses to the Incomplete Sentences Blank reflected: strong family orientation; strong religious beliefs; perception of being discriminated against due to being Hispanic; and self perception as being a bit shy. His Projective Drawings reflected positive thoughts about his girlfriend.

WALTER SEMIDEY

Mr. Semidey's obtained MMPI validity profile indicated that he presented a valid set of responses. His obtained MMPI clinical profile indicated the presence of significant emotional problems, most likely in the context of clinical depression. Given that Mr. Semidey had just lost his job at the time of this evaluation, the presence of clinical depression is not unexpected. Also, his obtained MMPI clinical profile is consistent with his reported previous history of acute depressive episodes, most likely

exacerbated by the traumatic events at DOTS. In other words, he was likely to be vulnerable to depression previous to the events at DOTS, but the considerable emotional trauma that he reportedly suffered there has made him even more vulnerable to depression. He appears to be currently clinically depressed.

His responses to the Incomplete Sentences Blank reflected: strong family orientation; a positivistic attitude toward life; and self perception as unpretentious and friendly. His Projective Drawings reflected extroversion.

SUMMARY AND CONCLUSIONS

There is no question in my mind that all four plaintiffs suffered significant emotional trauma at the time of the events at DOTS. To varying degrees, they all reported symptoms consistent with depression and anxiety, in a pattern similar to post traumatic stress disorder, for about three months following these events. The etiology of their depression and anxiety symptomatology appears to be in the humiliation and harassment as a result of the frequent talks by the manager, the search, and the plaintiffs' terminations. In each case, there were different idiosyncratic factors which exacerbated the emotional damage.

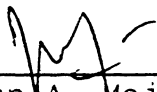
It should be noted that there was no evidence of past or current symptom exaggeration in my interviews with the plaintiffs nor in the results of standardized psychological testing produced by them. To varying degrees, they all attempted to portray themselves as free of psychopathology at this time, but as having been emotionally damaged at the time of the events at DOTS. Their stories, as reflected in their current interviews and past affidavits, were generally consistent with each other and devoid of any apparent inappropriate magnification of symptoms.

Mr. Bardales appears to have become vulnerable to ongoing depression and anxiety following the events at DOTS. He appears to try very hard to have the most positivistic attitude toward life as possible. To some degree, he is happy with his life because of his strong ties to his family and his church, but he currently has minimized signs of depression and anxiety.

Ms. Mazariegos reported the most tangible indicators of emotional trauma. Besides the events connected to the search, she reportedly was made to clean a carpet where a dog had relieved himself. This experience appeared to be very humiliating and upsetting to her. During the search, she appears to have been subjected to the worst humiliation of all the plaintiffs given the more intensive manhandling that she had to endure. The symptoms that she reported experiencing immediately after the search are also indicative of a more prominent manifestation of emotional damage. A significant factor in magnifying the emotional damage to her has to do with her very strong identification as an LDS believer. She was very disappointed by Mr. Esquivel, whom she had initially trusted as someone who strongly shared her LDS beliefs.

Mr. Santiago came across as the most emotionally reserved of all the plaintiffs. His style appears to be to "suffer in silence," with apparent helplessness. Still, he also reported signs of significant depression and anxiety symptomatology at the time of the events at DOTS. He seems to have been left with ongoing feelings that he is likely to be discriminated on the job as a Hispanic.

Mr. Semidey was particularly emotionally vulnerable to being traumatized by the events at DOTS because of previous depressive episodes, including one involving a previous loss of a job. Indeed, he came across as having been significantly emotionally damaged at the time of the events at DOTS, with reports of very prominent manifestations of depression and frustration. Further, he apparently has become even more emotionally vulnerable following the events at DOTS. At the time of this evaluation, he was clinically depressed apparently as a result of his recent loss of a job, with the exacerbating perception that he was terminated due to discrimination.



Juan A. Mejia, Ph.D.
Licensed Psychologist #403



**Conger & Gummow
247 E. 2100 S.
Salt Lake City, UT 84115**

Affadavit of Linda J. Gummow, Ph.D.

1. I am over the age of 21, and I am competent to testify as to all matters set forth herein from my professional knowledge unless otherwise stated.
2. I am a psychologist, and I am certified by the State of Utah to conduct Competency and Guilty and Mentally Ill/ Diminished Capacity evaluations for the State of Utah. In this capacity, I have evaluated many Hispanic defendants. In my private practice in Salt Lake City, Utah, I have evaluated Hispanic patients who were referred by physicians, Workers Compensation, and Vocational Rehabilitation. I am familiar with the psychological literature on the Hispanic population in the United States.
3. On March 13, 1995, I examined the following materials at the request of M. Jones: Psychological Evaluation of Jose Humberto Bardales, Rosa D. Mazariegos, Angel M. Santiago, and Walter Semidey done by Juan A. Mejia, Ph.D. and dated March 10, 1995; English translation of statements of the above named individuals.
4. Based upon my training and experience and the evaluations and statements of the plaintiffs, it is my opinion that the plaintiffs suffered significant emotional injury at their place of employment, DOT Adventures. The plaintiffs were exposed to continual verbal harassment and threats that culminated in a search of all Hispanic workers while non Hispanic workers were allowed to go home. The female plaintiff was subjected to an extensive body search as well as having been asked to do non job related tasks for her supervisor that she considered to be humiliating. All of the workers were fired when they complained of their treatment and the lack of payment of over time wages.
5. Based upon my training and experience, the Hispanic workers found themselves in a situation in which they felt they had to recourse other than submit to a personal search that they felt to be both wrong and degrading. All felt that they would lose needed employment if they protested or that they would be thought to be thieves. It is well known in the professional literature of my field that placing an individual in a situation with inescapable punishment causes severe reactions. Psychologically, the person shows irritability, depression, and anxiety. Behavior away from the work site is affected. If the stress is prolonged.

and severe, as it was in this case, physical manifestations can occur (pain, menstrual dysfunction, exacerbation of illness, etc.)

6. The symptoms of these individuals would be classified as Post Traumatic Stress Disorder, Acute DSM-IV 309.81.

7. Cultural factors related to the Hispanic heritage make it more difficult for Hispanic workers to deal with harassment. First, "Hispanic cultural values encourage positive interpersonal relationships and discourage negative competitive, and assertive interactions-- what we have called the "simpatika" script" (Triandis, Marín, Lisansky & Betancourt, 1984 in Geisinger book). Second, the newer Hispanic citizen, as are these plaintiffs, are more likely to remain isolated from the host culture and to retain the values of the mother culture. Third, Hispanic, particularly recently immigrated Hispanics, find it more difficult to deal with the psychological aspects of both work related and illness related stress. These workers tend to experience psychological stress as physical symptoms (as did these plaintiffs). See DuAlba and Scott (1993). Fourth, due to limited acculturation to the host culture, many Hispanics do not identify with the host culture and do not know how to avail themselves of services or protections (Marks, et al., 1987). This limited knowledge of their rights was a theme repeated by all plaintiffs. Fifth, individuals who believe in their own efficacy or ability to change their situation, do better at coping with a variety of situations including illness. The sense that events are outside of one's control is more common among the Hispanic worker, particularly the Hispanic worker of low socioeconomic status (Ell and Haywood, 1985).

8. Because many Hispanic workers have poor self-efficacy and poor knowledge of resources and options, emotional injury among Hispanic workers is more common among Hispanic workers, and employers of Hispanic workers have a responsibility to be sensitive to the acculturation needs of these individuals (DuAlba and Scott, 1993)

9. I have been informed that the plaintiffs are attempting to file a civil complaint in fourth district court against their former employer in which damages are claimed for the injuries associated with their former employment.

10. The opinions expressed herein are stated to a reasonable degree of medical probability within the field of my expertise.

11. References:

American Psychiatric Association. (1994). Diagnostic and Statistical Manual of Mental Disorders (4th Edition). American Psychiatric Association Press: Washington, D.C., page 424.

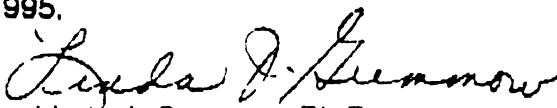
DuAlba, L & Scott, R.L. (1993). Somatization and malingering for worker's compensation applicants: A cross-cultural MMPI study J. Clinical Psychology, 49, 913-917.

Ell, K.O., Haywood, L. J. (1985). Sociocultural factors in MI recovery: An exploratory study. International Journal of Psychiatry In Medicine, 15, 157-175.

Geisinger, K.F. (1992). Psychological Testing of Hispanics. American Psychological Association Press: Washington, D.C.

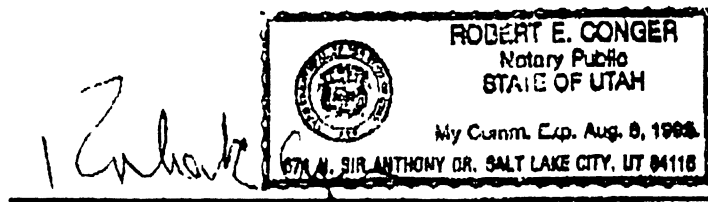
12. Further affiant sayeth not.

Dated this 13th day of March, 1995.


Linda J. Gummow, Ph.D.

State of Utah
County of Salt Lake

Subscribed and sworn to before me by Linda J. Gummow, Ph.D. this 13th day of March, 1995.



My commission expires: 8-96

APPENDIX B

WITNESS LIST

WITNESSES

At this time, Plaintiffs may call any or all of the individuals who have submitted reports and/or affidavits in this case. Thus witnesses may include each of the four Plaintiffs; Expert Witnesses Juan Mejia and Linda Gummow; relatives of the Plaintiffs such as Pastora and Matilda Mazariegos, Diana Semiday, and Maira Bardales. In each case the affidavits and/or reports that have already been submitted contain the basic testimony of the witness. In addition, Plaintiffs plan to call as additional witnesses Rocio Escobar and Jorge Sanchez. These two individuals are Mexican nationals, who worked at the DOTS factory around the time of this incident.

Rocio Escobar will testify that she was subjected to a physical battery of her person, similar if not identical to the battery experienced by Plaintiff Mazariegos.

Jorge Sanchez will testify that on at least one occasion he attempted to discuss the problems caused by Defendant Esquivel's verbal abuse of the work force with the plant owner and DOTS president, Jeanette Lynton.

Finally, Plaintiffs reserve the right to call as witnesses any other individuals employed at the DOTS factory during the time period between August 1992 and January 1993. At the present time the names and addresses of all members of this class of potential witnesses, with the exception of the named Defendants, are unknown. Once those names and addresses are discovered, and the individuals interviewed, where possible, Plaintiffs will supplement this discovery.

APPENDIX C

Copies of the Amended English Translations of
the Affidavits originally submitted in
support of Plaintiffs' Objection to
Defendants' Motion for Summary Judgment.

Tab 15

FILED IN
4TH DISTRICT COURT
STATE OF UTAH
UTAH COUNTY

MAR 23 11 01 AM '95
[Signature]

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Fax (801) 373-0466

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IN THE FOURTH JUDICIAL DISTRICT COURT
UTAH COUNTY, STATE OF UTAH

=====

	*	(AMENDED)
WALTER SEMIDEY, ANGEL SANTIAGO,	*	PLAINTIFFS' SECOND
HUMBERTO BARDALES, and ROSA	*	OBJECTION TO DEFENDANTS'
MAZAREIGOS,	*	MOTION FOR SUMMARY
	*	JUDGMENT
Plaintiffs,	*	
	*	
vs.	*	Civ. No. 930400503
	*	
JEANETTE R. LYNTON, et., al.	*	Judge Boyd L. Park
	*	

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COME the Plaintiffs, by and through their attorney of record, and hereby submit the following Second Objection to Defendants' Motion for Summary Judgment.

INTRODUCTION

This Memorandum is filed in accordance with the Court's Order to provide proof of damages, argument in support of why Plaintiff's affidavits and those of the relatives should be allowed as evidence, given that their depositions have been taken, a list of additional proposed witnesses, with a synopsis of their proposed testimony, and any additional evidence and arguments as to why Defendants' motion for Summary Judgment should not be granted. The evidence of damages will be referred to in the body of this Memorandum, and will be attached in

substantive right is rendered illusory. One way to remedy this problem would be to require a transcript of the Spanish testimony. That way, the Plaintiffs could review the transcript in a language in which they were literate. For obvious reasons, this solution is practically unworkable. To date, the courts have established no alternative solution to this problem. In this case the Plaintiffs' attorney was one of the few people with the bilingual abilities necessary to review the video taped records and make the necessary corrections to the English language transcript. Therefore, that review was done, in order to correct the transcript. On July 17, 1994 Plaintiffs' attorney filed lists of the requested corrections to each deposition, based on her understanding that such corrections in translation would be allowed. The Defendants objected to those corrections, on the basis that the Plaintiffs did not personally review the deposition transcripts and determine the errors for themselves. Defendants have, to date, made no claim that the corrections were inaccurate, merely that they were made by the attorney, not the deponent. Again, the rules of civil procedure require that the witness be allowed to correct the transcript. That right is, in the present case, illusory without some variation in the procedure. Therefore, so long as Defendants object to those corrections, Plaintiffs' will be forced to object to any use of the mistranslated portions of the transcripts.

Plaintiffs are willing to stipulate to the accuracy of the depositions, if the corrections are accepted as indicated. Without those corrections, however, Plaintiffs will maintain their objections to the depositions. Even if the corrections are made as asked for, however, this Court should actively consider the affidavits Plaintiffs submitted in support of their Objection to Defendants' Motion for Summary Judgment. This is so because of the limited questioning regarding the facts and substantial confusion created on several occasions by the defense attorney's questions and the translation process. By analogy, the syntactically confused and mistranslated deposition testimony may be an accurate picture of what the cross-examination might look like, while the affidavits present a more accurate picture of what Plaintiffs' direct testimony will be.

Therefore, because the depositions as transcribed are inaccurate and because they contain limited testimony regarding the actual issues of the case, Plaintiffs' Affidavits should be actively considered as supplemental testimony in determining whether or not to grant Defendants' Motion for Summary Judgment. Again, the only substantive legal basis for not accepting the Affidavits as evidence in support of Plaintiffs' claims would be a claim that the Affidavits materially contradict the deposition testimony. No such claim has been raised, and therefore the

affidavits must be considered as evidentiary support for Plaintiffs' Objection to Defendants' Motion for Summary Judgment.

Issue II: Additional Considerations

Plaintiffs have alleged nine specific causes of action in their complaint. Five of those causes of action are intentional torts. Three of the causes of action are for invasions of privacy. For each of these eight causes of action Plaintiffs have established a prima facie case, by their own testimony and that of others. In each case, that prima facie case presents issues of disputed material fact that can only be decided by a jury by a trial on the merits.

Wrongful Detention. Plaintiffs' first cause of action is for Wrongful Detention. Wrongful detention is a civil cause of action, based on the crime of unlawful detention. The elements of wrongful detention are a **knowing, unlawful, restraint of a person that interferes substantially with his liberty.**

Plaintiffs have stated, in their Verified Complaint, Depositions, and Affidavits, that the Defendant Miguelangel stated prior to beginning the search that what he was doing was illegal. (Semiday Deposition, pp. 41; 44; Bardales Deposition, p. 23; Affidavits of Semiday and Bardales). That statement indicates knowledge of illegality, and presumably knowledge of the offensiveness of the act--given that society had declared it illegal, it may presumably be considered highly offensive to reasonable people.

The fact that wrongful detention is also a crime provides the element of unlawfulness. Finally, Plaintiffs have also testified that they were compelled to remain in the cafeteria area of the plant where they worked until they submitted to entering a bathroom with a supervisor to be physically searched. (Bardales deposition, p.23; Affidavit of Mazariegos;). Until everyone in the plant had submitted they were not allowed to return to their normal work positions. Defendants have argued that this was not substantial interference with liberty because Plaintiffs could have walked out of the plant. However, wrongful detention does not require that there be no avenue of escape. In Orem City v. Fillmore, (Case # 93 10 0350), a Utah Fourth Circuit case involving the crime of Unlawful Detention, the Defendant prevented someone else from backing out of a parking space by intentionally placing his car behind the parked car. Even though the individual in the car was in no way prevented from getting out and walking away, the Defendant was convicted of this crime on June 7, 1993.

The defense has also argued that one cannot create a civil cause of action from a crime. This is simply not true. Criminal law protects the interests of the society at large.¹ As a

¹ See, for example, Privacy in the Workplace, Jon D. Bible and Darien A. McWhirter, pp. 4-8 (Quorum Books, Westport Conn.) 1990; The American Law of Torts, Stuart M. Speiser, Charles F. Krause, and Alfred W. Gans. (Clark, Boardman, Callaghan, New York) 1991, §26:3.

result, the standard of proof in a criminal case is always higher than that of a civil case. However, criminal cases are brought on behalf of the state, not the individual, and the money damages available in a civil case are not available in criminal cases.

Id. Therefore, as a matter of public policy, the existence of a crime, particularly an intentional crime, presupposes a parallel civil cause of action for damages caused by the unlawful actions of the defendant(s).

Assault. The elements of a prima facie case for civil assault are **an act, made with the intention to inflict a harmful or offensive contact, that places another in apprehension of an immediate harmful or offensive contact.** Restatement 2d. Torts §21. The interest that is protected by this cause of action is a purely mental interest, and requires no evidence of actual damages.² The Plaintiffs in this case have testified that Defendant Esquivel, acting in his capacity as plant manager, required each of them to submit to a physical search. (Depositions and Affidavits of each Plaintiff). Esquivel stated that the search was illegal. (Semiday Deposition, pp. 41; 44; Bardales Deposition, p. 23; Affidavits of Semiday and Bardales). The fact that he knew the search was illegal is prima facie evidence that he also knew it would cause offensive contact to the plaintiffs.

² The Law of Torts, 2nd ed. Fowler V. Harper, Fleming James, Jr., and Oscar S. Gray. (Little, Brown & Co, Boston) 1986. Interference with the person, § 3.4.

Furthermore, Defendant Esquivel's intent may also be inferred from other circumstances of this case, such as the relationship between the harm he was allegedly preventing, i.e., the stolen twenty dollar bill, and the action he took to remedy the harm. A jury might well find on the facts of this case that Esquivel's primary intent was to give offense to the forty Hispanic members of his work force. For example, the fact that Esquivel apparently made no attempt to limit his questioning to individuals with some proximity or ability to take the twenty dollars, and the fact that no theft would have been provable even if the physical search had found a twenty dollar bill,³ might well be interpreted by a jury as proof positive that Esquivel's **only** intent was to cause offense. For all of the above reasons, it would be more than reasonable for a jury to find that, when he required the plaintiffs to submit to a physical search, Defendant Esquivel acted intentionally to create in the Plaintiffs and their co-workers the apprehension of an offensive touching. The Plaintiffs have further testified that Esquivel's action had that specific effect, and did indeed place them in apprehension of an immediate offensive touching. (Affidavits of Semiday, Santiago, Bardales).

³ See, for example, Plaintiff Semiday's question regarding how a twenty dollar bill in his wallet could be distinguished from that allegedly stolen. Semiday Deposition, pp. 40-41.

Defendants argue, in counter to this cause of action, that the mere threat of an offensive contact is not sufficient to permit a recovery. This would be a nice theory, except that it is clearly contrary to the law of civil assault.⁴ The case law and the Restatement 2d Torts clearly recognize a cause of action for the right to be free of the apprehension of offensive bodily contact.

Defendants have also raised the affirmative defense of consent, arguing that Plaintiffs have no cause of action for assault because none of them objected to the search, and all of them voluntarily permitted themselves to be searched. The Plaintiffs have specifically disputed this assertion, contending that they did not consent, but rather that they were coerced into submission. The issue of consent is, except in extraordinary cases, an issue for the jury to decide. In this case, the basic facts may be interpreted in more than one way. A jury might find that because none of the Plaintiffs objected they therefore consented--the doctrine of implied consent. However, this same doctrine requires the trier of fact to determine whether the conduct of the Plaintiffs in this case may reasonably be understood as consent. Restatement 2d Torts §892 Furthermore, the trier of fact will also be require to determine whether that

⁴ See, for example, Restatement 2nd, Torts § 18; 6 Am Jur 2d, §110.

implied consent was given under duress. According to §892B of the Restatement, "duress is constraint of another's will by which he is compelled to give consent when he is not in reality willing to do so." In determining the existence of duress, the Restatement requires that the age, sex, mental capacity, relation of the parties and any antecedent circumstances be considered. Therefore, it would be quite reasonable for a jury to find that, given the power of Defendant Esquivel to fire the Plaintiffs at will, given their limited job skills and the limited alternative jobs available to them, given Esquivel's previous implicit threats against any who might be illegal aliens, and given Esquivel's explicit statement that whoever did object was presumably the thief, (Mazariegos Affidavit)⁵ no reasonable person could interpret the Plaintiffs' submission to be searched as an express or implied consent sufficient to privilege the Defendants' actions. Because the facts are susceptible of more than one interpretation, the issue of consent must, by consistent court rulings, be determined by the jury. Because consent is an absolute defense to all of the causes of action alleged in this complaint, this discussion is applicable to each of the remaining causes of action.

⁵ This is also in her deposition, as properly translated.

Battery. The elements of a civil cause of action for battery applicable to this case⁶ are the intentional infliction of a harmful or offensive contact to the person of another.⁷ These elements have been alleged in at least two of the searches. The physical search of Rosa Mazariegos was full of offensive contacts, from the hands run around her midriff to the pencil that was used to poke through her hair. (Mazariegos Deposition, Affidavit). Given, as has already been shown, that Esquivel clearly intended, at a minimum, an illegal and presumably offensive contact, all of the elements of a Battery are present. This is also true in the case of Mr. Semiday, where the individual conducting the search removed Mr. Semiday's shoes and socks, although the element of offensive touching is not as pervasive as it is in the case of Ms. Mazariegos. (Semiday Deposition, p. 41)

As discussed above, consent is an absolute defense to a claim for battery, and thus the issue of whether Plaintiffs

⁶ In order to simplify the issues, I have deliberately avoided the complicated phrasing of the hornbooks, intended to include cases of transferred intent or intent merely to cause apprehension, but not actual harm. It does not appear to me that these additional elements contribute anything to the present discussion, therefore I have avoided them where possible.

⁷ See, for example, Restatement 2d. Torts §18; Handbook on the Law of Torts 5th Ed., William Prosser and Paige Keeton, West Publishing Co. 1988, pp. 39, §9.

consented to the battery or were coerced is an issue of fact for the jury.

False Imprisonment. The applicable elements of the tort of False Imprisonment are **an action, intended to confine another within boundaries fixed by the actor, a resulting confinement, and a conscious awareness of the confinement.** Restatement 2d, Torts, §35. A confinement results, according to the Restatement, where there is no reasonable means of escape. Id. §36. According to the Restatement, it is unreasonable for someone to refuse to utilize a means of escape of which he is himself aware where it only entails a slight inconvenience or the minor risk of nominal liability. However, escape is not required, even where the means exist, "if the circumstances are such as to make it offensive to a reasonable sense of decency or personal dignity."Id. In the first place, in this case, any individual worker who sought to escape would have had to walk a distance of some thirty feet from the cafeteria area to the door. Given the distance, it was impossible to tell whether the door had been locked, and whether escape was a real, or merely illusory possibility. Furthermore, escape or attempted escape in the circumstances of this case would, in all probability, have entailed a loss of employment, defamation, and possibly deportation, given Defendant Esquivel's previous threats. Granted, under Utah law, the individual might then potentially have had a cause of action for wrongful

termination in violation of public policy.⁸ The question presented by this remedy, however, is whether or not the individual falsely imprisoned under these circumstances is **required** to object and suffer the consequences before being able to obtain redress. Is it reasonable to require that this means of escape be utilized before a cause of action may be stated? Or is it more reasonable to determine that the Plaintiffs were effectively confined to the cafeteria area by Mr. Esquivel's combined threats and behavior, and that no reasonable means of escape existed? Because reasonable men could differ on this question, and because the parties to this case **do** differ on this issue, this is another issue that must be determined by the trier of fact.

Intentional Infliction of Emotional Distress. This is, according to the Restatement, a comparatively new tort action. However, it is one that the Utah courts have expressly recognized.⁹ The elements of this cause of action have been

⁸ See, for example, Berube v. Fashion Centre, Ltd., 771 P.2d 1033 (Utah 1989), where it was held that forcing an employee to consent to a polygraph might raise such a cause of action.

⁹ See, for example, Matter of Estate of Grimm, 784 P.2d 1238, (Utah App. 1989) Utah Court of Appeals held that evidence was sufficient to present a jury question as to whether Defendants were liable for intentional infliction of emotional distress; Pentecost v. Harward, 699 P.2d 696 (Utah 1985), In reversing the lower court's grant of Summary Judgment to the defendant, the Utah Supreme Court held that material issues of fact existed as to whether a the self help actions of a landlord's agent raised a claim for intentional infliction of

stated by the Utah Supreme Court as **the intentional causing of severe emotional distress through extreme and outrageous conduct.** Pentecost, supra note 9, at 700. This definition was set forth in a case with facts somewhat analogous to those of the instant case. In Pentecost, a landlord's agent resorted to self help, rather than legal process, in evicting the Plaintiff and her children and seizing their personal belongings, allegedly as compensation for non-payment of rent. As in the present case, the agent's self-help remedies were illegal. The Plaintiff also alleged that the actions taken by the agent were intentional and malicious. While the Plaintiffs in the present case have not specifically alleged that Mr. Esquivel's actions were malicious, the facts they have alleged, including a demonstrated pattern of hiring almost exclusively Hispanic individuals with limited English capability, (arguably a substantially more vulnerable population than a comparable group of white English speakers); the ongoing verbal harassment and accusations; the complete lack of probable cause for the search; and the complete lack of probability that the search would do anything except offend and demoralize a vulnerable population, could well support a finding of deliberate, malicious intent to debase and demean the Plaintiffs and the other workers. Because reasonable men could differ on the outrageousness of the Defendants' actions, in

emotional distress.

compelling nearly forty Hispanic immigrant workers, legal and illegal, to submit to a fruitless and baseless search of their persons and property, this is yet another factual issue which must be determined by a jury.

Invasion of Privacy. The causes of action alleged by the Plaintiffs all involve the specific area of privacy labelled intrusion into private affairs. The Restatement 2d Torts §652B defines the specific elements of the tort of Intrusion upon Seclusion as the **intentional intrusion, physically or otherwise, upon the solitude or seclusion of another or his private affairs or concerns, where the intrusion would be highly offensive to a reasonable person.** In this case, the Plaintiffs have alleged that Defendants' search of their coats, bags, wallets, purses, and lunch sacks were all invasive intrusions in their personal belongings--belongings wherein the Plaintiffs had a legitimate expectation of privacy. A search of an individual's wallet is, in fact, one of the specific examples cited in this section of the Restatement. The search of an individual's purse, coat pockets, pants pockets, and lunch sack are parallel invasions of personal items and personal privacy. Again, a jury might find that the Plaintiffs' alleged consent will bar recovery on this cause of action. On the other hand, a jury might also find that the broad based, coercive nature of the search, without

reasonable cause, raises the level of offensiveness of the invasion and would permit a recovery on this cause of action.

The invasion of physical privacy occasioned by the illegal search, and the invasion of the psychological privacy of Mr. Semiday when he was required to show his temple recommend, are equally offensive invasions of areas of restricted personal interest. It is also important, in determining the offensiveness of this request, to note that the fact that an LDS church member does or does not have a temple recommend is indicative of even more personal, intensely private facts, than the simple question may indicate. An answer to that question provides an employer with information regarding sexual habits, smoking and drinking habits, the individual's financial affairs, and involvement with the LDS Church. A reasonable person may consider any or all of this question deeply private and personal. More than one court has specifically held that the invasion of privacy claim is specifically a claim for injury to emotions and mental suffering. See, for example, Froelick v. Adair, 213 Kan. 357, 516 P.2d 993, 995. For more specific details regarding these violations, and the express issues of public policy that prohibit such violations, see Privacy in the Workplace, supra, n.1, pp.64-66, and 83. This volume also has an entire chapter devoted to the legality of work place searches of employee's persons and

property. The authors reach the conclusion, at the end of this chapter, that

the legality of a search hinges essentially on the manner, scope, justification and location of it.

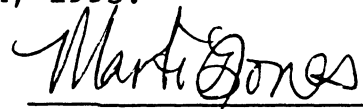
Searches of people attract greater judicial scrutiny than inspections of places, given the higher level of intrusiveness involved. . . . the central issue usually boils down to whether the employee had a reasonable expectation of privacy in the area in question. Id. p.169.

Again, it is the Plaintiffs' position that they had a reasonable expectation of privacy regarding their wallets, their purses, the pockets of their clothing, and the personal possessions, including lunch bags, which they brought to work. The search in this case is not comparable to a locker or desk search. The Plaintiffs were told that they were going to be physically searched, along with their belongings. Although the level of actual intrusion then depended upon the supervisor doing the searching, the fact that some were forced to submit to more invasive searches does not obviate the fact that the privacy interests of each Plaintiff, in his or her person and property, were invaded.

CONCLUSION

The Defendants' Motion for Summary Judgment on all counts must be denied. For each cause of action, there are facts in evidence at this time that would support differing perspectives on whether the Plaintiffs' protected interests, in freedom from apprehension of an offensive touching, freedom from an offensive touching, freedom from false imprisonment and wrongful detention and freedom from invasions of privacy, had been violated. Plaintiffs have attached, as stated previously, the reports of two psychologists. One report deals specifically with the harm caused to the Plaintiffs in this case, the other report deals with the nature of the psychological damages, and how they are comparable to the psychological damages caused by sexual harassment and other forms of abusive conduct. These reports, coupled with the Affidavits and the unchallenged portions of the depositions, as well as the Affidavits of the Plaintiffs' family members, give substantial support to the Plaintiffs' contention that they each suffered psychological distress, depression, embarrassment and humiliation due to the forced search. These affidavits also support a finding that Ms. Mazariegos suffered severe psychological distress, sufficient to upset her menstrual cycle, causing continual bleeding, and cause severe migraine headaches. For all of the above reasons, therefore, Plaintiffs respectfully request that this court deny Defendants' Motion for Summary Judgment.

DATED this 22nd day of March, 1995.

A handwritten signature in cursive script, reading "Marti L. Jones". The signature is written in black ink and is positioned above a horizontal line.

MARTI L. JONES
ATTORNEY FOR PLAINTIFFS

APPENDIX A

CONFIDENTIAL PSYCHOLOGICAL EVALUATION OF JOSE
HUMBERTO BARDALES; ROSA D. MAZARIEGOS; ANGEL
M. SANTIAGO AND WALTER SEMIDAY. EVALUATION
DONE BY JUAN A. MEJIA, PH.D.

AFFIDAVIT OF LINDA GUMMOW, PH.D.

Juan A. Mejia, Ph.D.

Licensed Clinical Psychologist

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(801) 328-4500

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CONFIDENTIAL PSYCHOLOGICAL EVALUATION

Clients: Jose Humberto Bardales
Rosa D. Mazariegos
Angel M. Santiago
Walter Semidey
Dates of evaluation: February 18 & 19, 1995
Date of report: March 10, 1995
Evaluator: Juan A. Mejia, Ph.D.
Referred by: Marti L. Jones, Attorney
Method of evaluation: Clinical interviews; Minnesota Multiphasic
Personality Inventory (MMPI); Incomplete
Sentences Blank; and Projective Drawings.

Mr. Bardales, Ms. Mazariegos, Mr. Santiago, and Mr. Semidey were referred by their attorney, Ms. Jones, for a psychological evaluation in connection to their lawsuit against DOT Adventures Inc., being heard at the Fourth Judicial District Court by Judge Boyd L. Park. Specifically, Ms. Jones was interested in an assessment of emotional damage to the plaintiffs, if any, in connection to events in this case. Available in preparing this report were affidavits by all four plaintiffs in this case as well as affidavits by some of their family members.

The first time I saw the plaintiffs, on February 18, 1995, I explained to Mr. Bardales, Ms. Mazariegos, Mr. Santiago, and Mr. Semidey the nature and purpose of the evaluation I was conducting of them. I further explained that I would be rendering my opinions in a report that would be sent to their attorney, Ms. Jones, but that the judge and defendants in their case would have likely access to this report. As such, I explained that the information that they discussed with me was not confidential. They all appeared to understand these principles of confidentiality, and we proceeded with the evaluation.

Since Spanish is the primary language for all four plaintiffs, all testing and interviewing was conducted in Spanish. Although they came together, they were interviewed and tested individually.

The four plaintiffs worked at DOT Adventures Inc. According to the information they provided in this evaluation and in their affidavits, they were subjected to frequent talks by the manager, Mr. Esquivel, in which he made insulting comments to the workers, calling them "thieves" and "lazy," and talking about their paying tithing to the LDS Church. A major event occurred in December 1992 reportedly when somebody lost a 20 dollar bill, and Mr. Esquivel had everybody searched after allegedly letting non-Hispanic workers go. Also, the three male plaintiffs were involved in an incident a few days later in which they complained about being shortchanged in their paychecks for overtime pay that they had accrued, but was not included in their paychecks. Mr. Esquivel reportedly was very upset about their demands, but paid them as he reportedly had originally offered.

JOSE HUMBERTO BARDALES

Mr. Bardales is a 26 year, 4 month old married Hispanic male. He is a polite young man who came nicely dressed. He wears his hair very short, as if he had shaved his head recently. He looks younger than his chronological age.

Mr. Bardales was born on October 26, 1968, in Puerto Cortez, a small coastal town in Honduras. He is the second of 11 siblings. His parents divorced when he was four. He was raised by his mother, who remarried when he was 11. He described his father as "very quiet, gentle" and reported a good relationship with him, with frequent contact after the divorce. He described his mother as "very compassionate and helpful." He reported a good relationship with his stepfather, whom he described as "a good man." He reported good relationships with his siblings.

Mr. Bardales graduated from high school in 1985 in Honduras. He described himself as a good student who typically obtained grades ranging from 85% to 95% in the grading system. After high school, he obtained a certificate in Electricity and Mechanics from a technical institute in Honduras.

Mr. Bardales is currently attending English as a Second Language classes which he said are helpful. He reported adequate English language skills, with better receptive abilities than expressive abilities.

At 19, Mr. Bardales served an LDS mission in Tegucigalpa which he regarded as a good experience. At 22, he married a 21 year old woman. They have a three year old daughter. They emigrated to the United States in 1991.

Besides his work at DOTS, Mr. Bardales has worked at a lumberyard, Deseret Industries, and a frozen food production facility. He described himself as a very good worker.

Mr. Bardales reported being in good health. He denied ever using alcohol or illegal drugs.

Mr. Bardales reported always having had "a positive attitude" towards life. He has "many" friends whom he sees frequently. However, most of his time is spent at home, with his family.

Mr. Bardales indicated that he was humiliated by the frequent talks. He was especially humiliated when he was searched for the 20 dollar bill. He said that the male supervisor who searched him checked his billfold and the pockets in his clothing and coat.

He complained about being shortchanged in pay some days later. He is convinced that he was then terminated because he complained.

Mr. Bardales indicated that the emotional trauma that he experienced at that time was exacerbated because it happened around

Mr. Santiago completed high school in Puerto Rico. He described himself as a good student, with grades from A to C. After high school, he received training as a plumber.

Mr. Santiago reported little oral English language abilities and no written English language skills. He has received some English as a Second Language instruction, but with limited benefit.

At 25, Mr. Santiago married an 18 year old woman. They have three children who are now 14, 13, and 10. They divorced after 13 years of marriage. After the divorce, he decided to come to the U. S. mainland looking for "something different, a change;" his two sons came with him, and his daughter remained with his ex-wife. At 40, he married a 23 year old Caucasian American woman. This marriage lasted only six months. According to him, his second wife was unable to get along with his children and insisted that he send them to Puerto Rico; he opted for a divorce. He is currently seeing a woman in her 30s, with whom he reported a good relationship.

In Puerto Rico, he worked as a plumber, but he has quit this occupation because he found out that he did not like to do it. In Utah, besides the work at DOTS, he has worked as a machine operator and as a janitor. Mr. Santiago described himself as a good worker.

Mr. Santiago reported being in good health. He denied ever using alcohol or illegal drugs.

Mr. Santiago said that he is happy with his life, in spite of the stress involved in raising his two sons as a single father. He reported occasional sleep disturbance, due to his concern over his children. He said that he has "many" friends, whom he sees frequently, but most of his time is spent with his children.

When he was searched, the male supervisor made him empty his pockets and checked his billfold. Mr. Santiago was extremely upset about this search, saying that it caused him sleep disturbance, and feelings of insecurity and helplessness. He felt "trapped" because he was unsure if he could get another job. He was angry because he felt that what Mr. Esquivel had done was illegal and insulting.

Mr. Santiago said that there was talk at DOTS about a few workers who were particularly upset about the search, including the three male plaintiffs. When he was among one of the workers who, a few days later, complained about being shortchanged in their pay, he was promptly terminated. He said that at the time that he was terminated, he was told by his supervisor that he was "rebellious." Mr. Santiago reported depressive and anxiety symptomatology for some months after these events.

WALTER SEMIDEY

Mr. Semidey is a 43 year old Hispanic male. He is a visibly overweight man who came casually dressed. He appeared to be assertive and at times he spoke for the group.

Mr. Semidey was born on March 2, 1953, in Coamo, a small town in Puerto Rico, but grew up in Ponce, an urban center in Puerto Rico. He is the youngest of two siblings. He reported an uneventful childhood with good relationships among family members.

Mr. Semidey graduated from high school in 1971 in Puerto Rico. He described himself as a good student, who typically obtained grades of B and C. After high school, he completed one year of an electronic training program, but discontinued it due to financial difficulties.

Mr. Semidey received English as a Second Language instruction when he first arrived in the U. S. mainland, but discontinued it once he obtained a job. He reported limited expressive skills, but better receptive English language skills.

At 23, Mr. Semidey married a 20 year old woman. They have three children who are now 18, 17, and 15. He reported very good relationships with his wife and children. He came to the U. S. mainland with his family in 1991, seeking better opportunities.

Besides his work at DOTS, Mr. Semidey has worked as a maintenance worker, dishwasher, and assembly worker. He is interested in carpentry. He described himself as a good worker.

Mr. Semidey reported asthma since childhood, for which he uses inhalers. He reported sleep apnea; he sleeps with a machine which ensures that his brain will receive enough oxygen.

Mr. Semidey reported a past pattern of alcohol abuse. He quit drinking in August, 1986, when he converted to the LDS faith.

Mr. Semidey reported a history of past acute depressive episodes. One episode occurred in 1984 when his 57 year old mother and his 35 year old sister died from cancer the same year. His depression was so acute that it included psychotic-like symptoms. The other episode was about five years ago, when he lost a job, causing considerably difficult financial circumstances for him and his family. At that time, his depression was so acute that it included suicide-like ideation. At the time of this evaluation, he was under significant emotional stress due to the recent loss of his job; his wife, who worked at the same place, also lost her job. He is convinced that their terminations were unfairly based on discrimination. He has "three or four" friends, whom he sees frequently, but he said that most of his time is spent with his wife and children.

In talking about the events regarding the 20 dollar bill search, Mr. Semidey was so upset that he talked about these events as if they had occurred a few days ago. During the search itself, Mr. Semidey said that the supervisor made him take his socks and shoes off. He said that he was furious that he was "treated like a thief without being one." He asked the supervisor who was searching him how the stolen 20 dollar bill could be differentiated

depression and anxiety. There is nothing of clinical significance previous to the traumatic events at DOTS that would predispose them to clinical depression and anxiety. One interpretation of his obtained MMPI clinical profile is that he was acutely depressed and anxious at the time of the search, which has left him vulnerable to depression and anxiety at this time.

His responses to the Incomplete Sentences Blank reflected: strong family orientation; strong religious beliefs; and positivistic attitude. His Projective Drawings reflected extroversion.

ROSA D. MAZARIEGOS

Ms. Mazariegos' MMPI validity profile indicated that she presented a technically questionable set of responses. Given that her cultural background as a Honduran is significantly different to the background of the MMPI normative population, this obtained questionable validity is not unexpected. As it is often seen in the MMPIs of Hispanic clients, the noted tendency was toward minimization of psychopathology.

Her obtained MMPI clinical profile was within normal limits, with no indication of psychopathology. This obtained profile could be due to her tendency toward minimization.

Her responses to the Incomplete Sentences Blank reflected: strong family orientation; strong religious beliefs; desire to meet a marriage mate; ruminations about injustice; and self perception as honest. Her Projective Drawings reflected attention to detail.

ANGEL M. SANTIAGO

Mr. Santiago's obtained MMPI validity profile indicated that he presented a valid set of responses. His obtained MMPI clinical profile was within normal limits, with no indication of psychopathology.

His responses to the Incomplete Sentences Blank reflected: strong family orientation; strong religious beliefs; perception of being discriminated against due to being Hispanic; and self perception as being a bit shy. His Projective Drawings reflected positive thoughts about his girlfriend.

WALTER SEMIDEY

Mr. Semidey's obtained MMPI validity profile indicated that he presented a valid set of responses. His obtained MMPI clinical profile indicated the presence of significant emotional problems, most likely in the context of clinical depression. Given that Mr. Semidey had just lost his job at the time of this evaluation, the presence of clinical depression is not unexpected. Also, his obtained MMPI clinical profile is consistent with his reported previous history of acute depressive episodes, most likely,

exacerbated by the traumatic events at DOTS. In other words, he was likely to be vulnerable to depression previous to the events at DOTS, but the considerable emotional trauma that he reportedly suffered there has made him even more vulnerable to depression. He appears to be currently clinically depressed.

His responses to the Incomplete Sentences Blank reflected: strong family orientation; a positivistic attitude toward life; and self perception as unpretentious and friendly. His Projective Drawings reflected extroversion.

SUMMARY AND CONCLUSIONS

There is no question in my mind that all four plaintiffs suffered significant emotional trauma at the time of the events at DOTS. To varying degrees, they all reported symptoms consistent with depression and anxiety, in a pattern similar to post traumatic stress disorder, for about three months following these events. The etiology of their depression and anxiety symptomatology appears to be in the humiliation and harassment as a result of the frequent talks by the manager, the search, and the plaintiffs' terminations. In each case, there were different idiosyncratic factors which exacerbated the emotional damage.

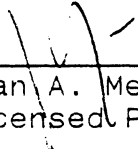
It should be noted that there was no evidence of past or current symptom exaggeration in my interviews with the plaintiffs nor in the results of standardized psychological testing produced by them. To varying degrees, they all attempted to portray themselves as free of psychopathology at this time, but as having been emotionally damaged at the time of the events at DOTS. Their stories, as reflected in their current interviews and past affidavits, were generally consistent with each other and devoid of any apparent inappropriate magnification of symptoms.

Mr. Bardales appears to have become vulnerable to ongoing depression and anxiety following the events at DOTS. He appears to try very hard to have the most positivistic attitude toward life as possible. To some degree, he is happy with his life because of his strong ties to his family and his church, but he currently has minimized signs of depression and anxiety.

Ms. Mazariegos reported the most tangible indicators of emotional trauma. Besides the events connected to the search, she reportedly was made to clean a carpet where a dog had relieved himself. This experience appeared to be very humiliating and upsetting to her. During the search, she appears to have been subjected to the worst humiliation of all the plaintiffs given the more intensive manhandling that she had to endure. The symptoms that she reported experiencing immediately after the search are also indicative of a more prominent manifestation of emotional damage. A significant factor in magnifying the emotional damage to her has to do with her very strong identification as an LDS believer. She was very disappointed by Mr. Esquivel, whom she had initially trusted as someone who strongly shared her LDS beliefs.

Mr. Santiago came across as the most emotionally reserved of all the plaintiffs. His style appears to be to "suffer in silence," with apparent helplessness. Still, he also reported signs of significant depression and anxiety symptomatology at the time of the events at DOTS. He seems to have been left with ongoing feelings that he is likely to be discriminated on the job as a Hispanic.

Mr. Semidey was particularly emotionally vulnerable to being traumatized by the events at DOTS because of previous depressive episodes, including one involving a previous loss of a job. Indeed, he came across as having been significantly emotionally damaged at the time of the events at DOTS, with reports of very prominent manifestations of depression and frustration. Further, he apparently has become even more emotionally vulnerable following the events at DOTS. At the time of this evaluation, he was clinically depressed apparently as a result of his recent loss of a job, with the exacerbating perception that he was terminated due to discrimination.



Juan A. Mejia, Ph.D.
Licensed Psychologist #403



Conger & Gummow
247 E. 2100 S.
Salt Lake City, UT 84115

Affadavit of Linda J. Gummow, Ph.D.

1. I am over the age of 21, and I am competent to testify as to all matters set forth herein from my professional knowledge unless otherwise stated.
2. I am a psychologist, and I am certified by the State of Utah to conduct Competency and Guilty and Mentally Ill/ Diminished Capacity evaluations for the State of Utah. In this capacity, I have evaluated many Hispanic defendants. In my private practice in Salt Lake City, Utah, I have evaluated Hispanic patients who were referred by physicians, Workers Compensation, and Vocational Rehabilitation. I am familiar with the psychological literature on the Hispanic population in the United States.
3. On March 13, 1995, I examined the following materials at the request of M. Jones: Psychological Evaluation of Jose Humberto Bardales, Rosa D. Mazariegos, Angel M. Santiago, and Walter Semidey done by Juan A. Mejia, Ph.D. and dated March 10, 1995; English translation of statements of the above named individuals.
4. Based upon my training and experience and the evaluations and statements of the plaintiffs, it is my opinion that the plaintiffs suffered significant emotional injury at their place of employment, DOT Adventures. The plaintiffs were exposed to continual verbal harassment and threats that culminated in a search of all Hispanic workers while non Hispanic workers were allowed to go home. The female plaintiff was subjected to an extensive body search as well as having been asked to do non job related tasks for her supervisor that she considered to be humiliating. All of the workers were fired when they complained of their treatment and the lack of payment of over time wages.
5. Based upon my training and experience, the Hispanic workers found themselves in a situation in which they felt they had to recourse other than submit to a personal search that they felt to be both wrong and degrading. All felt that they would lose needed employment if they protested or that they would be thought to be thieves. It is well known in the professional literature of my field that placing an individual in a situation with inescapable punishment causes severe reactions. Psychologically, the person shows irritability, depression, and anxiety. Behavior away from the work site is affected. If the stress is prolonged

and severe, as it was in this case, physical manifestations can occur (pain, menstrual dysfunction, exacerbation of illness, etc.)

6. The symptoms of these individuals would be classified as Post Traumatic Stress Disorder, Acute DSM-IV 309.81.

7. Cultural factors related to the Hispanic heritage make it more difficult for Hispanic workers to deal with harassment. First, "Hispanic cultural values encourage positive interpersonal relationships and discourage negative, competitive, and assertive interactions-- what we have called the "simpatica" script" (Triandis, Marin, Lisansky & Betancourt, 1984 in Geisinger book). Second, the newer Hispanic citizen, as are these plaintiffs, are more likely to remain isolated from the host culture and to retain the values of the mother culture. Third, Hispanic, particularly recently immigrated Hispanics, find it more difficult to deal with the psychological aspects of both work related and illness related stress. These workers tend to experience psychological stress as physical symptoms (as did these plaintiffs). See DuAlba and Scott (1993). Fourth, due to limited acculturation to the host culture, many Hispanics do not identify with the host culture and do not know how to avail themselves of services or protections (Marks, et al., 1987). This limited knowledge of their rights was a theme repeated by all plaintiffs. Fifth, individuals who believe in their own efficacy or ability to change their situation, do better at coping with a variety of situations including illness. The sense that events are outside of one's control is more common among the Hispanic worker, particularly the Hispanic worker of low socioeconomic status (Ell and Haywood, 1985).

8. Because many Hispanic workers have poor self-efficacy and poor knowledge of resources and options, emotional injury among Hispanic workers is more common among Hispanic workers, and employers of Hispanic workers have a responsibility to be sensitive to the acculturation needs of these individuals (DuAlba and Scott, 1993).

9. I have been informed that the plaintiffs are attempting to file a civil complaint in fourth district court against their former employer in which damages are claimed for the injuries associated with their former employment.

10. The opinions expressed herein are stated to a reasonable degree of medical probability within the field of my expertise.

11. References:

American Psychiatric Association. (1994). Diagnostic and Statistical Manual of Mental Disorders (4th Edition). American Psychiatric Association Press: Washington, D.C., page 424.


DuAlba, L & Scott, R.L. (1993). Somatization and malingering for worker's compensation applicants: A cross-cultural MMPI study. J. Clinical Psychology, 49, 913-917.

Ell, K.O., Haywood, L. J. (1985). Sociocultural factors in MI recovery: An exploratory study. International Journal of Psychiatry in Medicine, 15, 157-175.

Geisinger, K.F. (1992). Psychological Testing of Hispanics. American Psychological Association Press: Washington, D.C.

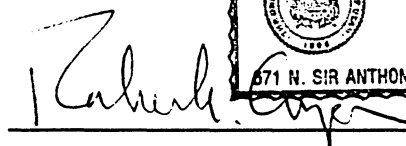
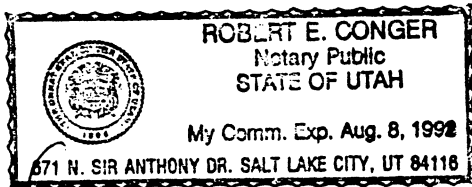
12. Further affiant sayeth not.

Dated this 13th day of March, 1995.


Linda J. Gummow, Ph.D.

State of Utah
County of Salt Lake

Subscribed and sworn to before me by Linda J. Gummow, Ph.D. this 13th day of March, 1995.

My commission expires: 8-96

APPENDIX B

WITNESS LIST

WITNESSES

At this time, Plaintiffs may call any or all of the individuals who have submitted reports and/or affidavits in this case. Thus witnesses may include each of the four Plaintiffs; Expert Witnesses Juan Mejia and Linda Gummow; relatives of the Plaintiffs such as Pastora and Matilda Mazariegos, Diana Semiday, and Maira Bardales. In each case the affidavits and/or reports that have already been submitted contain the basic testimony of the witness. In addition, Plaintiffs plan to call as additional witnesses Rocio Escobar and Jorge Sanchez. These two individuals are Mexican nationals, who worked at the DOTS factory around the time of this incident.

Rocio Escobar will testify that she was subjected to a physical battery of her person, similar if not identical to the battery experienced by Plaintiff Mazariegos.

Jorge Sanchez will testify that on at least one occasion he attempted to discuss the problems caused by Defendant Esquivel's verbal abuse of the work force with the plant owner and DOTS president, Jeanette Lynton.

Finally, Plaintiffs reserve the right to call as witnesses any other individuals employed at the DOTS factory during the time period between August 1992 and January 1993. At the present time the names and addresses of all members of this class of potential witnesses, with the exception of the named Defendants, are unknown. Once those names and addresses are discovered, and the individuals interviewed, where possible, Plaintiffs will supplement this discovery.

APPENDIX C

Copies of the Amended English Translations of
the Affidavits originally submitted in
support of Plaintiffs' Objection to
Defendants' Motion for Summary Judgment.

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IN THE FOURTH JUDICIAL DISTRICT COURT
FOR THE STATE OF UTAH
150 N. 100 W., PROVO, UTAH 84601

=====

WALTER SEMIDEY, ANGEL SANTIAGO,	*	AMENDED TRANSLATION OF
HUMBERTO BARDALES, and ROSA	*	AFFIDAVIT OF WALTER
MAZARIEGOS,	*	SEMIDAY
	*	
Plaintiffs,	*	
vs.	*	
	*	Civ. No. 930400503 PI
DOT ADVENTURES, INC., et. al.	*	Judge Boyd L. Park
	*	
Defendants.	*	
	*	

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COUNTY OF UTAH)
)ss
STATE OF UTAH)

COMES Walter Semiday, Plaintiff in the above entitled case,
and states the following:

I began working at the DOTS company around the first of
September, 1992. Before I was hired, I had an interview with the
plant manager, whose name was MiguelAngel Esquivel. During this
interview he asked me if I was a member of the Mormon (LDS)
church. I answered yes, that I was a member. Then he asked me
if I had a temple recommend. I told him yes, I did, and he asked
to see it. I thought this was a strange thing, because never in
my life had someone asked to see my temple recommend in an job

interview, but I wanted the job, so I gave it to him so that he could see it. I did not know that it was against the law to ask about this.

I worked at the DOTS firm some three months. During my time there, I observed things that I had never seen before in my life. For example, every time that Mr. Esquivel got angry with some person or some department, he would gather the entire plant together. He was almost always angry, and he would speak to us in a loud voice or yell at us. He would say that he had had to send several people home for a few days. Several times he told us that if we were paying our tithing, and there wasn't work or we were laid off for a few days, we should go to our bishop to ask for help, because the church had the responsibility to compensate us for the days we were laid off when we were paying our tithing. Many times he spoke to us hard and strong, accusing us of being robbers. On one occasion he threatened that he was going to search us all as we left work, because according to him, someone was stealing the stamps.

Besides being robbers, he also would accuse us of being liars. He would say that the majority of us were illegals. This thing about accusing people of being illegals, he used it as a threat. In my opinion, it was a way of reminding people that they were not free, and that with one phone call he could cause

them many problems. This was the method he generally used to control people, and make them behave the way he wanted them to.

But the greatest insult, in my opinion, was the day that we were all searched. That day he gave the day off to the department where the few American women worked. He sent everyone in that department home. After, he gathered the rest of us together. There were between thirty and forty of us, and all of us were Hispanic. He informed us of a theft of twenty dollars, and told us that he was going to do something that was against the law, but that he was going to do it, which was to search us all. At no time did he ask if anyone objected to being searched. At no time did he indicate that the door was open to whoever wanted to leave. Furthermore, the door was quite distant, around thirty feet, from where we were seated. After that he left the area and left us with the supervisors. There were two groups of women. Some were searched in the upstairs bathroom, others were searched downstairs in an office. We men were all searched upstairs in the men's bathroom. I was upset, nervous, and angry. I almost couldn't believe it. I asked myself again and again how it was that they were going to know the difference between the twenty dollar bill that had been lost and a twenty dollar bill that maybe I had in my wallet? I could not understand how they thought to prove anything. I felt anxious and threatened. I believed that they were going to search my entire body. I

believed that they were going to make me take off my clothes, and that they were going to touch every part of my body. I did not want to be searched, but I did not see any way to free myself from the situation.

Upon entering the bathroom, I asked my supervisor how he was going to know that the bill in my wallet was the twenty that had been lost. He did not know what to answer. After the search I felt ashamed and humiliated. I felt emotionally devastated. I got angry with my wife and my children. I felt very upset, very defensive, very aggressive. I continued this way for several days, like a week, until after Christmas. The search had not had any result. I did not know if this was going to happen again or not. I was not able to calm down until I was let go from work. Even though the way in which I was let go upset me, afterwards, when I didn't have to return there on a daily basis, and live under the threat of another search, I began to calm down and to feel better.

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IN THE FOURTH JUDICIAL DISTRICT COURT
FOR THE STATE OF UTAH
150 N. 100 W., PROVO, UTAH 84601

=====

WALTER SEMIDEY, ANGEL SANTIAGO,	*	TRANSLATION OF
HUMBERTO BARDALES, and ROSA	*	AFFIDAVIT OF ROSA
MAZARIEGOS,	*	MAZARIEGOS
	*	
Plaintiffs,	*	
vs.	*	
	*	
DOT ADVENTURES, INC., et. al.	*	Civ. No. 930400503 PI
	*	Judge Boyd L. Park
	*	
Defendants.	*	
	*	

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COUNTY OF UTAH)
)ss
STATE OF UTAH)

COMES Rosa Mazariegos, Plaintiff in the above entitled case,
and states the following:

I began to work in the stamp company the beginning of
November, 1992. Almost immediately I began to feel bad. The
manager of the factory was called MiguelAngel Esquivel. The day
that I began to work the manager gathered everyone and began to
yell at us and tell us insulting things. He told us that we were
a pack of slackers and lazybones. He said "I am certain that

there, on the other side from where you are from, you all spent your time cutting cactus.¹ You came here to become great."

After some days I came to understand that this same thing, the meetings and the yelling and the insults, Mr. Esquivel did almost every day, and sometimes twice a day. Among other things, he would say to us "I am certain that you don't pay your tithing. I know that's why things go badly for you." He would also say to us "I am certain that you are a bunch of hypocrites. To my face you smile at me, but behind my back you tell tales of me, I am certain." He would accuse us of not being able to enter the temple of the church. He would accuse us of being wetbacks and say that he knew who the illegals were.

But the worst of the situation was that after spending up to over an hour yelling at us, Mr. Esquivel would come to where I and the rest were working, and accuse us of being lazy because we were low in production. Also every day he would send one or another of the Latin women to clean the dog's room. The man had a dog. He would bring it to the factory, where he would put it in a carpeted room. Every day Mr. Esquivel would send an order telling one woman or another to go clean up the dog poop, or wash the dog. He knew how insulting it was, for an Hispanic woman, a worker, to be obligated to clean up dog poop of a dog that

¹ This expression is idiomatic, somewhat the equivalent of "All you could do was clean toilets" in English.

belonged to another person. One time it came to me to do it. Even though I had a table full of work, the supervisor told me that I had to leave what I was doing to go and pick up the dog poop and wash the carpet with detergent.

Because of the pressure, of being attacked and degraded, of being insulted and humiliated constantly, I was unable to sleep well. Although I ate somewhat, food didn't interest me like before. It had no flavor. I had headaches almost every day. In spite of all this, the worst of everything was the day that they searched us.

That day, he gathered us like always in the cafeteria area. The cafeteria area was about ten meters from the entrance to the factory. He began to yell at us. He said "Some money has been lost. Everyone here is a bunch of robbers. From here no one leaves if they are not searched." He also said "Whoever does not let themselves be searched, it is because they have the money." Then he told us that we all had to enter the bathroom one by one with the supervisor. I did not want to be searched, but I was afraid to object, because of the accusations and yelling that would come upon me, and because I didn't see any way out. For those reasons, and because he had told us that we could not leave, and the door was a long way away, I again saw myself obligated to submit. When it was my turn to enter the bathroom the supervisor made me unbutton my pants and loosen my blouse.

She also made me undo my bra. Then she stuck her hands under my blouse and ran her hands all over the area of my waist and even under my bra. Then she told me to take off my shoes and socks, and to roll my pant legs up above my knees. Last of all, she stuck a pencil in my hair and searched through all my hair with the pencil.

When I got home I was devastated. I had a bloody discharge that wasn't normal, but that was caused by my nerves and fear. I was almost hysterical. I couldn't sleep all night long. But even so, I didn't want to lose my job, and I returned to work, although I was very nervous and angry. A few days later I tried to speak with Mr. Esquivel, to tell him how wrong the search had been. That same day he fired me.

Upon leaving work I began to calm down, although it was some months before I felt sufficient emotional strength to return to look for work. During all this time my sister took care of me, with linden tea and other home remedies, to help me calm down and recover.

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IN THE FOURTH JUDICIAL DISTRICT COURT
FOR THE STATE OF UTAH
150 N. 100 W., PROVO, UTAH 84601

=====

WALTER SEMIDEY, ANGEL SANTIAGO,	*	AMENDED TRANSLATION OF
HUMBERTO BARDALES, and ROSA	*	AFFIDAVIT OF ANGEL
MAZARIEGOS,	*	SANTIAGO
	*	
Plaintiffs,	*	
vs.	*	
	*	
DOT ADVENTURES, INC., et. al.	*	Civ. No. 930400503 PI
	*	Judge Boyd L. Park
	*	
Defendants.	*	
	*	

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COUNTY OF UTAH)
)ss
STATE OF UTAH)

COMES Angel Santiago, Plaintiff in the above entitled case,
and states the following:

I began to work for the company DOTS in the fall of 1992. I worked for the company for about four months. During this time the manager of the factory customarily insulted the people almost daily. He would gather us together and begin saying things to us like "You are a bunch of thieves, robbers, ungratefult; you are talebearers because you speak badly of the company." He would also tell us that we were a bunch of lazy workers. He would say that we didn't pay our tithing, and because of this things went

badly in the company. What's more, he would accuse us of being wetbacks, and would tell us that if immigration came they would take us all away. One time he even told us that he was sick of people's gossip, and that we were a bunch of scandlemongers.

On the day of the search Mr. Esquivel gathered us together like always. He was very angry. Once again he began to insult us all. He said that we were a bunch of robbers, that this was the last straw,¹ and that he was going to have to search us all. Before this he had sent the American women to their homes.

Mr. Esquivel said that they were going to search us one by one, that we would have to enter the bathroom with the supervisor, who would search us. This was the height of insult. In my country, Puerto Rico, no one can search another person unless he has a search warrant. Even with a search warrant, the search has to be made by a government official. To humiliate another person this way, by searching them and accusing them of being robbers, is the worst. It is against the law for a boss to abuse his power by insulting and searching people like this.

But I had already complained before, about another boss. I had gone to Job Service and they had told me that they could not do anything; that here in Utah bosses could fire people whenever they wanted to, and that there was nothing they could do. So

¹ This is an idiomatic expression. It literally says "things had become too much," but carries the stronger meaning of "this was the last straw."

when Esquivel demanded that we be searched, I believed that if I objected to being searched, he was going to fire me that same day. Esquivel also told us that no one could go back to work without being searched, and that we all had to stay in the cafeteria area until everyone had been searched. There were more than forty people. I did not want to be searched, but to object would mean losing my job.

The two bathrooms were upstairs, and while climbing the stairs one by one the rest of the other people in the cafeteria were looking at us and telling us that we were going to be searched, that it was going to be our turn, that they were going to palpate everything. I felt humiliated and offended. I also felt powerless to object. I thought that there was no alternative, that no one would believe me, although I also knew that it was not right and that it might be against the law.

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IN THE FOURTH JUDICIAL DISTRICT COURT
FOR THE STATE OF UTAH
150 N. 100 W., PROVO, UTAH 84601

=====

WALTER SEMIDEY, ANGEL SANTIAGO,	*	AMENDED TRANSLATION OF
HUMBERTO BARDALES, and ROSA	*	AFFIDAVIT OF HUMBERTO
MAZARIEGOS,	*	BARDALES
	*	
Plaintiffs,	*	
vs.	*	
	*	Civ. No. 930400503 PI
DOT ADVENTURES, INC., et. al.	*	Judge Boyd L. Park
	*	
Defendants.	*	
	*	

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COUNTY OF UTAH)
)ss
STATE OF UTAH)

COMES Humberto Bardales, Plaintiff in the above entitled case, and states the following:

I began to work for the DOTS company the first of August of 1992. I worked for the company for about five months. During this time the manager, MiguelAngel Esquivel, abused me morally and emotionally.

Frequently, a minimum of two times a week and many times even more, he would gather all the personnel together to carry out meetings with the sole object of abusing and insulting the workers. He would accuse us of many things, with the intention

of offending us with his offensive words. He habitually told us that we the workers were a bunch of thieves, that he knew that we were stealing the stamps. He also would say that he had been endowed with the authority that Mrs. Jeanette Lynton had granted him to do whatever he wanted with the employees. Basing himself on the fact that many of the employees were Mormon, he would say that we needed to pay our tithing in order to continue working. He also threatened us by saying that if he dismissed us, we would have to go to ask help from our bishops so that they would provide food for us to eat.

Above all, the most insulting thing, and the experience that had the most negative emotional and psychological impact was when Mr. Esquivel gathered us together one afternoon after lunch to tell us that a co-worker had lost \$20.00 from her purse, and that he was going to find the thief. Mr. Esquivel was very angry. He shouted at everybody "You are a bunch of thieves." He yelled that he was tired of dealing with us. He immediately authorized Mr. Humberto Hernandez, who was an employee he trusted, to search all the men, one by one, individually, in the men's bathroom. The women were to be searched in like manner by Mrs. Maria Reyes in the women's bathroom and Mrs. Suleika was going to search another group of women in a room in the same building. Finally Mr. Esquivel said "I know that this is something illegal but I'm going to do it anyway, to find a thief." He also said, "anyone

who wouldn't permit himself to be searched was the thief."

In this way they proceeded to search some forty people, each one going in his turn to be searched. They told us that we had to bring with us our coats and our lunch bags or boxes. I felt threatened. I knew that I was going to be physically frisked and touched. I did not want them to search me. I knew that if I objected, I was going to lose my job, and that everyone was going to say that I was the thief.

This experience was one of the worst of my life. It left me very nervous and depressed. I got angry with my wife without any reason. I was very emotional and jittery for around a month after I left the company. Even now I am suspicious of people, in particular my supervisors, and it is difficult for me to confide in them and get along well with them.

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IN THE FOURTH JUDICIAL DISTRICT COURT
FOR THE STATE OF UTAH
150 N. 100 W., PROVO, UTAH 84601

=====

WALTER SEMIDEY, ANGEL SANTIAGO,	*	AMENDED TRANSLATION
HUMBERTO BARDALES, and ROSA	*	AFFIDAVIT OF PASTORA
MAZARIEGOS,	*	ESPERANZA MAZARIEGOS
	*	
Plaintiffs,	*	
vs.	*	
	*	Civ. No. 930400503 PI
DOT ADVENTURES, INC., et. al.	*	Judge Boyd L. Park
	*	
Defendants.	*	
	*	

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COUNTY OF UTAH)
)ss
STATE OF UTAH)

COMES Pastora Esperanza Mazariegos, and states the
following:

I am the sister of Rosa Mazariegos, plaintiff in the above
entitled case. I have lived in the same house with my sister
Rosa here in Provo for more than five years.

After she began to work at the stamp place her character
changed significantly. One day she came home and told me that
that day, in addition to her normal work, the Master, her boss,
had ordered her to clean up the poop of a dog that he had there.
Before, she had a happy disposition, very cheerful. She would

arrive home from work tranquil and calm. She liked to dance with the radio, and sing. She also liked to joke around.

But while she was working at the stamps place, she would almost always arrive home angry and very nervous. She would also almost always come home with a headache. I noticed that she was extremely nervous, and I made her take linden tea to help her calm down. I also gave her massages almost every night, and rubbed Vick's vapor rub into her head so she would relax and calm down.

After the day of the search, Rosa's nervous condition worsened. I was worried, because I was afraid she was so nervous that she would make herself sick. She could not sleep. She would only eat a little, and it didn't sit well with her. After she left the company she began to calm down a bit, but she continued to be nervous for some months afterwards.

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IN THE FOURTH JUDICIAL DISTRICT COURT
FOR THE STATE OF UTAH
150 N. 100 W., PROVO, UTAH 84601

=====

WALTER SEMIDEY, ANGEL SANTIAGO,	*	AMENDED TRANSLATION
HUMBERTO BARDALES, and ROSA	*	AFFIDAVIT OF MATILDE
MAZARIEGOS,	*	MAZARIEGOS
	*	
Plaintiffs,	*	
vs.	*	
	*	
DOT ADVENTURES, INC., et. al.	*	Civ. No. 930400503 PI
	*	Judge Boyd L. Park
	*	
Defendants.	*	
	*	

=====

COUNTY OF UTAH)
)ss
STATE OF UTAH)

COMES Matilda Mazariegos, and states the following:

I am the sister of Rosa Mazariegos, plaintiff in the above entitled case. I have lived in the same house with my sister Rosa, here in Provo, for more than five years.

After she began to work in the stamps, her character changed a great deal. Before, she had a happy character, very cheerful. She would arrive home from work tranquil and calm, and set about doing the household chores. But when she worked at the stamps place she would almost always arrive angry and very nervous. She would come home with headaches, and it was difficult for her to

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IN THE FOURTH JUDICIAL DISTRICT COURT
FOR THE STATE OF UTAH
150 N. 100 W., PROVO, UTAH 84601

=====

WALTER SEMIDEY, ANGEL SANTIAGO,	*	AMENDED TRANSLATION
HUMBERTO BARDALES, and ROSA	*	AFFIDAVIT OF MAIRA
MAZARIEGOS,	*	BARDALES
	*	
Plaintiffs,	*	
vs.	*	
	*	
DOT ADVENTURES, INC., et. al.	*	Civ. No. 930400503 PI
	*	Judge Boyd L. Park
	*	
Defendants.	*	
	*	

=====

COUNTY OF UTAH)
)ss
STATE OF UTAH)

COMES Maira Bardales, and states the following:

I am the wife of Humberto Bardales, plaintiff in the above titled case. We were married on the sixth of April of 1990. In the time period important to this complaint, we had been married for over two years. Humberto began to work at the stamps place on the first of August. From the beginning, there was a noticable change in his behavior. Before, he was a happy, calm, tranquil person. After working there, he would come home very angry. At first he did not want to tell me why. Later he began to tell me about the treatment that he was receiving at the

company. He began to look for other work, and even went to Job Service a couple of times, but he didn't find anything.

The day of the search he told me about it when he got home. I could see that it had been a humiliating experience for him. He was hurt and embarrassed to tell me about it. After this he went through a period of time when he was very depressed and angry for about fifteen days. He would get angry with me and with our daughter every day. When he stopped working at the stamps place it took a while for him to recover completely like he was before. But even then, his emotions began to get better from the day that he got out of that company.

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IN THE FOURTH JUDICIAL DISTRICT COURT
FOR THE STATE OF UTAH
150 N. 100 W., PROVO, UTAH 84601

=====

WALTER SEMIDEY, ANGEL SANTIAGO,	*	AMENDED TRANSLATION OF
HUMBERTO BARDALES, and ROSA	*	AFFIDAVIT OF DIANA
MAZARIEGOS,	*	SEMIDEY
	*	
Plaintiffs,	*	
vs.	*	
	*	Civ. No. 930400503 PI
DOT ADVENTURES, INC., et. al.	*	Judge Boyd L. Park
	*	
Defendants.	*	
	*	

=====

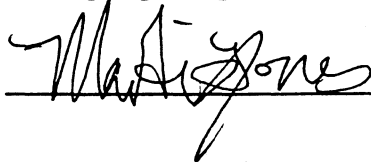
COUNTY OF UTAH)
)ss
STATE OF UTAH)

COMES Diana Semidey, and states the following:

I am the wife of Walter Semidey, a plaintiff in the above entitled case. I remember the day that Walter arrived home to tell me that on that day they had searched all the Hispanic workers. After that day, his character and way of being changed a great deal. Before his character was calm, almost always happy, and there wasn't much that upset him. After that day, he was almost always tense, very nervous, and very aggressive. Daily he would get angry with me or with our children. That year we didn't spend Christmas like we had other years, because Walter

CERTIFICATE OF MAILING

by certify that on the 23th day of March, 1995, I
ue and correct copy of the foregoing AMENDED
SECOND OBJECTION TO DEFENDANTS' MOTION FOR SUMMARY
inus Appendixes, to Counsel for Defendants, Loren D.
E. South Temple, #400, P.O. Box 11590, Salt Lake
4147-0590, first class postage pre-paid.



Tab 16

4005
APR 25 1995
RECEIVED

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Attorneys for Defendants

IN THE FOURTH JUDICIAL DISTRICT COURT
UTAH COUNTY, STATE OF UTAH
125 North 100 West, Provo, Utah 84601

WALTER SEMIDEY, et al.,
Plaintiffs,

vs.

DOT ADVENTURES, INC., et al.,
Defendants.

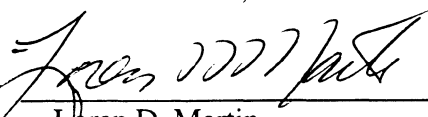
:
: MOTION TO STRIKE and/or
: TO DISREGARD PORTIONS OF
: PLAINTIFFS' AFFIDAVITS

:
: Civ. No. 930400503 PI
: Judge Boyd L. Park
:

Defendants, by and through their attorney, Loren D. Martin, hereby move the Court to strike and/or disregard all or part of Plaintiffs' affidavits. Plaintiffs' affidavits contain multiple conclusionary statements, inadmissible hearsay and do not meet minimal foundational requirements. This motion is accompanied by a supporting Memorandum.

DATED this 25th day of April, 1995.

LOREN D. MARTIN, P.C.

By: 
Loren D. Martin
Attorney at Law

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the above Motion To Strike and/or Disregard Portions Of Plaintiffs' Affidavits and the Memorandum In Support Of Defendants' Motion To Strike and/or To Disregard Portions of Plaintiffs' Affidavits, was placed in the U S Mail, postage prepaid on the 25th day of April, 1995, addressed to the following
~~HAND-DELIVERED~~

Law Offices of Linda Q Jones
Linda Q Jones,
Martí L Jones
40 South 100 West, Suite 303
Provo, Utah 84604

L Denise Farnsworth

Tab 17

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IN THE FOURTH JUDICIAL DISTRICT COURT
UTAH COUNTY, STATE OF UTAH
125 North 100 West, Provo, Utah 84601

WALTER SEMIDEY, et al.,
Plaintiffs,

vs.

DOT ADVENTURES, INC., et al.,
Defendants.

: MEMORANDUM IN SUPPORT OF
: MOTION TO STRIKE and/or
: TO DISREGARD PORTIONS OF
: PLAINTIFFS' AFFIDAVITS
:
: Civ. No. 930400503 PI
: Judge Boyd L. Park
:

Defendants, by and through their attorney, Loren D. Martin, submit this Memorandum In Support Of Motion To Strike and/or To Disregard Portions Of Plaintiffs' Affidavits, as follows:

STATEMENT OF FACTS

1. By pleading dated November 1, 1994, Plaintiffs submitted their own affidavits and affidavits of others. The original affidavits were written in Spanish, accompanied by what purported to be English translations thereof.

2. By pleading dated March 13, 1995, Plaintiffs submitted revised English translations.

3. No explanation was given for the revisions. The revised translations have been submitted without further comment.

4. In an attempt to determine the type of changes made, Defendants' counsel made an interlinear comparison of the Affidavit of Walter Semidey. That comparison is set forth in Exhibit A, attached hereto and made a part hereof.

ARGUMENT

POINT NO. 1

SUBSTANTIAL PORTIONS OF THE AFFIDAVITS DO NOT CONTAIN TESTIMONY WHICH IS ADMISSIBLE IN EVIDENCE SO AS TO MEET THE MINIMUM REQUIREMENTS OF RULE 56(e)

A party opposing a Motion for Summary Judgment must demonstrate that genuine issues of fact exist by reference to documents and to testimony admissible in evidence. Rule 56(e), URCivP, provides, in part, as follows:

Supporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein. [Emphasis Added]

Plaintiffs have submitted multiple affidavits which contain substantial quantities of hearsay testimony, but the affidavits generally do not relate the conversations nor establish any appropriate foundation. Instead, the affidavits most often only provide conclusions as to the ultimate effect of the conversations; and/or, the affidavits draw conclusions regarding the effect and/or the meaning of an incident or conversation; and/or, the affidavits set forth the declarant's mental impressions, what the declarant may believe other parties intended, or the declarant's arguments and conclusions of law.

Changes made to the most recent submissions are of no significant consequence. Substantially all of the statements made in the affidavits do not meet the minimum standards of Rule 56(e),

URCivP, as testimony admissible in evidence in order to create an issue of fact. Most of the statements made in the affidavits are just simply not admissible.

POINT NO. 2

STATEMENTS MADE IN THE AFFIDAVITS MAY NOT BE OFFERED TO CONTRADICT STATEMENTS MADE DURING THE DEPOSITIONS.

A party cannot create a genuine issue of material fact by contradicting or changing his own prior testimony.¹ The 11th Federal Circuit has held that:²

When a party has given clear answers to unambiguous questions which negate the existence of any genuine issue of material fact, that party cannot thereafter create such an issue with an affidavit that merely contradicts, without explanation, previously given clear testimony.

The 7th Federal Circuit has held that:³

In Babrocky, we held that “a party should not be allowed to create issues of credibility by contradicting his own earlier testimony.” ... In so holding, we noted that if we allowed a party to create a genuine issue of material fact by changing his prior testimony: “the very purpose of the summary judgment motion—to weed out unfounded claims, special denials, and sham defenses—would be severely undercut.” ... We also noted that the plaintiff had not explained the contradiction or attempted to resolve the disparity.

Stated another way, the Utah Supreme Court recognized the same long standing rule, “that Plaintiff’s testimony is no stronger than its inconsistent weakness.”⁴

A comparison of the Plaintiffs’ Depositions with the presently submitted Affidavits reveals that the present documents are an attempt to expand from the sole issue related to the checking or searching to one of general allegation of rude and disrespectful treatment in the work place. Rudeness or disrespect do not constitute a basis for the multiplicity of the causes of action alleged.

¹ *Camfield Tires, Inc., v. Michelin Tire Corp.*, 719 F.2d 1361, at 1365-1366 (8th Cir 1983).

² *Van T. Junkins & Associates, Inc. v. U.S. Industries, Inc.*, 736 F.2d 656, at 657 (8th Cir 1983).

³ *Essick v. Yellow Freight Systems, Inc.*, 965 F.2d 334 (7th Cir 1992).

⁴ *Ross v. Olsen*, 481 P.2d 675, at 676 (Utah 1971).

Sample extracts from the depositions of each of the Plaintiffs, preceded by a brief narrative, follows. No attempt has been made to make an exhaustive comparison.

WALTER SEMIDEY—Affidavit v. Deposition

His Affidavit, apparently attempting to indicate there was no escape and force was used to detain him and others, required as an element of an allegation of false imprisonment, Mr. Semidey states⁵.

At no time did he ask if anyone objected to being searched. At no time did he indicate that the door was open to whoever wanted to leave. Furthermore, the door was quite distant, around thirty feet from where we were seated.

In his Deposition he said

Q Did you ever see any force used against any person to facilitate the search?

A (By the translator) No, because the men went into the men's bathroom and the women into the women's. We went in voluntarily.⁶

Q At this checking or searching or — was there a forced detention other than what you thought, even though unexpressed to you, that if you objected in any way you would be terminated in your employment?

A (By the translator) Like I said before, I felt intimidated. There was nothing that was obligatory, but it was very clearly said yet or no. Why should I make any objection? Or if I make an objection I'd lose my job or I stay or I don't know.⁷

ROSA MAZARIEGOS—Affidavit v. Deposition

In her Affidavit, Rosa Mazariegos, attempting to expand her damages well beyond what she stated in her Deposition, stated⁸

When I got home I was devastated. I had a bloody discharge that wasn't normal, but that was caused by my nerves and fear. I was almost

⁵ Affidavit of Walter Semidey, page 3, lines 11-14.

⁶ Deposition of Walter Semidey, page 43, lines 3-7.

⁷ Deposition of Walter Semidey, page 56, lines 1-9.

⁸ Affidavit of Rosa Mazariegos, page 4, lines 7-18.

hysterical. I couldn't sleep all night long. But even so, I didn't want to lose my job, and I returned to work, although I was very nervous and angry. A few days later I tried to speak with Mr. Esquivel, to tell him how wrong the search had been. That same day he fired me.

Upon leaving work I began to calm down, although it was some months before I felt sufficient emotional strength to return to look for work. During all this time my sister took care of me, with linden tea and other home remedies, to help me calm down and recover.

In her Deposition she said:

Q Did you ever complain to anyone at work?

A (By the Translator) No.

Q At any time?

A (By the Translator) Only with my family.

Q Did anyone ever treat you differently after the checking than before?

A (By the Translator) No.

Q Were you ever paid more or less either before or after the checking?

A (By the Translator) No. They always paid me the same.

Q Did anyone tell you that if you did not cooperate you would lose your job?

A (By the Translator) No.

Q Did anyone take anything from you?

A (By the Translator) No.

Q Did anyone lock any doors so that you could not leave?

A (By the Translator) No, but I didn't have to go out because it was time to be working.⁹

...

Q Did you work from the time you left the company in this case until you began working at the one you work now?

A (By the Translator) I stay home a long time until now that I started working again.

Q Why did you start working again?

A (By the Translator) Because I need to. I can't stay idle or doing nothing.

Q Why did you stay home? For children or family?

A (By the Translator) For my family.

Q Did you try to look for work during that time?

A No.

Q Other than the checking, did these people offend you in any other way?

A (By the Translator) The truth is that he always had meetings and he made us waste time.¹⁰

...

Q You came back to work the next day after the checking?

⁹ Deposition of Rosa Mazariegos, page 27, line 22 — page 28, line 16

¹⁰ Deposition of Rosa Mazariegos, page 36, line 12 — page 37, line 4

A (By the Translator) I think so. I don't remember.
 Q Were you angry the next time you came to work?
 A (By the Translator) Yes. I was upset. I was feeling bad for about a month.¹¹

ANGEL SANTIAGO—Affidavit v. Deposition:

The very noticable thing about Mr. Santiago's Affidavit is that he portrays quite a striking difference in personality than during his Deposition. In his Affidavit, Mr. Santiago expands upon how he was humiliated, offended, and powerless:¹²

The two bathrooms were upstairs, and while climbing the stairs one by one the rest of the other people in the cafeteria were looking at us and telling us that we were going to be searched, that it was going to be our turn, that they were going to palpate everything. I felt humiliated and offended. I also felt powerless to object. I thought that there was no alternative, that no one would believe me.

In his Deposition he said:

Q Did any person prevent you from just leaving?
 A No one.
 Q Then the checking was voluntary?
 A It was voluntary, if you think that if someone leaves that they loose their job or then they say he took the money.
 Q Who said this?
 A It is obvious to think that.
 Q But no one said that?
 A It is not necessary for them to say it.
 Q Don't evade the question. Did anyone say this?
 A No.¹³
 ...
 Q Did anyone assault you?
 A No.
 Q Did anyone cause you to fear for your safety?
 A No, no fear.
 Q Did anyone cause you to believe that you would be harmed?
 A No, I don't fear.¹⁴

¹¹ Deposition of Rosa Mazariegos, page 48, lines 15-22

¹² Angel Santiago Affidavit, page 3, lines 8-15

¹³ Deposition of Angel Santiago, page 35, lines 7-17

HUMBERTO BARDALES—Affidavit v. Deposition

In his Affidavit, Mr. Bardales said:¹⁵

I felt threatened. I knew that I was going to be physically frisked and touched.

In his Deposition he, mentioning no threat or forced detention, he said:

Q Did Mr. Hernandez [the person doing the checking in the rest room] touch your person with his hands or otherwise?

A (By the translator) No. The only thing was that he — well, I gave it [his wallet] to him and he opened it. Okay? He gave it to me, and I put it back.

Q Did Mr. Hernandez keep anything that belonged to you?

A No.

Q At any time Mr. Esquivel first spoke when people were in the cafeteria, did anyone move to secure the doors or the exits?

A (By the translator) The doors were always kept shut, so there was no need to do that.

Q Oh. This is a correct answer to the question. I appreciate that. Did anyone that you saw secure or lock the doors?

A No.¹⁶

...

Q Did anyone touch your person, other than what you've described, in any way?

A No.¹⁷

...

Q Did you see any person touched in a harmful or offensive manner?

A (By the translator) No. In the plant, no.

Q At any time?

A No.¹⁸

CONCLUSION

The affidavits cannot be used to contradict the prior sworn testimony. The Depositions establish that there is no cause of action.

¹⁴ Deposition of Angel Santiago, page 40, lines 1-7

¹⁵ Humberto Bardales Affidavit, page 3, lines 5-6

¹⁶ Deposition of Humberto Bardales, page 41, lines 22-25 — page 42, lines 1-13

¹⁷ Deposition of Humberto Bardales, page 44, lines 1-3

¹⁸ Deposition of Humberto Bardales, page 44, lines 13-16

With Mr. Semidey's deposition, there appears to be no basis upon which his cause of action could be justified as a matter of law.

Mr. Bardales said that no person ever prevented his leaving the plant. He was never touched in a harmful or offensive manner.

Mr. Santiago said that no person ever prevented him leaving and he never had any fear for his safety.

Ms. Mazariegos said that she would have continued to work at the plant but for the fact that some days after the checking she was laid off. She suffered no monetary damage from the checking. She just felt bad. After being laid off she stayed home for her family for about a month and then went to work at another place where she is paid more.

None of the Plaintiffs are able to say more than that they were offended and treated rudely and with lack of respect. There is no cause of action for rudeness.

DATED this 25th day of April, 1995.

LOREN D. MARTIN, P.C.

By: 

Loren D. Martin
Attorney at Law

EXHIBIT A
COMPARATIVE ANALYSIS OF DIFFERENT TRANSLATIONS OF THE
WALTER SEMIDEY'S AFFIDAVIT AS SUBMITTED BY PLAINTIFFS'
COUNSEL

STATEMENT OF FACTS

1. The Affidavit of Walter Semidey, dated October 31, 1994, was first submitted to this Court by Plaintiffs' Objection To Defendants' Motion For Summary Judgment, dated November 1, 1994. The Affidavit was in Spanish. An unsigned English translation accompanied the Spanish version.
2. An Amended Translation Of Affidavit Of Walter Semidey was submitted to this Court as an attachment to Plaintiffs' Second Objection To Defendants' Motion For Summary Judgment.
3. Plaintiffs' counsel has also made extensive argument over the translation of Plaintiffs' depositions.
4. In an attempt to determine what all the fuss was about, Defendants' counsel made a standard interlinear comparison of Plaintiffs' first and second translations of the Walter Semidey Affidavit as follows:

COMPARATIVE INTERLINEAR TEXT OF THE TWO TRANSLATIONS:

Comes Walter Semiday [sic], Plaintiff in the above entitled case, and states the following:

I began working at the DOTS company around the first of September, 1992. Before I was hired, I had an interview with the plant manager, whose name was MiguelAngel Esquivel. During this interview he asked me if I was a member of the Mormon (LDS). [The letters, "LDS" were not in the original Spanish language affidavit.) I answered yes, ~~that~~ I was a member. Then he asked me if I had a temple recommend. I told him that yes, I did, and he asked to see it. I thought this was a strange thing, because never in my life had someone asked to see my temple recommend in

an ~~[employment]~~ job interview, but I wanted the job. so I gave it to him so that he could see it. I did not know that it was against the law to ask ~~[this question]~~ about this.

I worked in the DOTS business some three months. During my time there. I observed things that I had never seen before ~~in my life~~. For example, every time that Mr. Esquivel got angry with some person or some department, he would gather ~~[together]~~ the entire plant together. He was almost always ~~[he was]~~ angry, and he would speak to us in a ~~[strong]~~ loud voice or yell at us. He would say that he had had to ~~[lay-off some]~~ send several people home for a few days. ~~[Many]~~ Several times he told us that if we ~~[paid]~~ were paying our tithing, and there wasn't work or we were laid ~~[of]~~ off for a few days, we should go to our bishop and ask for help, because the church had the responsibility to compensate us for the days we were ~~[sic]~~ laid off ~~[if]~~ when we were paying our tithing. Many times he spoke to us hard and strong, accusing us of being robbers. ~~[In]~~ On one occasion he threatened that he was going to search us all as we left work, because, ~~[he said]~~ according to him, someone was stealing the stamps.

Besides being robbers, he also ~~[accused]~~ would accuse us of being liars. He would say that the majority of us were illegals. This~~[-of]~~ thing about accusing ~~[the]~~ people of being illegals, he used it as a threat. ~~[As I saw it]~~ In my opinion, it was a way of reminding the people that they were not free, and that ~~[he could]~~ with one phone call he could cause them many problems. This ~~[was he habitually controlled the]~~ was the method he generally used to control people, and ~~[made]~~ make them behave the way he wanted them to.

But the greatest ~~[offense, for me]~~ insult, in my opinion, was the day that ~~[they]~~ we were all searched ~~[us all]~~. That day he ~~[laid]~~ gave the day off to the department where the few American women worked. He sent everyone in that department home. After, he gathered the rest of us together. ~~[We]~~ There were thirty or forty ~~[people]~~ of us, and all of us were Hispanic ~~[people]~~. He informed us of a ~~[robbery]~~ theft of twenty dollars. and told us that he was going to do something

that was against the law, but that he was going to do it, [~~that~~] which was[-] to search us all. At no time did he ask if anyone objected to being searched. At no time did he indicate that the door was open to whoever wanted to leave. Furthermore, the door was quite distant, around thirty feet, from where we were seated. After that he left the area and left us with the supervisors. There were two groups of women. Some were searched in the upstairs bathroom, others were searched [~~below~~] downstairs in an office. [~~The~~] We men, were all searched upstairs in the men's bathroom. I was upset, nervous, and angry. I almost couldn't believe it. I asked myself [~~and kept asking myself~~] again and again, how it was that they were going to know the difference between the twenty dollar bill that had been lost and a twenty dollar bill that maybe I had in my wallet? I could not understand how they thought to prove anything. I felt anxious and threatened. I believed that they were going to search my entire body. I believed that they were going to make me take off my clothes, and that they were going to touch [~~me in~~] every part of my body. I did not want to be searched, but I did not see any way to [~~liberate~~] free myself from [~~there~~] the situation.

Upon entering the bathroom, I asked my supervisor how he was going to know that the bill in my wallet was the twenty that had been lost. He did not know what to answer. After the search I felt ashamed and humiliated. I felt emotionally [~~destroyed~~] devastated. I got angry with my wife and my children. I felt very upset, very defensive, very aggressive. I continued this way for [~~some~~] several days, like a week, until after Christmas. The search had not had any result. I did not know if this was going to happen again or not. I was not able to calm down until I was let go from work. Even though the way in which I was let go upset me, afterwards, when I didn't have to return there on a daily basis, and live under the threat of another search, I began to calm down and to feel better.

Tab 18

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RBB

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Attorneys for Defendants

IN THE FOURTH JUDICIAL DISTRICT COURT
UTAH COUNTY, STATE OF UTAH
125 North 100 West, Provo, Utah 84601

WALTER SEMIDEY, et al.,
Plaintiffs,

vs.

DOT ADVENTURES, INC., et al.,
Defendants.

:
: REPLY TO PLAINTIFFS' SECOND
: OBJECTION TO DEFENDANTS'
: MOTION FOR SUMMARY
: JUDGMENT

:
: Civ. No. 930400503 PI
: Judge Boyd L. Park
:

Defendants, by and through their attorney, Loren D. Martin, hereby file this Reply To
Plaintiffs' Second Objection To Defendants' Motion For Summary Judgment as follows:

STATEMENT OF FACTS

1. Defendants' Memorandum in Support of Motion for Summary Judgment set forth
14 separately numbered paragraphs containing facts established by specific references to sworn
testimony and identified exhibits.

2. Plaintiffs' Objection To Defendants' Motion For Summary Judgment, dated
November 1, 1994, did not disagree with the statement of facts provided by Defendants as
required by Rule 4-501(2)(b), Code of Judicial Administration. Instead, Plaintiffs provided an
additional set of facts, most of which were irrelevant.

000

3. Nor did Plaintiffs' Second Objection To Defendants' Motion For Summary Judgment, dated March 13, 1995, disagree with the statement of facts as required by Rule 4-501(2)(b).

4. Plaintiffs have not met the minimum requirements of Rule 56(e), URCivP, which requires an appropriate response to a motion for summary judgment. Instead, Plaintiffs have provided:

- a. letters from two psychologists which are inadmissible;
- b. additional sets of "affidavits", purporting to be second "amended translations", which are irrelevant;
- c. what appears to be an argument that all judicial proceedings, depositions, affidavits and transcripts must be in Spanish;
- d. no evidence as to damages as required by the previous Order of this Court; and
- e. additional argument, attempting to support their allegations.

5. At a hearing held on February 10, 1995, this Court granted Plaintiffs until March 13, 1995, to show any basis they may have as to why this matter should continue. At a minimum, this Court required that Plaintiffs provide:

- a. a list of witnesses for trial and a proffer as to what each witness will say, including the specifics as to what they will say about their damages, along with supporting corroboration or expert witnesses, if any; and
- b. any tangible evidence that would support Plaintiffs' claim for damages.

6. Attempting to comply with the Order, Plaintiffs have provided additional argument, new translations of Plaintiffs' affidavits, and letters from two recently contacted psychologists whose testimony would not be admissible. There has been no showing of any damages.

ARGUMENT

POINT NO. 1

PLAINTIFFS' HAVE STILL FAILED TO RAISE AN ISSUE OF MATERIAL FACT WHICH PRECLUDES THE COURT FROM GRANTING DEFENDANTS' MOTION FOR SUMMARY JUDGMENT.

Rule 4-501(2)(b), Code of Judicial Administration, requires that:

All material facts set forth in the movant's (Defendants') statement and properly supported by an accurate reference to the record shall be deemed admitted for the purpose of summary judgment unless specifically controverted by the opposing party's statement.

Rule 56(e), Utah Rules of Civil Procedure, requires that:

When a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of the adverse party's pleading, but the adverse party's response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. If the adverse party does not so respond, summary judgment, if appropriate, shall be entered against the adverse party. [Emphasis added.]

As yet, none of Plaintiffs' memorandum have complied with Rule 56(e) or Rule 4-501(2)(b). Consequently, Defendants' Statement Of Facts must be deemed admitted for the purposes of Defendants' Motion For Summary Judgment and it is appropriate to grant the Motion.

Plaintiffs' purpose for extensive argument over and submission of multiple translations of affidavits is uncertain. It is uncertain whether translation is an attempt to mislead the Court into uncertainty as to the possibility that there may be genuine issues of fact, or whether the extensive arguments and submission of multiple translations is to increase the cost of litigation to Defendants.

Defendants' counsel did not take time to make a careful interlinear comparison of all the different translations. One was picked at random—the first one—that of Walter Semidey. That interlinear comparison is attached hereto as Exhibit A. The changes from one translation to the next are insignificant and immaterial.

Whatever the reason, Plaintiffs' position cannot be improved by submission of multiple or contradictory statements. At the least, Plaintiffs should point out specific changes made in the translation of their affidavits, and give an explanation for such changes and contradictory statements.

As an example, in the Rosa Mazariegos' Deposition she stated that the reason she agreed to bring this action before the Court, was the incident in which she was checked or searched.¹ In her Affidavit, Ms. Mazariegos expands the incidents to being, "attacked and degraded, of being insulted and humiliated constantly."²

Federal and State case law has established that a party cannot create a genuine issue of material fact by contradicting or changing his own prior testimony.³ The 11th Federal Circuit has held that:⁴

When a party has given clear answers to **unambiguous questions** which negate the existence of any genuine issue of material fact, **that party cannot** thereafter create such an issue with an affidavit that merely contradicts, without explanation, previously given clear testimony.

The 7th Federal Circuit has held that:⁵

In Babrocky, we held that "a party should not be allowed to create issues of credibility by contradicting his own earlier testimony." ... In so holding, we noted **that if we allowed a party to create a genuine issue of material fact by changing his prior testimony: "the very purpose of the summary judgment motion—to weed out unfounded claims, special denials, and sham defenses—would be severely undercut."** ... We also noted that the plaintiff had not explained the contradiction or attempted to resolve the disparity.

Stated another way, the Utah Supreme Court recognized the same long standing rule, "that Plaintiff's testimony is no stronger than its inconsistent weakness."⁶ Whatever the reason for

¹ Deposition of Rosa Mazariegos, April 19, 1994, p. 46, line 25 through p. 47, line 14, and p. 55, lines 16-25.

² Affidavit of Rosa Mazariegos, page 3, para 2.

³ *Camfield Tires, Inc., v. Michelin Tire Corp.*, 719 F.2d 1361, at 1365-1366 (8th Cir 1983).

⁴ *Van T. Junkins & Associates, Inc. v. U.S. Industries, Inc.*, 736 F.2d 656, at 657 (8th Cir 1983).

⁵ *Essick v. Yellow Freight Systems, Inc.*, 965 F.2d 334 (7th Cir 1992).

⁶ *Ross v. Olsen*, 481 P.2d 675, at 676 (Utah 1971).

submission of multiple translations and affidavits, confronted with contradictory statements, the Court must consider the facts for purposes of summary judgment to be the weakest of a parties multiple statements.

POINT NO. 2
RECENT LETTERS FROM PSYCHOLOGISTS AS TO PLAINTIFFS'
EMOTIONAL STRESS IN 1992 ARE INADMISSIBLE BOTH IN FORM,
CONTENT AND AS A MATTER OF LAW.

As acknowledged by Plaintiffs⁷, under the provisions of Rule 56(b), URCivP, affidavits are legally admissible evidence in a Summary Judgment proceeding. Letters are not. A letter from a psychologist is not admissible. Affidavits or testimony of the two belated psychologists are not admissible and must be excluded as hearsay.

Rule 803(4), Utah Rules Of Evidence, provides an exception to hearsay in regard to statements made for purposes of medical diagnosis and treatment, as follows:

Statements made for purposes of medical diagnosis or treatment and describing **medical history**, or past or present symptoms, pain, or sensations, or the inception or **general character** of the cause or external source thereof insofar as reasonably pertinent to diagnosis or treatment.

Case law provides clarification of the applicability of the Rule and the reasoning behind this hearsay exception.⁸ Utah's courts have also held that to qualify as an exception to the prohibition against hearsay under Rule 803(4), the patient's statement must meet a two pronged foundational test: (1) is declarant's motive in making the statements consistent with a desire to promote treatment, and (2) is it reasonable for the physician to rely on the information in his diagnosis or treatment? Such foundational requirements are imposed to assure that the patient has a, "strong motivation to be truthful."⁹

⁷ Plaintiffs' Second Objection To Defendants' Motion For Summary Judgment, page 2, para 2, lines 1-2.

⁸ *Roberts v. Hollocher*, 664 F.2d 200, 204 (8th Cir. 1981), cited in: *Industrial Power Contractors v. Industrial Commission Of Utah*, 832 P.2d 477 (Utah App. 1992); and *Hansen v. Heath*, 852 P.2d 977 (Utah 1993).

⁹ *Hansen v. Heath*, supra, at 979.

In the present matter, the Plaintiffs' statements to psychologists were not made for the purpose of diagnosis to promote treatment. Plaintiffs' statements to the psychologists were solely for the purpose of aiding the pursuit of this litigation and attempting to qualify the psychologists as expert witnesses. Ms. Gummow has never seen any of the Plaintiffs and the purpose of the psychological evaluation of Plaintiffs made by Juan A. Mejia was not for the purpose of diagnosis and treatment. The affidavit on the letterhead of Linda J. Gummow, PhD, is based upon hearsay¹⁰:

On March 13, 1995, I examined the following materials at the request of M. Jones: Psychological Evaluation of Jose Humberto Bardales, Rosa D. Mazariegos, Angel M. Santiago, and Walter Semidey done by Juan A. Mejia, Ph.D. and dated March 10, 1995; English translation of statements of the above named individuals.

The purpose of the evaluation was solely to provide information for pursuit of this present litigation. Juan A. Mejia so stated in his letter as follows¹¹:

Mr. Bardales, Ms. Mazariegos, Mr. Santiago, and Mr. Semidey were referred by their attorney, Ms. Jones, for a psychological evaluation in connection to their lawsuit against DOT Adventures Inc., being heard at the Fourth Judicial District Court by Judge Boyd L. Park. Specifically, Ms. Jones was interested in an assessment of emotional damage to the plaintiffs, if any, in connection to events in this case. Available in preparing this report were affidavits by all four plaintiffs in this case as well as affidavits by some of their family members.

Plaintiffs did not go to the psychologist for diagnosis or treatment. Plaintiffs went to the psychologist solely for the purpose of litigation. As to Rule 803(4), both Federal and Utah case law recognize the distinction between a treating physician, an examining physician and a professional opinion sought solely for the purposes of litigation rather than diagnosis or treatment of a current condition. The Federal Rules of Evidence in this regard, also Rule 803(4), have the

¹⁰ Letter affidavit of Linda J. Gummow, PhD, March 13, 1995, page 1, para 3.

¹¹ Letter titled, "Confidential Psychological Evaluation" Juan A. Mejia, PhD, March 10, 1995, page 1, para 1.

same provisions as the Utah Rule and have been similarly interpreted.¹² Secondary sources on the subject have set forth the same reasoning¹³:

Courts have historically drawn distinctions between diagnosing and treating physicians and examining, i.e., nontreating—physicians in the admission of testimony concerning the plaintiff's out-of-court complaints of pain and suffering. The distinctions have largely reflected the belief that statements made to a physician from whom the injured person seeks treatment are inherently more trustworthy than statements made to a physician whom the plaintiff has consulted for the main, if not sole, purpose of obtaining a favorable trial witness.

Such distinctions have been long standing. As an example, the U.S. 8th Circuit Court has held¹⁴ that:

Since it is clear that the doctor did not examine the appellee for the purpose of effecting a cure of his injury but only to qualify himself as a favorable witness, the doctor's testimony as to the history of the case given him by appellee was inadmissible because of hearsay.

Since the proffered testimony of the two psychologists would not be admissible as a matter of law, a basic issue of damages would necessarily have to be resolved in the Defendants' favor.¹⁵

Absent the testimony of the two psychologists, the alleged mental suffering and anguish required to establish a cause of action can not be shown.

There is no evidence to show actual damages. The Statement Of Facts previously set forth by the Defendants still stands uncontradicted for purposes of summary judgment. Therefore, "Plaintiffs acknowledge that they all are presently earning more money with their new employment than they were when working for DOT Adventures, Inc."¹⁶ There has been no physical injury or loss. None has been claimed. There is no evidence of damages.

¹² *Padgett v. Southern Ry.*, 396 F.2d 303 (6th Cir 1968).

¹³ *Damages In Tort Actions*, Minzer, Nates, Kimball, Axelrod & Goldstein, Matthew Bender, 1994, §4.32(3)(ii)(B).

¹⁴ *Chicago N.W. Ry. v. Garwood*, 167 F.2d 848 (8th Cir. 1948)

¹⁵ *Damages In Tort Actions*, *op cit.* §4.32(3)(ii)(A).

¹⁶ Defendants' Memorandum In Support Of Motion For Summary Judgment, page 7, para 14.

POINT NO. 3
PLAINTIFFS ARE BARRED FROM
DENYING THAT THEY GAVE CONSENT

No Plaintiff ever objected about any incident during the period of their employment. No objection was ever received by any of the Defendants until the formal Complaint was filed more than six months later, long after all Plaintiffs had terminated employment with DOT Adventures, Inc.¹⁷ Plaintiffs not only failed to make any objection to the checking or search procedure, but also they all voluntarily went to the cafeteria, went to the rest rooms, and complied with all requests. Silent compliance may be taken for consent. The Plaintiffs did nothing to object to any of what they now claim was continual, abusive, humiliating, intentional and offensive treatment.

In fact, in the deposition of the first named Plaintiff, Mr. Walter Semidey, he said, "We went in voluntarily."¹⁸ And that, "There was nothing that was obligatory."¹⁹

Plaintiffs are barred from denying that they gave consent. The doctrine of equitable estoppel prevents one from asserting or establishing a position contrary to that represented by their conduct and actions upon which another relied. Even if it could be shown that Defendants engaged in actionable conduct, such conduct would not constitute a tort when all of the Plaintiffs actions and comments, the only thing upon which Defendants could rely, indicated that the Plaintiffs all consented to the action. None of the Plaintiffs ever made any objection whatever. Consequently, Plaintiffs must be barred from now taking a position that their own conduct and words or lack thereof constituted a misrepresentation of their unseen and unexpressed injuries. Regarding the question of consent, the Restatement, Torts, 2d §892, provides that:

Meaning of Consent. (1) Consent is willingness in fact for conduct to occur. It may be manifested by action or inaction and need not be communicated to the actor. (2) If words or conduct are reasonably understood by another to be

¹⁷ Defendants' Memorandum In Support Of Motion For Summary Judgment, page 6, para 11.

¹⁸ Deposition of Walter Semidey, page 43, line 7.

¹⁹ Deposition of Walter Semidey, page 56, lines 6-7.

intended as consent, they constitute apparent consent and are as effective as consent in fact.

CONCLUSION

This matter is brought before the Court by former employees, belatedly claiming that they were offended by their previous work environment. No complaint was ever made during the period of employment. Plaintiffs' first complaint came more than six months later. Opening the door and encouraging litigation after the fact of employment would be to encourage a wide-open flood gate of unfounded and frivolous suits.

DATED this 31st day of March, 1995.

LOREN D. MARTIN, P.C.

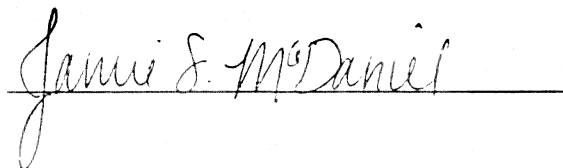
By: 

Loren D. Martin
Attorney at Law

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the above Reply To Plaintiffs' Second Objection To Defendants' Motion For Summary Judgment, was placed in the U.S. Mail, postage prepaid on the 31st day of March, 1995, addressed to the following:

Law Offices of Linda Q. Jones
Linda Q. Jones,
Marti L. Jones
40 South 100 West, Suite 303
Provo, Utah 84604



COMPARATIVE ANALYSIS OF DIFFERENT TRANSLATIONS OF THE
WALTER SEMIDEY'S AFFIDAVIT AS SUBMITTED BY PLAINTIFFS'
COUNSEL

STATEMENT OF FACTS

1. The Affidavit of Walter Semidey, dated October 31, 1994, was first submitted to this Court by Plaintiffs' Objection To Defendants' Motion For Summary Judgment, dated November 1, 1994. The Affidavit was in Spanish. An unsigned English translation accompanied the Spanish version.

2. An Amended Translation Of Affidavit Of Walter Semidey was submitted to this Court as an attachment to Plaintiffs' Second Objection To Defendants' Motion For Summary Judgment.

3. Plaintiffs' counsel has also made extensive argument over the translation of Plaintiffs' depositions.

4. In an attempt to determine what all the fuss was about, Defendants' counsel made a standard interlinear comparison of Plaintiffs' first and second translations of the Walter Semidey Affidavit as follows:

COMPARATIVE INTERLINEAR TEXT OF THE TWO TRANSLATIONS:

Comes Walter Semiday [sic], Plaintiff in the above entitled case, and states the following:

I began working at the DOTS company around the first of September, 1992. Before I was hired, I had an interview with the plant manager, whose name was MiguelAngel Esquivel. During this interview he asked me if I was a member of the Mormon (LDS). [The letters, "LDS" were not in the original Spanish language affidavit.] I answered yes, [that] I was a member. Then he asked me if I had a temple recommend. I told him that yes, I did, and he asked to see it. I thought this was a strange thing, because never in my life had someone asked to see my temple recommend in

an ~~[employment]~~ job interview, but I wanted the job, so I gave it to him so that he could see it. I did not know that it was against the law to ask ~~[this question]~~ about this.

I worked in the DOTS business some three months. During my time there, I observed things that I had never seen before ~~in my life~~. For example, every time that Mr. Esquivel got angry with some person or some department, he would gather ~~[together]~~ the entire plant together. He was almost always ~~[he was]~~ angry, and he would speak to us in a ~~[strong]~~ loud voice or yell at us. He would say that he had had to ~~[lay off some]~~ send several people home for a few days. ~~[Many]~~ Several times he told us that if we ~~[paid]~~ were paying our tithing, and there wasn't work or we were laid ~~[off]~~ off for a few days, we should go to our bishop and ask for help, because the church had the responsibility to compensate us for the days we were ~~[sic]~~ laid off ~~[if]~~ when we were paying our tithing. Many times he spoke to us hard and strong, accusing us of being robbers. ~~[In]~~ On one occasion he threatened that he was going to search us all as we left work, because, ~~[he said]~~ according to him, someone was stealing the stamps.

Besides being robbers, he also ~~[accused]~~ would accuse us of being liars. He would say that the majority of us were illegals. This ~~[, of]~~ thing about accusing ~~[the]~~ people of being illegals, he used it as a threat. ~~[As I saw it]~~ In my opinion, it was a way of reminding the people that they were not free, and that ~~[he could]~~ with one phone call he could cause them many problems. This ~~[was he habitually controlled the]~~ was the method he generally used to control people, and ~~[made]~~ make them behave the way he wanted them to.

But the greatest ~~[offense, for me]~~ insult, in my opinion, was the day that ~~[they]~~ we were all searched ~~[us all]~~. That day he ~~[laid]~~ gave the day off to the department where the few American women worked. He sent everyone in that department home. After, he gathered the rest of us together. ~~[We]~~ There were thirty or forty ~~[people]~~ of us, and all of us were Hispanic ~~[people]~~. He informed us of a ~~[robbery]~~ theft of twenty dollars, and told us that he was going to do something

that was against the law, but that he was going to do it, [~~that~~] which was[~~it~~] to search us all. At no time did he ask if anyone objected to being searched. At no time did he indicate that the door was open to whoever wanted to leave. Furthermore, the door was quite distant, around thirty feet, from where we were seated. After that he left the area and left us with the supervisors. There were two groups of women. Some were searched in the upstairs bathroom, others were searched [~~below~~] downstairs in an office. [~~The~~] We men, were all searched upstairs in the men's bathroom. I was upset, nervous, and angry. I almost couldn't believe it. I asked myself [~~and kept asking myself~~] again and again, how it was that they were going to know the difference between the twenty dollar bill that had been lost and a twenty dollar bill that maybe I had in my wallet? I could not understand how they thought to prove anything. I felt anxious and threatened. I believed that they were going to search my entire body. I believed that they were going to make me take off my clothes, and that they were going to touch [~~me in~~] every part of my body. I did not want to be searched, but I did not see any way to [~~liberate~~] free myself from [~~there~~] the situation.

Upon entering the bathroom, I asked my supervisor how he was going to know that the bill in my wallet was the twenty that had been lost. He did not know what to answer. After the search I felt ashamed and humiliated. I felt emotionally [~~destroyed~~] devastated. I got angry with my wife and my children. I felt very upset, very defensive, very aggressive. I continued this way for [~~some~~] several days, like a week, until after Christmas. The search had not had any result. I did not know if this was going to happen again or not. I was not able to calm down until I was let go from work. Even though the way in which I was let go upset me, afterwards, when I didn't have to return there on a daily basis, and live under the threat of another search, I began to calm down and to feel better.

Tab 19

IN THE FOURTH JUDICIAL DISTRICT COURT

STATE OF UTAH

WALTER SEMIDEY, ANGEL
SANTIAGO, HUMBERTO
BARDALES, and ROSA
MAZARIEGOS,

Plaintiffs,

vs.

JEANETTE R. LYNTON, /aka/
JEANETTE ROMERO MARKHAM,
/dba/D.O.T.S., DOZENS OF
STAMPS, MIGUEL ANGEL
ESQUIVEL; JOHN DOES I & II
AND JANE DOES I-III,

Defendants.

Civil No. 930400503 PI
Judge Boyd L. Park

Deposition of:
ROSA MAZARIEGOS

CERTIFIED COPY

BE IT REMEMBERED that on the 19th day of April, 1994, the deposition of Rosa Mazariegos, produced as a witness herein at the instance of the Defendants Jeanette R. Lynton and Miguelangel Esquivel herein, in the above-entitled action now pending in the above-named court, was taken before Carole A. King, a Certified Shorthand Reporter and Notary Public in and for the State of Utah, commencing at the hour of 5:25 p.m. of said day at the offices of Loren D. Martin, 1200 Beneficial Life Tower, 36 South State Street, Salt Lake City, Utah.

That said deposition was taken pursuant to Notice.

CAROLE KING
CSR No. 330

**INDEPENDENT REPORTING
SERVICE**

Certified Shorthand Reporters

1710 Beneficial Life Tower
36 South State Street
Salt Lake City, Utah 84111
(801) 538-2333

APPEARANCES

For the Plaintiffs: Ms. Marti Jones

Attorney at Law

Law Offices of Linda Q. Jones

40 South 100 West, #33

Provo, Utah 84601

(801) 373-0276

For the Defendants Mr. Loren D. Martin

Jeanette R. Lynton Attorney at Law

and Miguelangel Esquivel 1200 Beneficial Life Tower

36 South State Street

Salt Lake City, Utah 84111

The Translator: Ms. Elvia George

Also Present: Ms. Denise Farnsworth

Ms. Jeanette R. Lynton

Mr. Miguelangel Esquivel

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Witness Page

ROSA MAZARIEGOS

Examination by Mr. Martin 3

EXHIBITS

Number	Description	Marked
1	Drawing by witness	39

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[1] April 19, 1994 PROCEEDINGS 5:25 p.m.
 [2] MR. MARTIN: We're here for a deposition,
 [3] and let me ask you if you will state your name first,
 [4] please.
 [5] THE WITNESS: Rosa.
 [6] MR. MARTIN: And your last name?
 [7] THE WITNESS: Mazariegos.
 [8] ROSA MAZARIEGOS,
 [9] having been first duly sworn, through the interpreter,
 [10] was examined and testified as follows:
 [11] EXAMINATION
 [12] BY MR. MARTIN:
 [13] Q: Maybe before we start you could tell us:
 [14] What is the source of your Spanish?
 [15] A: (By the translator) I born in Mexico City,
 [16] and I have been living here for about 30 years.
 [17] MR. MARTIN: Do you have training also in
 [18] English?
 [19] THE TRANSLATOR: Yes, of course, I have.
 [20] MR. MARTIN: Would you tell us that also.
 [21] THE TRANSLATOR: Yes. I have a master's
 [22] degree in psychology and attended the University of
 [23] Utah.
 [24] MS. JONES: Do you have any training in
 [25] translation?

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[1] THE TRANSLATOR: Not in translation, but I
 [2] have translated for the Church and my school.
 [3] MS. JONES: But you don't have any specific
 [4] training in translation.
 [5] THE TRANSLATOR: No.
 [6] MS. JONES: I'm going to reserve the right
 [7] at this point that if there's anything — like if
 [8] there's a problem, I will stop the deposition, because
 [9] if there's a problem with translation I don't want to
 [10] continue.
 [11] MR. MARTIN: We expect that. Okay. That's
 [12] why I wanted to have — okay. Very good. Since we all
 [13] speak Spanish —
 [14] (laughter)
 [15] Q: (By Mr. Martin) All right. Maybe we start
 [16] again. Is that okay? Now, state your name, your full
 [17] name.
 [18] A: Rosa Mazariegos.
 [19] Q: Your address.
 [20] A: (By the translator) 430 North, Provo, Utah,
 [21] Apartment #3, 8401.
 [22] Q: It's missing one number.
 [23] A: (By the translator) 601.
 [24] Q: What schools have you attended?
 [25] A: (By the translator) In her country,

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[1] secondary education.
 [2] Q: What country?
 [3] A: (By the translator) Honduras.
 [4] Q: Do you speak English?
 [5] A: (By the translator) Little bit. She
 [6] understands a little bit and speaks a little bit. Not
 [7] much.
 [8] Q: Do you understand why we are here?
 [9] A: (By the translator) Yes.
 [10] Q: Do you understand that it's a deposition?
 [11] A: (By the translator) How deposition or —
 [12] Q: That is to ask you questions under oath.
 [13] A: (By the translator) Yes.
 [14] Q: Do you understand what it means to be under
 [15] oath?
 [16] A: (By the translator) Yes, she understands.
 [17] Q: Do you understand that if you were to say
 [18] something which was false, then that could be used
 [19] against you?
 [20] A: (By the translator) Yes, she understands.
 [21] Q: And also maybe charges of perjury, if
 [22] appropriate.
 [23] A: (By the translator) I understand that if
 [24] one lies, not only man can punish but also God.
 [25] Q: Do you understand that after the deposition

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[1] you'd have the opportunity to read through that with
 [2] your counsel and make any corrections?
 [3] A: (By the translator) Yes.
 [4] Q: Going back to December 16 or 17, where were
 [5] you employed in 1992?
 [6] A: (By the translator) In the factory of
 [7] stamps.
 [8] Q: Where was that located?
 [9] A: (By the translator) She doesn't remember.
 [10] Q: You'll need to speak up maybe a little
 [11] louder for the recorder. Would you tell her that. And
 [12] you also.
 [13] THE TRANSLATOR: Si.
 [14] Q: (By Mr. Martin) What was your assignment at
 [15] that place where you worked?
 [16] A: (By the translator) She cut stamps.
 [17] Q: With whom did she work?
 [18] THE TRANSLATOR: As a companion or her boss?
 [19] MR. MARTIN: Companion first.
 [20] A: (By the translator) They work individually
 [21] in each table.
 [22] Q: (By Mr. Martin) And who was your
 [23] supervisor?
 [24] A: (By the translator) Miguelangel Esquivel.
 [25] Q: How long before the 16th or 17th of December

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[1] ahead and answer it.
 [2] A: (By the translator) Cash.
 [3] Q: (By Mr. Martin) Were you paid by the hour?
 [4] A: (By the translator) By hour.
 [5] Q: How much?
 [6] A: (By the translator) \$4.25.
 [7] Q: What was the name of the company you worked
 [8] for when you cut stamps?
 [9] THE TRANSLATOR: In her country or here?
 [10] MR. MARTIN: Here.
 [11] A: (By the translator) She doesn't remember.
 [12] The only thing she remembers is that his name was Scott.
 [13] I think —
 [14] Q: (By Mr. Martin) The name when you're
 [15] working cutting stamps.
 [16] A: (By the translator) She doesn't remember.
 [17] Q: How were you paid?
 [18] MS. JONES: No. There's some confusion here
 [19] as to what the question — what you want to ask — the
 [20] sense in Spanish is different than the sense in English.
 [21] Q: (By Mr. Martin) With what were you paid?
 [22] THE TRANSLATOR: With what?
 [23] MR. MARTIN: Yes.
 [24] A: (By the translator) With checks.
 [25] Q: (By Mr. Martin) Were you paid by the hour?

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[1] of '92 had you worked there?
 [2] A: (By the translator) Sincerely, she had been
 [3] working there a short time.
 [4] Q: What do you mean, a "short time"?
 [5] A: (By the translator) She doesn't remember if
 [6] two months or one month.
 [7] Q: Where had you worked before then?
 [8] A: (By the translator) She was working in the
 [9] agricultural, in the apples.
 [10] Q: For how long?
 [11] A: (By the translator) Also a short time when
 [12] she just came back from her country when she started
 [13] working there.
 [14] Q: Where was that agricultural work?
 [15] A: (By the translator) In Provo.
 [16] Q: Did you work in Honduras?
 [17] A: (By the translator) Yes.
 [18] Q: Doing what?
 [19] A: (By the translator) She worked also in
 [20] agriculture in a factory. Bananas.
 [21] Q: When you worked agriculture in Provo, how
 [22] were you paid?
 [23] MS. JONES: Is that relevant?
 [24] MR. MARTIN: Mm-hm.
 [25] MS. JONES: I'll object for the record. Go

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[1] A: (By the translator) \$4.75.
 [2] Q: How often were you paid?
 [3] A: (By the translator) Every 15 days.
 [4] Q: How long did you work in one day?
 [5] A: (By the translator) Most of the time eight
 [6] hours, but sometimes there was not enough work and they
 [7] had to go.
 [8] Q: On the 16th or 17th of December '92, what
 [9] happened? Do you remember an unusual thing that
 [10] happened in your work?
 [11] A: (By the translator) I don't remember
 [12] exactly the date, but I think it was the 17th.
 [13] Q: What first happened unusual?
 [14] A: (By the translator) That day some money was
 [15] lost. \$20 were lost.
 [16] Q: How did she know this? How do you know
 [17] this?
 [18] A: (By the translator) Because the supervisor,
 [19] Mr. Esquivel, said that they had lost — \$20 were lost.
 [20] Q: Did you know or were you told who had lost
 [21] the money?
 [22] A: (By the translator) She said the money
 [23] belonged to a girl whose name she doesn't remember, but
 [24] she does remember her face.
 [25] Q: A coworker?

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[1] A: (By the translator) Yes, another coworker.
 [2] Q: A person who worked near you?
 [3] A: (By the translator) Not very close.
 [4] Q: How well did you know this person?
 [5] A: (By the translator) Only as a worker, as a
 [6] part of the personnel where she worked.
 [7] Q: What I understand is that someone told you
 [8] that \$20 had been questioned.
 [9] A: (By the translator) Could you clear out
 [10] how?
 [11] Q: No. I'm saying what I understand is that
 [12] she — you are saying someone told you that \$20 was
 [13] missing.
 [14] A: (By the translator) Mr. Esquivel said that
 [15] the \$20 were lost.
 [16] Q: Can you remember the exact words he said?
 [17] A: (By the translator) He called everybody and
 [18] said he was going to have a meeting.
 [19] Q: What time?
 [20] A: (By the translator) I don't remember the
 [21] time exactly.
 [22] Q: Morning or afternoon?
 [23] A: (By the translator) It was late in the
 [24] morning.
 [25] Q: Where were you when you first heard this

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[1] usually from there.
 [2] Q: Big door or small door?
 [3] A: (By the translator) It's a small door,
 [4] because there's a big door, but they usually don't open
 [5] it.
 [6] Q: I put the word "entrance" by the place. Is
 [7] this correct, this location?
 [8] A: (By the translator) Yes.
 [9] Q: Is there a large door?
 [10] A: (By the translator) There is a big door,
 [11] but they usually don't open it. Only the little one.
 [12] Q: Where is the big door?
 [13] A: (By the translator) Where the small one is.
 [14] Q: Would you mark that.
 [15] (The witness complies.)
 [16] A: (By the translator) By this side, it is.
 [17] Q: She's indicated with a line running
 [18] horizontal with the word "entrance" and on the north
 [19] side of the small door. Are there any other doors?
 [20] A: (By the translator) Yes. I could see other
 [21] doors, but they don't open.
 [22] Q: I don't care if they are open or not. It's
 [23] not important to me.
 [24] A: (By the translator) Yes, there's more
 [25] doors.

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[1] message?
 [2] MS. JONES: No. Excuse me. You're adding
 [3] things to what he's saying. Don't do that.
 [4] A: (By the translator) Working.
 [5] Q: (By Mr. Martin) In what location?
 [6] A: (By the translator) In her table where she
 [7] cut the stamps.
 [8] Q: Could you make a drawing of the warehouse?
 [9] (The witness complies.)
 [10] A: (By the translator) More or less this way.
 [11] I work here. There's some shelves where they put
 [12] stamps, and then the office of this man, and then some
 [13] desks and tables, and she was there.
 [14] Q: Where were you — well, let me, if I may,
 [15] make just a rectangular shape, and if you would indicate
 [16] on this rectangular shape approximately where you were
 [17] located.
 [18] A: (By the translator) Always on this side.
 [19] Q: I'm putting an "X," or a star, on that
 [20] location. Do you know which direction would be north?
 [21] A: (By the translator) North over here, and
 [22] make south here.
 [23] Q: Put an "N" on north, and south with question
 [24] mark. Where is the door in which you usually enter?
 [25] A: (By the translator) There. She enters

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[1] Q: Where?
 [2] A: (By the translator) In the side, but I
 [3] don't remember how many are there.
 [4] Q: She indicated, as she was speaking, the
 [5] entire line south of the word "entrance."
 [6] A: (By the translator) The entrance door is
 [7] only one that is that.
 [8] Q: Small?
 [9] A: (By the translator) It's little.
 [10] Q: All of the other doors are large?
 [11] A: (By the translator) Sincerely, I don't
 [12] remember.
 [13] Q: Do you remember any doors on the south side?
 [14] A: (By the translator) No.
 [15] Q: On the west side?
 [16] A: (By the translator) If there's any, she
 [17] doesn't remember them. She didn't pay attention.
 [18] Q: Does Mr. Esquivel have an office?
 [19] A: Si.
 [20] Q: Where is that?
 [21] A: (By the translator) In this side.
 [22] Q: Would you mark this.
 [23] (The witness complies.)
 [24] Q: She's made a mark on the north side of the
 [25] north line, and I will mark this "Esquivel."

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[1] Where was he when you first heard him say
 [2] \$20 is lost?
 [3] MS. JONES: No. Excuse me.
 [4] THE TRANSLATOR: I'm sorry.
 [5] MS. JONES: Ask the question again,
 [6] because — listen to it again, please.
 [7] Q: (By Mr. Martin) Where were you when the
 [8] question was asked about the \$20?
 [9] A: (By the translator) Working.
 [10] Q: At the location marked here with the star?
 [11] A: (By the translator) Yes.
 [12] Q: What was the next thing that happened?
 [13] A: (By the translator) For his own mouth, she
 [14] learned that that money was lost.
 [15] Q: What happened after that?
 [16] A: (By the translator) He called everybody to
 [17] a reunion.
 [18] MS. JONES: A meeting.
 [19] THE TRANSLATOR: A meeting.
 [20] MR. MARTIN: What word did she use?
 [21] THE TRANSLATOR: Reunion. Reunion is —
 [22] MR. MARTIN: Yes. I understand.
 [23] Q: (By Mr. Martin) Where?
 [24] A: (By the translator) In the dining room or
 [25] dining — eating area.

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[1] A: (By the translator) Mr. Esquivel.
 [2] Q: What did he say?
 [3] A: (By the translator) He said there has been
 [4] lost some money and that's why he was getting them all
 [5] together.
 [6] Q: Did anyone else speak at that moment?
 [7] A: (By the translator) No.
 [8] Q: What did he say next?
 [9] A: (By the translator) He said, Gentlemen,
 [10] there has been lost some money. \$20, he said.
 [11] Q: After he said that, what did he say?
 [12] A: (By the translator) He said, Nobody's going
 [13] to leave this place if you don't give me that money.
 [14] Q: How many people were there?
 [15] A: (By the translator) I don't know the number
 [16] of people working there, but he does.
 [17] Q: More than 20?
 [18] A: (By the translator) Yes. Many more.
 [19] Q: More than 50?
 [20] A: (By the translator) I don't know exactly
 [21] how many workers are there, but there were a lot of
 [22] people.
 [23] Q: Was Jeanette Lynton present?
 [24] A: (By the translator) No.
 [25] Q: After he said, Nobody is going to leave,

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[1] Q: Where is that located?
 [2] A: (By the translator) The eating area is
 [3] here, and they have tables there.
 [4] Q: I'm marking this eating area. This is the
 [5] area where she made three parallel lines from north to
 [6] south.
 [7] Q: Did everyone go to that area?
 [8] A: (By the translator) Everybody.
 [9] Q: You saw no one leave?
 [10] A: (By the translator) No.
 [11] Q: Where in the area did you go?
 [12] A: (By the translator) I sat here.
 [13] MR. MARTIN: We may make this a star. I'm
 [14] putting the numeral 1 at her work location and the
 [15] numeral 2 at the place where she sat in the eating area.
 [16] Q: (By Mr. Martin) Were you sitting or
 [17] standing in the eating area?
 [18] A: (By the translator) Sit.
 [19] Q: Who was in charge?
 [20] A: (By the translator) Mr. Esquivel.
 [21] Q: How long did it take everyone to get there
 [22] from the time he first announced the meeting?
 [23] A: (By the translator) Maybe three minutes to
 [24] get all together.
 [25] Q: When everyone was together, who spoke?

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[1] what did he say?
 [2] A: (By the translator) He said everybody's
 [3] going to be checked to see who has that money.
 [4] Q: Do you remember the exact words?
 [5] A: (By the translator) That, what she said.
 [6] Q: What did he say next?
 [7] A: (By the translator) Raise your hand whoever
 [8] doesn't want to be checked.
 [9] Q: What did she understand by the word
 [10] "checked"?
 [11] A: (By the translator) "To check," for her,
 [12] means to look up to everything they have for what he's
 [13] looking.
 [14] Q: Did anyone raise their hand?
 [15] A: (By the translator) Nobody raised their
 [16] hand, because he said that if somebody didn't raise
 [17] their hand would be for some reason.
 [18] Q: When did he say that?
 [19] A: (By the translator) After he said to raise
 [20] their hand, and that if somebody didn't raise their hand
 [21] is because they were afraid of something.
 [22] Q: Did anyone else speak?
 [23] A: (By the translator) No.
 [24] Q: Did any companions speak?
 [25] A: (By the translator) No.

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- [1] Q: What happened next?
- [2] A: (By the translator) Then he send the woman
- [3] supervisor to check the woman, and the man supervisor to
- [4] check all the men.
- [5] Q: Who was the woman supervisor?
- [6] A: (By the translator) The one that check her
- [7] they call her "Cookies," but she doesn't know the name.
- [8] Q: How many women companions?
- [9] A: (By the translator) Everybody, many, but I
- [10] don't know the number.
- [11] Q: Did the women go to a different area?
- [12] A: (By the translator) We were in the same
- [13] place. It was in that area, and they sat around like
- [14] that.
- [15] Q: Was that in the eating area?
- [16] A: (By the translator) Yes.
- [17] Q: Did you move into male and female groups?
- [18] A: (By the translator) They take one by one
- [19] the woman to the ladies room and the man to the man's
- [20] room with the supervisors.
- [21] Q: How long did this take in total?
- [22] A: (By the translator) More than an hour,
- [23] because I look at the clock and it was past an hour.
- [24] Q: Did they go in groups or singly?
- [25] A: (By the translator) One by one they

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- [1] A: (By the translator) No. Nobody was
- [2] supposed to be checked.
- [3] Q: After you were checked, did you go back to
- [4] work?
- [5] A: (By the translator) Yes.
- [6] Q: Were you offended in feelings?
- [7] A: (By the translator) Yes, of course.
- [8] Q: Did you say that to anyone?
- [9] A: (By the translator) At home.
- [10] Q: Did you ever say that you had been offended
- [11] and say that to any other person than at home?
- [12] A: (By the translator) No, but I felt very bad
- [13] that they would check me, because I knew that I didn't
- [14] have that money.
- [15] Q: Did anyone push you?
- [16] A: (By the translator) How — what do you
- [17] mean?
- [18] Q: Push with the hands.
- [19] A: (By the translator) No.
- [20] Q: Did anyone hit you?
- [21] A: (By the translator) No.
- [22] Q: Did anyone cause you pain?
- [23] A: (By the translator) Physical pain —
- [24] Q: Yes.
- [25] A: (By the translator) — or moral?

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- [1] checked.
- [2] Q: "They," meaning whom?
- [3] A: (By the translator) They — they, the two
- [4] woman supervisors, and him, the supervisor man.
- [5] Q: Were there two supervisors?
- [6] A: (By the translator) Only one I remember.
- [7] Q: Did people leave and go out of the building
- [8] after they had been checked?
- [9] A: (By the translator) No, they went back to
- [10] work.
- [11] Q: Was any money found that she knows about?
- [12] THE TRANSLATOR: Excuse me?
- [13] Q: (By Mr. Martin) Was any money found that
- [14] she knows about?
- [15] A: (By the translator) She doesn't know. She
- [16] didn't find out.
- [17] Q: Where is the women's rest room?
- [18] A: (By the translator) It's in the upper part,
- [19] and I could not try there because it's in the upper
- [20] part.
- [21] Q: Did more than one person with a supervisor
- [22] go to the upper part?
- [23] A: (By the translator) No. Only one by one
- [24] with a supervisor.
- [25] Q: Did any other woman object?

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- [1] Q: Physical pain.
- [2] A: (By the translator) No.
- [3] Q: Did anyone touch you?
- [4] A: (By the translator) Yes.
- [5] Q: Who?
- [6] A: (By the translator) Cookie, the one that
- [7] check her.
- [8] Q: Did she touch you while you were in the
- [9] eating area?
- [10] A: (By the translator) No, in the rest room.
- [11] Q: Was anyone else present?
- [12] A: (By the translator) No, only the two of us.
- [13] Q: Where did she touch you?
- [14] A: (By the translator) When she got her turn
- [15] to check — to be checked in her body — when she got
- [16] her turn, she asked her to take off her shoes and her
- [17] socks.
- [18] MS. JONES: If I may make a suggestion here.
- [19] Speak in the first person, as though you're just
- [20] speaking for her.
- [21] THE TRANSLATOR: Okay.
- [22] MS. JONES: You're saying "she," and it's
- [23] getting confusing, because there's lots of "she's."
- [24] THE TRANSLATOR: Okay.
- [25] MR. MARTIN: Thank you, counselor.

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[1] **MS. JONES:** Anyway, do you want to ask her
 [2] to repeat what she just said.
 [3] **A:** (By the translator) Yes. When it was my
 [4] turn, the lady asked me to take off my tennis shoes and
 [5] my socks.
 [6] **Q:** (By Mr. Martin) What type of stockings, or
 [7] socks?
 [8] **A:** (By the translator) Like this ones that I
 [9] have on, socks.
 [10] **MR. MARTIN:** Well, counsel, would you care
 [11] to describe that, or should I?
 [12] **MS. JONES:** White cotton socks, not ankles,
 [13] Slightly mid calf.
 [14] **Q:** (By Mr. Martin) What else were you wearing?
 [15] **A:** (By the translator) Always in my pants,
 [16] because when it's cold I always use pants. But she
 [17] said — when she asked her to take off her shoes, she
 [18] asked — I asked, Why do I have to take my shoes, and
 [19] she said, Because this are the orders from the boss.
 [20] **Q:** You said that Cookie touched you.
 [21] **A:** (By the translator) Yes, because she said,
 [22] Roll your pants to the knees, because she wanted check
 [23] right.
 [24] **Q:** The question was: Did Cookie touch you, and
 [25] where?

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[1] **A:** (By the translator) Yes, because when I
 [2] roll my pants she asked me to loosen pants, and she did
 [3] this, (indicating) and then she asked me —
 [4] **Q:** Let the record indicate that she took her
 [5] right hand and put it across her waist from left to
 [6] right.
 [7] **A:** (By the translator) And then she asked me
 [8] to loosen my bra, and she check inside. She — with a
 [9] pencil she went like that to her hair.
 [10] **MR. MARTIN:** As to the bra, as she was
 [11] speaking she was indicating that she was putting the
 [12] fingers along the bottom of the bra. This is a comment.
 [13] If counsel has an objection —
 [14] **MS. JONES:** Yeah. And I would also add that
 [15] in both cases the indication was under the clothing.
 [16] **MR. MARTIN:** By gesture, yes.
 [17] **A:** (By the translator) Yes. When she loosened
 [18] her bra, she went with her fingers like that to see if
 [19] the money got loose and something fell from there.
 [20] **Q:** (By Mr. Martin) Did she have a shirt on at
 [21] that time or no?
 [22] **A:** (By the translator) Yes.
 [23] **Q:** On or no.
 [24] **A:** (By the translator) Yes, on.
 [25] **Q:** Were your pants ever removed?

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[1] **A:** (By the translator) No. She just undone
 [2] them and she just shook them like that.
 [3] **MR. MARTIN:** She's indicating a shaking
 [4] motion at the front of her shirt about the waist. Is
 [5] that right, counsel?
 [6] **MS. JONES:** (Nods her head)
 [7] **Q:** (By Mr. Martin) After that did you leave or
 [8] go back downstairs?
 [9] **A:** (By the translator) Yes, and another went
 [10] on as her turn came.
 [11] **Q:** Did you have a purse or carrying case with
 [12] you of any kind?
 [13] **A:** (By the translator) Yes. I always — yes,
 [14] I always have a purse, and she also checked it.
 [15] **Q:** "She," meaning Cookie?
 [16] **A:** (By the translator) Yes.
 [17] **Q:** Upstairs or in the eating area?
 [18] **A:** (By the translator) Upstairs in the
 [19] bathroom.
 [20] **Q:** Did she check that before or after she asked
 [21] to have you take off your shoes and socks?
 [22] **A:** (By the translator) After she checked me
 [23] she checked my purse.
 [24] **Q:** Describe how she checked the purse.
 [25] **A:** (By the translator) She asked her to take

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[1] her things out and —
 [2] **Q:** She asked "me."
 [3] **A:** (By the translator) She asked me to take my
 [4] things out, and after I took them out she checked in the
 [5] purse.
 [6] **Q:** Was anything found that looked like money
 [7] which had been taken?
 [8] **A:** (By the translator) No.
 [9] **Q:** Did Cookie ever ask you if you had taken any
 [10] money?
 [11] **A:** (By the translator) No. She just said that
 [12] she had to check everybody because they were orders from
 [13] the boss.
 [14] **Q:** Rosa, did you tell her that you did not take
 [15] any money?
 [16] **A:** (By the translator) She said, I had orders
 [17] from the boss, and that's why she checked her.
 [18] **MS. JONES:** Back up, because —
 [19] **MR. MARTIN:** You need to go a phrase at a
 [20] time.
 [21] **MS. JONES:** Why don't you back up and ask
 [22] that question again.
 [23] (The pending question was read as follows:
 [24] **Q:** Rosa, did you tell her that
 [25] you did not take any money?)

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[1] **MS. JONES:** Can you read the question again?
 [2] I'd just like it stated again.
 [3] **MR. MARTIN:** What did you say just then?
 [4] **THE TRANSLATOR:** Rosa —
 [5] **MR. MARTIN:** No. The question was: What
 [6] did she just now say, not —
 [7] **MS. JONES:** She's not — excuse me. The
 [8] translation of the original question that you asked is
 [9] incorrect —
 [10] **THE TRANSLATOR:** I don't think so.
 [11] **MS. JONES:** — and I'm going to object to
 [12] have that — the translation was incorrect. And so the
 [13] question was not the question you asked, but it was a
 [14] different question.
 [15] **THE TRANSLATOR:** I didn't think so, but if
 [16] you have it —
 [17] **MS. JONES:** Would you read the question
 [18] back, please.
 [19] (The pending question was read as follows:
 [20] **Q:** Rosa, did you tell her that
 [21] you did not take any money?)
 [22] **A:** (By the translator) Yes. I said that I
 [23] haven't taken the money.
 [24] **Q:** (By Mr. Martin) When did you say that?
 [25] **A:** (By the translator) When she was going to

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[1] **Q:** Did anyone ever treat you differently after
 [2] the checking than before?
 [3] **A:** (By the translator) No.
 [4] **Q:** Were you ever paid more or less either
 [5] before or after the checking?
 [6] **A:** (By the translator) No. They always paid
 [7] me the same.
 [8] **Q:** Did anyone tell you that if you did not
 [9] cooperate you would lose your job?
 [10] **A:** (By the translator) No.
 [11] **Q:** Did anyone take anything from you?
 [12] **A:** (By the translator) No.
 [13] **Q:** Did anyone lock any doors so that you could
 [14] not leave?
 [15] **A:** (By the translator) No, but I didn't have
 [16] to go out because it was time to be working.
 [17] **Q:** Did anyone ever use threatening words?
 [18] **A:** (By the translator) For threatening, no,
 [19] but offending, yes.
 [20] **Q:** What offending words?
 [21] **A:** (By the translator) After the money was
 [22] lost, they say that all of us were robbers, stealing.
 [23] **Q:** Who said these words?
 [24] **A:** (By the translator) Mr. Esquivel.
 [25] **Q:** What did he say exactly?

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[1] check me, I told her that I haven't taken the money, and
 [2] she said she was sorry.
 [3] **Q:** Did she do anything else to you than what
 [4] you have described?
 [5] **A:** (By the translator) No.
 [6] **Q:** Did you cooperate in the checking?
 [7] **A:** (By the translator) I didn't want to be
 [8] checked, but —
 [9] **Q:** But what?
 [10] **A:** (By the translator) But she —
 [11] **Q:** But "I."
 [12] **MS. JONES:** But "she."
 [13] **MR. MARTIN:** That's right.
 [14] **A:** (By the translator) But she said that she
 [15] had to check me because they were orders from the boss.
 [16] **Q:** (By Mr. Martin) Did she use the name to
 [17] describe the boss?
 [18] **A:** (By the translator) The name, no, but we
 [19] know that he is the boss.
 [20] **Q:** "He," referring to Mr. Esquivel?
 [21] **A:** (By the translator) Yes.
 [22] **Q:** Did you ever complain to anyone at work?
 [23] **A:** (By the translator) No.
 [24] **Q:** At anytime?
 [25] **A:** (By the translator) Only with my family.

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[1] **A:** (By the translator) He said, The money
 [2] didn't appear. All in here are robbers.
 [3] **Q:** When was that said?
 [4] **A:** (By the translator) At the moment that the
 [5] money was lost and he didn't find it, he said that all
 [6] of us were robbers.
 [7] I'm translating here exactly what she's
 [8] stating.
 [9] **MS. JONES:** No. That's a mistranslation.
 [10] **A:** (By the translator) She said, After the
 [11] money was lost and he didn't find it, he said all of us
 [12] were robbers.
 [13] **MS. FARNSWORTH:** What do you think she said?
 [14] **MS. JONES:** What do I think she said?
 [15] **MS. FARNSWORTH:** (Nods her head)
 [16] **MS. JONES:** He said this. What I think she
 [17] said was, At the beginning, when he announced the money
 [18] was lost, he said, If we don't find the money, then
 [19] everyone here are robbers and thieves.
 [20] **THE TRANSLATOR:** No. She says, When the
 [21] money was lost and he didn't find it.
 [22] **MR. MARTIN:** Okay. We will ask that
 [23] question again.
 [24] **Q:** (By Mr. Martin) Did he say that everyone
 [25] was robbers before the checking or after?

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[1] A: (By the translator) Before and after.
 [2] MS. FARNSWORTH: Are you satisfied with
 [3] that?
 [4] MS. JONES: (Nods her head)
 [5] Q: (By Mr. Martin) Who was present when he
 [6] said this before?
 [7] A: (By the translator) Everybody.
 [8] Q: Who was present when he said this after the
 [9] checking?
 [10] A: (By the translator) All the workers. To
 [11] all of us he said this.
 [12] Q: Did anyone object?
 [13] A: (By the translator) Of course nobody liked
 [14] this, because we can't see.
 [15] Q: Can't see what?
 [16] A: (By the translator) Because when they were
 [17] going out everybody was complaining that — why did they
 [18] do this, because they didn't have an order to do this.
 [19] Q: What does she mean by an "order"?
 [20] A: (By the translator) That's what I heard,
 [21] that this wasn't right, because they needed an order
 [22] of — a legal order to do this.
 [23] Q: From the police?
 [24] A: (By the translator) Maybe. Yes, I think
 [25] the police, because they are the only ones that could

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[1] check.
 [2] Q: If the police had been there, would that
 [3] have been non-offensive?
 [4] A: (By the translator) I feel that, yes, we
 [5] would be offended, but it would have been an order of
 [6] the police.
 [7] Q: Did anyone tell you that your job would
 [8] terminate if you did not cooperate?
 [9] A: (By the translator) Well, in those days he
 [10] threw out some of us from work.
 [11] Q: Before or after the checking?
 [12] A: (By the translator) After he check he threw
 [13] some of us from work because —
 [14] Q: Because why?
 [15] A: (By the translator) Because we complain and
 [16] he threw out those of us who complain.
 [17] Q: Who? Names, please.
 [18] A: (By the translator) Walter — Santiago, I
 [19] think is his last name. Humberto and another from South
 [20] America that I don't know the name, but I know who he
 [21] is. Another three that went back to Mexico.
 [22] Q: When?
 [23] A: (By the translator) After they threw them,
 [24] they say that they would go back because they didn't
 [25] like the way they treated them here.

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[1] Q: These are the people leaving?
 [2] A: (By the translator) Yes.
 [3] Q: Who said this?
 [4] A: (By the translator) They, the ones that
 [5] went back, because they say that they didn't like the
 [6] treatment that the boss is keeping here.
 [7] Q: "Going back," does that mean going to your
 [8] home country?
 [9] A: (By the translator) Yes.
 [10] Q: When did this happen? How many days or
 [11] months after the checking?
 [12] A: (By the translator) After they checked,
 [13] because they threw them out or laid them off from work,
 [14] that's when they left.
 [15] Q: How long — how many days or months after
 [16] the checking?
 [17] A: (By the translator) Before Christmas they
 [18] left.
 [19] Q: When is Christmas? What day?
 [20] A: (By the translator) December 24.
 [21] Q: Less than ten days?
 [22] A: (By the translator) Yes. I remember they
 [23] say they were going to spend Christmas with their
 [24] families, and they left. I don't know exactly. They
 [25] left, but they say that.

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[1] Q: Did you leave also at the same time?
 [2] A: (By the translator) No. She stay — I
 [3] stay.
 [4] Q: After the checking at that moment, did you
 [5] say that everyone's companions complained together among
 [6] themselves?
 [7] A: (By the translator) Yes.
 [8] Q: And this would be everyone?
 [9] A: (By the translator) By the faces I saw,
 [10] nobody liked it, and they were commenting.
 [11] Q: They were commenting by their facial
 [12] expression or by word?
 [13] A: (By the translator) By the faces I saw,
 [14] they were commenting, some with words.
 [15] Q: What words were used?
 [16] A: (By the translator) That it was arbitrary,
 [17] because they didn't have an order from the police.
 [18] Q: Who said that?
 [19] A: (By the translator) So many people, I don't
 [20] even remember.
 [21] Q: And only six left?
 [22] A: (By the translator) Nine of the ones that I
 [23] know that were laid off. I don't know if there were any
 [24] more.
 [25] Q: You do not know the reason why these people

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[1] left?
 [2] A: (By the translator) They say that they were
 [3] leaving for that, because they have talked to
 [4] Mr. Esquivel.
 [5] Q: And for this they go back to Honduras?
 [6] A: (By the translator) No. They went to
 [7] Mexico, because they are from Mexico. Mexicans.
 [8] Q: And they left solely because of the
 [9] checking?
 [10] A: (By the translator) Well, only for that,
 [11] no, but they say they were discouraged because what
 [12] happened.
 [13] MS. JONES: Excuse me. If she's changing
 [14] that, I'd like to wait.
 [15] (Off the record briefly.)
 [16] Q: (By Mr. Martin) You do not know why they
 [17] left. You only know what they said.
 [18] A: (By the translator) Yes. I don't know why
 [19] they left.
 [20] Q: Did you also leave the company at that time?
 [21] A: (By the translator) Yes, because the man
 [22] threw me out because I complained to him.
 [23] Q: You believe that.
 [24] A: (By the translator) Yes.
 [25] Q: You do not know that Senor Esquivel believes

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[1] Q: Were you ever told by anyone as a
 [2] supervisor — or by a supervisor about the quality of
 [3] your work?
 [4] A: (By the translator) No.
 [5] Q: Where are you working now?
 [6] A: (By the translator) In the company Jolene
 [7] Factory of Sewing, a sewing company.
 [8] Q: When did you start working there?
 [9] A: (By the translator) In October.
 [10] Q: Of what year?
 [11] A: (By the translator) Last year.
 [12] Q: Did you work from the time you left the
 [13] company in this case until you began working at the one
 [14] you work now?
 [15] A: (By the translator) I stay home a long time
 [16] until now that I started working again.
 [17] Q: Why did you start working again?
 [18] A: (By the translator) Because I need to. I
 [19] can't stay idle or doing nothing.
 [20] Q: Why did you stay home? For children or
 [21] family?
 [22] A: (By the translator) For my family.
 [23] Q: Did you try to look for work during that
 [24] time?
 [25] A: (By the translator) No.

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[1] that.
 [2] A: (By the translator) Yes. I know, because
 [3] he got angry when I complained to him, and after three
 [4] days, two or three days — she said two days or three
 [5] days — I don't remember — that he was going to let us
 [6] go because we complained. I don't remember — I know
 [7] that he got angry and he let us go.
 [8] Q: Were you replaced by others?
 [9] A: (By the translator) I don't know.
 [10] Q: Do you believe the sole reason you left the
 [11] company was because of your complaining?
 [12] A: (By the translator) Well, I don't know if
 [13] it's the only reason.
 [14] Q: What other reasons may have been?
 [15] A: (By the translator) I don't know.
 [16] Q: Were you at the company Christmas party?
 [17] A: (By the translator) Yes. No. I'm sorry.
 [18] I only went to — when they gave some presents, but I
 [19] didn't go to the party.
 [20] Q: So you were still working at the company at
 [21] Christmastime.
 [22] A: (By the translator) Yes.
 [23] Q: Were you still working at the company on
 [24] New Year's Day or after?
 [25] A: (By the translator) I don't remember.

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[1] Q: Other than the checking, did these people
 [2] offend you in any other way?
 [3] A: (By the translator) The truth is that he
 [4] always had meetings and he made us waste time.
 [5] Q: "He," meaning whom?
 [6] A: (By the translator) Mr. Esquivel. He was
 [7] always having meetings.
 [8] Q: How does having a meeting or always having a
 [9] meeting offend you?
 [10] A: (By the translator) Because he always
 [11] called us and he said that we were going to have a
 [12] meeting, he said. And when he got us all together, and
 [13] he would get us together there just to offend us.
 [14] Q: For the sole purpose?
 [15] A: (By the translator) I didn't see any
 [16] purpose, and I would ask myself, Why, what is the
 [17] purpose? I didn't see any purpose.
 [18] Q: If you saw no purpose, then you concluded
 [19] that it was for the purpose of offending you.
 [20] A: (By the translator) Yes. To offend me, no,
 [21] but everybody.
 [22] Q: How many meetings in a week?
 [23] A: (By the translator) Almost every day. It
 [24] was rare if he didn't call us.
 [25] Q: How many meetings in a day?

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[1] A: (By the translator) Sometimes one,
 [2] sometimes two.
 [3] Q: Did he say nothing at these meetings?
 [4] A: (By the translator) He said that he called
 [5] us because we were not doing anything, that we had to
 [6] hurry up and work.
 [7] Q: This is unusual for a business?
 [8] A: (By the translator) Well, this offends me.
 [9] MS. JONES: Wait. That's not what she said.
 [10] A: (By the translator) Oh, this doesn't —
 [11] well, this doesn't offend. Okay. She talked so fast —
 [12] yeah, okay.
 [13] This is not an offense, but I look at the
 [14] clock, and I said, We are wasting time. And she said,
 [15] You are lazy people. And he used to say, I'm sure that
 [16] you are not paying your tithing. That's why you don't
 [17] do well at work.
 [18] Q: (By Mr. Martin) Always say this, or only
 [19] once?
 [20] A: (By the translator) About two or three
 [21] times he said that we didn't pay tithing in church.
 [22] Q: So what?
 [23] A: (By the translator) He used to say lazy and
 [24] that we didn't pay tithing, and one day he even made
 [25] like a — like an interview in church.

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[1] Q: With music?
 [2] A: (By the translator) No.
 [3] (Laughter)
 [4] MR. MARTIN: Let's take a break.
 [5] (A recess was taken.)
 [6] MS. JONES: I just want to describe this for
 [7] the record. This is a diagram that was drawn based
 [8] on —
 [9] MR. MARTIN: During the interview with Rosa.
 [10] MS. JONES: — Mr. Martin's questions during
 [11] the deposition process, based on Mr. Martin's questions,
 [12] and with some direction by the deponent, Rosa
 [13] Mazariegos.
 [14] MR. MARTIN: That's Exhibit 1.
 [15] (Exhibit Number 1 was marked for identification.)
 [16] Q: (By Mr. Martin) During this checking was
 [17] there a translator?
 [18] A: (By the translator) No. Why translating?
 [19] The person that check me was Hispanic.
 [20] Q: Did you go to lunch after the checking?
 [21] A: (By the translator) It's that I don't
 [22] remember if this was before or after lunch.
 [23] Q: During all of these meetings that you found
 [24] offensive, were you paid for the time spent in the
 [25] meeting?

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[1] A: (By the translator) Yes.
 [2] Q: Was there any meeting which you attended for
 [3] any good purpose?
 [4] A: (By the translator) I don't remember.
 [5] Q: Is there anything that you think positive
 [6] about the company?
 [7] A: (By the translator) Positive in which form?
 [8] Q: In any form.
 [9] A: (By the translator) The only one thing that
 [10] it bothers me was the offenses from him. The rest I
 [11] feel it's okay.
 [12] Q: "Him," meaning Esquivel.
 [13] A: (By the translator) Yes.
 [14] Q: Everyone else is good?
 [15] A: (By the translator) I never had problems
 [16] with anybody there.
 [17] Q: Do you have problems with Jeanette Lynton?
 [18] A: (By the translator) No.
 [19] Q: Why in your court papers do you complain
 [20] against Jeanette Lynton?
 [21] A: (By the translator) I haven't complained
 [22] about her. Maybe she's there because she's the owner.
 [23] Q: Owner of what?
 [24] A: (By the translator) Maybe she is the owner.
 [25] I think she is, because she went a couple of times there

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[1] to where we work, and I know she is her.
 [2] Q: Do you comprehend the difference between a
 [3] corporation and a person?
 [4] A: (By the translator) I know that when it is
 [5] a company there's several owners.
 [6] Q: Do you think Mr. Esquivel is also an owner?
 [7] A: (By the translator) No.
 [8] Q: Do you think that an owner of a company is
 [9] personally liable?
 [10] MS. JONES: I'm going to object, because I
 [11] think that calls for a legal conclusion.
 [12] MR. MARTIN: I understand. I'm asking what
 [13] she believes.
 [14] A: (By the translator) What is "liable"?
 [15] MS. JONES: No, you said it right, but you
 [16] didn't finish what he said.
 [17] A: (By the translator) I think so.
 [18] Q: (By Mr. Martin) Do you ever hear about the
 [19] word "limitados"?
 [20] A: (By the translator) I understand that a
 [21] limit is something that only goes so far.
 [22] Q: Did you intend to complain against the
 [23] company? Did you intend to complain against the company
 [24] or Jeanette Lynton as an individual?
 [25] A: (By the translator) I never have had

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[1] treatment with her. I don't know her. I never have
 [2] even spoken to her.
 [3] Q: Was she present during the checking?
 [4] A: (By the translator) No.
 [5] Q: The major complaint seems to be, biggest
 [6] complaint, that you do not like Mr. Esquivel.
 [7] A: (By the translator) I don't have bad
 [8] feelings for him. And I don't have any rancor for him.
 [9] The only thing is that I feel really bad because never
 [10] in my life have anybody check my body for something that
 [11] was lost.
 [12] Q: Do you believe that everyone's body was
 [13] checked in the same fashion?
 [14] A: (By the translator) I cannot say, because I
 [15] wasn't present, but I only know that mine was checked.
 [16] Q: Did you ever take off your clothing and
 [17] demand further checking than was asked?
 [18] A: (By the translator) Never before somebody
 [19] had done it.
 [20] Q: During — no.
 [21] THE TRANSLATOR: Okay.
 [22] Q: (By Mr. Martin) No. During the checking
 [23] upstairs, did you take off clothing and demand that you
 [24] be checked to guarantee —
 [25] A: (By the translator) No. She didn't ask.

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[1] because he laid them off. Me too. If he haven't left
 [2] me off, I would stay working there.
 [3] Q: If you found out that you were not replaced,
 [4] would you conclude that you were laid off because of
 [5] less work at the company?
 [6] A: (By the translator) That, I don't know.
 [7] Q: Did any man ever touch you at the checking?
 [8] A: (By the translator) No.
 [9] Q: Were you touched in an offensive manner
 [10] other than the checking itself?
 [11] A: (By the translator) For me it's an offense
 [12] to be checked to find something in my body that I don't
 [13] have.
 [14] Q: Yes, but that's not the answer to the
 [15] question.
 [16] THE TRANSLATOR: I don't think she
 [17] understands.
 [18] Q: (By Mr. Martin) Were you touched in a
 [19] sexual way?
 [20] A: (By the translator) No.
 [21] Q: Were you touched for rudeness?
 [22] A: (By the translator) For me it is rude to be
 [23] checked and shaken to see if they find something. It's
 [24] not a caress.
 [25] Q: Did Cookie touch your breasts or just your

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[1] She just with her hand.
 [2] Q: No. Did she herself request more?
 [3] A: (By the translator) No. I was feeling bad
 [4] because they were checking me.
 [5] MS. FARNSWORTH: I don't think she
 [6] understands.
 [7] THE TRANSLATOR: Did you —
 [8] MS. JONES: Wait. Wait. Let him clarify.
 [9] These are comments on the side.
 [10] Q: (By Mr. Martin) Did you ask Cookie to look
 [11] more?
 [12] A: (By the translator) No.
 [13] Q: Do you believe that Mr. Esquivel is a good
 [14] manager?
 [15] A: (By the translator) If the owner has him
 [16] there, it's because probably he does a good job for her.
 [17] Q: What is your opinion?
 [18] A: (By the translator) Her opinion is that if
 [19] he's still working there it's because he's good at his
 [20] job at work.
 [21] Q: No. I want to know —
 [22] A: (By the translator) But to treat people
 [23] there, he's not okay, he's not good.
 [24] Q: But only eight people left.
 [25] A: (By the translator) Eight people left

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[1] bra?
 [2] A: (By the translator) No, only the bra. She
 [3] shook it.
 [4] Q: So you were offended by the checking and not
 [5] by the touching.
 [6] A: (By the translator) It's the same.
 [7] Q: We have two things that offended you: the
 [8] checking and stupid meetings.
 [9] A: (By the translator) Yes. It offended me,
 [10] because he would take our time from working and then he
 [11] would tell us that we were not working enough.
 [12] Q: Then you just believed it was bad
 [13] management.
 [14] A: (By the translator) He offends the people
 [15] very much.
 [16] Q: After so much time, why only four people
 [17] complain in court?
 [18] A: (By the translator) Four. Not only four.
 [19] All the ones that were laid off complain to her. What
 [20] happens is that they went out of the country. They left
 [21] for Mexico.
 [22] Q: Of course, everyone who is laid off would
 [23] complain about something. Do you believe this?
 [24] A: (By the translator) I don't know. There's
 [25] people that can't take a lot.

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[1] Q: When you worked in Honduras, did you leave
[2] voluntarily?

[3] A: (By the translator) Yes, voluntarily,
[4] because I wanted to come here.

[5] Q: Because you would be paid more.

[6] A: (By the translator) Everybody wants to come
[7] to United States.

[8] Q: How has this checking caused you money
[9] damage?

[10] A: (By the translator) In which form?

[11] Q: Money.

[12] A: (By the translator) Because I would have
[13] continued working there, but they laid me off.

[14] Q: Who told you that you were laid off because
[15] of the checking?

[16] A: (By the translator) Not because of the
[17] checking, but Mr. Esquivel. When I complain, he got
[18] angry and laid her off — laid me off.

[19] Q: Immediately?

[20] A: (By the translator) About one or two days
[21] after.

[22] Q: Why the delay?

[23] A: (By the translator) For me, one day is not
[24] delay. One or two days is fast.

[25] Q: I want to know, other than the checking and

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[1] the meetings, if there is any other objection she has
[2] against Mr. Esquivel or the company.

[3] A: (By the translator) No.

[4] Q: Or Jeanette Lynton.

[5] A: (By the translator) I don't have anything
[6] against her.

[7] Q: Is there anything — and please list them —
[8] any offense that these people committed against you?

[9] A: (By the translator) Not her. She hasn't
[10] offend me on anything.

[11] Q: Or Mr. Esquivel.

[12] A: (By the translator) No, there's no more.

[13] Q: Only the meetings and the checking.

[14] A: (By the translator) Yes.

[15] Q: During the checking, would you have left the
[16] plant if there had been no checking?

[17] A: (By the translator) I would have continued
[18] working, because I need a job.

[19] Q: No. During the time of the checking, if the
[20] checking had not occurred, would you have left and gone
[21] outside?

[22] A: (By the translator) Outside, you mean —
[23] excuse me. Do you mean out of the building?

[24] Q: To go out of the building.

[25] A: (By the translator) No. Why should I go

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[1] out? I was working. I had to stay in my work.

[2] Q: Why, then, do you claim that you were
[3] falsely kept in the building?

[4] A: (By the translator) How "detained"?

[5] Q: "Mr. Esquivel refused to allow me to leave
[6] work."

[7] A: (By the translator) I haven't say that.

[8] Q: Did you want to leave the building during
[9] the checking?

[10] A: (By the translator) I don't know. I only
[11] know that I had to be in my work.

[12] MR. MARTIN: We need just a brief break, I
[13] think. Then we can pretty well wrap up.

[14] (A recess was taken.)

[15] Q: (By Mr. Martin) You came back to work the
[16] next day after the checking?

[17] A: (By the translator) I think so. I don't
[18] remember.

[19] Q: Were you angry the next time you came to
[20] work?

[21] A: (By the translator) Yes. I was upset. I
[22] was feeling bad for about a month.

[23] Q: Feeling bad with anger?

[24] A: (By the translator) Yes.

[25] Q: Angry enough to break things?

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[1] A: (By the translator) No. I never do that
[2] even if I am very angry.

[3] Q: Angry enough to hurt someone?

[4] A: (By the translator) No. I don't hurt

[5] anybody when I get angry.

[6] Q: Angry enough to yell at children or family?

[7] A: (By the translator) No.

[8] Q: Angry enough to sit up at night and plan
[9] revenge?

[10] A: (By the translator) No. I don't get angry
[11] like that to people that — that's something to me.

[12] Q: Angry enough to stay awake all night or —

[13] A: (By the translator) Yes. I stay several
[14] days without being able to sleep, but not because of
[15] anger. I was — I couldn't sleep because I didn't have
[16] work, a job.

[17] Q: Oh. After you left the company, this is
[18] when you were lying awake at night because you did not
[19] have work?

[20] A: (By the translator) Yes.

[21] Q: Did it not cause you to lie awake also on
[22] the checking?

[23] THE TRANSLATOR: Excuse me. Could you make
[24] that question again?

[25] Q: (By Mr. Martin) Yes. Did you also lie

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[1] awake as a result of the checking?
 [2] A: (By the translator) Yes.
 [3] Q: All the time and every night until you left
 [4] the company?
 [5] A: (By the translator) No, because they lay me
 [6] off soon, and I couldn't sleep because I was upset.
 [7] Q: Did you have to go to a doctor?
 [8] A: (By the translator) Because it's so
 [9] expensive, I don't. I just take things in the house. I
 [10] have been drinking tila tea so that I could sleep.
 [11] Q: Are you okay now?
 [12] A: (By the translator) Yes. It's a long time
 [13] since this happened.
 [14] Q: Did you have difficulty finding employment
 [15] because of this company?
 [16] A: (By the translator) No. Because of her
 [17] company, no.
 [18] Q: Did you believe that Cookie searched you
 [19] because of anger or malice?
 [20] A: (By the translator) If I check a person,
 [21] it's because I have malice in my mind. I think her
 [22] malice was to humiliate one person.
 [23] Q: The entire checking was just for the purpose
 [24] of humiliating you?
 [25] A: (By the translator) I think so, because if

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[1] I am in her place, if I was a supervisor and he has
 [2] given me the order to check somebody, he wouldn't know
 [3] how she checked me. Then I would have say to her
 [4] that — she check us I think because of malice or
 [5] because the boss told her to do it.
 [6] Q: The question was: Do you believe that the
 [7] entire checking procedure was only for the purpose of
 [8] offending you?
 [9] A: (By the translator) I think so.
 [10] MS. JONES: No.
 [11] MR. MARTIN: Do you believe that she
 [12] misunderstood the question?
 [13] MS. JONES: Yeah. Okay. Excuse me. You're
 [14] saying "you," okay? She's using a different verb.
 [15] She's using the objective pronoun. You're saying, Was
 [16] it to offend you personally? She's saying, Was it to
 [17] offend everybody?
 [18] THE TRANSLATOR: No, no, no, no. To offend
 [19] you.
 [20] MR. MARTIN: Okay. Ask her again.
 [21] MS. JONES: Make it specific, then.
 [22] Q: (By Mr. Martin) Do you believe that the
 [23] purpose of the checking was to offend you as an
 [24] individual person, solo?
 [25] A: (By the translator) I think they wanted to

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[1] know who had the money.
 [2] Q: It's "yes" or "no."
 [3] A: (By the translator) Both things, to offend
 [4] and to find the money. If they check it's because they
 [5] think they have the money.
 [6] Q: The question is to offend — a plan to
 [7] offend everyone or to offend only you?
 [8] A: (By the translator) I don't know. They
 [9] were looking for money, and they check everybody, and
 [10] this is what offends.
 [11] Q: Would she think that it would be offensive
 [12] if the company had knowledge or reason to believe that
 [13] money had been taken and did nothing?
 [14] A: (By the translator) I don't think — I feel
 [15] that everywhere where you work things are lost, and this
 [16] had never happened to her. I'm going to say something
 [17] that I remember now. I think that it was to offend
 [18] everybody, because before that he said that some of the
 [19] stamps were lost.
 [20] Q: So does she believe that there was no money
 [21] missing?
 [22] A: (By the translator) No. Before that money
 [23] was lost, he used to say that stamps were lost.
 [24] Q: So you believe that Mr. Esquivel's request
 [25] for checking was intended by him to offend every

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[1] employee.
 [2] A: (By the translator) Yes, because he was
 [3] always offending. That's what I believe, yes.
 [4] Q: Okay. Do you ever think that Mr. Esquivel
 [5] had a purpose of trying to encourage or manage people?
 [6] THE TRANSLATOR: Encourage or what?
 [7] Q: (By Mr. Martin) Encourage or manage people
 [8] with the purpose of running a business the best he knew
 [9] how?
 [10] A: (By the translator) Well, I think you're
 [11] always asking me the same thing. I will repeat again.
 [12] He was offending us in every meeting.
 [13] Q: Would she acknowledge that all she really
 [14] knows is that only she was offended in exactly this
 [15] manner?
 [16] A: (By the translator) I feel that every human
 [17] being gets offended when we are told naughty things.
 [18] Q: Naughty things?
 [19] MS. JONES: There's not a translation for
 [20] it.
 [21] MR. MARTIN: Would inappropriate —
 [22] THE TRANSLATOR: Offenses.
 [23] MS. JONES: Offenses is probably the best
 [24] translation.
 [25] Q: (By Mr. Martin) And you believe that a

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[1] purpose not Mr. Esquivel to ask you about your own
 [2] finances?
 [3] THE TRANSLATOR: What?
 [4] Q: (By Mr. Martin) Your own money. Church, if
 [5] he did. Okay. Your purpose of Mr. Esquivel if he asked
 [6] you about church was for the purpose of offending you
 [7] also?
 [8] A: (By the translator) I think so, because she
 [9] doesn't need to know if somebody else paid the tithing
 [10] or not. That is only for me and for God to know.
 [11] Q: For telling "yes" or "no," what's the
 [12] difference?
 [13] A: (By the translator) Yes, it's offense,
 [14] because that is for me and God.
 [15] Q: What are you being paid now at your
 [16] employment?
 [17] A: (By the translator) It is variable.
 [18] Depends on what we do. Sometimes five, sometimes six,
 [19] sometimes seven, even eight sometimes.
 [20] Q: More than what you were paid at this
 [21] company?
 [22] A: (By the translator) Yes, much more.
 [23] Q: And in your application for employment did
 [24] you ever tell them that you had been employed by this
 [25] company?

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[1] A: (By the translator) No.
 [2] MS. FARNSWORTH: Are you satisfied with that
 [3] one?
 [4] MS. JONES: Yeah.
 [5] MS. FARNSWORTH: Why are you shaking your
 [6] head?
 [7] MS. JONES: Because the question wasn't
 [8] translated right.
 [9] MS. FARNSWORTH: Ask it again.
 [10] THE TRANSLATOR: I —
 [11] Q: (By Mr. Martin) Did you ever tell anyone
 [12] that you had worked at this company?
 [13] A: (By the translator) No.
 [14] Q: Why?
 [15] A: (By the translator) I don't gain anything.
 [16] Q: Do you know or do you believe that you
 [17] cannot bring a court action against somebody for having
 [18] stupid meetings?
 [19] A: (By the translator) No. I did it because
 [20] they checked me.
 [21] Q: For that alone?
 [22] A: (By the translator) Yes.
 [23] Q: No other reason?
 [24] A: (By the translator) There's no other
 [25] reason, but since you are asking me I have to say the

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[1] truth.
 [2] Q: What is the truth?
 [3] A: (By the translator) Because you — they
 [4] checked me, but because you are asking me I have to say
 [5] the truth.
 [6] Q: That is the offense is the checking?
 [7] A: (By the translator) Yes, because they make
 [8] me unbutton my bra and take off my shoes and my socks.
 [9] Q: Okay. That's the sole, only claim?
 [10] A: (By the translator) Yes.
 [11] MR. MARTIN: Okay. Thank you.
 [12] THE WITNESS: You're welcome.
 [13] (The deposition concluded at 8:25 p.m.)
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WITNESS CERTIFICATE
 STATE OF UTAH)
) ss.
 COUNTY OF SALT LAKE)
 I HEREBY CERTIFY that I have read the foregoing
 testimony consisting of 54 pages, numbered from 3 to 56,
 inclusive, and the same is a true and correct record of
 said testimony, with the exception of the following
 corrections listed below, giving my reasons therefor.
 Page Line Change/Correction Reason
 ROSA MAZARIEGOS
 SUBSCRIBED AND SWORN to at Salt Lake City, Utah,
 this ____ day of ____, 1994.
 Notary Public
 My commission expires:

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REPORTER CERTIFICATE

STATE OF UTAH)
) ss.
COUNTY OF SALT LAKE)

I, CAROLE A. KING, Certified Shorthand Reporter
and Notary Public in and for the State of Utah, do
hereby certify:

That prior to being examined, the witness,
Rosa Mazariegos, was duly sworn to tell the truth, the
whole truth, and nothing but the truth;
That the testimony of said witness was taken down
by me in stenotype on April 19, 1994 at the time and
place herein stated and was thereafter caused by me to
be transcribed into typewriting, and that a full, true
and correct transcription of said testimony so taken and
transcribed is set forth in the foregoing pages numbered
from 3 through 56, inclusive.

I further certify that after the said deposition
was transcribed the original of same was sent to
Mr. Loren D. Martin, attorney for defendants, to be
submitted to the witness for reading, signed before a
notary public, and returned to Independent Reporting
Service.

I further certify that I am not of kin or
otherwise associated with any of the parties to said
cause of action and that I am not interested in the
event thereof.

WITNESS MY HAND AND SEAL this 22nd day of April,
1994.

CAROLE A. KING, CSR/RPR

Notary Public

Residing in Salt Lake County

My commission expires:
September 20, 1997

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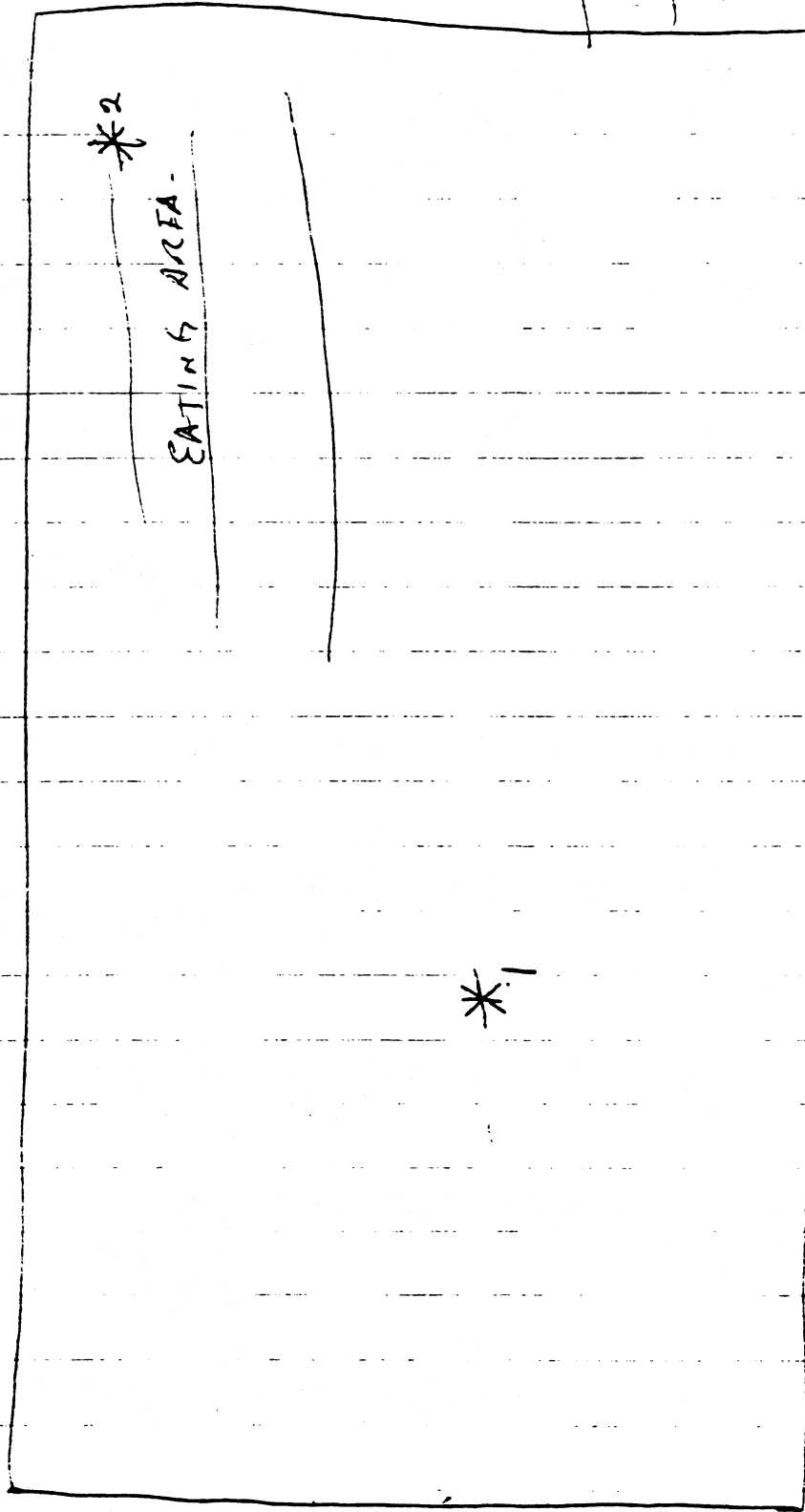
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N

Esperanza



(S)

Tab 20

IN THE FOURTH JUDICIAL DISTRICT COURT

STATE OF UTAH

WALTER SEMIDEY, ANGEL
SANTIAGO, HUMBERTO
BARDALES, and ROSA
MAZARIEGOS,

Plaintiffs,

vs.

JEANETTE R. LYNTON,/aka/
JEANETTE ROMERO MARKHAM,
/dba/D.O.T.S., DOZENS OF
STAMPS, MIGUELANGEL
ESQUIVEL; JOHN DOES I & II
AND JANE DOES I-III,

Defendants.

Civil No. 930400503 PI
Judge Boyd L. Park

Deposition of:
WALTER SEMIDEY

CERTIFIED COPY

BE IT REMEMBERED that on the 21st day of April, 1994, the deposition of Walter Semidey, produced as a witness herein at the instance of the Defendants Jeanette R. Lynton and Miguelangel Esquivel herein, in the above-entitled action now pending in the above-named court, was taken before Carole A. King, a Certified Shorthand Reporter and Notary Public in and for the State of Utah, commencing at the hour of 12:25 p.m. of said day at the offices of Loren D. Martin, 1200 Beneficial Life Tower, 36 South State Street, Salt Lake City, Utah.

That said deposition was taken pursuant to Notice.

CAROLE KING
CSR No. 330

**INDEPENDENT REPORTING
SERVICE**

Certified Shorthand Reporters

1710 Beneficial Life Tower
36 South State Street
Salt Lake City, Utah 84111
(801) 538-2333

APPEARANCES

For the Plaintiffs: Ms. Marti Jones
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 Law Offices of Linda Q. Jones
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 (801) 373-0276

For the Defendants: Mr. Loren D. Martin
 Jeanette R. Lynton Attorney at Law
 and Miguelangel Esquivel 1200 Beneficial Life Tower
 36 South State Street
 Salt Lake City, Utah 84111

The Translator: Mr. Grant Andersen
 Also Present: Ms. Denise Farnsworth
 Ms. Jeanette R. Lynton
 Mr. Miguelangel Esquivel

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 WALTER SEMIDEY
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[1] April 21, 1994 PROCEEDINGS 12:25 p.m.
 [2] WALTER SEMIDEY,
 [3] having been first duly sworn, through the interpreter,
 [4] was examined and testified as follows:

EXAMINATION
 BY MR. MARTIN:

[7] Q: Name and address, please.
 [8] A: (By the translator) 95 South 600 East, #2,
 [9] in Provo.
 [10] Q: Where are you employed?
 [11] A: Nu Skin International.
 [12] Q: What do you do at Nu Skin?
 [13] A: (By the translator) I work in the
 [14] department of order assembly, the order assembly
 [15] department.
 [16] Q: Doing what?
 [17] A: (By the translator) What we do in this
 [18] department is we put the orders in different boxes to be
 [19] sent out to the distributors.
 [20] Q: Are you a supervisor?
 [21] A: No.
 [22] Q: How many people work in that department as
 [23] companions of you?
 [24] A: In my group, there is five people.
 [25] Q: Is one of those supervisors?

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[1] A: (By the translator) There's five employees,
 [2] the supervisor, and leader.
 [3] Q: How many hours do you work each work?
 [4] A: 40.
 [5] Q: Are you paid by the hour?
 [6] A: Yes.
 [7] Q: How much?
 [8] A: \$5.16.
 [9] Q: When did you first begin working there?
 [10] A: In March of last year.
 [11] Q: March of 1993?
 [12] A: Yes.
 [13] Q: Where were you employed prior to working at
 [14] Nu Skin?
 [15] A: (By the translator) I was working in the
 [16] Los Hermanos Restaurant. There was a cleaning company
 [17] out of Salt Lake that cleans the Mervyn's store in
 [18] Provo.
 [19] Q: Do you work at that cleaning company?
 [20] A: (By the translator) Yes, part-time.
 [21] Q: Los Hermanos, how many hours did you work
 [22] there?
 [23] A: (By the translator) 20.
 [24] Q: Did you work at the same time at the
 [25] cleaning company?

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[1] A: It's three day: Tuesday, Friday, and
 [2] Saturday. And Sunday is Mervyn's cleaning.
 [3] Q: Just as an aside here, I've been informed
 [4] that you have possibly a medical condition that may
 [5] cause you to ask for — to move around or whatever you
 [6] feel like.
 [7] A: (By the translator) I had a surgical
 [8] operation nine days ago. They opened me up pretty wide
 [9] here in front, and I may feel a little bit
 [10] uncomfortable.
 [11] Q: If you do and need anything, please let us
 [12] know.
 [13] A: Okay.
 [14] Q: Are you taking any medication, prescription?
 [15] A: For pain.
 [16] Q: Do you know the name of this prescription?
 [17] A: (By the translator) Percocet. I'm not
 [18] taking it. I only take it when I'm in pain.
 [19] Q: Did you take any within the last four hours?
 [20] A: No.
 [21] Q: Does your medical condition or the
 [22] medication cause you to in any way not be able to answer
 [23] questions and think correctly?
 [24] A: (By the translator) No. Only — when I
 [25] take the pain medication, I feel a little bit groggy.

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[1] But no.
 [2] Q: You're not groggy now?
 [3] A: No.
 [4] Q: My apology for being required to ask those
 [5] questions. Tell me what formal education you have
 [6] received.
 [7] A: High school. One year — one year —
 [8] A: (By the translator) One year of technical
 [9] institute. Technical school, I suppose, would be the
 [10] equivalent.
 [11] Q: Where was the high school?
 [12] A: (By the translator) In the town that I
 [13] lived in, in Ponce.
 [14] Q: Was that in Puerto Rico?
 [15] A: Yes.
 [16] Q: And where's the technical school?
 [17] A: In Puerto Rico.
 [18] Q: In the technical school, what was the nature
 [19] of your studies?
 [20] A: (By the translator) I'm studying
 [21] electronics, digital electronics.
 [22] Q: You obviously know that we're here. I
 [23] wonder if you know we're here for a deposition.
 [24] A: (By the translator) Yes.
 [25] Q: Do you understand what a deposition means?

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[1] A: (By the translator) I understand from my
 [2] point of view what a deposition is.
 [3] Q: Please explain that to me.
 [4] A: (By the translator) A deposition concerning
 [5] a —
 [6] MS. JONES: Client.
 [7] THE TRANSLATOR: Thank you.
 [8] MS. JONES: That's the English term for what
 [9] you're looking for.
 [10] A: (By the translator) — about a complaint
 [11] that has been made, or a specific case of some
 [12] complaint.
 [13] Q: (By Mr. Martin) Do you understand — excuse
 [14] me for not being polite in asking these questions. Do
 [15] you understand the nature of the oath to swear to tell
 [16] the truth?
 [17] A: (By the translator) Yes.
 [18] Q: Explain to me what you understand that to
 [19] mean.
 [20] A: (By the translator) For me it's quite —
 [21] for me, it gives me an immense feeling of tranquility to
 [22] be able to just express the situation exactly as I feel
 [23] it inside me.
 [24] Q: Do you understand that in explaining how you
 [25] feel it must be truthful?

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[1] A: (By the translator) Yes.
 [2] Q: Going back to — so I can understand Los
 [3] Hermanos and the cleaning company. You work 20 hours at
 [4] Los Hermanos, and then you work maybe three days at the
 [5] cleaning company. Was that all during the same time?
 [6] A: (By the translator) Yes. Also including
 [7] Nu Skin. All three of those jobs were part-time.
 [8] Q: When did you commence work at Los Hermanos?
 [9] A: (By the translator) I only worked there two
 [10] months: January and February. That same time I was
 [11] working at the cleaning company.
 [12] Q: Also for the same two months?
 [13] A: (By the translator) Yes, because in March
 [14] they offered me a full-time position at Nu Skin, and I
 [15] went to Nu Skin.
 [16] Q: Did you commence working with the cleaning
 [17] company in January?
 [18] A: (By the translator) In January, yes.
 [19] Q: The same day as you began work at Los
 [20] Hermanos?
 [21] A: (By the translator) Yeah. It was almost
 [22] just side by side.
 [23] Q: Approximately what day?
 [24] A: (By the translator) At Los Hermanos I
 [25] started on a Thursday, and I also started the cleaning

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[1] place on a Thursday.
 [2] Q: Approximately the day of the month, if you
 [3] please.
 [4] A: (By the translator) I don't remember it
 [5] specifically.
 [6] Q: Beginning of January? Shortly after the new
 [7] year?
 [8] A: (By the translator) I'm not sure if it was
 [9] the end of January or somewhere around then.
 [10] Q: When you worked at Los Hermanos, were you
 [11] paid by the hour?
 [12] A: (By the translator) Yes.
 [13] Q: How much?
 [14] A: (By the translator) I started out at \$4.10.
 [15] Q: And ended?
 [16] A: (By the translator) And ended what?
 [17] Q: With the same amount of pay?
 [18] A: (By the translator) Ended with the same
 [19] amount of pay, yes.
 [20] Q: Were you paid by the hour at the cleaning
 [21] company?
 [22] A: (By the translator) Yes.
 [23] Q: How much?
 [24] A: (By the translator) The minimum wage.
 [25] Wasn't it 4.25?

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[1] Q: And when did you begin working at Nu Skin?
 [2] A: (By the translator) Full time I began in
 [3] March.
 [4] Q: Part-time when did you begin?
 [5] A: (By the translator) Let's see. Let me
 [6] peruse my memory. It was all little by little the same.
 [7] I think it was somewhere around February or something
 [8] like that.
 [9] MR. MARTIN: Counsel, would you be able to
 [10] provide those, or provide us with releases so we can
 [11] make requests?
 [12] MS. JONES: The exact date?
 [13] MR. MARTIN: The exact dates.
 [14] MS. JONES: Yeah. You may want to do it in
 [15] the form of a —
 [16] MR. MARTIN: We will submit just a first set
 [17] of interrogatories after we are completed here.
 [18] Q: (By Mr. Martin) This may not be easy to
 [19] calculate, but I'm trying to determine, maybe
 [20] approximate, how much you were working each week with
 [21] all three of these companies and how much you were
 [22] earning total, approximately, an hour. Maybe we should
 [23] say this is based upon an assumed 40-hour per week
 [24] basis.
 [25] A: (By the translator) Mm-hm. Certainly.

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[1] Sure. I was working 20 hours in the cleaning. It
 [2] wasn't always 20 set hours, because it all depended
 [3] on — the hours would go down in the restaurant.
 [4] Sometimes they were 20 hours. Sometimes they were less.
 [5] At Nu Skin I work from 5:00 to 9:00. Those
 [6] were the hours that I had when I started, four hours.
 [7] Q: And the cleaning company?
 [8] A: (By the translator) 20, 20 hours.
 [9] Q: And the rate of pay you received at the
 [10] Nu Skin company when you were part-time was how much?
 [11] A: (By the translator) Part-time they paid
 [12] me — let's see. Part-time they paid me \$4.50.
 [13] Q: Our brief calculations would indicate that
 [14] you received approximately \$80 to \$84 per week from the
 [15] cleaning company and Los Hermanos.
 [16] A: (By the translator) You mean both of those
 [17] combined?
 [18] Q: No.
 [19] A: (By the translator) No. That's right.
 [20] Q: And approximately the same from Nu Skin?
 [21] A: (By the translator) More or less the same.
 [22] Q: Where did you work before Los Hermanos and
 [23] the cleaning company and Nu Skin?
 [24] A: (By the translator) Where I worked before
 [25] that? The company there in D.O.T.S.

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[1] Q: Do you know if D.O.T.S. is a corporation, a
 [2] partnership, a limitados, a — what type of company did
 [3] you understand D.O.T.S. to be?
 [4] THE TRANSLATOR: I don't know what a
 [5] "limitados" is.
 [6] MR. MARTIN: A limitados is a Spanish
 [7] limited liability-type company, or in English we say
 [8] liability company. It's more limitados in
 [9] Spanish-speaking companies. GMBH is German.
 [10] THE TRANSLATOR: Let's see if I can remember
 [11] that question.
 [12] THE WITNESS: No.
 [13] Q: (By Mr. Martin) Were you paid in cash or by
 [14] check?
 [15] A: (By the translator) We were paid by check.
 [16] Q: Do you remember the name on the check?
 [17] A: (By the translator) I don't remember, no.
 [18] I don't remember where the check was from. I don't
 [19] remember what the name was.
 [20] Q: Did you have an employment application that
 [21] you made for D.O.T.S.?
 [22] A: (By the translator) Yes.
 [23] Q: When did you finish your work at D.O.T.S.,
 [24] or did you leave D.O.T.S.? Should I restate that?
 [25] THE TRANSLATOR: The reason that's a little

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[1] hard for me is because when you say "finish your work,"
 [2] it sounds — it's just like what time of day did you
 [3] leave?
 [4] MR. MARTIN: Yes, I know.
 [5] THE TRANSLATOR: Thanks for rephrasing that
 [6] one for me.
 [7] Q: (By Mr. Martin) Did you work at D.O.T.S.
 [8] until what day?
 [9] A: (By the translator) Up until the 30th of
 [10] December of '92.
 [11] Q: How long have you worked at D.O.T.S.?
 [12] A: Three months.
 [13] Q: Were you paid by the hour?
 [14] A: (By the translator) Yes.
 [15] Q: How much?
 [16] A: (By the translator) I started out at
 [17] minimum wage, and I ended up at \$4.50.
 [18] Q: What did you do at D.O.T.S.?
 [19] A: (By the translator) I worked in the
 [20] department of the ovens, or furnaces they call them,
 [21] burners, for lack of a better word on my part.
 [22] Q: Describe, please, what you did in that
 [23] department.
 [24] A: (By the translator) That department is, in
 [25] my opinion, the main or principal department in the

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[1] whole setup.
 [2] Q: And what did you do there?
 [3] A: (By the translator) There you take the
 [4] molds, the castings with which rubber stamps were made.
 [5] Q: And what do you do with the molds and the
 [6] castings?
 [7] A: (By the translator) That's what we used to
 [8] make the rubber stamps so the clients would order
 [9] through catalogs, whatever.
 [10] Q: With whom did you work?
 [11] A: (By the translator) Those of us that worked
 [12] in the department were Geraldo, Angel, and me, a server.
 [13] Q: Who was the supervisor?
 [14] A: (By the translator) Mr. Humberto.
 [15] Q: Now, you understand in a deposition that I
 [16] want to ask you and have you respond to things that you
 [17] knew or saw yourself personally.
 [18] A: Mm-hm.
 [19] Q: You said that you made rubber stamps that
 [20] were sold through catalogs.
 [21] A: (By the translator) The company has a
 [22] certain procedure. They have a subcontractor, sub — an
 [23] under-seller. And what we did was we made the things
 [24] that the others sold. And then we'd have a halt on
 [25] the — an end to the amount of the — or to the quantity

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[1] of the rubber stamps that we'd sell.
 [2] Q: Did you ever see a catalog?
 [3] A: (By the translator) Yes.
 [4] Q: Did you know if the company sold things
 [5] other than through a catalog?
 [6] A: (By the translator) No, I don't know.
 [7] Q: Do you believe that you know enough about
 [8] the company to say whether or not the work requirements
 [9] of production were seasonal?
 [10] A: No.
 [11] Q: Are you okay?
 [12] A: (By the translator) Every once in a while
 [13] the sore hurts me.
 [14] Q: Is this okay to continue?
 [15] A: Yes.
 [16] Q: Do you remember if there was any information
 [17] you had before Christmastime that there would be an
 [18] increase in the number of stamps purchased or produced?
 [19] A: (By the translator) If there was an
 [20] increase in what?
 [21] Q: In number of stamps produced to meet a
 [22] higher demand for purchase.
 [23] A: (By the translator) Every business has its
 [24] ups and downs. It had its ups and downs, and at
 [25] Christmastime sell more than at other times, yes. When

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[1] I entered into the company there were a lot of orders,
 [2] because everything was backlogged and there was a lot of
 [3] work.
 [4] Q: What was the situation as you just described
 [5] at the time you left the company? Was there a lot of
 [6] backlog or more or less work?
 [7] A: (By the translator) When I left the
 [8] company, I know there was work.
 [9] Q: Backlog work, the same as when you were
 [10] working there the total time?
 [11] A: (By the translator) The orders for that
 [12] month of December were at the point of being entered to
 [13] execute them, orders.
 [14] Q: Yes, but the question is: From your
 [15] observations did you see more or less?
 [16] A: (By the translator) More or less of what?
 [17] Q: More or less production.
 [18] A: (By the translator) More production.
 [19] Q: More production than in January? than in
 [20] November?
 [21] A: (By the translator) Yes, sir. In January I
 [22] can't tell you, because I left the 3rd of December.
 [23] Q: On 29 December, compared to the first day of
 [24] November, from your observation was there more or less
 [25] demand for stamps?

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[1] A: (By the translator) There was a greater
 [2] demand.
 [3] Q: Explain the basis for that conclusion.
 [4] A: (By the translator) We were required to
 [5] work more, we were given overtime; and that meant that
 [6] there was a demand.
 [7] Q: How much overtime, if you remember, per week
 [8] before Christmas?
 [9] A: (By the translator) We worked up until 9:00
 [10] at night. We didn't start at 9:00. We started at 8:00.
 [11] Q: Started at 8:00 a.m.?
 [12] A: Mm-hm.
 [13] Q: And worked until 9:00 p.m.?
 [14] A: (By the translator) Yes, with our little
 [15] break times, our little lapses for breaks.
 [16] Q: Did you receive any information from anyone
 [17] at the company and in regard to Christmas deadlines?
 [18] A: No.
 [19] THE TRANSLATOR: Maybe you could explain
 [20] "deadline" a little better. Deadlines for what?
 [21] Q: (By Mr. Martin) Did you ever hear the word
 [22] "deadline" at anytime you were employed by D.O.T.S.?
 [23] THE TRANSLATOR: I'm probably giving the
 [24] word for deadline that they use in school.
 [25] A: (By the translator) We always tried to

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[1] respect the orders that came in, to try and finish them
 [2] in time, because the manager would let us know, the
 [3] manager of the company would let us know about it.
 [4] Q: (By Mr. Martin) Would your manager let you
 [5] know that so many stamps had to be completed by a
 [6] certain day?
 [7] A: (By the translator) They would tell us when
 [8] the orders were — they'd say we have this month, we're
 [9] behind on things, and that's how they informed us about
 [10] how the product was coming off.
 [11] Q: If I understand what you have said, you are
 [12] saying that you worked from eight o'clock a.m. until
 [13] 9:00 p.m. before Christmas and that after Christmas you
 [14] worked even more hours.
 [15] A: (By the translator) After Christmas we
 [16] didn't work quite so many hours, but we did work our
 [17] regular hours they'd give us.
 [18] Q: That would be maybe 40 hours a week?
 [19] A: (By the translator) No. What do you mean?
 [20] When they give us overtime or 40 regular hours?
 [21] Q: 40 regular hours.
 [22] A: 40 regular hours.
 [23] Q: So you worked overtime only before
 [24] Christmas?
 [25] A: (By the translator) That's how it was.

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[1] Q: Then we could reasonably conclude that the
 [2] work requirement was reduced after Christmas.
 [3] A: (By the translator) In the department from
 [4] which the production comes out, the production comes off
 [5] of, we had been informed that we were going to work
 [6] regularly. Other departments did not have the
 [7] materials, raw materials maybe, but we did. But we had
 [8] things to do. We did have work.
 [9] Q: You did have work but did not have overtime.
 [10] A: (By the translator) Mm-hm. Right. That's
 [11] right.
 [12] Q: Would it be a true statement that you worked
 [13] in the only department which had raw materials?
 [14] A: (By the translator) Well, the department
 [15] that is the focal point, the axis of the plant.
 [16] Q: That is where you were?
 [17] A: (By the translator) Yes.
 [18] Q: And if your work was reduced, that would in
 [19] some manner reduce the work of the entire plant?
 [20] A: (By the translator) That's right.
 [21] Q: I understand why you say that you were in
 [22] the center of things, or important. I mean important to
 [23] the operation of the entire plant.
 [24] A: (By the translator) The plant, yes.
 [25] Q: Would it be true to say that you did not

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[1] know immediately how many orders were being received
 [2] by
 [3] the company?
 [4] A: No.
 [5] Q: No, meaning it is true that you did not
 [6] know? Please explain.
 [7] A: (By the translator) Exact quantity, no.
 [8] Yes. But we were required to do the rubber, the stamps.
 [9] Q: And if you did not do rubber, nobody worked.
 [10] THE TRANSLATOR: When you say "you," do you
 [11] mean singular or plural?
 [12] MR. MARTIN: Singular.
 [13] A: (By the translator) No, if the group didn't
 [14] make the rubber, nobody worked.
 [15] Q: (By Mr. Martin) Five important persons; is
 [16] this correct?
 [17] A: Yes.
 [18] Q: Let's take a break. Would this be helpful?
 [19] A: (By the translator) No, it's fine.
 [20] Q: We can wait until another day. Is this
 [21] okay?
 [22] A: (By the translator) Continue.
 [23] Q: You have described your understanding of the
 [24] company as based upon a series of levels of sales or
 [25] salespersons; is this correct?
 A: (By the translator) What?

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[1] Q: Okay. You described underpersons or other
 [2] persons in the sales force.
 [3] A: (By the translator) Well, I really don't
 [4] understand the question. The question is still not
 [5] clear to me.
 [6] Q: What I am asking is your understanding of
 [7] what made up the organization that collected the orders
 [8] for stamps. Maybe we think about that while we take a
 [9] break.
 [10] (A recess was taken.)
 [11] MR. MARTIN: If you would read back the last
 [12] question.
 [13] (The pending question was read.)
 [14] A: (By the translator) I'm saying I worked in
 [15] that one department, and I didn't work in the order
 [16] department.
 [17] Q: (By Mr. Martin) Would it be true, then, to
 [18] say that you would have no knowledge of any lead time or
 [19] order time between receipt of a sale to a purchaser and
 [20] the ultimate delivery of the product?
 [21] THE TRANSLATOR: The time between the
 [22] receipt of an order and —
 [23] MR. MARTIN: The receipt of the order and
 [24] delivery of the product.
 [25] A: (By the translator) We knew about the

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[1] orders, but I'm going to repeat this because — the
 [2] managers told us, Now, these are the orders for this
 [3] month, and this is what we need to do for this month,
 [4] and we're behind such and such for this month.

[5] Q: (By Mr. Martin) There was a Christmas
 [6] fiesta?

[7] A: (By the translator) Yes, there was a
 [8] Christmas party.

[9] Q: Did this party not just seem to be on a
 [10] calendar but also be significant as to completion of
 [11] orders for the year or for that month?

[12] A: (By the translator) When they held this
 [13] recognition party, it was for the workers that had —
 [14] you know, that had been working there, and I hadn't
 [15] worked there a year yet. And I say "recognition,"
 [16] because that's how Jeanette made the employees feel,
 [17] very grateful for the production that had taken place
 [18] during that year.

[19] Q: When you received orders for production, was
 [20] that written on paper or verbal?

[21] A: (By the translator) They didn't give us the
 [22] stuff from the order department. You know, there's the
 [23] cutting out department and the something-or-other
 [24] department. The supervisor of each department would
 [25] give the written orders of the stamps that they needed

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[1] so that they could maintain a cutoff point and maintain
 [2] a certain inventory.

[3] Q: Do you know if the orders that you saw were
 [4] written by the salesperson or by the supervisor in the
 [5] plant?

[6] A: (By the translator) I tell you again that
 [7] they asked — they made the request, requisitioned the
 [8] orders, only by the supervisors of the plant, the plant
 [9] supervisors, those that knew what the need was.

[10] Q: So you did not know what the need was until
 [11] you were told by a supervisor.

[12] A: (The witness nods his head.)

[13] Q: Your employment with the company ended on
 [14] the 30th of December, correct?

[15] A: (By the translator) Correct.

[16] Q: At what time?

[17] A: (By the translator) Well, early in the
 [18] morning.

[19] Q: Had you been working that morning at the
 [20] plant?

[21] A: (By the translator) No. I was resting that
 [22] day. I was off that day. It was my day off.

[23] Q: Tell me what happened then, please.

[24] A: (By the translator) Our department,
 [25] according to the information we'd received from

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[1] Mr. Miguelangel in a meeting in his office — he had let
 [2] us know that the burners, the people that do the
 [3] burning — this is my own addition, I suppose, those
 [4] that work with the furnaces or the ovens, whichever they
 [5] are — would never have to be laid off.

[6] Q: The question, though, was: What happened on
 [7] December 30?

[8] A: (By the translator) Well, I'm answering
 [9] your question about the 30th of December, because I had
 [10] a day off, and the supervisor called me at home telling
 [11] me that I wasn't working for the company anymore.

[12] Q: What was said?

[13] A: (By the translator) I'm in the process of
 [14] explaining to you, and then you want me to answer again?

[15] Q: Just on the 30th.

[16] A: (By the translator) They called me at home
 [17] telling me I wasn't working for the company.

[18] Q: Who called?

[19] A: (By the translator) Humberto, supervisor.

[20] Q: What did Humberto say?

[21] A: (By the translator) That it would no more
 [22] be necessary to show up at the company because there
 [23] wasn't any more work.

[24] Q: Was that the total conversation that day, on
 [25] the 30th, with Humberto?

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[1] A: (By the translator) Yes, Humberto. I asked
 [2] him — I told him — I communicated to him that, How is
 [3] that possible? In the meeting before, Miguelangel had
 [4] told us that no one was going to be without work.

[5] Q: Is that all you said at that moment?

[6] A: To Humberto?

[7] Q: Correct.

[8] A: (By the translator) Yes.

[9] Q: What did he say then after you had said
 [10] this?

[11] A: (By the translator) He says, Well, I'm
 [12] sorry. And then I told him that I needed a written
 [13] document that stated that I was not working for the
 [14] company anymore.

[15] Q: What did he say? Humberto.

[16] A: (By the translator) He told me to stop by
 [17] and pick it up.

[18] Q: Was that the end of the conversation then?

[19] A: (By the translator) The conversation ended.

[20] Q: When did you receive your last paycheck?

[21] A: (By the translator) I received it the week
 [22] after losing the job.

[23] Q: Maybe seven or eight, nine January?

[24] A: (By the translator) Yeah. I got it on a
 [25] Friday. I had to wait until they run down their list so

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[1] they could run my check.
 [2] Q: Were you working with either Los Hermanos,
 [3] the cleaning company, or Nu Skin before you received
 [4] that check?
 [5] A: No.
 [6] Q: How long after that check was received
 [7] before you were working with one of these other
 [8] companies?
 [9] A: (By the translator) I was — I was —
 [10] around about two to three months.
 [11] Q: Before you even worked part-time?
 [12] A: (By the translator) I received that last
 [13] check — from there till the time I started working for
 [14] the other companies, I had to wait till — I started to
 [15] work, but I didn't get paid immediately. I had to wait
 [16] till they paid people, ran their checks.
 [17] Q: But the question was: How long after you
 [18] received the check did you commence work with the other
 [19] companies, or was that before you received the check?
 [20] A: (By the translator) No, it was not before I
 [21] received the check. For the other company, like I
 [22] repeat, three months.
 [23] Q: I do not understand. You commenced working
 [24] full time for Nu Skin in March.
 [25] A: (By the translator) That's what I told you,

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[1] between two and three months. I don't know exactly,
 [2] because I can't remember the date.
 [3] Q: I can understand that, but you had said you
 [4] had worked for two months with these companies before
 [5] you worked full time with Nu Skin. Please explain, if
 [6] that helps you remember.
 [7] A: (By the translator) In the company in
 [8] Nu Skin, I started on the 24th of March, and I started
 [9] part-time. So I was working part-time a month or two
 [10] months. I don't remember.
 [11] Q: Do you remember, then, the meeting that you
 [12] said was in Senor Esquivel's office?
 [13] A: (By the translator) This was around about
 [14] the month of November.
 [15] Q: Who was present?
 [16] A: (By the translator) Mr. Humberto and
 [17] Mr. Angel. Oh, I forgot the name of that kid. Geraldo.
 [18] Q: Was that everyone present?
 [19] A: (By the translator) And Mr. Esquivel and a
 [20] server, and then one other person: Ruben.
 [21] MS. JONES: Could I stop this for a minute?
 [22] (A discussion was held between Ms. Jones and the
 [23] translator.)
 [24] MS. JONES: We've just clarified the point
 [25] that "servant" or "server" is a Hispanic cultural term.

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[1] It's being translated into English that way. In reality
 [2] it's a Spanish cultural term to refer to oneself, such
 [3] as, your faithful servant.
 [4] A: (By the translator) I'm referring to my own
 [5] person.
 [6] Q: (By Mr. Martin) Was this meeting in
 [7] November?
 [8] A: (The witness nods his head.)
 [9] Q: How many other meetings were held that you
 [10] attended in Mr. Esquivel's office?
 [11] A: (By the translator) Later on there was
 [12] another, when they informed us of the overtime and that
 [13] so — I say in his private office, si.
 [14] Q: Only two that you attended, then?
 [15] A: (By the translator) I attended many
 [16] meetings with the whole plant.
 [17] Q: I'm only talking about the meetings in
 [18] Esquivel's office.
 [19] A: (By the translator) I was just in two.
 [20] Q: When was the other one, other than November?
 [21] A: (By the translator) When they informed us
 [22] about the overtime and they asked our cooperation to
 [23] work overtime.
 [24] Q: When was that meeting?
 [25] A: (By the translator) Before the overtime,

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[1] quite a bit before Christmas, in the month of December.
 [2] What I'm talking about, meetings in groups in his
 [3] office, group meetings in his office.
 [4] Q: Oh. I think I begin to understand. That's
 [5] something that's helpful. See if this explanation is
 [6] correct. When you began working you were working
 [7] regular time approximately 40 hours a day — not a day.
 [8] Then sometime in December you were asked about maybe
 [9] working overtime, and so you worked overtime sometime
 [10] after the 1st of December until approximately Christmas.
 [11] A: (By the translator) Yes.
 [12] Q: And then after that you worked back to
 [13] regular time?
 [14] A: (By the translator) Yes.
 [15] Q: Being the center or most important part of
 [16] the plant, then, that would be reflective of the total
 [17] work or production rate; is that correct?
 [18] A: (By the translator) Correct.
 [19] Q: So the work in November was regular, then an
 [20] increase the beginning — sometime after the beginning
 [21] of December, and work reduction after December 25.
 [22] A: (By the translator) Correct.
 [23] Q: Do you know if the November meeting was at
 [24] the beginning of November or toward the end of November?
 [25] A: (By the translator) Oh, beginning of

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[1] November.

[2] Q: How long was the meeting?

[3] THE TRANSLATOR: Do you want me to translate
[4] that?

[5] MR. MARTIN: Yes.

[6] A: (By the translator) One hour.

[7] Q: (By Mr. Martin) Tell me as much as you can
[8] remember what was said at that meeting.

[9] A: (By the translator) This meeting was called
[10] because in our department we were, quote-unquote,
[11] burning. There was some difference in the relationship
[12] between the orders and the requisitions that we
[13] received, the orders we received. Sometimes we were
[14] doing some stamps and then other times they asked us to
[15] do others. Like as if there weren't a coordination.

[16] And then there at that time that was when

[17] Mr. Geraldo — I don't know whether you'd call it a
[18] little quarrel or a — just some problems.

[19] And so Mr. Miguelangel asked us to tell him
[20] what our feelings were, how we felt about it. Each one
[21] said how he felt. Mr. Miguelangel, the only thing that
[22] he rectified or set straight there was that Mr. Angel
[23] Santiago and I were going to continue working in the
[24] furnace or oven department and that we would stay there.
[25] We were an important team, because if there wasn't any

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[1] are not saying that the company call made to you by
[2] Humberto on December 30th was unlawful.

[3] A: (By the translator) Pardon me? Could you
[4] please repeat the question?

[5] Q: Okay. The reason why we're here is not
[6] because you are taking, then, the position that the
[7] company, in having Humberto call you and tell you your
[8] work was complete, was somehow unlawful.

[9] A: (By the translator) Are you referring to my
[10] termination with the company?

[11] Q: Yes.

[12] A: (By the translator) No.

[13] Q: Please explain. Maybe my question was so
[14] long I need an explanation.

[15] A: (By the translator) My opinion, it's not
[16] unlawful that I ended up without a job.

[17] Q: Are you okay?

[18] A: (By the translator) Yes.

[19] Q: My first thought when you said that, was
[20] maybe it was not unlawful, but unfortunate.

[21] A: (By the translator) In my own conscience I
[22] know that I did a good job for the company, and that's
[23] enough for me.

[24] Q: Very good.

[25] A: (By the translator) No, I don't have any —

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[1] rubber then there wasn't any production, there wouldn't
[2] be any production, and that his spirit had told him that
[3] we were strong spirits, and that's where everything
[4] ended.

[5] THE TRANSLATOR: I want to add just as an
[6] aside here. Sometimes when we translate "spirit," "his
[7] spirit," you could also translate that as his mind, his
[8] sense of the situation.

[9] Q: (By Mr. Martin) Would it be fair to say
[10] that you understand at that time that this was a
[11] compliment for work performed, that it was an indication
[12] of the amount of work in the plant at that time, or the
[13] work that was expected to come in, and a general
[14] compliment as to the work that you in that department
[15] were performing?

[16] A: (By the translator) In my opinion, what he
[17] wanted to say was that he was satisfied with the
[18] production that was coming off.

[19] Q: If this is true, certainly you wouldn't have
[20] considered this as a guarantee personally to you for
[21] employment. Is that a fair statement?

[22] A: (By the translator) For me, in my opinion,
[23] it was just that he was pleased with my own personal
[24] work and that of Angel.

[25] Q: If I understand, then, your position, you

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[1] Q: Listening to your description of your
[2] employment with Nu Skin, maybe it was fortunate.

[3] A: (By the translator) Not that somebody's
[4] luckier or fortunate for trying to show the — to do
[5] their best and produce and that, to know that someone's
[6] sure in the company that they're in, to give it their
[7] maximum.

[8] Q: I apologize if I just referred to this as
[9] pure luck. For whatever reason, at least we are happy
[10] mutually to see your situation improved.

[11] A: (By the translator) Yes.

[12] Q: Would you agree with this?

[13] A: Yes.

[14] Q: Congratulations.

[15] What concerns me now, then, at the moment,
[16] is — what is the reason for now the complaint against
[17] the company, meaning D.O.T.S.?

[18] A: (By the translator) It's due to the
[19] irregularities and the negligency that they had which
[20] were harmful to one's person.

[21] Q: Please, I don't mean to become too personal
[22] or impolite, but if you could — and please explain
[23] maybe in one, two, three, four order, if this is
[24] possible.

[25] A: (By the translator) Okay. The thing that

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[1] has affected me the most as a person is to feel accused
 [2] of things that you didn't do, accused of tainting
 [3] someone or taking a little — the name to them of being
 [4] a rip-off or a liar where the intimidation — where
 [5] everybody feels intimidated. In my case it was they
 [6] searched my person without any authorization.

[7] Q: What would be your understanding of
 [8] "authorization"?

[9] A: (By the translator) A person that has
 [10] permission, that is legal in doing things.

[11] Q: Is there anyone who would be a person who
 [12] could do the same thing, in your understanding, in a
 [13] legal manner?

[14] A: (By the translator) I didn't understand the
 [15] question.

[16] Q: Okay. You said two things: One, with
 [17] permission of the individual, yourself, or someone who
 [18] had an authorization under law. First I asked the
 [19] question about who would have permission, in your
 [20] understanding under the law, if anyone.

[21] A: (By the translator) You mean that might
 [22] have the authorization?

[23] Q: Yes.

[24] A: (By the translator) I would say the law.

[25] Q: You mean the police?

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[1] A: (By the translator) Yes, in every judicial
 [2] aspect.

[3] Q: If the police had been called to the plant
 [4] at that moment and done the same thing, would that have
 [5] been as offensive?

[6] A: (By the translator) No.

[7] Q: If the police had done exactly the same
 [8] thing, there would have been no offense?

[9] A: (By the translator) As long as there
 [10] wouldn't have been no offense, as long as there was
 [11] authorization.

[12] Q: But I thought we already covered that. We
 [13] had agreed, maybe, that your understanding was that the
 [14] police would have authorization.

[15] A: (By the translator) No. The police is
 [16] authorized only when the law gives them that
 [17] authorization.

[18] Q: In this circumstance, as you understood the
 [19] complaint that money was missing or property was missing,
 [20] or some crime had occurred or something had been wrong,
 [21] do you think under that circumstance that the police
 [22] would have had authorization?

[23] I'm not asking for a question as to the
 [24] legal opinion. I'm just asking for your understanding.
 [25] Of course, I realize that all of us in this room may

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[1] have a different opinion. I'm just asking for yours.

[2] A: (By the translator) I repeat again, yes,
 [3] the police have certain power but have to base what they
 [4] do on the law, on if it's right or not. That's why if
 [5] they don't have — if they're not authorized, they can't
 [6] do it. Now, yes, I can say that if the police is here
 [7] then I can say, yes, go ahead and search me. So there's
 [8] a witness.

[9] Q: Did I make a mistake in believing that
 [10] previously you had said that if the police had been
 [11] there there would have been no offense?

[12] A: (By the translator) There would not have
 [13] been any, because he is a witness under the law.

[14] Q: So the conduct that was — maybe I correct
 [15] this. The major question was one of a proper witness.

[16] A: (By the translator) Right.

[17] Q: If there had been a proper witness present,
 [18] then there would have been no offense; is that correct?

[19] A: (By the translator) Yes, correct, under the
 [20] law.

[21] Q: This is how you would feel about it
 [22] personally; is that correct?

[23] A: (By the translator) As long as it's under
 [24] the law.

[25] Q: I understand this. Then what happened to

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[1] you was offensive because you believed it to be
 [2] unlawful?

[3] A: (By the translator) Exactly.

[4] Q: I think we begin to understand each other
 [5] better. I can appreciate that. What I'm trying to make
 [6] the distinction in my own mind is to determine exactly
 [7] what was the cause of the offense. The cause of the
 [8] offense was not the specific conduct, excluding maybe
 [9] offensive words used. Is that a fair statement?

[10] A: (By the translator) Fair in what sense?

[11] Q: Fair in your opinion. I'm just trying to
 [12] express what I understand would be your opinion.

[13] A: (By the translator) Well, it's just that
 [14] besides the words that were said there was a search of
 [15] my person.

[16] Q: But if there had been a proper witness
 [17] present there would have been no offense?

[18] A: (By the translator) Like I tell you again,
 [19] as long as it's under the law, lawful.

[20] Q: Tell me, as you remember, the sequence of
 [21] what you have described as the search of your person.

[22] A: (By the translator) The supervisor asked us
 [23] to go to the bathroom. In the bathroom they took our —
 [24] our shoes were taken off, our socks. We emptied out our
 [25] pockets, and we handed over our wallet.

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[1] Q: This is unfortunate that everyone felt
[2] accused. Everyone can understand that sort of feeling.
[3] However, if an accusation has been made by someone, true
[4] or no, would it in your opinion have been the best thing
[5] to do to call the police to conduct this search? What
[6] would you have done?

[7] A: (By the translator) They say that in order
[8] to accuse someone you have to have proof. You have to
[9] have proof. At that time if they had at that time proof
[10] in their hand and they had the authorization, authority
[11] of the law, then they could do it.

[12] Q: Okay. Suppose for a moment that you are the
[13] supervisor in the plant where you work for D.O.T.S. and
[14] someone came to you and said someone has stolen \$20.
[15] How would you respond to that? What would you do?
[16] Suppose you didn't even believe this, the accusation?

[17] A: (By the translator) In the case that the
[18] attorney is explaining here, me as a supervisor, if the
[19] person that was informed was the supervisor and he went
[20] and spoke with the manager, the next corresponding
[21] person, to see what opinion the manager had about the
[22] case, and me as a person, as a supervisor, I wouldn't
[23] dare search anyone.

[24] I mean, just like they say in my country,
[25] once the little ball has been loosed, then it goes to

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[1] the next line — upline in chain of command and let
[2] them — because the next person up the line has more
[3] authority.

[4] Q: I appreciate the correctness and care with
[5] the question. Now, if you'd please permit me to make
[6] you the manager of the plant. Maybe my apology for
[7] doing so. Now, what do you do?

[8] A: (By the translator) At the point of the
[9] manager there's another person that is in authority over
[10] me that's the owner. The situation or the case would be
[11] discussed and opinions would be heard.

[12] Q: Okay. I think you know what I'm going to do
[13] to you next.

[14] A: (By the translator) The next question is
[15] when it's heard.

[16] Q: Meaning the owner. Please respond,
[17] supposing you were the — what would be your order?

[18] A: (By the translator) The order would be to
[19] speak with the work force personnel, explain the
[20] situation to them, with love.

[21] Q: An important distinction.

[22] A: (By the translator) Lovingly. If a person
[23] does not show their confidence towards an employee, then
[24] the employee doesn't draw close to us, the employee
[25] won't express their feelings. And if someone has seen

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[1] what happened at that time, their cooperation is asked
[2] for, and it's a very delicate matter to treat.

[3] Q: Yes, I agree.

[4] A: (By the translator) Like I told you, the
[5] cooperation of the personnel, all of the work force
[6] would be solicited, and it would — and ask the
[7] supervisors to — you know, to wait on — to kind of be
[8] over their groups to receive any information that might
[9] come from them.

[10] Q: Very good. No person walks up to confess.

[11] A: (By the translator) Exactly. I know that.

[12] Q: And yet you have one person in the plant who
[13] is accusing everyone and doesn't know where the money
[14] went. It could be anywhere, any person. Would you try
[15] to explain, maybe a difference in love, which I
[16] appreciate. Would the search then become not
[17] necessarily a search, but to show this one person,
[18] whoever it may be, that no one is a thief, that we did
[19] something at least in response to the complaint? Is
[20] this a possibility?

[21] A: (By the translator) It would be a
[22] possibility as long as — like I say, as long as it's
[23] based on some law.

[24] Q: Sure. Now, you said that you —

[25] A: (By the translator) I asked Humberto when

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[1] he had my wallet — I said, What difference is there
[2] between my \$20 that are right here in this wallet and
[3] the \$20 that were taken?

[4] Q: Very good point, yes. But the question is:
[5] Do you search or no? Do you ask questions of employees
[6] or no? Do you tell the employees that an accusation has
[7] been made by someone or say nothing?

[8] A: (By the translator) What I'm saying is that
[9] the case has different ways of arriving at a conclusion,
[10] but the way that was taken or chosen was illegal.

[11] Q: Maybe impolite, but maybe not unlawful.
[12] Maybe also in poor taste or — the question maybe is:
[13] Did anyone or did you yourself say, I object to the
[14] procedure or the question prior to the time that you
[15] opened your pockets or your wallet?

[16] A: (By the translator) Me? Well, in my case I
[17] was not opposed, because Mr. Miguelangel was — because
[18] he intimidated the personnel, like I said. They told us
[19] that we were rip-offs and stealing at that moment, as a
[20] manager. And he himself recognizes — he said, I'm
[21] going to do something that's unlawful, but we're going
[22] to search everyone —

[23] Q: Maybe everyone just go ahead. Excuse me.

[24] A: (By the translator) — whether you like it
[25] or not.

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[1] Q: But this is a new phrase I've not heard
[2] before from anyone else. I think this phrase makes a
[3] difference. Let's go back for a moment to the point
[4] where you were in the rest room with others. Who was
[5] present?

[6] A: (By the translator) Just Humberto and I
[7] alone. Only Humberto and I.

[8] Q: He removed your shoes and stockings?

[9] A: (By the translator) Yes.

[10] Q: He himself, rather than asking you to remove
[11] your shoes and stockings?

[12] A: (By the translator) What he asked us to do
[13] was to empty out our pockets and the billfold.

[14] Q: And you did that yourself?

[15] A: (By the translator) Yes.

[16] Q: You said something about removing your shoes
[17] and stockings.

[18] A: (By the translator) I didn't do that. What
[19] he asked us, that we empty out — and then he proceeded
[20] to the shoes.

[21] Q: Tell me, as close as you can remember, what
[22] Humberto said.

[23] A: (By the translator) That he was going to
[24] search us with the authorization of Miguelangel. The
[25] only thing that I imagined was like you see in the

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[1] movies where they search you. I don't know if they
[2] thought that the money was in the shoes or in the socks.

[3] Q: Did you ever see any force used against any
[4] person to facilitate the search?

[5] A: (By the translator) No, because the men
[6] went into the men's bathroom and the women into the
[7] women's. We went in voluntarily.

[8] Q: And possibly, from Humberto's point of view,
[9] opened your pockets voluntarily?

[10] A: (By the translator) Because he asked us.
[11] He said we had to show him our billfold and we had to
[12] empty our pockets. And the people that had a little
[13] lunch sack, they had to get it out and open it.

[14] Q: But Humberto's point of view would be that
[15] this was consented to or done by each person individual,
[16] by you and others voluntarily.

[17] A: (By the translator) Those were the orders
[18] that he gave, to search us. The search was verbal, but
[19] he asked us to do it.

[20] Q: And you did.

[21] A: (By the translator) And they did it. I'm
[22] talking just about what happened to me.

[23] Q: Of course. I appreciate that correctness.
[24] After this occurred did you make any suggestions to a
[25] supervisor or an officer of the company that maybe

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[1] something had happened that was inappropriate?

[2] A: (By the translator) Nothing was done,
[3] because the gentleman had told us at the beginning —
[4] the gentleman, Miguelangel, had told us to do something
[5] that I know is not supported by the law, but I'm going
[6] to do it. No one did anything.

[7] Q: Did he say, If anybody objects, please raise
[8] your right hand, or anything?

[9] A: (By the translator) Nothing, because he
[10] said that he's going to do it whether you like it or
[11] not.

[12] Q: I did not mean it to be impolite, but I
[13] really do not believe that everyone in the plant would
[14] be little sheep, would just follow along without saying
[15] anything if there was such an offense.

[16] A: (By the translator) If a person feels —
[17] you know. I mean, you say a little like a little sheep,
[18] but that's more or less how you kind of feel, because if
[19] I hadn't — I say if I had not allowed myself to be
[20] searched I would have lost my job.

[21] Q: Which the company could have done anyway,
[22] correct?

[23] A: (By the translator) It has the right to do
[24] it, to do so. But at that time my desire was to stay
[25] with the company, because I worked out of necessity.

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[1] Q: Similar to all of us. My apology if we look
[2] impolite. This is just a — not only a very serious
[3] matter for you but a very serious matter for we who are
[4] on the other side of the table. And we're just trying
[5] to determine accurately how this became viewed by some
[6] people to be a personal offense to such a degree as to
[7] justify court action many months later. Why only four?
[8] Why so many more months later?

[9] A: I don't know.

[10] Q: Did the four somehow get together? And if
[11] so, how? I do not mean to be impolite. We just must
[12] know.

[13] A: (By the translator) What — how should I
[14] say? The only answer I have is that it's intimidation
[15] towards the personnel, towards the work force. There
[16] are many people. Many people work out of necessity.
[17] Many have very personal problems, matters of how they
[18] are here in this country.

[19] Q: I think all of us who have seen anything in
[20] the news would understand what you've just said and
[21] would appreciate that. When did the four get together,
[22] though? Six months later? Two months later? How?
[23] Why? What?

[24] A: (By the translator) Not six months after.
[25] It was immediately after, when we left.

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[1] Q: Where?
 [2] A: (By the translator) We did it in the
 [3] attorney's office.
 [4] Q: When?
 [5] A: (By the translator) I don't remember the
 [6] exact date, but some lawyer at BYU.
 [7] Q: Before or after Easter, if you remember?
 [8] A: (By the translator) I'd say it was around
 [9] February or March or thereabouts.
 [10] Q: This was the first time that anyone ever
 [11] talked about this? Was that this meeting at the
 [12] university?
 [13] A: No.
 [14] Q: When was the first time?
 [15] A: (By the translator) We didn't meet at the
 [16] university. We met at the home of another person.
 [17] Q: Who?
 [18] A: (By the translator) He was working for the
 [19] Latin Council, Concilio Latino.
 [20] Q: Who was present?
 [21] A: (By the translator) We were Humberto,
 [22] Rosa — I don't remember the name of that little guy
 [23] that went — another boy that worked at the plant. Now
 [24] I can't remember his name. Angel. Rosio. There was
 [25] Jorge. I don't remember the others. I can't remember.

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[1] The feelings were not those of just four people, but
 [2] those of 12 people.
 [3] Q: Who called the meeting? Who organized the
 [4] meeting?
 [5] A: (By the translator) The one from the Latin
 [6] Council.
 [7] Q: Were there 12 people present?
 [8] A: (The witness nods his head.)
 [9] Q: Plus the Latin Council person.
 [10] A: (By the translator) Yes, and that lawyer
 [11] from BYU. I don't know who it is. I don't know him.
 [12] Q: Who called you, or how did you find out to
 [13] go to a meeting?
 [14] A: (By the translator) Because they called us
 [15] individually, and they told us to meet at that place.
 [16] Q: Who called?
 [17] A: (By the translator) Each individual took
 [18] responsibility to call another person.
 [19] Q: Who called you?
 [20] A: (By the translator) A guy called me that I
 [21] can't remember his name, from Mexico.
 [22] Q: Who did you call?
 [23] A: (By the translator) I just informed Angel.
 [24] Q: The person who called you, what words did he
 [25] use?

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[1] MS. JONES: I'm going to object to this line
 [2] of objection formally. I'm not sure that it has that
 [3] much relevance to the cause of action for which we're
 [4] here, and I think it has the possibility of leading in
 [5] other directions that I think are inappropriate.
 [6] MR. MARTIN: From this side of the table it
 [7] appears that it already has been inappropriate before we
 [8] were ever informed.
 [9] Q: (By Mr. Martin) Please answer just the
 [10] questions. Was this just someone who wanted to see if
 [11] anyone was angry at D.O.T.S.? What were the words?
 [12] What were the words that this person who called you
 [13] used?
 [14] A: (By the translator) The person just
 [15] informed me of the meeting. I'd felt the reasons that
 [16] I've given and that I base myself on this search. I
 [17] don't know the opinions of each individual person. What
 [18] we felt about these opinions we continued together.
 [19] What we didn't, well, I don't know.
 [20] Q: I understand this, but the question is:
 [21] What words did the person use who called you?
 [22] A: (By the translator) He just told me to go
 [23] to the meeting and to give my testimony about what had
 [24] happened. Nothing more. He didn't tell me anything
 [25] else. I don't know his personal feeling towards the

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[1] company. I don't know.
 [2] Q: That was all he said?
 [3] A: (By the translator) Yes, that's all he
 [4] said.
 [5] Q: Then how did you know that it was a meeting
 [6] for the purpose of trying to put together a group of
 [7] people who had a complaint against D.O.T.S.?
 [8] A: (By the translator) How's the question?
 [9] Q: If that is all the words this person used,
 [10] the person who called you, then how did you know there
 [11] even was a meeting concerning D.O.T.S.?
 [12] A: (By the translator) Well, each person gave
 [13] their testimony.
 [14] Q: To who?
 [15] A: (By the translator) To the person from the
 [16] Latin Council and to the attorney.
 [17] Q: How did this person — do you have any idea
 [18] how this person knew to call you?
 [19] A: (By the translator) Because what was
 [20] wanted, what was — what was being looked for was some
 [21] orientation as to what could be done.
 [22] Q: Because somebody wanted to hurt D.O.T.S.
 [23] because someone was offended. And you don't —
 [24] A: (By the translator) I was offended.
 [25] Q: Yes, but you did not organize the meeting

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[1] nor do you know, it seems, who may really be behind all
[2] of this.

[3] **MS. JONES:** I'm objecting again. There's
[4] implications that are in that question that are
[5] inappropriate. I think they're irrelevant. I think
[6] there's no basis to them.

[7] **Q:** (By Mr. Martin) We're finding — you
[8] understand, though, the question?

[9] **A:** (By the translator) Yes, and I've answered
[10] it.

[11] **Q:** Who, if you know, called this meeting or
[12] organized it or initiated it? You don't know?

[13] **A:** (By the translator) I didn't make any
[14] meeting.

[15] **Q:** Was the purpose of the meeting to damage or
[16] get back at for offense? Was it personal?

[17] **A:** (By the translator) Me, as a person, I went
[18] to look for some orientation that — what could be done
[19] into — about what I considered to be illegal.

[20] **Q:** Of course.

[21] **A:** (By the translator) That's it.

[22] **Q:** At anytime in the search or anything of that
[23] sort was Jeanette Lynton present?

[24] **A:** (By the translator) At the search?

[25] **Q:** Yes.

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[1] **A:** (By the translator) No.

[2] **Q:** Why do you decide to put her name first?

[3] **MS. JONES:** Again I'm going to object. That
[4] calls for a legal conclusion.

[5] **MR. MARTIN:** No. I'm asking just his
[6] opinion as to why she is listed first.

[7] **Q:** (By Mr. Martin) Why do you do that?

[8] **A:** (By the translator) Her name's at the top
[9] of the list because I feel that she as a manager, as the
[10] owner of the company, ought to know what happened on
[11] that day.

[12] **Q:** She did not know. Is she still personally
[13] liable for someone else's —

[14] **MS. JONES:** Object again. That calls for a
[15] legal conclusion.

[16] **MR. MARTIN:** His opinion.

[17] **A:** (By the translator) I answered that. She
[18] is the owner of the company. She needs to know it all.

[19] **Q:** (By Mr. Martin) Yeah, but you worked for
[20] the company.

[21] **A:** Mm-hm.

[22] **Q:** In this searching, were you hurt in any
[23] manner physically?

[24] **A:** No.

[25] **Q:** Was there any discussion at this meeting —

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[1] and this, maybe it's just a personal curiosity — that
[2] someone organized this meeting for a general reason that
[3] they thought Latinos were being mistreated at D.O.T.S.
[4] and we had to do something to correct this problem? Yes
[5] or no?

[6] **A:** (By the translator) In my point, because of
[7] what has been already exposed here, because of the
[8] search.

[9] **Q:** The question was what occurred at the
[10] meeting, and the motivation.

[11] **MS. JONES:** I'm going to object again. I
[12] think that the motivation of that original meeting is
[13] irrelevant to the question and to the issues and to the
[14] issues in this case.

[15] **MR. MARTIN:** Okay. I disagree.

[16] **Q:** (By Mr. Martin) Please answer the question.

[17] **A:** (By the translator) The question is that if
[18] the motivation for the meeting was — was what points?

[19] **Q:** No, I'm not asking you for a conclusion.
[20] I'm asking you if anything was said about general or
[21] specific maltreatment of Latinos at the company named
[22] D.O.T.S.

[23] **A:** (By the translator) We're all Latinos there.

[24] Almost everybody is Latin there. At the present time
[25] those of us that are in this case were Latinos. And

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[1] we're going to see.

[2] **Q:** Yes. I understand the explanation, but this
[3] is not responsive to the question. The question is: Do
[4] you remember anything about this meeting? Yes or no?

[5] **A:** No.

[6] **Q:** Is this because you're afraid to remember or
[7] because you have a total lapse of memory as to this
[8] meeting?

[9] **A:** (By the translator) I can't answer
[10] because — for the same reasons that the others can't
[11] answer.

[12] **MR. MARTIN:** I just noticed that counsel has
[13] nodded her head to her client in the negative.

[14] **MS. JONES:** No. I said — I'm actually
[15] nodding at the translator. That is not what my client
[16] answered.

[17] **Q:** (By Mr. Martin) Was this a secret meeting?
[18] Si or no?

[19] **A:** Yes.

[20] **Q:** Did you agree to secrecy, you personally?

[21] **A:** (By the translator) The meeting?

[22] **Q:** Yes.

[23] **A:** No.

[24] **Q:** Why did you say, then, that it was secret?

[25] **A:** (By the translator) Secret in the sense

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[1] that what we were looking for at that time was
[2] orientation. I was looking for orientation, and I
[3] continued the orientation.

[4] **MS. JONES:** I'm going to object again. I
[5] think this meeting is fairly characterized as an
[6] official meeting with counsel, and therefore there's
[7] some issues of privilege involved here.

[8] **MR. MARTIN:** Are you saying that you were
[9] present?

[10] **MS. JONES:** I'm not saying that I was
[11] present, but I'm saying there was an attorney present.
[12] It was an initial meeting with counsel.

[13] **MR. MARTIN:** Have you been advised that this
[14] attorney was representing the group? What's the basis
[15] for your objection?

[16] **MS. JONES:** I think that the objection —
[17] and we may need to take it up in court. But the
[18] particular objection is that these people got together
[19] to talk with an attorney, together looking for
[20] orientation as to their personal individual rights.

[21] **MR. MARTIN:** I'm wondering if you were
[22] involved in organizing the meeting. It makes me wonder
[23] when you first found out about it, or if this is the
[24] first information, or if this attorney is unknown and if
[25] all the other people are unknown.

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[1] This is the first time that we've ever heard
[2] anything about a meeting, and this is the first time
[3] which now counsel for the four plaintiffs is attempting
[4] to exercise attorney/client privilege for someone else.
[5] And that's not appropriate.

[6] **MS. JONES:** I'm attempting to exercise
[7] attorney/client privilege and perhaps indicate to my
[8] client where he has a privilege that he is not aware of.

[9] **MR. MARTIN:** The questions were who called
[10] the meeting, how it got together, and what was the
[11] motivation for this meeting.

[12] **MS. JONES:** You were also asking about what
[13] was said during the meeting.

[14] **MR. MARTIN:** That's correct. And if someone
[15] is representation of this meeting or is claiming that
[16] they represent them as counsel, then I would ask them to
[17] step forward. And it appears that this was a meeting
[18] specifically for damaging my client and commencing it in
[19] some secret fashion. Certainly that would seem to
[20] someone else to be as inappropriate as, unfortunate
[21] though it may be, a response to someone's claim that
[22] money had been taken.

[23] **Q:** (By Mr. Martin) Do you at least understand
[24] what I'm saying? Si or no?

[25] **A:** (By the translator) Yes, I understand.

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[1] **Q:** At this checking or searching or — was
[2] there a forced detention other than what you thought,
[3] even though unexpressed to you, that if you objected in
[4] any way you would be terminated in your employment?

[5] **A:** (By the translator) Like I said before, I
[6] felt intimidated. There was nothing that was
[7] obligatory, but it was very clearly said yes or no. Why
[8] should I make any objection? Or if I make an objection
[9] I'd lose my job or I stay or I don't know.

[10] **Q:** Were any doors locked or closed and everyone
[11] was told not to leave? Were those words used, or did
[12] that action happen?

[13] **THE TRANSLATOR:** Did you say windows?

[14] **MR. MARTIN:** No, just doors.

[15] **A:** (By the translator) What do you mean the
[16] door is closed? We were working.

[17] **Q:** (By Mr. Martin) Did anyone say that you
[18] were prohibited from leaving? Yes or no?

[19] **A:** No.

[20] **Q:** Did anyone take anything from you that would
[21] have been your own property?

[22] **A:** (By the translator) To acquire it?

[23] **Q:** Yes.

[24] **A:** (By the translator) No.

[25] **Q:** Did anyone stand up as guard in their

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[1] appearance or in words to prevent anyone from leaving?

[2] **A:** No.

[3] **Q:** Did anyone touch you to cause pain?

[4] **A:** No.

[5] **Q:** Or pressure to feel, or in an indecent
[6] fashion?

[7] **A:** No.

[8] **Q:** No one touched you at all?

[9] **A:** (By the translator) Just for the shoes.

[10] **Q:** Did you ever have a feeling yourself other
[11] than — first of all —

[12] **THE TRANSLATOR:** Do you want me to translate
[13] that first thing you did?

[14] **MR. MARTIN:** Sure. Translate first.

[15] **Q:** (By Mr. Martin) Okay. Correct that
[16] question to say — just to say at this moment. The
[17] question is: Did you ever have an understanding or
[18] feeling that you were prohibited in leaving?

[19] **A:** (By the translator) Like I said, I was
[20] afraid to leave, afraid for my job.

[21] **Q:** That's all? That's the only reason, which
[22] you never told anyone?

[23] **A:** No.

[24] **Q:** During this checking or searching, was it
[25] done with anger or embarrassed?

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[1] A: (By the translator) It wasn't done with
 [2] anger, because it was done by the order of him.
 [3] Q: Did he have — "him," meaning — he's
 [4] referring to Esquivel?
 [5] A: (By the translator) Esquivel, yes. He
 [6] ordered it and Humberto did it.
 [7] Q: Because of personal animosity toward you?
 [8] A: (By the translator) You mean, he searched
 [9] me?
 [10] Q: No, that he had some personal animosity
 [11] toward you.
 [12] A: (By the translator) Who? Humberto?
 [13] Q: Yes.
 [14] A: (By the translator) No, because he's just
 [15] following orders.
 [16] Q: No, about Mr. Esquivel.
 [17] A: (By the translator) No, because everyone
 [18] was being searched.
 [19] Q: Did he announce animosity toward everyone?
 [20] I'm angry toward everyone?
 [21] A: (By the translator) As far as I know, no.
 [22] Q: Now, maybe this sounds silly. It seems that
 [23] from your explanation here today that as a result of
 [24] this action you suffered no monetary loss. Is this
 [25] true?

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[1] A: (By the translator) Yes, right.
 [2] Q: You were not damaged in any way except by
 [3] feelings?
 [4] A: (By the translator) That's right.
 [5] Q: It also seems that you did not claim, other
 [6] than your own fear, that there was any forced detention
 [7] of any person. Is this true?
 [8] A: (By the translator) For my own person?
 [9] Only to my person?
 [10] Q: Yes.
 [11] A: (By the translator) Right.
 [12] Q: Is that an answer? In other words — maybe
 [13] we're not communicating.
 [14] The sole reason for us being here is the
 [15] feeling of offense as a result of this conduct, meaning
 [16] the search incident. Is this true?
 [17] A: (By the translator) Yes.
 [18] Q: I can understand this. But I can also
 [19] understand where feelings of misunderstanding can be on
 [20] both sides. And I do not think that one injury
 [21] justifies another. I do believe that some informal —
 [22] at least, information received by the company by someone
 [23] would be appropriate. Do you agree?
 [24] A: (By the translator) Please put together
 [25] everything you told me so that I can — please try and

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[1] translate a whole sentence at once, not just little bits
 [2] and chunks.
 [3] Q: Very good.
 [4] THE TRANSLATOR: I told him thanks for the
 [5] suggestion.
 [6] Q: (By Mr. Martin) You were offended by the
 [7] checking, true?
 [8] A: (By the translator) Yes.
 [9] Q: Why no telephone call, letter, personal
 [10] communication to any person in the company from any
 [11] person who had felt offended to even make a small
 [12] suggestion of the offense? Isn't this also an offense?
 [13] A: (By the translator) Because there was no
 [14] trusting communication between the manager of the
 [15] company.
 [16] Q: Meaning Mr. Esquivel?
 [17] A: (By the translator) Uh-huh. Even to
 [18] eventually — to Jeanette that was on the other side of
 [19] this.
 [20] Q: Pick up the telephone and call her on the
 [21] phone. Why not?
 [22] A: (By the translator) I tell you again.
 [23] Because we've always been told you have to follow this
 [24] pattern. In order to get up to Ms. — he's using a
 [25] title to address Jeanette — you have to go through

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[1] Miguel first to get to her.
 [2] Q: Even when you're no longer employed by the
 [3] company, why no phone call after? Why no contact? Such
 [4] anger is instilled in these people that you feel that
 [5] these people and this conduct is making no offense but
 [6] is totally justified. Fear?
 [7] A: (By the translator) I didn't understand
 [8] what you just said.
 [9] THE TRANSLATOR: And I said I didn't either.
 [10] Q: (By Mr. Martin) Someone as an observer, a
 [11] neutral observer, could maybe say that this complaint
 [12] now against the company is some vendetta. Why would you
 [13] say that it would not appear some vendetta?
 [14] A: (By the translator) I just wanted to make
 [15] sure of what my legal rights were. That's why I'm here,
 [16] just for that. If I had come and asked you for legal
 [17] advise, I would still be here.
 [18] Q: You mean from the first time you asked me
 [19] legal advise you would have been living here or — I
 [20] don't know.
 [21] THE TRANSLATOR: No, that's —
 [22] Q: (By Mr. Martin) What isn't, what is a
 [23] complaint?
 [24] A: (By the translator) That's why I'm here,
 [25] for the legal thing. I'm not looking for illegalities.

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[1] I'm looking for what's legal.
 [2] Q: Were you touched in a harmful or offensive
 [3] way?
 [4] A: (By the translator) In a search, no. Just
 [5] touching the bottom of my feet for me.
 [6] Q: Humberto touched your feet?
 [7] A: (By the translator) That's all.
 [8] Q: For clarification, yes or no?
 [9] A: (By the translator) Did he touch my feet?
 [10] Q: Did Humberto touch your feet?
 [11] A: Yeah.
 [12] MR. MARTIN: Let's take maybe just a brief
 [13] break.
 [14] (A recess was taken.)
 [15] Q: (By Mr. Martin) I'm just curious about the
 [16] time of these first meetings, if you can remember
 [17] approximately the month and day.
 [18] A: (By the translator) Exactly, I don't
 [19] remember.
 [20] Q: Approximately. As close as you can
 [21] remember. Or if you could relate it to another day or
 [22] event.
 [23] A: (By the translator) February or March,
 [24] those two months. I don't remember exactly.
 [25] Q: And where was the meeting held?

[1] Q: Do you know what countries?
 [2] A: (By the translator) The majority of the
 [3] people were Mexican.
 [4] Q: Just the date, without asking more, when was
 [5] the first time you met with your current counsel,
 [6] approximately?
 [7] A: (By the translator) I'd say about a year.
 [8] Q: A year after the first meeting at this
 [9] house?
 [10] A: No.
 [11] Q: What month, approximately, of what year?
 [12] A: (By the translator) I can't say.
 [13] Q: How long after the meeting at the house —
 [14] A: (By the translator) I'd say it was probably
 [15] about four months.
 [16] Q: The person's house where you met, did they
 [17] also leave the United States?
 [18] A: No.
 [19] Q: Do they still live at the same residence?
 [20] A: (By the translator) I don't know.
 [21] Q: Is it true you do not remember the name of a
 [22] person who was introduced as a lawyer from the BYU?
 [23] A: (By the translator) He came just to give an
 [24] assessment. It was an older person. I don't remember
 [25] the name.

[1] A: (By the translator) In a house.
 [2] Q: Address, approximately?
 [3] A: (By the translator) There in Orem. I don't
 [4] remember.
 [5] Q: Top of the hill or on the bottom of the
 [6] hill? North or south?
 [7] A: (By the translator) Let's see. South.
 [8] Q: Do you remember the name of the person whose
 [9] house at which the meeting was held?
 [10] A: (By the translator) I've got the name right
 [11] there, but it just won't come out.
 [12] Q: If you were in an automobile, could you
 [13] drive to the place?
 [14] A: (By the translator) Yes.
 [15] Q: How were the four of you selected?
 [16] A: (By the translator) How were — what was
 [17] the question?
 [18] Q: How were those four selected from 12, or
 [19] from 50?
 [20] A: (By the translator) They weren't selected.
 [21] Because the others were just going away. They went to
 [22] their own country.
 [23] Q: All of them left except four?
 [24] A: (By the translator) Because we four lived
 [25] here. All the others don't live here anymore.

[1] Q: Her name?
 [2] A: (By the translator) I don't remember the
 [3] name.
 [4] Q: The name of the male or —
 [5] A: (By the translator) I would say even an
 [6] elderly person.
 [7] Q: Who introduced this person and said that
 [8] this person was an attorney?
 [9] A: (By the translator) It was the person from
 [10] the concilio.
 [11] Q: Concilio?
 [12] A: (By the translator) Concilio Latino, the
 [13] Latin Council.
 [14] Q: Where is that located?
 [15] A: (By the translator) Provo.
 [16] Q: Do you know the address or telephone number?
 [17] A: (By the translator) In the Provo county,
 [18] right to the side there. I don't know the name of that
 [19] building.
 [20] Q: Is it Provo City, I suspect?
 [21] A: (By the translator) Yes.
 [22] Q: I don't know. Is this listed in the
 [23] telephone book? A regular office?
 [24] A: (By the translator) Because the office
 [25] still exists, the program still exists.

- [1] Q: My apologies for my ignorance. Did that
 [2] office recommend lawyers?
 [3] A: No.
 [4] Q: Did the person introduced as a lawyer from
 [5] BYU recommend lawyers?
 [6] A: No.
 [7] A: (By the translator) He either.
 [8] Q: I'm not trying to be offensive with this
 [9] question, but did you just look through the telephone
 [10] book to find an attorney?
 [11] A: (By the translator) You mean if I went to
 [12] the phone book to —
 [13] Q: Well, how? How did you find the attorney?
 [14] A: (By the translator) Through an attorney.
 [15] Q: Ah. Okay. Some other attorney recommended
 [16] someone.
 [17] A: (By the translator) Of all the attorneys
 [18] that had spoken previously with us, they didn't
 [19] recommend any attorneys. Like he says, through the
 [20] phone book, and that person told us about another
 [21] person.
 [22] Q: And then you finally came over to the office
 [23] of either Senorita or Senora Jones — trying to speak
 [24] with respect at least — beings approximately four
 [25] months after the first meeting?

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- [1] A: (The witness nods his head.)
 [2] Q: Is that correct, from what you remember?
 [3] A: (By the translator) Yeah, from what I
 [4] remember, yes.
 [5] Q: Okay. Very good. Maybe — I count on my
 [6] fingers — maybe about June of '93?
 [7] A: June or July.
 [8] Q: Before or after Independence Day, do you
 [9] know, if you remember?
 [10] A: (By the translator) I don't remember.
 [11] MR. MARTIN: Okay. Thank you.
 [12] MS. JONES: No questions.
 [13] (The deposition concluded at 4:35 p.m.)
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WITNESS CERTIFICATE

STATE OF UTAH)
) ss.

COUNTY OF SALT LAKE)

I HEREBY CERTIFY that I have read the foregoing
 testimony consisting of 65 pages, numbered from 3 to 67,
 inclusive, and the same is a true and correct record of
 said testimony, with the exception of the following
 corrections listed below, giving my reasons therefor.

Page Line Change/Correction Reason

WALTER SEMIDEY

SUBSCRIBED AND SWORN to at Salt Lake City, Utah,
 this ____ day of _____, 1994.

Notary Public

My commission expires:

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REPORTER CERTIFICATE

STATE OF UTAH)
) ss.

COUNTY OF SALT LAKE)

I, CAROLE A. KING, Certified Shorthand Reporter
 and Notary Public in and for the State of Utah, do
 hereby certify:

That prior to being examined, the witness,
 Walter Semidey, was duly sworn to tell the truth, the
 whole truth, and nothing but the truth;

That the testimony of said witness was taken down
 by me in stenotype on April 21, 1994 at the time and
 place herein stated and was thereafter caused by me to
 be transcribed into typewriting, and that a full, true
 and correct transcription of said testimony so taken and
 transcribed is set forth in the foregoing pages numbered
 from 3 through 67, inclusive.

I further certify that after the said deposition
 was transcribed the original of same was sent to
 Mr. Loren D. Martin, attorney for Defendants.

I further certify that I am not of kin or
 otherwise associated with any of the parties to said
 cause of action and that I am not interested in the
 event thereof.

WITNESS MY HAND AND SEAL this 29th day of April,
 1994.

CAROLE A. KING, CSR/RPR

Notary Public

Residing in Salt Lake County

My commission expires:

September 20, 1997

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Tab 21

IN THE FOURTH JUDICIAL DISTRICT COURT

STATE OF UTAH

WALTER SEMIDEY, ANGEL
SANTIAGO, HUMBERTO
BARDALES, and ROSA
MAZARIEGOS,

Plaintiffs,

vs.

JEANETTE R. LYNTON, /aka/
JEANETTE ROMERO MARKHAM,
/dba/D.O.T.S., DOZENS OF
STAMPS, MIGUEL ANGEL
ESQUIVEL; JOHN DOES I & II
AND JANE DOES I-III,

Defendants.

Civil No. 930400503 PI
Judge Boyd L. Park

Deposition of:
JOSE HUMBERTO BARDALES

CERTIFIED COPY

BE IT REMEMBERED that on the 21st day of April, 1994, the deposition of Jose Humberto Bardales, produced as a witness herein at the instance of the Defendants Jeanette R. Lynton and Miguelangel Esquivel herein, in the above-entitled action now pending in the above-named court, was taken before Carole A. King, a Certified Shorthand Reporter and Notary Public in and for the State of Utah, commencing at the hour of 8:20 p.m. of said day at the offices of Linda Q. Jones, 40 South 100 West, #33, Provo, Utah.

That said deposition was taken pursuant to Notice.

CAROLE KING
CSR No. 330

INDEPENDENT REPORTING
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36 South State Street

Salt Lake City, Utah 84111

The Translator: Mr. Grant Andersen

Also Present: Ms. Denise Farnsworth

Ms. Jeanette R. Lynton

Mr. Miguelangel Esquivel

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Witness Page

JOSE HUMBERTO BARDALES

Examination by Mr. Martin 3

EXHIBITS

Number	Description	Marked
1	Drawing	34

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[1] April 21, 1994 PROCEEDINGS 8:20 p.m.
 [2] **JOSE HUMBERTO BARDALES,**
 [3] having been first duly sworn, through the interpreter,
 [4] was examined and testified as follows:
 [5] **EXAMINATION**
 [6] **BY MR. MARTIN:**
 [7] Q: Please state your full name and address.
 [8] A: I am Jose Humberto Bardales. My address is
 [9] 1818 South Columbia Lane, Orem. The zip code is 84058.
 [10] Q: Where are you employed?
 [11] A: For now I work for National Security. It's
 [12] in American Fork.
 [13] Q: What do you do at National Security?
 [14] A: This is a — oh, bar sander. We make the
 [15] safety box.
 [16] Q: What size?
 [17] A: Boxes?
 [18] Q: Yes.
 [19] A: Any size.
 [20] Q: Huge? Big?
 [21] A: Yeah. It's for the big business, small
 [22] business.
 [23] Q: And what do you do specifically in the
 [24] company?
 [25] A: Sander, bar sander.

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[1] Q: Is it bar sander?
 [2] A: Yes.
 [3] Q: For —
 [4] A: I sand boxes.
 [5] Q: Prior to painting, I suspect. Before.
 [6] A: Oh, before?
 [7] Q: Or in preparation for painting of the boxes.
 [8] A: Yes.
 [9] Q: Are you paid by the hour?
 [10] A: Yes.
 [11] Q: How much are you paid by the hour?
 [12] A: Five dollar.
 [13] Q: You work 40 hours a week?
 [14] A: Yes.
 [15] Q: And how long have you been working at
 [16] National Security?
 [17] A: Oh, this is a month.
 [18] Q: Eight months?
 [19] A: No, one month.
 [20] Q: Where did you work before then?
 [21] A: Excuse me?
 [22] Q: Before National Security?
 [23] A: Oh, I was work for the Deseret Industries,
 [24] D.I. It's in Provo.
 [25] Q: How long did you work at Deseret Industries?

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[1] A: One year.
 [2] Q: And your position?
 [3] A: In the washer/dryer technician.
 [4] Q: Were you paid by the hour?
 [5] A: Yes.
 [6] Q: How much?
 [7] A: This is 4.25.
 [8] Q: Four-two-five?
 [9] A: Yeah, four dollars and five cents.
 [10] Q: Thank you. Do you work only now for
 [11] National Security?
 [12] A: I had another part-time for the landscaping.
 [13] Q: What is this?
 [14] A: (By the translator) Landscaping.
 [15] Q: My apology. I look at the same letters and
 [16] pronounce them differently, like somebody who's a —
 [17] A: My English no very good.
 [18] Q: Your English is good. My Spanish is not
 [19] very good. That's why we have an interpreter. And this
 [20] is a help.
 [21] A: Yes, I know.
 [22] Q: Just to make you feel more comfortable. It
 [23] is not something which we do just to be impolite or to
 [24] not show respect, but for accuracy.
 [25] Do you understand the nature of deposition?

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What is it?
 Now, in what we —
 THE TRANSLATOR: He's asking me for another
 1.
 2. MARTIN: Yes, I understand.
 (By Mr. Martin) Not to be impolite, again,
 to show respect for the English that you have,
 that makes me feel rather inadequate for only being a
 a language person, but because of the formality of
 meeting, his assignment, meaning the interpreter,
 repeat word for word what I say in Spanish and
 to repeat back if we could in Spanish word for
 1. Otherwise, we send him home and he looks bad.
 is okay?
 Oh, yes.
 : Because the reason we have to do this is
 use her responsibility is to record every word —
 Okay.
 : — instead of conversation between the two
 you trying to help with words which don't translate
 one language to another easily. Do you understand
 : Yes.
 : Okay. Now, we will work — may I address
 man as if it were you?

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where did you work?
 A: In D.O.T.S. In D.O.T.S. I went to work.
 Q: Is D.O.T.S. a corporation?
 A: (By the translator) What I understand is
 that on the paychecks it says D.O.T.S. — Adventures?
 Q: That's correct.
 A: (By the translator) Inc., I-n-c.
 Q: Do you understand I-n-c?
 A: (By the translator) Not really. I don't
 know what the term is in English.
 Q: You've heard of the word "corporation"?
 A: (The witness nods his head.)
 Q: Now, you nodded affirmatively, and she must
 write down a word, so if you could answer "yes" or "no."
 A: Yes.
 Q: Explain to me what is your understanding of
 a corporation.
 A: (By the translator) What I understand is a
 corporation is when there exists more than one owner.
 That's what I understand.
 Q: Is your understanding, then, that a single
 stockholder would not be a lawful corporation?
 MS. JONES: I'm going to object. That calls
 for a legal conclusion.
 MR. MARTIN: I'm just asking for his

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(The witness nods his head.)
 : And he would say then in Spanish to you, and
 respond, please, in Spanish, and then he tells her
 English what was described, so that we do not have an
 dependent conversation.
 : (The witness nods his head.)
 : Is this okay?
 : Yes.
 : Thank you. Do you understand that this
 thing is a deposition?
 : (By the translator) In other words, for
 position.
 : Correct.
 THE TRANSLATOR: He's asking for another
 definition of "deposition."
 : (By Mr. Martin) A statement made by you,
 taken by a recorder, after you make an oath to tell
 truth. Do you understand this?
 : (By the translator) I understand this.
 Thank you for the definition.
 : So that you will understand, then, I ask him
 repeat each word that I say, meaning the interpreter.
 you understand this?
 : Yes.
 : Before you worked at Deseret Industries,

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understanding.
 THE TRANSLATOR: Maybe it would be best to
 ask the question again, please.
 Q: (By Mr. Martin) I think maybe make it in
 two questions. Do you understand what a shareholder is
 of stock?
 THE TRANSLATOR: May I use the dictionary,
 or maybe somebody ought to help me.
 MR. MARTIN: Maybe I could say it easier.
 MS. JONES: Ask him in Spanish.
 A: (By the translator) Exactly.
 Q: (By Mr. Martin) Tell me what your
 understanding is, what this means, understanding of what
 stockholder is.
 A: (By the translator) As far as I understand
 it, a stockholder is a person that holds a certain
 quantity value which has been invested in something.
 Q: Perhaps a corporation.
 A: Yeah.
 A: (By the translator) We could say so.
 Q: Is it your understanding that a lawful
 corporation must have more than one stockholder?
 A: (By the translator) I really don't know for
 a surety. I'm not quite acquainted, really, with all
 these terms that have to do with corporations and

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[1] partnerships.
 [2] Q: One reason I asked this question is because
 [3] of a feeling I have that others may have believed or had
 [4] an understanding that if Jeanette Lynton — whether or
 [5] not it's true — was a sole stockholder, there must be
 [6] something wrong. Do you know or have you ever talked
 [7] with any of the other three plaintiffs that indicated
 [8] this to you?
 [9] A: (By the translator) You mean about a
 [10] corporation or a partnership?
 [11] Q: Yeah, a corporation.
 [12] A: (By the translator) No.
 [13] Q: I still don't understand. On this paper
 [14] which has your name and three others, there's a personal
 [15] complaint against Jeanette Lynton rather than the
 [16] company D.O.T.S. Adventures, Inc.
 [17] MS. JONES: Again, I think that calls for a
 [18] legal conclusion.
 [19] THE TRANSLATOR: Am I supposed to be
 [20] interpreting all of these objections and —
 [21] MS. JONES: Yes.
 [22] THE TRANSLATOR: Okay.
 [23] Q: (By Mr. Martin) Okay. What is your
 [24] understanding?
 [25] A: (By the translator) I'm confused because of

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[1] all the translation and things. What is the actual
 [2] question again?
 [3] Q: The actual question is: Did you know that
 [4] an allegation that you have filed with the court is
 [5] against Jeanette Lynton personally rather than against
 [6] the company D.O.T.S. Adventures, Inc.?
 [7] MS. JONES: Again —
 [8] A: (By the translator) I understand that it's
 [9] against the business where one worked. I understand
 [10] that it doesn't matter which person is presiding over a
 [11] business. There's a — whatcha call it? There's
 [12] owners, or people that are responsible, in charge.
 [13] Q: (By Mr. Martin) Did you personally intend
 [14] an allegation to be against Jeanette Lynton personally?
 [15] A: (By the translator) It doesn't matter who
 [16] the owner is. It's just whoever is responsible for that
 [17] business. For example, I understand that in the
 [18] workplace, in the business one works, there's certain
 [19] people that if something happens they are directly
 [20] responsible. It doesn't matter if some line of
 [21] authority exists or not. And I understand that there's
 [22] an ultimate person that's responsible. And it's against
 [23] them that I am doing what I'm doing or complaining.
 [24] Q: Did anyone ever explain to you that the
 [25] purpose of a corporation is to limit personal liability?

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[1] THE TRANSLATOR: I'm having a little trouble
 [2] with the word "liability." Any helpers?
 [3] MR. MARTIN: Liability means —
 [4] THE TRANSLATOR: I said personal
 [5] responsibility is the way —
 [6] Q: (By Mr. Martin) Okay. "Responsibility" is
 [7] not the same as "liability."
 [8] THE TRANSLATOR: (Reading from dictionary)
 [9] Liabilities, duties — let me just find it real quick
 [10] before reading all this. It says "responsabilidad" a
 [11] whole lot in here.
 [12] MR. MARTIN: Maybe this is part of our
 [13] problem.
 [14] THE TRANSLATOR: "Responsabilidad" is a lot
 [15] broader, I think. It covers a lot broader spectrum of
 [16] meaning.
 [17] MR. MARTIN: Yes.
 [18] THE TRANSLATOR: I don't know.
 [19] MR. MARTIN: I think so. Let me explain —
 [20] A: (By the translator) The question that I
 [21] understood was if the corporation is immune from
 [22] complaints.
 [23] Q: (By Mr. Martin) Ah, the reverse. Has
 [24] anyone ever told you it's the reverse that's true? A
 [25] corporation may be liable, under the law, and the

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[1] individual owner is not. Have you ever heard this
 [2] before?
 [3] A: (By the translator) No.
 [4] THE TRANSLATOR: The word "liable,"
 [5] jurisprudential definition —
 [6] Q: (By Mr. Martin) Ah. That's part of the
 [7] problem. Do you know or believe that Jeanette Lynton as
 [8] an individual did anything wrongful to you personally,
 [9] by her own choice? Translate that please, if you can.
 [10] MS. JONES: Yeah. I'm waving because he
 [11] asked you something, and when he asks you something you
 [12] need to translate it back rather than answering. You're
 [13] having conversations with him.
 [14] MR. MARTIN: Maybe. You haven't said
 [15] anything yet.
 [16] A: (By the translator) Let's go back a little
 [17] bit and we'll get it.
 [18] Q: (By Mr. Martin) Do you have any reason or
 [19] do you believe that Jeanette Lynton as an individual did
 [20] something wrongful to you intentionally?
 [21] A: (By the translator) Well, to the point that
 [22] I realized when I was working there, the person that
 [23] most represented — oh, not represented — the person
 [24] that stood as the owner of the company. However, the
 [25] person that was always there was Miguelangel.

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and what I understand, that if Jeanette
 on was the only — I always realized that
 Miguelangel was under the direction of
 Jeanette. If there were any people above Jeanette,
 I never knew about it. We never realized it.
 : Part of the deposition purpose is to ask a
 question, and you listen to the question to respond and
 answer or give an answer to the question on what you
 saw —
 : (By the translator) Right. I understand
 But it also must be understood that I'm going to
 answer the way I'm receiving it, because it's not a
 direct discussion. It's through an interpreter. And I
 know by my experience that some things will be lost or
 added.
 : Very good.
 : Did Jeanette Lynton ever arrest you or
 confine you or prevent you from freely moving from one
 place to another?
 : No.
 : (By the translator) No. While we were
 working there, she was never directly in charge of us.
 : Her, Mr. Miguelangel.
 : So the answer is no.
 : (By the translator) No. Directly from her,

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Something that we were always told that —
 Miguelangel told us, told all of us, that anything that
 might say would be as if Mrs. Jeanette had said it
 that he had all of her approbation or approval to do
 anything in the company. He repeated that many times,
 many ears heard it.
 : Then I ask you the same question about
 Miguelangel, Mr. Esquivel.
 : (By the translator) What was the question
 about him?
 : The question: Did Mr. Esquivel ever arrest
 you, detain you, or stop you by force from freely moving
 from one place to the other? Si or no?
 : (By the translator) I'm going to answer the
 question concerning a specific case in which I felt
 that, yes, I was restricted, and it was on one occasion
 when \$20 had been lost, which was the quantity that was
 lost to all of us had been lost.
 : One moment. Is there only one occasion,
 then, in which you believe that Mr. Esquivel arrested,
 detained, or forcibly prevented you from moving with
 freedom?
 : (By the translator) I understand that if he
 was in the company it was in order to have someone that
 was directing the company, and so —

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[1] Q: Okay. The question is: Did Mr. Esquivel,
 [2] you believe, arrest, detain or prevent your freedom on
 [3] only one occasion, or more?
 [4] A: (By the translator) I understand what he's
 [5] saying in that thing, in that sense, right. You're
 [6] supposing that — you're hypothesizing that he was maybe
 [7] with a machete or some other weapon threatening me, and
 [8] I want to explain to you.
 [9] Q: No.
 [10] A: (By the translator) Yes. That's the way
 [11] I'm understanding.
 [12] Q: Okay. Then let me explain. You must answer
 [13] the question or we'll be here all night. Do you have a
 [14] complaint against Mr. Esquivel for one occasion or more?
 [15] A: (By the translator) I understand that the
 [16] question of the lawyer is if I was detained or if my
 [17] liberty — my freedom was taken away more than one time.
 [18] That's what I want to explain.
 [19] Q: The question is one or more?
 [20] A: (By the translator) I'm going to return to
 [21] the question.
 [22] Q: No. The question must be answered.
 [23] A: (By the translator) How can I answer
 [24] something — I mean, I understand the tone of voice with
 [25] which he's saying the question. Since he was

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[1] responsible we received orders from him, and that can be
 [2] just — that can be a little different from the way that
 [3] you're stating it.
 [4] Q: Okay. When I asked you the question if he
 [5] had arrested or detained you or restrained your liberty,
 [6] you said, Yes, on one occasion.
 [7] A: (By the translator) Exactly.
 [8] Q: Only one?
 [9] A: (By the translator) Exactly.
 [10] Q: Thank you. Only that we try to be correct.
 [11] And I appreciate your help in trying to make questions
 [12] accurate also. However, the reason we are here is
 [13] because of my understanding that you and others have a
 [14] complaint against the action of Mr. Esquivel. Is this a
 [15] single incident or more?
 [16] A: (By the translator) Just one incident of
 [17] what?
 [18] Q: In which you feel that Mr. Esquivel in some
 [19] manner restrained your liberty.
 [20] A: (By the translator) Well, in a direct way I
 [21] think that — in which I felt that — in that Esquivel
 [22] was the best way to call to our attention, even though
 [23] maybe he didn't tell us exactly — like in this manner:
 [24] "Don't move from there" — maybe not in that way, but in
 [25] a way that he was always gathering us together for a lot

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[1] of meetings to call to our attention, to the workers
[2] that were gathered together, that we were thieves and
[3] that we were stealing things from there.

[4] Or another situation too, always is calling
[5] a meeting to call something to our attention, which
[6] never really came to the case.

[7] Q: Very good. However, in all of those cases
[8] it was you being in a position of an employee and he
[9] being in a position of a manager, and you were always
[10] paid for the time.

[11] A: (By the translator) Right, but I understand
[12] that a person works out of necessity. For that reason,
[13] many times, because a person has needs to support their
[14] family, one puts up with the humiliations or even with
[15] things that are incorrect just because the need that one
[16] has. If there were any other alternative, a person
[17] would not endure all the things that he experienced with
[18] Miguelangel.

[19] Q: I understand you may be part a philosopher
[20] and disagree with management of a company, and may
[21] believe that this is demeaning and of no consequence or
[22] purpose. This is the responsibility of the manager.

[23] A: (By the translator) One moment.

[24] Q: With this you may disagree, but what is a
[25] cause of action under law may be different than just

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[1] rudeness or lack of respect.

[2] A: Okay.

[3] Q: Now, however, restraint of liberty is an
[4] accusation you have made on a specific incident.

[5] A: (By the translator) Specifically, yes.

[6] Q: I understand philosophy. We may talk in
[7] general terms of the total circumstance, but do you
[8] understand that we are here for the purpose of a single
[9] incident?

[10] A: (By the translator) Right.

[11] Q: Is this also true from what you understand?

[12] A: (By the translator) Exactly.

[13] Q: Maybe we progressed. The question may then
[14] be more correctly to your understanding: Is there more
[15] than one incident which you believe was unlawful?

[16] A: (By the translator) More than the one that
[17] is with accusation or besides the complaint?

[18] Q: Yes. And if more than one, then be specific
[19] as to each incident. Otherwise, it's impossible for us
[20] to communicate or understand.

[21] A: (By the translator) There was an incident
[22] in which we were told that we were not going to work
[23] from midday noon on because we were going to make some
[24] preparations for a Christmas party which was going to
[25] take place, and Mr. Miguelangel told us to go home.

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[1] And then we didn't all go home, but the
[2] promise was that we would be paid for the hours that
[3] made up that difference, which would have been four
[4] hours. And so the promise was made, and it wasn't
[5] fulfilled. And so me personally, I went to the office
[6] with Miguelangel to complain about the fact that on my
[7] check the balance — or the difference of the hours that
[8] I'd been promised to be paid for did not appear.

[9] But yes, they did appear, but those four
[10] hours had been paid only to two people of which I know
[11] about, and they are Walter Semidey and Angel Santiago.
[12] And so I asked him why.

[13] Q: Okay. You asked him why.

[14] A: (By the translator) So his answer was —
[15] and he told me, Brother, you believe that I am God. And
[16] I told him no in answer to that question, but why had
[17] this money been paid to Walter Semidey and Angel
[18] Santiago and to the other people not been paid?

[19] And so he told me that I was fired because
[20] of that complaint. But then I told him that I needed a
[21] letter of dismissal, and he gave me one, and I have it
[22] now signed by him. He said in the next check coming he
[23] was going to speak with the accountant or with Jeanette
[24] and that we would be paid the hours, for the missing
[25] hours, and that it would be paid to everyone. And it

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[1] was paid to everyone.

[2] So things of this nature, even though
[3] they're a condition of someone that's directing the
[4] company, he can do those things. But personally I felt
[5] offended. And I perceived it as an unfair action.

[6] Q: What day was this?

[7] A: (By the translator) I don't know the day
[8] exactly, but I have that letter at home, and it's on the
[9] day that letter is dated. The letter has the date.

[10] Q: You have explained two incidents.

[11] A: (By the translator) In this last one that I
[12] just barely explained, I understand that perhaps to me
[13] it's bad, but under the law it may be all right, because
[14] if someone doesn't want to keep an employee that's made
[15] a complaint of this nature, he can unemploy.

[16] Q: Did you ever believe otherwise?

[17] A: (By the translator) Like what? Did I
[18] believe that?

[19] Q: Did you ever believe that the company or an
[20] employer did not have a right under the law to tell you
[21] to no longer work?

[22] A: (By the translator) No. That's why I'm
[23] saying it. I'm saying that if the person that's in
[24] charge, because of this action that he did to me,
[25] provoked by this type of a complaint, if I complained

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ainst him, a complaint of this nature that I just
ished explaining, he was in his line of duty to
miss me, unemploy me.

THE TRANSLATOR: I'm asking him what the very
t phrase was. I thought there had been something
ie.

Q: (By Mr. Martin) Do you believe that
O.T.S. Adventures owes you money? Yes or no?

A: (By the translator) In payment for my work?

Q: Yes.

A: (By the translator) No. I was paid to the
ry last cent.

Q: Or for any other reason?

A: (By the translator) I am making a complaint
th this lawyer because, as far as I understand, my
hts to freedom were violated.

Q: Is this the only reason?

A: (By the translator) I think, yes.

Q: D.O.T.S. Adventures, then, owes you
mpensation for violation of your liberty?

MS. JONES: Again, I think that calls for a
al conclusion.

A: (By the translator) If the law dictates it
sly, I think that's the way it should be.

Q: (By Mr. Martin) Did any supervisor or

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. Esquivel ever say to you you cannot leave?

A: (By the translator) Yes. When this
ident happened they said that no one could leave,
t we all had to line the sides of the cafeteria
ause he was going to do something that he knew is
inst the law, but that he was going to do it, and it
s to search us until the money that had been lost
eared.

When he said that, I immediately realized
t that is against the law in my country and that this
ntry could not make an exception to the law. It's
nothing that had never happened to me, and I would
: to tell Mrs. Jeanette what happened, because at
t time perhaps she didn't realize, and I would like
express my feelings how I felt about that action.
When that was said and it was my turn to go
h the person designated by Mr. Esquivel to search us,
it offended and I felt deprived of my rights as a
zen, because never has a situation like this
opened to me.

The country where I'm from, for someone to
able to do what was done to me — that is, for
neone to do that that happened to me on this occasion,
re must be proof that I am delinquent. And there has
be a legal authorization.

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[1] And that was the thing that — well, I
[2] really felt bad. I felt all torn up, humiliated because
[3] of this situation, because in my culture not even
[4] someone's wife does that. No one, absolutely no one.

[5] So, why can it be allowed in this country,
[6] it can be permitted in this country — excuse me. Why
[7] in this country any person without legal authorization
[8] can take upon themselves this authorization to search a
[9] person or determine a set group of people.

[10] Q: Do you believe that if the police had done
[11] the same thing exactly it would have been lawful? If
[12] possible in less than three minutes, an answer.

[13] A: (By the translator) Yes. I said that as
[14] far as I understand the laws in my country —

[15] Q: No. The question is — yes or no? Is it
[16] possible for you ever to answer a question "yes" or
[17] "no"? If police had come to the plant and done exactly
[18] the same thing, would that have been lawful, in your
[19] opinion? Yes or no? No. Yes or no?

[20] A: (By the translator) I do not know the laws
[21] of this country.

[22] Q: Do you believe or no? Do you believe, yes
[23] or no?

[24] A: (By the translator) I think that —

[25] Q: No. Yes or no? Do you believe, yes or no?

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[1] If you say "yes" or "no" —

[2] A: (By the translator) I insist that —

[3] Q: If you say "yes" or "no," then we may ask
[4] you to explain, but you must answer the question instead
[5] of just your philosophy. This is not permitted.

[6] A: (By the translator) No. What I want to say
[7] is that the police, yes, they can do it, or maybe they
[8] can't do it. If I'm suspect, he could do it. If I'm a
[9] normal person and they have no referral, no probable
[10] cause, and he sees me on the street, he could never do
[11] that. That's what I understand.

[12] Q: You're not on the street. You're in a plant
[13] where someone has made an accusation that there was a
[14] loss.

[15] A: (By the translator) That's made an
[16] accusation of what?

[17] Q: That there was a loss. And yet you wish to
[18] philosophize as to some different situation.

[19] A: (By the translator) I don't know whether
[20] the police would search the person or not. I've never
[21] had such an experience in my life.

[22] Q: Then it's easy to just say "I don't know."

[23] A: (By the translator) I don't know.

[24] Q: It seems that you believe that your entire
[25] time that you worked at D.O.T.S. was offensive to you.

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[1] Is this correct?
 [2] A: (By the translator) It was the worst time
 [3] of my life with reference to work. My worst experience.
 [4] Q: How long did you work there?
 [5] A: Six months.
 [6] Q: Why?
 [7] A: (By the translator) Why was it the worst
 [8] time?
 [9] Q: No. Why did you work there for so long if
 [10] you were so offended, and leave more than a year ago —
 [11] A: (By the translator) And leave more than a
 [12] year ago?
 [13] Q: Yes. — and leave your employment, either
 [14] voluntarily or involuntarily, and wait until now to
 [15] spill out your feelings?
 [16] A: (By the translator) It's not just up till
 [17] now that I've spilled my feelings, for your knowledge.
 [18] I've done this before my wife, with my coworkers, and
 [19] with other people. My ecclesiastical leaders, for
 [20] example.
 [21] Q: To anyone who would listen sympathetically.
 [22] A: (By the translator) I would explain it to
 [23] any person that I thought would understand my problems.
 [24] Q: Yet you never explained that to any person
 [25] while you worked for the company or after you left.

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[1] A: (By the translator) While I was working in
 [2] the company, with those people that I expressed it to;
 [3] for example, my wife.
 [4] Q: Did you ever talk to Jeanette Lynton? Yes
 [5] or no?
 [6] A: (By the translator) I didn't do it.
 [7] Q: No. Is the answer no?
 [8] A: (By the translator) I'd like to explain the
 [9] reason.
 [10] Q: Well, we'll be here all night, I'm afraid.
 [11] You feel like —
 [12] A: (By the translator) No, it's short.
 [13] Q: Yes, but you need this emotional event this
 [14] evening, and I don't mind if we're here all night, but I
 [15] don't know that it serves any purpose, because you've
 [16] already made the complaint.
 [17] A: (By the translator) One moment. I'm going
 [18] to — I'd like to express that I feel a little bit
 [19] uncomfortable at this time because of the way in which
 [20] you are questioning me, and the reason is because he's
 [21] doing it "yes or no," "yes or no." Your point of view
 [22] is different from the way that I feel about it.
 [23] Q: Of course. But your option if you thought
 [24] you were treated so poorly would be to leave or stay.
 [25] Why do you endure six months in such enormous pain

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[1] voluntarily?
 [2] A: (By the translator) I'm going to explain
 [3] that now.
 [4] Q: And I would not believe that it was just
 [5] because you had no other thing in your mind you could
 [6] work anyplace else?
 [7] A: (By the translator) In the beginning I
 [8] explained that many times you put up with the
 [9] humiliation and many things out of the necessity of a
 [10] job.
 [11] Q: I remember all this.
 [12] A: (By the translator) And nevertheless,
 [13] however, while I was working there I was going to the
 [14] Job Service, the employment office, to look for another
 [15] job, including on one occasion I returned to a previous
 [16] job to ask if they would have me back, but at that time
 [17] there was not any opportunity to go back.
 [18] MR. MARTIN: Let me suggest to counsel that
 [19] you instruct in the nature of the purpose of a
 [20] deposition, that he answer the questions, or I suspect
 [21] that we take it before a judge and have him answer the
 [22] questions as instructed by the court.
 [23] MS. JONES: Do you want to take a break?
 [24] MR. MARTIN: Yes.
 [25] (A recess was taken.)

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[1] Q: (By Mr. Martin) If I may draw your
 [2] attention to approximately 16 or 17 December 1992, is
 [3] this approximately the time or date when everyone was
 [4] ordered to the cafeteria area?
 [5] A: (By the translator) Approximately, yes,
 [6] around that date.
 [7] Q: Where were you at the time you first heard
 [8] that there would be such an order?
 [9] A: (By the translator) I was working at a
 [10] table where I was cutting a — something — a red
 [11] something.
 [12] THE TRANSLATOR: I don't know what an
 [13] "ooh-lay" (phonetically) — oh, yes, I've heard of the
 [14] word "ooh-lay" before. Can anyone help me with the word
 [15] "ooh-lay"?
 [16] MS. JONES: Rubber. plastic.
 [17] THE TRANSLATOR: This is a different way to
 [18] say plastic than what the Puerto Ricans have. They call
 [19] it "goma," and he calls it "ooh-lay." It's the same
 [20] thing.
 [21] A: (By the translator) — where I was cutting
 [22] the raw material that is used to fabricate the stamp.
 [23] Q: (By Mr. Martin) What country is your
 [24] origin?
 [25] A: Honduras.

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Q: What did you first hear on the 16th or 17th, going back to that date, at that moment when you first —

A: (By the translator) That some money had been lost. My supervisor came, Mr. Humberto Hernandez, and said that some money had been lost and Miguelangel wanted us in the cafeteria, that we should all go to the cafeteria.

Q: Were you one of the persons at that time that worked with the heaters or, like I say, burning rubber or burning — this other word that you used — the plastic? What was your job assignment?

THE TRANSLATOR: I'm having trouble with the word heaters —

Q: (By Mr. Martin) Furnaces.

A: (By the translator) No, I never worked with the furnaces.

Q: Then describe what your work was.

A: (By the translator) It was to cut these rubber plastic into precisely-measured sections.

Q: I understand.

A: (By the translator) About 11 by 9.

Q: After Humberto Hernandez gave you this information, what did you do?

A: (By the translator) Obeyed him. Obey him.

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Q: Let me give you this piece of paper which I have made a rectangle upon with this indication "north," (indicating) and presume that this is the place of your employment. Please mark where you were working.

A: (The witness complies.)

A: (By the translator) These are the three large doors and there's a table, and there's another table perpendicular to it, or crossways to it, in the form of a "T."

Q: Very good. And you have marked the large doors, in Spanish, "puerta."

A: Puerta.

Q: And the table "Mesa."

A: Mm-hm.

Q: And put a figure here indicating this is where you were standing at your work.

A: Yeah.

Q: Where is the cafeteria area? And you've marked the cafeteria —

THE TRANSLATOR: Dining.

Q: (By Mr. Martin) — "comedor." And you moved, then, from your place of work to the cafeteria area. Is this correct?

A: (By the translator) Yes.

Q: Approximately how many people, including

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(1) supervisors and Mr. Esquivel, were present in the
(2) cafeteria area?

(3) A: (By the translator) Accurately, I don't
(4) know the precise number. The only thing I know is that
(5) it was all the employees. No one stayed over here
(6) (indicating). They have the blueprints, or whatever,
(7) the plans of the building, so they know better.

(8) Q: Yes. The only thing I'm asking is what you
(9) remember.

(10) A: (By the translator) About the number of
(11) people?

(12) Q: Yes. Approximately.

(13) A: (By the translator) There would be about 35
(14) to 40 people, I think.

(15) Q: After everyone arrived in the cafeteria
(16) area, in what area of the cafeteria were you?

(17) A: (By the translator) In a chair that was on
(18) this side. The tables were set up like this, like that,
(19) and there's chairs on that side and on the other side,
(20) and on that day I was on this side. I didn't always sit
(21) there at that place. I sat down wherever there was a
(22) place where it was comfortable.

(23) Q: You have indicated the west side of the
(24) cafeteria area.

(25) A: (By the translator) No, east. It would be

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(1) east. I'm setting it up this way as though I were right
(2) there in the place right now. For me that would be the
(3) west, but — oh, sorry — the east.

(4) Q: Yes. Maybe I put the "north" on the wrong
(5) side. You have made a small square as the cafeteria
(6) area to indicate where you were located. Is this
(7) correct?

(8) A: (By the translator) That's where I was
(9) located on that day.

(10) Q: At that moment.

(11) A: (By the translator) Exact.

(12) Q: Who spoke to the group?

(13) A: (By the translator) Mr. Miguelangel.

(14) Q: What did he say?

(15) A: (By the translator) I repeated it
(16) beforehand, but I'll go ahead and repeat it again. "I'm
(17) going to do something that I know should not be done,
(18) but I'm going to do it, and it's that we're going to
(19) search everyone."

(20) He said some other things, but I can't
(21) remember it exactly, because it's been more than a year
(22) since this happened.

(23) Q: Did anyone else speak at that time?

(24) A: (By the translator) I don't remember.

(25) Q: What happened after Mr. Esquivel spoke to

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[1] the group?

[2] A: (By the translator) Proceeded as order had

[3] been given. The women went with some — the Spanish

[4] women. A division was made. The Hispanic women went

[5] with Mrs. Maria Rigue. And the American women went with

[6] Mrs. Zulecka. And I think that maybe one or so Hispanic

[7] women that were bilingual went with Mrs. Zulecka. Women

[8] went to the men's bathroom. We went to the bathroom

[9] with Mr. Humberto Hernandez as he called us.

[10] (Exhibit Number 1 was marked for identification.)

[11] Q: (By Mr. Martin) Let me show you now what

[12] has been marked Deposition Exhibit 1, and would you

[13] please identify this, the paper, please. In other

[14] words, is this the paper that you were drawing upon?

[15] A: (By the translator) Sure.

[16] Q: We do this just for the record.

[17] A: (By the translator) That's fine.

[18] Q: Did you go to, you said, the men's rest room,

[19] firstly or later?

[20] A: (By the translator) If I was the first

[21] person? Is that the question?

[22] Q: Yes.

[23] A: No.

[24] Q: And if I take a total number, approximately

[25] where were you in that order?

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[1] A: (By the translator) Exactly, I don't know.

[2] I just know that I went in.

[3] Q: Somewhere in the middle?

[4] A: (By the translator) Maybe, possibly.

[5] Q: One person at a time, or more than one at a

[6] time?

[7] A: (By the translator) One person — well, it

[8] was individual.

[9] Q: Do you remember if before going to the rest

[10] rooms anyone had spoken to the group and asked them to

[11] raise their hand if they had any objection?

[12] A: (By the translator) Is someone asking us

[13] for an objection or if —

[14] Q: Yes. In other words, for comment from the

[15] group by raising their hand or in any other manner.

[16] A: (By the translator) I don't remember that

[17] anyone raised their hand to —

[18] Q: Do you remember if anyone asked the

[19] question, Would there anyone raise their hand?

[20] THE TRANSLATOR: The last part of that

[21] question was, Would anyone raise their hand?

[22] Q: (By Mr. Martin) Let me maybe restate this.

[23] Do you remember if anyone asked about anyone raising

[24] their hand at anytime?

[25] A: (By the translator) For any reason?

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[1] Q: For any reason.

[2] A: (By the translator) I don't remember.

[3] Q: You don't remember whether or not it

[4] occurred?

[5] A: (By the translator) No, I don't remember.

[6] Q: Would you say that it did or did not occur

[7] with any certainty?

[8] A: (By the translator) I don't remember. I

[9] don't remember. I don't remember.

[10] Q: You were asked to go into the rest room with

[11] whom?

[12] A: (By the translator) Mr. Humberto Hernandez

[13] called me.

[14] Q: Do you remember if Mr. Hernandez or

[15] Mr. Esquivel said words meaning no one is permitted to

[16] leave?

[17] A: (By the translator) Miguelangel said that

[18] nobody could leave, that everyone was going to be

[19] searched.

[20] Q: When was this said?

[21] A: (By the translator) When he called us to

[22] tell us everything. That's at the beginning.

[23] Q: Is it possible that you could — I'm asking

[24] if it's possible — that you could pretend for a moment

[25] that you are Mr. Esquivel.

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[1] A: (By the translator) The question again,

[2] please. I mean, I didn't understand the meaning of the

[3] question.

[4] Q: I'm just trying to say, without being

[5] offensive, would you for a moment pretend that you were

[6] Mr. Esquivel at that moment, that day?

[7] A: (By the translator) I've always liked to be

[8] myself. I never remember being anyone else.

[9] Q: I understand. I'm just trying to see if you

[10] could show us how Mr. Esquivel acted at that moment.

[11] A: (By the translator) You want me to explain

[12] my point of view as to how I perceived Mr. Esquivel on

[13] that day?

[14] Q: Correct. Maybe we should stop for just a

[15] moment, please. We've run out of things.

[16] (Off the record.)

[17] Q: (By Mr. Martin) Just by chance, maybe this

[18] would be easier with Mr. Esquivel not here at the

[19] present.

[20] A: (By the translator) In the first place, I

[21] don't feel any fear towards Mr. Esquivel. It's the same

[22] to me.

[23] Q: Would you please give us your interpretation

[24] of how he acted at this moment.

[25] A: (By the translator) He showed that he

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sn't happy. First, he said that he was — that, in an angry manner.

Q: Maybe it would be helpful if you just acted he did, if it's possible.

A: No.

A: (By the translator) I'm sorry, but I haven't got the gift of being able to interpret other people's — or to act out other people's personalities. And besides that, it was not a good experience for me, it's not worth the trouble for me.

Q: Okay. Then can you continue to describe, if I would, his action?

A: (By the translator) He did it in that manner, and he did it like he always was used to doing

Q: He always acted in some angry manner?

A: (By the translator) That's his character traits, at least when I'm working there.

Q: An angry manner. Does this mean a louder voice?

A: (By the translator) Yes, right.

Q: With facial expression that is appropriate anger, gross anger?

THE TRANSLATOR: Gross anger?

MR. MARTIN: Yeah. Large, big.

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[1] the rest rooms were. And he told me then that he wanted
[2] to see my billfold. So I showed him my billfold. He
[3] looked through it, and he handed it to me again. And
[4] then he said that he wanted to see my pockets.

[5] So I pulled out my pockets and shook them
[6] like this, (indicating) and my pockets in back. And I
[7] had a jacket, a coat, it was black in color, red and
[8] black, and I showed that to him too to show him that
[9] there wasn't anything.

[10] Q: This is everything? The question was:

[11] Describe the entire sequence maybe from the time you
[12] went in until you left.

[13] A: (By the translator) Right. He was on one
[14] side. I was on the other side. We were face-to-face.
[15] He was standing up and I was also standing up. He asked
[16] me to show him my wallet. I gave it to him. He opened
[17] it. He gave it back to me, said he wanted to see what
[18] was in my pant pockets. I pulled them out. I showed
[19] him, and also on the backside, my pockets in back.

[20] I had this coat on. I was wearing a coat.

[21] I opened it in the way that I had it opened so that he
[22] could see the pockets and tell that there wasn't
[23] anything there.

[24] I asked him if he wanted me to do anything
[25] else. I asked him if he wanted me to take off my shoes

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A: (By the translator) No, not in that way that you're — not in this way like you were describing

Q: (By Mr. Martin) That's why I asked you maybe to describe it.

A: (By the translator) I said it in an angry way, not just for the way that it was being said.

THE TRANSLATOR: I don't know. Anything more?

Q: (By Mr. Martin) Then, during the entire time you worked at D.O.T.S., Mr. Esquivel always conducted himself with the appearance of anger?

A: (By the translator) That's what normally — that's how I saw it.

Q: During the entire six months?

A: (By the translator) He rarely acted different than that. A little more flexible or so to

Q: When you went into the rest room with Humberto Hernandez, describe in sequence what happened, please.

A: (By the translator) When I entered with Humberto Hernandez?

Q: Of course.

A: (By the translator) Well, I went up where

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[1] or anything else. He said, No, that was sufficient.

[2] Then I left, and the next person went in.

[3] Q: Now, so we may understand each other better,
[4] the purpose of us being here is to ask questions
[5] accurately and to answer accurately, which you have, so
[6] that someone may make a determination based upon this
[7] description — some neutral person, possibly a judge,
[8] possibly counsel — that based upon this specific fact
[9] situation there would be determination that this conduct
[10] was not only offensive but unlawful. This is just an
[11] explanation. There was no question asked except, Is
[12] this your understanding also?

[13] A: (By the translator) Right.

[14] Q: Did you say anything to Humberto Hernandez
[15] in the rest room other than, Do you wish me to take off
[16] my shoes also?

[17] A: (By the translator) Right. To culminate
[18] the doubts concerning my integrity, I asked him if that
[19] was all he wanted me to do. He said, Yes, and I left.

[20] Q: Nothing else?

[21] A: (By the translator) Yes, nothing more.

[22] Q: Did Mr. Hernandez touch your person with his
[23] hands or otherwise?

[24] A: (By the translator) No. The only thing was
[25] that he — well, I gave it to him and he opened it.

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[1] Okay? He gave it to me, and I put it back.
 [2] Q: Did Mr. Hernandez keep anything that
 [3] belonged to you?
 [4] A: No.
 [5] Q: At the time Mr. Esquivel first spoke when
 [6] people were in the cafeteria, did anyone move to secure
 [7] the doors or the exits?
 [8] A: (By the translator) The doors were always
 [9] kept shut, so there was no need to do that.
 [10] Q: Oh. This is a correct answer to the
 [11] question. I appreciate that. Did anyone that you saw
 [12] secure or lock the doors?
 [13] A: No.
 [14] Q: Did anyone exhibit to you or anyone else a
 [15] show of force, of physical resistance to anyone's exit?
 [16] A: (By the translator) Show or exhibit or sit?
 [17] Q: Show or exhibit.
 [18] A: (By the translator) No. It was just sit.
 [19] Q: I understand before what you may be
 [20] referring to now is the words which you remember stated
 [21] by Mr. Esquivel where you describe he said, No one is to
 [22] leave. Is this correct?
 [23] A: (By the translator) Correct.
 [24] Q: Any other statement made other than that or
 [25] in addition to Mr. Esquivel's statement indicating that

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[1] Q: Did anyone touch your person, other than
 [2] what you've described, in any way?
 [3] A: No.
 [4] Q: Included — I'm saying this only because
 [5] it's written, because it is in the accusation that there
 [6] was a harmful or offensive touching. The question is:
 [7] Do you remember seeing any person who was touched in a
 [8] harmful or offensive manner?
 [9] A: (By the translator) It was all in private.
 [10] There were just the person that was searching and the
 [11] person that was going to be searched.
 [12] Q: Yes, I understand the inference, but did you
 [13] see any person touched in a harmful or offensive manner?
 [14] A: (By the translator) No. In the plant, no.
 [15] Q: At anytime?
 [16] A: No.
 [17] Q: I think every person can understand, at
 [18] least in this country, being very much offended by an
 [19] extreme discourtesy, lack of courtesy. Did this, as you
 [20] described, exceptional lack of courtesy, appear to you
 [21] to be done with a purpose intending to inflict injury,
 [22] mental or physical?
 [23] A: (By the translator) I understand that not
 [24] just the lack of courtesy, but I consider it an attack
 [25] to the person. Personally, I felt emotionally very bad

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[1] no one was to leave? Maybe I can correct this to help
 [2] the translation.
 [3] THE TRANSLATOR: That's quite a
 [4] hypertactical sentence, convoluted syntax.
 [5] MR. MARTIN: Stupido sentence.
 [6] (Laughter)
 [7] MR. MARTIN: I've been a lawyer so long I do
 [8] not know how to communicate.
 [9] THE TRANSLATOR: I've been a linguist so
 [10] long —
 [11] MR. MARTIN: Tell him what we said anyway.
 [12] (The translator complies.)
 [13] MR. MARTIN: I think you enjoyed that too
 [14] much.
 [15] (Laughter)
 [16] THE TRANSLATOR: I'm sorry. I just hope
 [17] that the judge laughs a little bit too when he — oh,
 [18] okay.
 [19] Q: (By Mr. Martin) In addition to
 [20] Mr. Esquivel's statement, was there anything else which
 [21] indicated to you no one would be permitted to leave?
 [22] A: (By the translator) Just what he said.
 [23] Q: Nothing in addition to that from any other
 [24] person or from Mr. Esquivel?
 [25] A: No.

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[1] that whole day, an experience that never happened to me.
 [2] Worse, I never thought that in this country that could
 [3] happen to me. I've always tried to maintain my
 [4] principles, and I've always been — and I've never had
 [5] any problem. This is the first time that I find myself
 [6] in this situation.
 [7] Q: I can understand this and appreciate your
 [8] explanation. Was the same attack against you, as you've
 [9] described it, consistent with every person's experience,
 [10] so far as you could see?
 [11] THE TRANSLATOR: With every person's
 [12] experience so far as you could see?
 [13] MR. MARTIN: Yes.
 [14] A: (By the translator) I perceived it in that
 [15] manner. However, some of the people that I know that
 [16] were involved on that day, their experience was worse.
 [17] Like the case of Rosa Mazariegos.
 [18] Q: (By Mr. Martin) Okay. Your knowledge of
 [19] someone else's experience, because of the individual
 [20] checking, must be only based upon what someone else has
 [21] told you. Is this true?
 [22] A: (By the translator) The question again,
 [23] please.
 [24] Q: Your knowledge of someone else's experience,
 [25] because of the separate individual checking, must be

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ased solely upon someone else's description to you of what happened. Is this true?

A: (By the translator) My experience is personal, and the experience of someone else is their experience.

Q: Yes. And you did not see someone else's experience; you saw only your own. This is true?

A: (By the translator) Exactly.

Q: So, as an example, Rosa's experience you did not see.

A: No.

Q: And is only based on her telling you what happened or someone else.

A: (By the translator) She told me personally at same day.

Q: Bueno. Can you tell us what she said happened to her, if you remember?

MS. JONES: That's hearsay.

MR. MARTIN: I understand that.

A: (By the translator) No. She lived that experience. She told me. I believe it.

Q: (By Mr. Martin) I understand this, but what did she tell you?

MS. JONES: I'm going to object again formally. I mean, this isn't evidence that's going to

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admissible in court, because it is hearsay. You have a witness that's actually been through the experience. You can ask her.

MR. MARTIN: I disagree. However, this is just to preserve any objection for future. Today we just create a record.

A: (By the translator) I really don't know everything she told me. The only thing I remember is that she felt very badly emotionally. The reason is because she traveled in my car with me. Her gesture, or the way that she felt, was totally different than on any other occasion. I saw in the expression on her face, but I can't remember all the words, because it's been more than a year.

Q: (By Mr. Martin) Tell me all the words you can remember.

A: (By the translator) I don't remember.

Q: You don't remember any words?

A: (By the translator) I don't remember one word. It seems strange, but I don't remember one word. I remember more than anything else how I saw her.

Q: How did the four people listed on the complaint first get together?

A: (By the translator) In the beginning there were 11 of us that were totally in disagreement with —

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[1] we were disagreed with this action that was done. The
[2] rest of them have moved. They're outside of this state.
[3] That's why they haven't done anything legally in this
[4] regard.

[5] Q: Well, did the 11 meet together to discuss
[6] this situation?

[7] A: (By the translator) Yes. Where we met —
[8] we spoke to each other by telephone of the unconformity
[9] of all the actions that had taken place. And the place
[10] that we met was — in Provo there is a municipal
[11] building. I don't know what the — that place that's
[12] across from the tabernacle, an office that's called the
[13] Utah Latin Council, Latin Council of Utah — to receive
[14] an assessment. It's an organization that's there to
[15] give —

[16] Q: An organization which is there to give —

[17] A: (By the translator) What?

[18] Q: This is where you stopped.

[19] A: (By the translator) We went there and that
[20] was how we started.

[21] Q: When was the first time you met with any
[22] attorney?

[23] A: (By the translator) I really don't

[24] remember. I really don't know the exact date.

[25] Q: The meeting at the Latino Council, was this

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[1] a meeting with all 11 or four?

[2] A: (By the translator) No, with everyone.

[3] Q: How was the meeting organized?

[4] A: (By the translator) We went to ask for help
[5] there. They offered an assessment in many areas, in the
[6] legal area and in other areas.

[7] Q: All in the same car, or how did you get
[8] together?

[9] A: (By the translator) No. Each person went
[10] on their own account. Some people didn't have
[11] transportation. They went with the people that did and
[12] in that manner.

[13] Q: I was just curious how everyone knew to come
[14] down to the meeting at the same time.

[15] A: (By the translator) We had come into
[16] agreement on the phone.

[17] Q: Were you the person who did primarily the
[18] calling, or did someone else?

[19] A: (By the translator) I was called by, I
[20] believe, Walter Semidey. I think he called me first.

[21] MR. MARTIN: For information of everyone
[22] concerned, the video has expired and we have no more.

[23] Q: (By Mr. Martin) I'm still very curious
[24] about Rosa, because what you would say about what she
[25] described could either strengthen or diminish her own

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[1] description. Would it help in any manner if you had an
 [2] oral representation of what she described before now?
 [3] Do you understand the question maybe?

[4] A: (By the translator) I don't remember. I
 [5] already said that I didn't remember. I remember more
 [6] the expressions and the way I saw her.

[7] Q: Did she ever tell you that someone had
 [8] removed all of her clothing, as an example?

[9] A: (By the translator) Yes.

[10] Q: If you remember, did she say that someone
 [11] else had removed her clothing or that she had removed
 [12] her clothing herself?

[13] A: (By the translator) I really don't
 [14] remember.

[15] Q: I understand.

[16] A: (By the translator) I'm sorry. I don't
 [17] remember. I insist on the fact of what I remember most
 [18] were her expressions and words of — some other word.

[19] Q: I was just wondering if she was describing
 [20] what someone may think was a total body search of her
 [21] person.

[22] A: (By the translator) I think that, as far as
 [23] I know, I — how do you say it? — she was already
 [24] interviewed or questioned, and I think she's already
 [25] said it all. I don't remember anything of what she told

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[1] me with exactness.

[2] Q: Except that she said she had removed all of
 [3] her clothing, or someone had.

[4] A: (By the translator) I don't know what the
 [5] exact — I don't know exactly. I don't remember
 [6] exactly, really.

[7] MR. MARTIN: Just a moment for break.

[8] (A recess was taken.)

[9] MR. MARTIN: Let me just say at this point
 [10] that it's 11:30 at night, and for your information the
 [11] way we feel about the meeting here is that this is an
 [12] unusual time to meet.

[13] We knew that your employment took you during
 [14] the day, and late, and I hope that you'll just consider
 [15] that this has been not extraordinary, but an unusual
 [16] courtesy.

[17] And I hope that maybe this experience, maybe
 [18] sometime in the future, and maybe even with the
 [19] frustration that you've experienced here tonight, that
 [20] somehow this would reduce or help the animosity that —
 [21] that I think we can understand your personal experience,
 [22] which you have well described.

[23] THE TRANSLATOR: I missed the last three
 [24] words of that.

[25] MR. MARTIN: Which you have well described.

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[1] And thanks to everyone here. Let's go home, unless
 [2] counsel has some really inspiring comment that you just
 [3] cannot help —

[4] MS. JONES: I'm not sure even God would have
 [5] inspiring comments at 11:30.

[6] MR. MARTIN: Frankly, I was hoping you
 [7] weren't driven to give us any. Thank you for the
 [8] courtesy of the use of your office.

[9] (The deposition concluded at 11:30 p.m.)

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WITNESS CERTIFICATE

STATE OF UTAH)
) ss.

COUNTY OF SALT LAKE)

I HEREBY CERTIFY that I have read the foregoing
 testimony consisting of 50 pages, numbered from 3 to 52,
 inclusive, and the same is a true and correct record of
 said testimony, with the exception of the following
 corrections listed below, giving my reasons therefor.

Page Line Change/Correction Reason

JOSE HUMBERTO BARDALES

SUBSCRIBED AND SWORN to at Salt Lake City, Utah,

this ____ day of _____, 1994.

Notary Public

My commission expires:

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REPORTER CERTIFICATE

STATE OF UTAH)
) ss.

COUNTY OF SALT LAKE)

CAROLE A. KING, Certified Shorthand Reporter
Notary Public in and for the State of Utah, do
hereby certify:

That prior to being examined, the witness,
Humberto Bardales, was duly sworn to tell the
truth, the whole truth, and nothing but the truth;
the testimony of said witness was taken down
in stenotype on April 21, 1994 at the time and
place herein stated and was thereafter caused by me to be
transcribed into typewriting, and that a full, true
and correct transcription of said testimony so taken and
transcribed is set forth in the foregoing pages numbered
from 3 through 52, inclusive.

I further certify that after the said deposition
was transcribed the original of same was sent to
Loren D. Martin, attorney for Defendants.

I further certify that I am not of kin or
otherwise associated with any of the parties to said
cause of action and that I am not interested in the
outcome thereof.

I DEPOSIT MY HAND AND SEAL this 30th day of April,
1994.

CAROLE A. KING, CSR/RPR

Notary Public

Residing in Salt Lake County

My commission expires:

September 20, 1997

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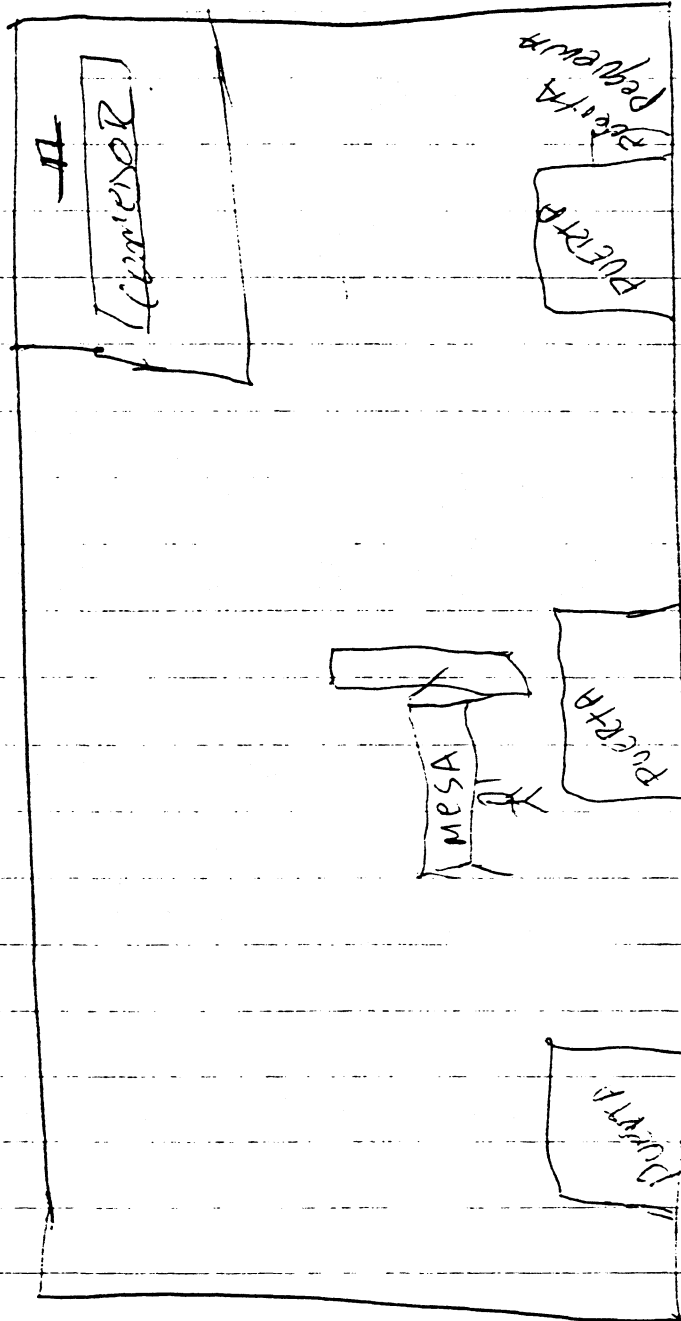
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North



Tab 22

IN THE FOURTH JUDICIAL DISTRICT COURT

STATE OF UTAH

-oOo-

WALTER SEMIDEY, ANGEL
SANTIAGO, HUMBERTO BARDALES,
and ROSA MAZARIEGOS,

Plaintiffs,

vs.

JEANETTE R. LYNTON, /aka/
JEANETTE ROMERO MARKHAM, /dba/
D.O.T.S., DOZENS OF STAMPS,
MIGUEL ANGEL EQUIVEL, JOHN
DOES I & II AND JANE DOES
I-III,

Defendants.

) Civ. No. 930400503 PI

) Judge: Boyd L. Park

) DEPOSITION OF:

) ANGEL SANTIAGO

CERTIFIED COPY

-oOo-

BE IT REMEMBERED that on the 20th day of April, 1994,
the deposition of ANGEL SANTIAGO, produced as a witness
herein at the instance of the defendants, in the
above-entitled action now pending in the above-named court,
was taken before Karri Jensen, a Certified Shorthand
Reporter and Notary Public in and for the State of Utah,
commencing at the hour of 5:00 p.m. of said day at the
office of Loren D. Martin, 1200 Beneficial Life Tower, 36th
South State Street, Salt Lake County, State of Utah.

That said deposition was taken pursuant to Notice.

-oOo-

KARRI JENSEN
CSR No. 345

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A P P E A R A N C E S

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Also present: Miguelangel Esquivel
 Jeanette R. Lynton

I N D E X

Page

WITNESS

Angel Santiago

Examination by Mr. Martin

3

1 Q Which months?

2 A December, November, October, September--December,
3 November--September, August.

4 MR. MARTIN: We have to be careful not to assist or
5 counsel or advise.

6 Q (By Mr. Martin) Do you understand the oath?

7 A Uh-huh.

8 Q Explain that to me.

9 A What is an oath--something that when someone is going
10 to tell the truth of the facts as they have happened of "X"
11 thing or "X" fact.

12 Q Do you understand there may be a penalty if you are
13 not truthful?

14 A Uh-huh.

15 Q Do you understand that you would have an opportunity
16 to review the transcript and make corrections after you receive
17 that transcript?

18 A Yes.

19 Q Tell me what has been your formal education.

20 A High school graduate and some preparation--some
21 schooling in plumbing, some formal school in plumbing.

22 Q What high school?

23 A Porto Rico, a city called Ponce, the name of the
24 school is Doctorpila, D-O-C-T-O-R-P-I-L-A.

25 Q Was that a 12-year school like we have in the United

1 States or something different?

2 A It is the same.

3 Q Do you speak English?

4 A No.

5 Q How long have you lived in the United States?

6 A Three and a half years.

7 Q When did you first arrive?

8 A June of '91.

9 Q Where were you first employed in the United States?

10 A Deseret Industries.

11 Q In Utah?

12 A In Provo.

13 Q Were you employed before you came to the United

14 States?

15 A Yes.

16 Q Where?

17 A I worked as a custodian for the church.

18 Q Where was that?

19 A In the city of Arroyo, Porto Rico, A-R-R-O-Y-O.

20 Q Where were you employed before you worked for

21 D.O.T.S.?

22 A Lumber in Orem.

23 Q Do you know the name of the company?

24 A Which?

25 Q The lumber company.

1 A That was the name of the company.

2 Q What did he do?

3 A Operating machine.

4 Q What type of a machine?

5 A How can I say this? How can I explain this?

6 Different sizes of pieces of wood, the machine separated or

7 split it into pieces. After the machine had split the wood, I

8 had to separate it and make a decision which pieces were good

9 and which were not good.

10 Q How long did you work there?

11 A You mean at the time that I left my work at D.O.T.S.?

12 Q Did he work at Lumber before D.O.T.S.?

13 A Yes.

14 Q For how long?

15 A One year.

16 Q Did you work someplace between Lumber and D.O.T.S.?

17 A No. I quit at Lumber and I went to D.O.T.S.

18 Q Why did you quit Lumber?

19 A I had an interview, and when I quit--one was working

20 inside a building, and in Lumber I worked outside. It was

21 really cold.

22 Q Were you paid, when you worked for Lumber, by the

23 hour?

24 A Yes.

25 Q How much?

1 A 4.25 an hour.

2 Q Was that the same pay during the entire year?

3 A Yes.

4 Q How did you select D.O.T.S.?

5 A Some of my co-workers that were at work with me at
6 Lumber talked to me about D.O.T.S.

7 Q Were you paid at D.O.T.S. by the hour?

8 A Yes.

9 Q How much?

10 A 4.75.

11 Q Was that the same amount you were paid the entire
12 time at D.O.T.S.?

13 A I am not real sure about that.

14 Q Was the 4.75 the amount that you were paid at the
15 time you left D.O.T.S.?

16 A I don't remember that.

17 Q How do you remember the 4.75?

18 A That is what they offered me.

19 Q Was that a beginning salary, then, or a payment?

20 A I don't know.

21 Q Was your pay ever increased during the time that you
22 worked at D.O.T.S.?

23 A I believe that at one time they did tell me, yes,
24 they were going to give me a raise.

25 Q Did that happen?

1 MS. JONES: You need to get the names in here. He
2 didn't say "they."

3 MR. MARTIN: You have to translate accurately. If he
4 uses a name or makes reference to a male or female person or
5 supervisor--

6 MS. JONES: Why don't you back up and ask the
7 question again.

8 MR. MARTIN: Translate into English what you just
9 told him.

10 THE INTERPRETER: It seems like I didn't perceive the
11 sound that he said because I thought he said one thing and
12 somebody else thought he said something else.

13 He confirms that he said--

14 MR. MARTIN: You have to say what he said.

15 THE INTERPRETER: "They told me."

16 Q (By Mr. Martin) Who is "they"? What does he mean by
17 they?

18 A I thought that they were telling me plural things
19 that weren't correct. He told me he was the one that spoke to
20 me, nobody else.

21 Q The name of "he"--who is this person?

22 A Miguelangel.

23 Q Okay. What did Miguelangel tell you?

24 A About--

25 Q About the time you said he told you they were going

1 to give you a raise?

2 A He said that we always did a good job, those of us
3 that were working on the furnace, and he talked to me--he knows
4 that it is true--and then he gave me a raise.

5 Q What was your job at D.O.T.S.?

6 A My work at D.O.T.S. was the furnaces.

7 Q Was that your only, single employment at D.O.T.S.?

8 A Yes, that is what I did.

9 Q Describe what you mean by "furnaces."

10 A There is a piece of plastic that they gave us, okay?
11 They didn't have anything--there was some little figurines,
12 figures that you had to put down on top of the plastic. I put
13 these into the furnace, or oven, on a tray, and right there
14 they lowered down the--there is a little jack that goes up and
15 it presses down on it at the right moment, right time.

16 When the time was up, the bell rang and we pulled out
17 the mold and they were all done.

18 THE INTERPRETER: Can I ask one thing, kind of a
19 side? He says, "Ornoce" (phonetic spelling), and since I don't
20 know all the background of what goes on at D.O.T.S., I don't
21 even know what is done there, so I use two words in English
22 that means ornoce (phonetic spelling), either furnace or oven.
23 I don't know whether they are baking bred or making rubber
24 doggie biscuits. So is that all right for me to go ahead and--

25 MR. MARTIN: If there is a choice sometime and you

1 feel like there should be an explanation between an option in
2 two words, if you could explain that.

3 THE INTERPRETER: Sure.

4 MR. MARTIN: That would be helpful.

5 THE INTERPRETER: Sure.

6 Q (By Mr. Martin) In fact, that was my next question.
7 The work you did was to put things in a chamber which would
8 apply heat and pressure to whatever you put in?

9 A Yes.

10 Q Who was your supervisor?

11 A Humberto.

12 THE INTERPRETER: U-M-B-E-R-T-O. It might be with an
13 "H."

14 Q (By Mr. Martin) Bardales?

15 A B-A-R-D-A-L-E-S.

16 Q Is this the same Humberto Bardales--

17 A It is Humberto, but not Bardales. Humberto is with
18 an "H." There were two Humbertos. Humberto Bardales, that was
19 an employee, and Humberto, the supervisor. His last name, I
20 never knew what it was.

21 Q Was he your only supervisor?

22 A Among the men or of the men, it was him--or I guess
23 he was a supervisor over the men.

24 Q During the entire time you worked at D.O.T.S.?

25 A Yes.

1 Q With whom did you interview when you were first
2 employed?

3 A With Miguelangel.

4 Q When did you leave D.O.T.S., what months?

5 A December.

6 Q What year?

7 A '92.

8 Q Do you know the date?

9 A The exact date?

10 Q Yes.

11 A Yes. December 29th.

12 Q Why?

13 A I don't know. I wasn't told. The supervisor told me
14 that it was probably because--

15 Q If you know, then you answer what you know rather
16 than what you may believe, unless I ask you.

17 A Okay.

18 Q In other words, what I would like you to do is just
19 think of the question and answer the question.

20 A What was the question? Would you repeat it, please?

21 Q Any question. It would apply to all questions.

22 THE INTERPRETER: I told him that it applied in
23 general to all questions. And he said, "Not to that specific
24 question you just told me?"

25 Q (By Mr. Martin) Yes.

1 A Okay.

2 Q Then why did you leave?

3 THE INTERPRETER: Can I ask one thing here? When you

4 ask questions, "why, what, when," without a subject or a

5 complete thought, sometimes quite a bit is lost in the

6 communication. So if you say, "Why did you leave," sometimes

7 it is a little bit open ended. So if you are a little more

8 precise in the way you ask your questions, then maybe you

9 will--

10 Q (By Mr. Martin) On the 29th of December of 1992,

11 what was the reason that you left employment at D.O.T.S.?

12 A I was fired.

13 Q How did you receive this information?

14 A The supervisor.

15 Q Humberto?

16 A Uh-huh.

17 Q What did he say?

18 A "Angel, your work is through."

19 Q At what time of day was this information received?

20 A 12:00.

21 Q What did you do then?

22 A Left.

23 Q Where were you employed after you left D.O.T.S.?

24 A I went back to Lumber.

25 Q What did you do then at Lumber?

1 A What do you mean, "What did I do"? With relationship
2 to what?

3 Q What was his work there when he went back to Lumber?

4 A Same. They gave me the same thing.

5 Q What were you paid when you went back to Lumber?

6 A \$5.00 an hour.

7 Q Did you commence work on December 30 at Lumber?

8 A No. After the Christmastime was over, Monday the
9 first day of January, I started work, more or less the first
10 day of January.

11 Q On the 29th of December in your conversation or
12 information received from Humberto, did he say any other words?

13 A No, he didn't tell me anything else.

14 Q Where were you at the time Humberto gave you this
15 information?

16 A I was working with the ovens, the furnaces.

17 Q Did you leave alone or did you leave with other
18 people on the 29th of December?

19 A Alone.

20 Q At the moment you left D.O.T.S. on the 29th of
21 December, did you know if anyone else had left the day before
22 or within maybe five or ten days before?

23 THE INTERPRETER: Could you clarify the word "left"?

24 MR. MARTIN: Left employment.

25 THE WITNESS: Yes.

1 Q (By Mr. Martin) How many?

2 A I don't know how many. They had, well, been fired.

3 Q What does he mean by "fired"?

4 A There is no more work when they throw you out.

5 Q Do you understand the difference between fired and

6 laid off?

7 A He told me that my work was over.

8 MR. MARTIN: Translate into English what you just

9 told him.

10 THE INTERPRETER: I just explained to Angel that here

11 in the United States there is a difference between firing

12 someone and laying them off. If there is a word for laying off

13 in Spanish, I don't know of it. I have got my dictionary, I

14 could look. But I used beating around the bush to describe to

15 him the differences between firing someone--I told him that

16 firing someone is generally when the person has done something

17 wrong or there is some type of discipline involved and that

18 laying someone off is because there is no more work.

19 Q (By Mr. Martin) Do you understand the difference in

20 the words?

21 A Uh-huh.

22 (Off the record.)

23 Q (By Mr. Martin) The word "fired" would be for bad

24 conduct or for cause. Is that what you understand?

25 A I feel that I did a good job for Miguelangel, for the

1 company.

2 Q The question is: The word you would use to say that
3 you knew or had reason to believe that persons other than
4 yourself were either fired or laid off--you had previously
5 stated that others were fired--

6 A Uh-huh.

7 Q Do you know whether they were fired or laid off.

8 A No, they were fired.

9 Q What is the source of his information?

10 A They all talked among themselves right there.

11 Q Was that on the 29th of December?

12 A Uh-huh.

13 Q Who else are you talking about?

14 THE INTERPRETER: He said, "He's asking me a
15 question, I am answering it. About my matter or about someone
16 else?"

17 Q (By Mr. Martin) About someone else.

18 A On the 29th?

19 Q Yes.

20 A On the 29th, I didn't speak with anyone.

21 Q Before the 29th, within ten days, did he speak to
22 anyone?

23 A Yes.

24 Q Who?

25 A A young man, a boy that was fired, he commented to me

1 that he had been fired.

2 Q Did he tell you the nature of his bad conduct?

3 A No, he said, "I was fired." He didn't talk a lot.

4 Q So you wouldn't know if he was fired or he was laid
5 off?

6 A He told me that he was fired.

7 Q Which may or may not be true.

8 A He never came back.

9 Q We know he never did come back, but he said he was
10 fired. That does not mean that you know he was fired.

11 A Certainly.

12 Q This may sound too simple; however, the distinction
13 in court proceedings is important.

14 A To know whether he was fired or not?

15 Q No. So that when I ask you a question, you answer by
16 saying what you know and not what you heard from someone else.
17 Our purpose is to be as accurate or correct as possible.

18 A Did he ask me something?

19 Q No.

20 (Brief recess at 6:15 p.m.)

21 Q (By Mr. Martin) You did a good job for D.O.T.S.?

22 A Yes.

23 Q So you know of no cause for termination?

24 A Yes.

25 Q So you believe until this moment today that you were

1 told to leave for cause?

2 A No.

3 THE INTERPRETER: He said, "They didn't give me any
4 explanations."

5 Q (By Mr. Martin) Maybe that was a lack of courtesy or
6 poor management. Do you understand what I mean by this other
7 possibility for the abbreviated number of words that you were
8 given?

9 A That they told me?

10 Q Yes.

11 A That Humberto told me?

12 Q Yes.

13 A If I remember, yes, when he fired me.

14 Q Did he appear angry? Did Humberto appear angry at
15 the time?

16 A Humberto? No.

17 Q Do you believe that Humberto was angry with you?

18 A Not that I know of. That he was angry at me?

19 Q Do you have a reason to believe that someone in the
20 company would be angry with you without telling you so?

21 A I don't believe so. I don't know.

22 Q Do you know of any reason why someone in the company
23 would be angry with you on December 29th?

24 A No.

25 Q Why are we here, then? Why do you complain about the

1 company if no one was angry?

2 A Is that the question you are asking me now?

3 Q Yes.

4 A It's one thing, the question that he's asking me
5 right now, and a whole other thing, the things that were
6 happening inside the company.

7 Q Please explain.

8 A He asked me a question. He asked me if I like the
9 work, if I didn't have any problems at work--

10 MS. JONES: Excuse me. He's translating this "he"
11 and he's speaking to him of you.

12 THE WITNESS: You were asking me some questions, if I
13 didn't have any enemies at work, if anyone had gotten mad at
14 me, if I did a good job, if I knew someone that was fired. The
15 questions that you have asked me, I have answered them.

16 Now, the thing that caused the problems that came up
17 in the company that I saw is different than the questions that
18 you are asking me.

19 Q (By Mr. Martin) I understand.

20 A What I mean is, I was doing my work and I did my job
21 well. Miguelangel knows. From there on out, why any other
22 person was fired--I did my job.

23 Q Yes. Do you understand there may be other reasons--
24 other than someone who thought you were doing a good job--may,
25 for business reasons, need to have fewer employees for a period

1 of time? Do you understand that that is a possibility?

2 A I don't know. It could be.

3 MR. MARTIN: You are writing notes to him or your own
4 notes? You are writing a note to him to explain how to answer
5 the question, or what is the note?

6 MS. JONES: I am just explaining the reasons for the
7 questions. He's very confused as to why you are asking these
8 questions.

9 Q (By Mr. Martin) Is this true, that you are confused
10 about the nature of the questions I ask?

11 A Yes, a lot of questions I don't know, according to my
12 understanding.

13 Q Maybe we ought to go back just a little bit.

14 Do you know of any reason why someone in the company
15 would tell you to leave for cause?

16 A Please repeat the question again.

17 Q Do you know of any reason why someone in the company
18 would ask you or tell you to leave for cause?

19 A You mean right at the time when I was fired?

20 Q If you were fired or laid off, yes.

21 A No. They never told me why. They never gave me the
22 reasons.

23 Q The question is: Do you know a reason why someone
24 would terminate you or ask you to leave for a cause?

25 A No. I am unaware of any reason why they would say

1 that--why they said that.

2 Q Do you believe today that someone in the company is
3 angry with you?

4 A I don't believe so.

5 Q Are you angry with someone in the company?

6 A What do you mean, "angry"?

7 Q To have a feeling that would cause you to take action
8 against that person?

9 A Like the action for which we are here today?

10 Q Yes.

11 A It is not angry or mad. I believe that each
12 individual should respect their fellow men. If a manager or a
13 supervisor has "X" number of employees, I believe that that
14 manager or that supervisor should respect that work force that
15 he has in his company. If this work force does a good job or
16 "X" job well, he should be pleased with the work that those
17 employees at that work force is carrying out. To be angry or
18 mad is one thing, and to observe or respect the rights of
19 someone or "X" person is something different.

20 Q Did you leave the company because someone at the
21 company did not show proper respect for fellow persons?

22 A First, I did not leave the company. The person that
23 spoke to me, the supervisor, Humberto, he spoke and he told me
24 to go. Before he fired me, he held meetings, and many times
25 these meetings were unnecessary, superfluous.

1 Q Are you saying that nothing was done in the company
2 that would have caused you to leave the company voluntarily?

3 A There were certain things that were not right. I
4 wasn't leaving the company quickly, whether I was going to find
5 a job somewhere else.

6 Q Did anything happen which caused you to be so angry
7 that you would leave immediately?

8 A You mean at work?

9 Q Yes.

10 A They always held their meetings. They said things
11 that were kind of bothersome. Everybody was bothered.

12 Q Did you ask everyone in the interview, or how did you
13 determine that everyone was bothered?

14 A No. Just people talk.

15 Q Are the useless meetings the principal reason that
16 you would say there were problems in the company?

17 A I believe so.

18 Q If I ask you if there are any other principal
19 reasons, what would come to mind about management of the
20 company or anything else?

21 A You are asking me about the administration of the
22 company?

23 Q Any reason that he would say there would be something
24 as important or maybe not as important as this meeting that
25 would give people, or you, a reason to be concerned about the

1 company or lack of respect.

2 THE INTERPRETER: Could you please be more specific
3 and exact in your question, because this is a very long
4 question.

5 Q (By Mr. Martin) Thank you. We have talked about
6 useless meetings. We have talked about lack of respect. This
7 would be two reasons why someone, and maybe yourself, would
8 find fault with the company. Is there a third reason?

9 A You mean besides the meetings?

10 Q Besides the meetings and besides, maybe, lack of
11 respect.

12 A He also organized a big review, a big check.

13 (Off the record.)

14 Q (By Mr. Martin) I think we understand a review or
15 check. Do you understand?

16 A (Nodded affirmatively.)

17 Q What do you mean by "review," or what do you
18 understand by the word "review"?

19 A To review, to look for.

20 Q Is that different than to check?

21 A You mean, is it different?

22 Q Yes.

23 A Well, maybe it is different. Maybe it doesn't--it
24 depends on--

25 Q So, we have, number one, useless meetings; is that

1 correct?

2 A Unnecessary.

3 Q Is that the most important reason why you would be
4 concerned about the company?

5 A How is that? Please repeat.

6 Q The most important cause you would find fault with
7 the company is these useless meetings?

8 A One of the reasons, one of the causes.

9 Q What would you say would be the most important cause?

10 A You mean besides the meetings?

11 Q I am trying to put things in priority.

12 A I don't know. There is no seniority. It is all
13 important.

14 Q Other than a tone of voice or expression, would you
15 give me an example of lack of respect?

16 A How is it possible that for a person that has "X"
17 number of employees and brings them all together one day or
18 some morning and admonishes them, warns them all saying, for
19 example, that there is a lot of thieves in the company, a lot
20 of stealing going on, or they speculate that people are hauling
21 off with merchandise, or speculate that they are talking bad
22 about the company--so if you were to come and see, they almost
23 always talk about those same things. And so if I have a
24 company that is producing work, I have no reason to hold so
25 many meetings to offend people.

1 Q Would you characterize this as poor management or
2 malice?
3 A You mean what he did?
4 Q "He" meaning whom?
5 A Miguelangel.
6 Q Yes.
7 A You mean whether it was good or bad?
8 Q Yes.
9 A I feel that it was out of place.
10 Q All of the time?
11 A What do you refer to when you say "all the time"?
12 Q The entire period of your employment.
13 A You mean when they had meetings, constantly?
14 Q Whether a supervisor would treat you with respect or
15 not the total time that you were employed.
16 A Well, supervisors never disrespect me.
17 Q Is there a single person who would show you
18 disrespect?
19 A I am a very friendly person, no.
20 Q Did any person ever try to confine you or arrest you
21 or stop you from leaving or injure you?
22 A You mean inside the company, someone that may have
23 tried to suppress my right of expression?
24 Q No, to freely come and go, your person.
25 A You mean like to go out on break and at lunchtime?

1 Is that what you mean?

2 Q Yes.

3 A No, we have our breaks and our lunchtime.

4 Q Did anyone lock the doors and tell you that you were
5 not ever permitted to leave until the end of the day?

6 A No.

7 Q I asked the question if anyone had locked the doors
8 and told you that you could not leave until the end of the day.
9 Did anyone lock the doors and tell you that you could not leave
10 at any time?

11 A As far as I remember, no.

12 (Brief recess at 6:55 p.m.)

13 Q (By Mr. Martin) Do you understand what a contract
14 is?

15 A Yes.

16 Q Explain your understanding of a contract.

17 A An agreement between two or more people.

18 Q You have, or had, an agreement for employment or a
19 contract with the company?

20 MS. JONES: I would like to object to this. I am
21 sure that this may be going somewhere, but my objection is the
22 fact that the causes of action are fairly clear and had little
23 or nothing to do with employment.

24 MR. MARTIN: Are you saying there is no cause of
25 action related in any way to employment or termination?

1 MS. JONES: I think the complaint speaks for itself
2 and the list of causes of action does not include anything
3 involving employment.

4 MR. MARTIN: Are you saying that--

5 MS. JONES: I am not being deposed here.

6 Q (By Mr. Martin) Okay, then I will ask the question:
7 Did you have an agreement or contract with the company for
8 employment?

9 A Application, same as the whole company.

10 Q What did you understand was the term or length of
11 your agreement with the company?

12 A What agreement?

13 Q Not a written agreement, but with every association
14 there is some agreement.

15 A I was an employee.

16 Q Do you understand that your employment was for your
17 lifetime?

18 A No, no. No job is--no employment is for your whole
19 life.

20 Q Did anyone at the company ever tell you or did anyone
21 give you reason to understand that you could not be terminated
22 except for cause?

23 A Well, Miguelangel used to tell me that my job
24 was--that the work I did was good and that my position was sure
25 there.

1 Q Did you have any reason to believe that you could not
2 be told that your work was finished?

3 THE INTERPRETER: You need to be more specific in the
4 question.

5 Q (By Mr. Martin) Do you have any reason to believe
6 that the company did not have the right to tell you at any time
7 that your work was complete?

8 A I think that when--well, a good employee and a
9 company is an intelligent one--when they have a good employee,
10 you should keep ahold of him.

11 Q Of course, but I am talking about the right of the
12 company to say that your work was complete. What I meant to
13 say was: Do you believe that the company had no legal right to
14 tell you, "Angel, your work is through"?

15 A I believe so.

16 Q Why would you ever think that a company, whether for
17 a good reason or not, has no right to employ a person or tell
18 that same person that their work is through?

19 A What I understand is that if a company doesn't have
20 financial problems or if it is not bankrupt and it has a group
21 of employees that are producing, I believe that they don't have
22 any reason to fire the employee.

23 Q We are not talking about reason, we are talking about
24 a legal right to do so.

25 A The same as the rights that each employee has. It is

1 the same.

2 Q So an employee can leave at any time; is that true?

3 A If an employee--

4 Q Is it true that an employee, then, could leave
5 employment at any time?

6 A You mean a person just leave?

7 Q Sure.

8 A If a person decides to leave a company on his own
9 will?

10 Q Yes.

11 A Yes. Sure, he can go on his own will. He can go.

12 Q For cause or for no cause?

13 A It is up to the discretion of each individual.

14 Q Yes. Also, the company can say you are employed or
15 not employed on the same basis as the employee may?

16 A Before being an employee?

17 Q No. The company could tell a person, "You may work
18 here." The company agrees that you work here, and the company
19 may say, "You are no longer working here;" is this true?

20 A Uh-huh.

21 Q Is that correct?

22 A A company employs a person. If the company has the
23 desire to get rid of that person, for whatever reason--let me
24 explain myself. If a company employs a person and he's given
25 that person good work, any old person, "X" person, if the

1 company so desires to get rid of a person without any reason,
2 where are the rights of the employee?

3 Q Isn't this the same for the employee and the company?

4 A I believe it is different.

5 Q Tell me how.

6 A I don't know. I don't believe--like I said just a
7 bit ago, the difference is that when a company is bankrupt--I
8 don't know what all these questions are due to. What is the
9 cause of all these questions? I believe that we are just--my
10 personal opinion is that we are going round and round the
11 question at hand, or the matter, and we are not going straight
12 to the heart of things, the concrete part of the--

13 Q Explain what you believe to be the heart of things.

14 A The reason why we are here.

15 Q Explain the reason why we are here.

16 A We are here simply because when you are after a
17 person inappropriately, out to get someone--you know the reason
18 why we are here.

19 Q Explain why.

20 A I already explained myself. I have been pretty
21 clear.

22 Q If we beat around the bush all the time--I don't know
23 that you have given any explanation.

24 A We are just wasting time, then.

25 Q Well, then, explain to me why we are here, the heart

1 of the matter.

2 A Go ahead and ask the questions.

3 Q I just did. I asked the question.

4 A You asked the question and I answered it.

5 Q You have no reason, then, to explain more than what
6 you have said?

7 A That I don't have what?

8 Q You have no reason to explain more than what you have
9 said as to why we are here?

10 A Yes, I can explain.

11 Q Please.

12 A The reason why we are here is because the case of
13 D.O.T.S., okay? It is involved with the demand to go after
14 someone, to go after--and I believe that is the basic point of
15 the case here.

16 Q Did someone go after you?

17 A Yes.

18 Q When?

19 A In the company.

20 Q Not where, when?

21 A The exact day, I can't remember.

22 Q Approximately?

23 A December. I can't specify the exact day.

24 Q Middle--

25 A I don't know how to specify--

1 Q Before Christmas or after?

2 A Before Christmas.

3 Q A specific incident?

4 A Concerning some--

5 Q What is the specific reason that you are referring
6 to?

7 A On that day.

8 Q Repeat that, please.

9 A That day Mr. Miguelangel gathered together all the
10 employees and he gave us notice that \$20 had been lost or
11 someone had taken \$20, and on that day he said he was going to
12 search or check--search.

13 MR. MARTIN: Are you poking him or something,
14 Counsel?

15 MS. JONES: I said, "Excuse me." The translator
16 looked like he was going to say something.

17 THE INTERPRETER: My translation of chequeayare
18 (phonetic spelling) is to check or to search, that is the
19 translation I gave. Apparently, someone is not in agreeance
20 with that translation.

21 MR. MARTIN: Opposing counsel is not agreeing with
22 that translation.

23 MS. JONES: He was interrupting his pause, and I
24 paused him. My client was interrupting his pause, and I paused
25 him.

1 Q (By Mr. Martin) Ask him about this translation, what
2 he described.

3 A To check, to search.

4 Q Review?

5 A Uh-huh. Review.

6 Q Tell us what happened.

7 A Each person was checked, searched, reviewed. They
8 checked me, they searched me. I had to take out my wallet.
9 They searched through it. The men were checked over. They
10 were searched in the men's bathroom and the women in the
11 women's bathroom.

12 Q Their pockets?

13 A I emptied my pockets.

14 Q Did anyone reach in your pockets?

15 A No. He told me to empty my pockets.

16 Q Anyone tell you to look inside of your shirt or in
17 your trousers?

18 A No.

19 Q Or your shoes or your socks?

20 A No.

21 Q Did they say this in an angry or demanding way?

22 A When Miguelangel spoke?

23 Q Yes.

24 A He was mad.

25 Q Describe how you know he was angry. If you are

1 saying he was angry, also describe who he was angry at.

2 A Him, with everybody, at everyone.

3 Q Okay. Did anyone touch you?

4 A No.

5 Q Did anyone tell you that the door was locked and you

6 could not leave?

7 A You mean, if someone told me that?

8 Q Yes.

9 A You mean, so that I could leave?

10 Q Yes.

11 A No. You mean, if someone in the moment of the

12 checking out if--yes, the door was closed. When they were

13 going to search--

14 Q Locked?

15 A Closed.

16 Q Locked?

17 A Closed.

18 Q That is not the question. Was the door locked or was

19 there a guard?

20 A If the door had a lock, had its lock been put on it?

21 Q Yes.

22 A He left and the supervisor stayed there.

23 Q Was the door locked?

24 A From where I was, it is hard to tell whether the lock

25 there was locked or not, but the door was closed.

1 Q I think I am not the one beating around the bush or
2 evading. I think you understand why I am asking the questions
3 and I believe you are refusing--or trying to avoid the
4 question.

5 A No, I am being very precise and exact.

6 Q Was the door usually opened?

7 A Before or after?

8 Q Usually.

9 A Usually--it was always opened. Sometimes it was
10 closed.

11 Q Which door?

12 A The little one. A small door that there is to enter
13 in the company; sometimes he kept it closed, sometimes it was
14 open.

15 Q The door was usually opened or usually closed?

16 THE INTERPRETER: He said closed in the middle of
17 that.

18 THE WITNESS: Usually it is closed.

19 Q (By Mr. Martin) Did you see anyone at this time on
20 this day go to the door and close it or lock it? Yes or no.

21 A No.

22 Q Did you see any guard who would prevent you from
23 leaving?

24 A I didn't see--I saw the door closed. I saw that the
25 door was closed.

1 Q Did this surprise you?

2 A No, it was always closed.

3 Q So it is not important that the door was open or

4 closed?

5 A That is not important. What is important is the

6 search.

7 Q Did any person prevent you from just leaving?

8 A No one.

9 Q Then the checking was voluntary?

10 A It was voluntary, if you think that if someone leaves

11 that they loose their job or then they say he took the money.

12 Q Who said this?

13 A It is obvious to think that.

14 Q But no one said that?

15 A It is not necessary for them to say it.

16 Q Don't evade the question. Did anyone say this?

17 A No.

18 Q Did anyone leave except Miguelangel?

19 A You mean, when Miguelangel left, did someone leave?

20 Q Anyone else.

21 A No. All the supervisors stayed there.

22 Q If you were so offended, why did you not just leave?

23 You are paid more money now?

24 A I didn't know at that time. I stayed there because I

25 had a job and I had to stay.

1 Q But now you say, a year later, that you were so
2 offended that you waited a year to complain?

3 A I didn't wait for a year. Now we are just seeing
4 this.

5 Q Did you tell anyone at that time that you were
6 offended?

7 A To some boy at work?

8 Q Anyone.

9 A I said that what they were doing was out of place.

10 Q But not enough to say that you were so offended that
11 you were deprived of personal dignity sufficient to terminate
12 your employment?

13 A I had to stay. I didn't have any other work,
14 employment. What is bad is bad. What is outside of the law is
15 outside of the law.

16 Q Was everyone checked?

17 A Everyone except the supervisors.

18 Q Okay. What contract did you have with the company?

19 A An application to work, not a contract.

20 Q Something may be not proper, why do you say that it
21 is unlawful?

22 A You mean the searching?

23 Q Yes.

24 A The only people that can look for a person can--the
25 only person that can search someone is the police. No one else

1 except the police can do it except, for example, unless they're
2 in a specific department and you see someone taking something,
3 then they can stop that person and then they can search.

4 Q You did not object, and they believe that you stayed
5 voluntarily.

6 A How is that?

7 Q If you do not object--

8 A About--

9 Q If you ask me, "Open your pockets," and I open my
10 pockets, then where is the unlawful search, if I agree?

11 A If a person says that they are going to check me or
12 search me and they don't have an order, a warrant to check,
13 that is bad and you know that.

14 Q No, only if it is the government.

15 A The government.

16 Q If I open my pockets, it is indicating my consent.

17 A That is with the government.

18 Q With any person.

19 A This has to do with work. It is different for any
20 person.

21 Q No. A person may consent.

22 A It is different. It is not just on the street. This
23 is at work. There is a work force that is being accused of
24 something, and for something that supposedly occurred, and what
25 is being done or what is happening is outside of the law.

1 Q You believe.

2 A I believe it. I accept it and I admit it, that it is
3 that way.

4 Q You believe this? You believe that it is unlawful--

5 A A person that does not have the authority and that
6 has not seen anything that has been taken, that is illegal.

7 Q Certain things are illegal. Assault. What do you
8 understand by assault?

9 A Physical assault?

10 Q Yes.

11 A Hit, to beat.

12 Q Did anyone assault you?

13 A No. Physically, no.

14 Q Do you think you were mentally assaulted? Or why do
15 you say "physically, no"?

16 A What do you mean when you say "physically"?

17 Q You said "physically."

18 A You asked me physically or how.

19 Q I just asked you if anyone assaulted you.

20 A No. Physically, no.

21 Q In any way?

22 A They assaulted me, yes.

23 Q How?

24 A Beyond physically?

25 Q The question is: Did anyone assault you? So the

1 answer is no?

2 A Physically, no.

3 Q Do you mean that someone assaulted you in some manner
4 other than physically?

5 A When they did the search, I felt bad because they
6 were showing mistrust toward their employees, employees that
7 are producing employees for the company. Whether there was \$20
8 lost or not, it is not known. I never knew. That is the
9 reason why one would feel bad about it.

10 Q Is there a difference between feeling bad and being
11 assaulted?

12 A Quite a bit.

13 Q Did anyone assault you?

14 A Physically, no.

15 Q Why not just yes or no?

16 A He is asking me if someone assaulted me. He has to
17 be specific if it was physically or emotionally.

18 Q The only question, under the law, would be physical.

19 A You mean to assault?

20 Q Yes. Assault means to cause you to be in fear of
21 harm.

22 A We are not talking about assault, we are talking
23 about searching.

24 Q Okay.

25 A It is different.

1 Q Did anyone assault you?

2 A No.

3 Q Did anyone cause you to fear for your safety?

4 A No, no fear.

5 Q Did anyone cause you to believe that you would be

6 harmed?

7 A No, I don't fear.

8 Q Going back to the heart of things is that you have

9 some reason to believe that a company, specifically D.O.T.S.,

10 could not tell you to leave at any time; is this true? Leave,

11 meaning leave employment?

12 A You mean my person?

13 Q Yes.

14 A You mean if they had the right to tell me to go?

15 Q Yes.

16 A I consider that yes.

17 Q Who in the company told you that this was permanent

18 employment, that they could not ask you to leave your

19 employment for no cause? Who told you this at the company?

20 A I'll tell you again. Miguelangel told me that the

21 position that I had--that I did a good job, and that I was

22 going to be all the time there.

23 Q Forever?

24 A He didn't specify days or dates or anything.

25 Q For two weeks?

1 A He wasn't specific "all the time."
2 Q Did you tell him that you would be there forever?
3 A What I answered.
4 Q Yes?
5 A It was fine.
6 Q That you stay in the company forever?
7 A He told me, "Angel, you do a good job. You are going
8 to have your position there." He didn't say any date nor when
9 I was going to finish, that I was going to stay there.
10 Q Then some day he tells you your work is finished?
11 A Uh-huh.
12 Q Is that unlawful, do you believe?
13 A No.
14 Q Are we in agreement that it would be lawful for you
15 to leave at any time "employment" and also legal for the
16 company to say your work is finished?
17 A For the company?
18 Q Yes.
19 A For the company, yes.
20 Q Do you understand that there is a difference between
21 the company and Jeanette Lynton, a difference?
22 A What do you mean, "there is a difference"?
23 Q Going back to the heart of the matter, you are listed
24 here--
25 MS. JONES: I am going to object to this question

1 because I think it calls for a legal conclusion.

2 Q (By Mr. Martin) Very good. You are listed here and
3 Jeanette R. Lynton is listed here in opposition to you,
4 personally.

5 A What do you mean?

6 Q This is you versus Jeanette Lynton, not D.O.T.S.

7 A Who does D.O.T.S. belong to?

8 Q The stockholder or holders.

9 A And not to Jeanette?

10 Q Yes.

11 A Does it belong to her?

12 Q The stock--

13 A I don't know. The stock or the company.

14 Q Were you employed by the company?

15 A Sure.

16 Q Did you receive payment and a check from the company
17 named D.O.T.S.?

18 A Uh-huh.

19 Q Was Jeanette Lynton present during the checking?

20 A No.

21 Q Do you have any reason to say that you may have some
22 real action against Jeanette Lynton?

23 A When a person is responsible for a company and, in
24 this case, Jeanette presents herself as the owner of the
25 company, and those persons are responsible for the things that

1 happen in the company but there is more than one person, all of
2 them are responsible for what happens in a company.

3 Q You believe that the person is individually liable
4 for all of the business of the company?

5 MS. JONES: Objection, I think that calls for a legal
6 conclusion.

7 Q (By Mr. Martin) I am asking what he believes.

8 A Concerning what--

9 Q Do you believe that an owner of a company, a
10 corporation, is personally liable under the law?

11 A Concerning what, concerning the employees?

12 Q Yes.

13 A Sure.

14 Q This is the problem.

15 A Why?

16 Q Because it is a corporation by which he was employed.
17 The corporation paid you?

18 MS. JONES: I didn't understand that as a question.

19 MR. MARTIN: It was a question.

20 Q (By Mr. Martin) Counsel has objected to what I said
21 and interrupted, stopping her client from responding, because
22 she thought that it was not a question. The question is: Were
23 you employed by Jeanette Lynton or the company, the corporation
24 named D.O.T.S.?

25 A D.O.T.S. was the one that contracted me.

1 Q Contracted. This we agree. There was some
2 contract--

3 THE INTERPRETER: The word contracted and a contract
4 is different.

5 Q (By Mr. Martin) And when he said "different," he
6 indicated with one finger, as if he was writing, upon his left
7 hand.

8 A A contract is written.

9 Q I understand where maybe we have a difference. The
10 writing is a contract, and to me an agreement, oral, is also a
11 contract.

12 A Verbal?

13 Q Yes.

14 A Yes.

15 Q My apology to you for not making this more clear
16 earlier. I did not understand that you were thinking an oral
17 agreement may not be a contract.

18 A Uh-huh.

19 THE INTERPRETER: May I make a comment here? The
20 word "contract" in Spanish, one of the definitions that is
21 given is "to hire." So words--even though you believe you
22 understand all the meanings of the words that I say, I can show
23 you some word in here that has two or three columns of
24 definitions, okay?

25 MR. MARTIN: Yes.

1 THE INTERPRETER: Even though you want to set a
2 specific definition to a word, many times there are multiple
3 definitions, depending on the culture the person is coming
4 from, the meaning that a person wants to give.

5 MR. MARTIN: I understand. I have done some
6 translations from Arabic and Hebrew to English. So I
7 understand translation, and I appreciate what you are doing,
8 and I think that you are doing well, and I appreciate what you
9 are doing. And I think that it is just taking us a little more
10 time. If you would translate for him, please.

11 Q (By Mr. Martin) This has caused maybe some
12 misunderstanding and maybe taken more time around the heart of
13 the issue. My apologies.

14 A No problem.

15 THE INTERPRETER: I also apologize.

16 Q (By Mr. Martin) If we can talk a moment about your
17 emotions. Explain to me, if you can, the degree of your
18 emotions which resulted from the checking.

19 A You mean when I was searched, when I was checked?

20 Q Yes.

21 A Just simply a person feels uncomfortable.

22 Q Anyone could understand this.

23 A Uh-huh.

24 Q Did you become so concerned over a week that it
25 caused you to lose sleep?

1 A The checking? No, I was fine with myself, with my
2 own conscience.

3 Q This is good. This was before Christmas?

4 A Uh-huh.

5 Q Is there a company social or association or party on
6 or around Christmas?

7 A Yes. You mean that the company held?

8 Q Yes.

9 A Uh-huh.

10 Q Did you attend this party--

11 A Yes.

12 Q --or social?

13 A Yes.

14 Q Any bad feelings that you had at that time as a
15 result of the checking?

16 A No.

17 Q Did anyone express to you at the company social or
18 party that they were emotionally concerned about the checking
19 at that time?

20 A No.

21 Q Did you, at any time with the company, try to express
22 concern about the checking to a supervisor or officer or any
23 official?

24 A No.

25 Q Not even by suggestion?

1 A No.

2 Q Did you give suggestions as to improvements of the
3 company?

4 A No.

5 Q Not at any time?

6 A No.

7 Q Did you think of maybe giving suggestions to anyone?

8 A Some co-worker?

9 Q No, to someone in authority.

10 A An example, in the department where we work, there in
11 that group among us, we suggested among ourselves to change the
12 other thing in that work area.

13 Q Well, natural thing for companions to do. But about
14 maybe the heart of the issue.

15 A You mean giving a suggestion?

16 Q Yes.

17 A No. You mean a suggestion in questions of work?

18 Q In questions of propriety, what may be appropriate
19 conduct between supervisors and employees.

20 A On one occasion, the supervisor came up to me and
21 made the comment to me that this work was good, because the
22 supervisor was talking to me that there was a rumor that this
23 person was doing some things bad. He asked me about this
24 person. I answered that I had not heard any rumors, and I was
25 right. And I told him that all the employees that were there

1 were doing their job, as far as I could tell, and that if there
2 was any rumor or gossip, maybe the person that had said that
3 this matter was not good, was bad, was the person that was
4 talking about him. Because I told him I am not depending on
5 any gossip that is in the workplace. I do my job.

6 Q That is good. Would you understand that when someone
7 tells you you were doing a good job that is a compliment and is
8 a usual thing to say for someone who is doing well?

9 A Uh-huh.

10 Q Do you understand that that is a normal thing for a
11 person to do?

12 A You mean to tell someone you are doing a good job?

13 Q Yes.

14 A If it is normal? Please repeat again.

15 Q Do you believe that it is normal for someone to
16 compliment an employee for doing a good job?

17 A That a compliment is given to someone who is doing a
18 good job?

19 Q Yes.

20 A Yeah, if they are doing a good job, sure.

21 Q Is the reason we are here, maybe the heart of the
22 issue, because you personally had some reason to think that you
23 were told your work is through?

24 A I didn't understand.

25 Q Let me say this again. You did a good job; true?

1 A Yes.

2 Q For the company, so far as you know?

3 A For the company, yes.

4 Q And the supervisors and even Miguelangel believes
5 that you were doing a good job?

6 A Uh-huh.

7 Q Do you believe that the supervisors and even
8 Miguelangel believed that you were doing a good job?

9 A There was a time when he told me that.

10 Q Yes. Is the heart of the issue maybe that sometime
11 unknown someone in the company became angry at you and said
12 your job is through because of not being happy with your work?

13 A You mean if I knew?

14 Q Or had reason to believe.

15 A I don't know.

16 Q So the only thing and the only reason we are here is
17 because of the checking?

18 A Uh-huh.

19 Q Can you think of any reason, in addition to the
20 checking, as to why we are here?

21 A Besides the checking?

22 Q Yes.

23 A I believe that besides the checking, the other things
24 that happened, I believe--I think they should be, how do you
25 say it, just a combination of things.

1 Q A combination of things that would give you just a
2 general feeling of lack of respect?

3 A I think so.

4 Q Is there anything specific that you can think of,
5 other than meetings that had no purpose or the checking?

6 A You mean related to work, work related?

7 Q Of course.

8 A Besides the checking, on one occasion, Miguelangel
9 went to pay me, and about when he paid me, he said I was a
10 rebel, a real rebel. I never knew why he told me that. I
11 never found out why he told me that, and I never asked him,
12 either.

13 Q With a voice of anger or just general conversation?

14 A "Here, you are a real rebel." I don't know whether
15 he told me in a way--well, because I wasn't looking at him. I
16 was getting some forms, some moldings, and when I picked them
17 up, he was already on his way out.

18 Q Anything else?

19 A Not that I remember right now. I think I have said
20 it.

21 Q Prior to the checking, was anything said by a
22 supervisor that would have invited a person to leave or decline
23 to be checked?

24 A What do you mean, "before the checking"?

25 Q Maybe at that same moment or approximately the same

1 time?

2 A You are referring to the checking?

3 Q Yes.

4 A What happened if somebody--maybe if someone invited
5 someone else to leave?

6 Q Or asked if anyone wishes to leave. Did they raise
7 their hand?

8 A Of the group?

9 Q Yes.

10 A No.

11 Q Was the person speaking Miguelangel?

12 A Yes.

13 Q What did he say, if you remember?

14 A The day before the checking?

15 Q If it is important.

16 A He told us that we should go to the area of the
17 cafeteria, the dining room.

18 Q Is this the day of the checking?

19 A Yes. We should go to the dining room area, the
20 dining area. Miguelangel was there. He directed words to us.
21 He addressed us.

22 Q In Spanish?

23 A Yes. And he said that he was bothered because there
24 were rip-offs in the company and \$20 had been stolen from the
25 billfold--well, a little purse of one of the employees. And

1 that he was going to check everyone. And that he knew--he
2 said, "I know that I am doing wrong, but I am going to do it."
3 Q That is the total words?
4 A He said, "The supervisor, Humberto, is going to
5 search the men, and the woman supervisor is going to check the
6 women."
7 Q But so far as you know, no one was physically touched
8 or searched by a supervisor?
9 A No.
10 Q All of the checking you saw was an asking of a person
11 to open their wallet or open their pockets? I understand that
12 a person feeling accused would be upset.
13 A Uh-huh.
14 Q That would seem normal. But the question is: If we
15 talk about a search, it almost sounds like someone went inside
16 of my clothing with their own hand.
17 A No.
18 Q This never occurred?
19 A No.
20 Q You mentioned your own wallet before, previously.
21 A Uh-huh.
22 Q How was the checking of your wallet accomplished?
23 A My person?
24 Q Yes, personal wallet.
25 A I took it out and they told me to open it, and I took

1 out the papers that were inside, that were in the wallet. I
2 emptied it and I pulled out my pocket that he wanted to see and
3 that all my pockets--

4 Q I understand this is demeaning. If you are a
5 supervisor--suppose for a minute--and an employee tells you
6 that, "Someone stole my money"--

7 A Some employee?

8 Q Maybe I will repeat this.

9 A If I--

10 Q A single employee--

11 A Uh-huh.

12 Q --tells you, as supervisor--

13 A That they robbed something from him, that he had been
14 robbed?

15 Q That someone took their money.

16 A You should complain to the police. That is what is
17 right.

18 Q If the police came and said, "Okay, everyone will be
19 checked," would this be more appropriate?

20 A I believe so.

21 Q This is a yes?

22 A Yes.

23 Q If the police had done the same thing in checking,
24 then there would be no offense?

25 A It is different.

1 Q I know it is different. If the police had done the
2 same precise thing as the checking, would there have been no
3 offense, personally?

4 A I would still feel bad because they are doubting my
5 person, my reputation as an employee. It put in the doubt. I
6 would always still feel uncomfortable because of that.

7 Q But if the police had done the same thing, you
8 believe that it would have been lawful?

9 A The police?

10 Q Yes.

11 A Yes.

12 Q If the police had done the same thing, it would have
13 been lawful?

14 A Sure.

15 Q In your opinion?

16 A Yes.

17 Q I think maybe since the video machine is tired, the
18 only thing I have left to ask is: Would it have been important
19 at the checking if there had had been a translator to help?

20 A What for?

21 Q I just wonder, because we live as neighbors and I
22 speak principally English and you speak principally Spanish,
23 there may be somebody as an employee--the question is, and this
24 is the final question: Did anyone not understand that you
25 knew?

1 A About what?

2 Q About the English language--or Spanish--at the
3 checking. Was there any confusion?

4 A At the time of the checking, there were no Americans,
5 only Latins, and there were Americans that worked there.

6 Q You are American.

7 A I know, but I also consider myself Latin.

8 Q Very good.

9 MR. MARTIN: This machine, now, is tired. Is
10 opposing counsel tired or did you wish to ask questions?

11 MS. JONES: No.

12 (The deposition concluded at 8:40 p.m.)

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W I T N E S S C E R T I F I C A T E

STATE OF UTAH)
 :ss.
COUNTY OF UTAH)

I HEREBY CERTIFY that I have read the foregoing testimony consisting of 53 pages, numbered from 3 to 55, inclusive, and the same is a true and correct transcription of said testimony, with the exception of the following corrections listed below, giving my reasons therefor.

Page	Line	Change\Corrections	Reasons
_____	_____	_____	_____
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ANGEL SANTIAGO

Subscribed and sworn to at Provo, Utah, this _____day
of _____, 1994.

Notary Public

My commission expires:

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C E R T I F I C A T E

STATE OF UTAH)
 :ss.
COUNTY OF SALT LAKE)

THIS IS TO CERTIFY that the deposition of ANGEL SANTIAGO, the witness in the foregoing deposition named, was taken before me, Karri Jensen, a certified shorthand reporter and notary public in and for the state of Utah, residing at Salt Lake City.

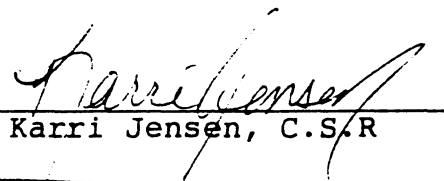
That the said witness was, before examination, duly sworn to testify the truth, the whole truth and nothing but the truth in said cause.

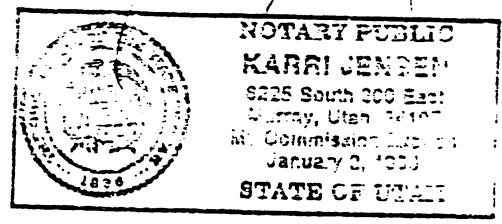
That the testimony of said witness was reported by me in Stenotype, and thereafter caused by me to be transcribed into typewriting, and that a full, true, and correct transcription of said testimony so taken and transcribed is set forth in the foregoing pages, numbered 3 to 55 inclusive, and said witness deposed and said as in the foregoing annexed deposition.

I further certify that the original transcript of the same was mailed to MARTI JONES, at 40 South 100 West, #303, Provo, Utah, to be delivered to the witness and read by him, and to be returned to me within 30 days of the date hereon.

I further certify that I am not of kin or otherwise associated with any of the parties to said cause of action, and that I am not interested in the event thereof.

WITNESS MY HAND and official seal at Salt Lake City, Utah, this 23rd day of May, 1994.


Karri Jensen, C.S.R



Tab 23

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IN THE FOURTH JUDICIAL DISTRICT COURT FOR UTAH COUNTY
STATE OF UTAH
* * *

FILED
Fourth Judicial District Court
of Utah County, State of Utah
CARMA B. SMITH, Clerk
Deputy

10-13-95

WALTER SEMIDEY
Plaintiff,)
vs.) Civil No. 930400503
) HEARING TRANSCRIPT
JEANETTE R. LYNTON)
Defendant.)

BE IT REMEMBERED that on Tuesday the 16th day
of August of 1994, the HEARING in the above-entitled matter
was taken by Richard C. Tatton, a Certified Shorthand
Reporter and Notary Public in and for the State of Utah
before the Honorable Boyd L. Park, at the Fourth Judicial
District Court Building, Provo, Utah 84601.

A P P E A R A N C E S

For the Plaintiff: Ms. Marti Jones
Attorney at Law
40 South 100 West, #303
Provo, Utah 84601

For the Defendant: Mr. Loren D. Martin
Attorney at Law
36 South State Street #1200
Salt Lake City, Utah 84111

P R O C E E D I N G S

THE COURT: This is the matter of Walter Semidey et al, vs. Lynton et al. The matter is before the court on a Motion for Summary Judgment and a Motion to Strike and that is you Mr. Martin?

MR. MARTIN: Yes sir.

THE COURT: That is your motion Mr. Martin. We

1 will hear from you?

2 MR. MARTIN: Thank you. Your Honor, this matter
3 was originally filed including two named parties. One
4 Mrs. Lynton and the other a plant manager for Dot Ventures
5 a Corporation. It centers around an incident which
6 occurred on the 16th of 17th of December in which the
7 plant manager Mr. Esquivel was informed by one of the
8 employees that \$20.00 had been stolen from the personal
9 belongings. In response to that, at that moment then
10 Mr. Equivel announced that everyone would meet in the
11 lunch room area within the manufacturing plant and then from
12 thereon they were all asked to submit to a checking or
13 searching or asked to show their wallets or purses one on one
14 in the restrooms and that really then results in the
15 complaint being filed six months later and then served
16 a little over a year later upon the Defendant Mrs. Lynton
17 and also against Mr. Esquivel, the plant manager of the
18 corporation.

19 Also included in there, there are several John Does,
20 Jane Does or however, they would be characterized and a
21 Motion to Amend subsequently was filed. Then the court
22 even though the Statute of Limitations had run before the
23 matter was served. I think in looking at it and saying
24 that since Mrs. Lynton was the officer and shareholder
25 of the corporation that would not be taken as surprise

1 and based on that I think is what the court granted that the
2 motion to include even though the statute had run.

3 So now we are here with other named defendants also,
4 meaning those who were acting under Mr. Esquivel's
5 direction in looking in the wallets or the purses
6 as they each took one by one and went into a restroom.
7 Then as a result of that, the accusations include wrongful
8 detention, civil assaults, civil battery, interference
9 with personal belongings and on and on as the nature
10 of it and everything else on that particular incident.

11 The question here before the court now is was
12 Mr. Esquivel acting as an agent of Mrs. Lynton or acting
13 as an agent of the corporation in a nut shell.

14 THE COURT: Or acting on his own.

15 MR. MARTIN: Yes. The argument of course that we
16 have in the Motion for Summary Judgment that is in any
17 event, he was not acting as an agent of Mrs. Lynton.

18 The corporation was organized in 1989 in Nevada.
19 Then it moved its manufacturing plant from the State of
20 Nevada to Utah in 1992, mid-1992. It is an operating
21 business. It presently employs 70 employees and ships
22 products to 45 states and has been very successful in
23 manufacturing and sales and marketing of little
24 decorative stamps. You see them all over in gift shops.
25 This is a marketing arm which they have is through one on

1 one type contacts. It is not through a retail store. It is
2 just one to one type sales arrangement that they market
3 these rubber stamps and extremely successful. It is based
4 upon really the art and the ability to market.

5 Well, the thing that looks like and there is certainly
6 no allegation given that Mrs. Lynton knew of the incident.
7 And so there is an attempt now after the court has permitted
8 the corporation to be joined. There is an attempt to try
9 and circumvent that corporate structure in two ways. One
10 of which is most interesting. If I may just use the board
11 here for a second?

12 THE COURT: Sure.

13 MR. MARTIN: The Nevada corporation seems that
14 plaintiffs make no claim that the Nevada corporation Dot
15 Adventures. Dot Adventures in Nevada corporation and that
16 doesn't seem there is any allegation that Dot Adventures,
17 a Nevada Corporation, isn't legally and lawfully created.
18 There is no claim that they didn't follow all of the corporate
19 formalities. Then the move and that is 1989. Then the move
20 to Utah in 1992 and I guess we can put a little box over
21 there, move to Utah, and opened the manufacturing plant
22 in Orem.

23 Now there is two ways of trying to attack this to say
24 that Jeanette Lynton was the employer rather than the
25 corporation. However, Dot Adventures and here is where the

1 twist is. Utah Law requires the named corporation,
2 incorporated or the abbreviation or something to that
3 affect, INC. Utah Law requires that as part of the name.
4 Nevada does not. So when a company then comes to Utah, Utah
5 Law requires does designate in the name the type of business
6 entity that it is Dot Adventures Inc.

7 Now looking if a person were to look at what has been
8 provided to the court is the computer print out of the
9 screen, Division of Corporations, it indicates on that
10 screen name in Nevada and the name in Utah, and then also it has
11 down at the bottom the default print out date of the
12 incorporation. And of course when we go and get the copy
13 of the application for this business to be registered
14 with the Division of Corporations in Utah, it shows that
15 Dot Adventures a Nevada Corporation is registered in
16 Utah as Dot Adventures Inc., and the date that was filed,
17 in other words, approved by the Division of Corporations. If
18 you look at the computer screen it doesn't look that way.
19 If you do the print out, it says the date of the
20 incorporation and that is nothing more than a tracking
21 print out. It is the date of qualification or date
22 of registration. Without looking at the certified copy
23 of the record and just taking a computer print out which is
24 not certified, and of course is not really a part of
25 the corporate record. Looking at that one line, it says

1 the date of incorporation.

2 The plaintiffs then try and say there were two
3 corporations, a Dot NEV and they characterize it something
4 like Dot of Utah or something. I don't understand, and then
5 try and argue that there were two different corporations.
6 Since this one was registered in Utah, January 4, 1993,
7 and this incident occurred on December 16, 17 of 1992, then
8 somewhere this falls into the cracks and since Dot Adventures
9 is either a new corporation that didn't exist until
10 January the 4th of 1993, then everything that happened
11 was her personal liability. It seems to be just a
12 misunderstanding but how and why it is called Dot Adventures
13 Inc., in Utah and Dot Adventures in Nevada and nothing
14 more or less than that. I can see how that mistake could be
15 made, but that is how the law applies.

16 All the plaintiffs including Mr. Esquivel for the
17 defendant the plant manager were paid checks not cash or
18 something else that didn't clearly indicate corporation but
19 all of them, as we provided copies to the court, are paid
20 with check written in the name of Dot Adventures Inc., a
21 corporation in Utah. All of them were paid in that fashion.

22 So the only other theory that could possibly be is some-
23 how we are going to pierce the corporate veil. If in
24 fact Dot Adventures was a corporation organized in 1989,
25 we need to maybe round it up just a little bit. If Dot

1 Adventures comes to Utah and does business here without
2 first registering is every corporate act conducted in Utah
3 null and void but the fact an individual?

4 Well, asking the court to rule on that and in that
5 fashion would be to throw out or maybe over state with a
6 raw brush the full faith and credit clause and Interstate
7 Commerce Clause Constitution. If every corporation
8 that came into Utah did not the first thing and the
9 representative of that corporation did, did not go to the
10 office of Division of Corporations. Their first act in Utah
11 was either by mail or personally to appear and get that
12 registration. Otherwise, the corporation is non-existent
13 so far as the laws of the State of Utah are concerned, then
14 you would have indeed very very serious problems about
15 all types of things, probably get into the Long Arm Statute,
16 if a person is even called anyway there would be serious,
17 be serious upheavals in the business law.

18 Well, Utah Law doesn't provide that. It doesn't require
19 that. The registration is required for the purpose of
20 identification of a registered agent and so there might be
21 some order in things. And the purpose underlying that and
22 provides for under a new revised Utah Business Corporation
23 Act, provides for some penalties, civil penalties as
24 characterized if not recorded within a certain time or
25 civil penalties that may be imposed.

1 Then it goes right down to the very last subparagraph
2 which we have quoted in our brief to the court, it simply
3 says that if a corporation does not register, it does
4 not invalidate any of the corporate acts. Well, it couldn't
5 be otherwise. If an entity both in under Utah Statute
6 and also under the restatement entity which is formally
7 incorporated in another law has that same authority over
8 here and over here in another law and the standard we go
9 back to full faith and credit and Interstate Commerce.
10 So that is so.

11 So then if Dot Adventures is doing business in Utah
12 and doing so successfully, is this a nullification of the fact
13 that it is a corporation or when you add , under law,
14 Inc., at the end of the name, does that somehow mean this
15 is a separate corporation than this one. Oh, you have
16 got the certification of all of the records from the
17 Utah Division of Corporations related to Dot Adventures Inc.,
18 it doesn't show any kind of application or Articles
19 of Incorporation that were filed separately as the same
20 corporation, and they were all paid under Dot Adventures Inc.

21 So to try and go around that and have her personally
22 liable, there would have to be another theory which now we
23 get down to saying, how are you going to pierce the
24 corporate veil. Well most of the time these things come in
25 where you have as the wording such as a connection between

1 the two you will find a sparsity of records not even annual
2 shareholder's meetings held but what you really find quite
3 often , I would guess, I don't know the experience of this
4 particular court, we would look at it and say there is a
5 mingling of funds, there is payment of debts and obligations
6 of the corporation to the principal shareholder and
7 officer to the exclusion of other creditors. And the fact
8 it depleted all of the assets of the corporation then we
9 look at it and say this person didn't have any, in other
10 words it was the alter ego of that operation.

11 The second prong, and that is the other part is they
12 must show that by recognizing the corporate entity will
13 be the upholding of a fraud an injustice. That has to be
14 looked at on an individual case. First of all the
15 corporate formalities, the corporate formalities have all
16 been met. There is nothing to really say otherwise. So
17 once we have met that, then you have to go to the next one
18 and say in addition to that, this operation of this
19 corporation as an entity was really upholding that would
20 be a verification or validation of a fraud upon the creditors
21 is what it is amounting to. That is hardly the case here.
22 We have 70 employees. The affidavit of Mrs. Lynton as the
23 President of the Corporation shows that in that affidavit
24 and that is why I am referring to that. It says 70 employees
25 and ships to 45 states, incorporated in 1989 and has been

1 incorporated and in good standing since that date. It
2 never missed a payroll, never been late on a payroll
3 including payments to all of the plaintiffs. Dot is current
4 in all account payables and Dot is currently on sales tax
5 in every state. In fact, Dot pays suppliers in 10 days
6 of receipt of payment so to take advantage of
7 payment discounts. Dot is current in all debts and no
8 other litigation is known.

9 The amended complaint then just simply makes the
10 statement that Dot Adventures is under capitalized in an
11 attempt to try and use that theory somehow to even
12 though we recognize it will pierce the corporate veil under
13 some theory. I don't know of any. There is none has been
14 presented under Rule 56 if we are coming forward to the court
15 by admissible evidence that is Dot is current on everything,
16 has paid everything. There isn't any dispute there. That
17 second prong of the argument fails.

18 I don't know whether it was an error or whether it was
19 some unrecognized sort of ploy or something of other
20 counsel but it says in Paragraph 5 of the amended complaint
21 that the plaintiff's allege affirmatively that Defendant
22 Jeanette Lynton at all times relevant hereto was the alter
23 ego of Dot Adventures Inc. Well, we say that it certainly
24 is not an error, obviously argues that the principal is the
25 corporation and it is the reverse of the usual argument

1 that you would hear as the corporation is the alter ego
2 of the principal acting party that there is such a close
3 mix of accounts and everything. That is just a sham. The
4 reverse is stated in the allegations of the complaint that
5 Jeanette is the alter ego of the corporation. I don't
6 see how that argument could be developed. That certainly
7 is what we have got here the allegations against the
8 corporation of being under funded or statements which are just
9 made it appears, just to somehow maintain a position of
10 saying that the corporation is responsible but yes we
11 still want to hold onto her personally.

12 It appears from the pleadings that plaintiffs knew of
13 the corporate existence before the initial complaint was
14 filed. That is why we came back in with the our motion and
15 objection to the amendment because it appeared to be a
16 conscious objective and selection that was made, not that
17 they didn't know about the corporation, not they didn't
18 know it didn't exist. The complaint was not signed until
19 July of 1993. It wasn't served until the beginning of
20 1994. So Plaintiffs really aren't and that is why we came
21 back with that objection, otherwise, we probably wouldn't
22 have filed an objection to it. But it appeared to us,
23 from looking at the pleadings, that it was a conscious
24 objective from the beginning to bring that allegation
25 against Mrs. Lynton personally with the design of sometime

1 later will just simply amend this. We would take the
2 position that having consciously made that decision as a
3 matter of strategy then they should be bound by that and
4 not surprised and not object to the basis upon what the
5 court said that there was no surprise to the corporation
6 itself.

7 But now you go to the next step and say now we can hold
8 them both, both the corporation and Mrs. Lynton personally
9 liable certainly begs the issue at this point and is not
10 justified and has no basis here in doing that, and we
11 would just submit that to the court.

12 THE COURT: Ms. Jones.

13 MS. JONES: Your Honor, plaintiffs would present
14 to the court that the issue as the counsel for the
15 Defendant Jeanette Lynton has presented it is not as
16 quite as complex as he would present it.

17 The issue before the court is a simple one are there
18 disputed issues of material fact that might, at trial,
19 provide grounds for holding the Defendant Jeanette Lynton
20 personally responsible for the tortuous actions of the
21 factory manager. And to use counsel's diagram, it is a
22 undisputed fact, Your Honor, that Dot Adventures is an
23 incorporated corporation in Nevada. It has properly
24 been incorporated since 1989.

25 It is also an undisputed fact that as of and I think
the actual date is January the 5th and it doesn't really

1 January 4th of 5th of 1993 there is Dot Adventures
2 Incorporated in Nevada , is properly registered as doing
3 business in Utah under that name.

4 The issue before the court, Your Honor, is who was doing
5 business in Utah under the name of Dot Adventures Inc.,
6 prior to this registration? Counsel for the defendant
7 Jeanette Lynton and indeed the Defendant Jeanette Lynton
8 in her capacity as the President of this company have
9 represented to the court that it was indeed a Nevada
10 corporation. However, Your Honor, the only proof that they
11 have submitted in support of that is Number 1 the affidavit
12 of Jeanette Lynton which they would appear to want to use
13 her capacity as President to avoid any possibility of or being
14 responsible of liability as an individual by representing
15 as President of the Corporation that it was indeed the
16 corporation that was acting without having properly registered
17 under Utah Corporate Law.

18 I would submit that the burden of proof upon the
19 defendant in this matter is substantially higher than that.
20 I think in the case that we cited in our opposition Sterling
21 vs. Pettit case, the Utah Supreme Court specifically
22 states if you would pardon a brief citation. That the
23 defendants were assuming corporate powers without authority
24 by using the unregistered name of Investor's Publishing
25 Company and hence reliable for the debts of that company.

1 Then the court goes on to say the burden lay on defendants
2 to show they were actually representing someone else.

3 Now the defendants in this case have also submitted
4 some corporate checks made out as what is represented
5 to be corporate checks, made out in the name of Dot
6 Adventures Inc., with the Utah address, made out during this
7 period of time and signed by the Defendant Jeanette Lynton.
8 They have submitted those checks as proof that it was a
9 Nevada corporation that was doing business in Utah. I
10 submit to, Your Honor, those checks are no proof of that.
11 Rather, those checks put this case in a much, in a fact
12 situation fairly parallel to that of Sterling vs. Pettit
13 where the individuals involved had signed corporate checks
14 without indication of representing the capacity and with
15 a corporate name that wasn't registered. We are then held
16 responsible for that check when the funds were unavailable
17 in the bank under the company account.

18 Although, it is not and this particular case presents
19 no issues quite as easy as corporate or non-corporate
20 check having been bounced. This case does present issues of
21 who was acting during this period of time. Again, the
22 defendants have argued that it was undisputedly this
23 corporation Dot Adventures. Plaintiffs dispute that claim at
24 this point.

25 Defendants have submitted that and have argued that

1 plaintiffs have submitted no evidence and contest to
2 that. I would submit to Your Honor that is accurate. We
3 have and I submit for the record, at this point, our
4 initial interrogatories, the originals and the defendant's
5 answers to our initial interrogatories. At that time,
6 in our request for production no. 3, we asked for copies of
7 the minutes, corporate minutes, of whatever entity was doing
8 business in Utah as Dot Adventures Inc., during this
9 period of time. We asked for the minutes, the business
10 minutes from March 1992 through March 1993. Counsel for
11 the defendants replied this was an irrelevant issue.

12 It appears to me, Your Honor, that this particular
13 point in the proceedings that is a highly relevant issue.
14 Who was doing business in Utah during that period? Give
15 me some, on the spot, at the time concurrent documented
16 evidence as to the fact that the corporation in Nevada
17 chose to come in and do business in Utah, set up a factory,
18 mail, ship, do all kinds of major business.

19 Now if you permit me to side track. Defendant's
20 counsel has argued that to require foreign companies to
21 register for any minor business that they do would really
22 through all Interstate Commerce out of whack. The Utah
23 Corporate Code is very cognizant of that fact, Your Honor.
24 Because the Utah Corporate Code under Foreign Businesses
25 and I am not sure of the exact section, I would have to

1 look it up. It has a lengthy series of exclusions of people
2 doing business in Utah that don't need to register as
3 a foreign business, as a foreign corporation. However,
4 that list of exclusions does not include a foreign
5 business that comes in, hires 70 employees and sets up a
6 factory to manufacture and ship in the Interstate Commerce,
7 products.

8 Defendant Lynton also argues that the Utah Code 16-10A,
9 15-02-6 that particular section in Utah Code, Your Honor,
10 allows unregistered defendants, okay, let's give a for
11 example. Let us assume that with proper documentary
12 evidence, counsel for the defendants are able to support
13 their allegations at this point that it actually was
14 a Nevada Corporation doing business in Utah. Then under
15 that particular section of the Utah Code, this Nevada
16 Corporation would not be barred from defending in this suit
17 even where it did not register until this point. But that
18 is not the question.

19 The question is not is this corporation barred from
20 defending. We indeed asked to add the corporation in the
21 assumption that the defendants are further able to support
22 their allegation that it was a corporation acting and not
23 the Defendant Lynton. But the fact that that corporation
24 could defend does not prove that it was a corporation acting.

25 It is therefore a disputed material fact whether Lynton

1 as an individual was doing business as the entity called
2 Dot Adventures Incorporated in Utah during this period of
3 time or whether it really was a Nevada corporation who
4 had failed to register, had failed to register,

5 If it was Lynton, Your Honor, then her Motion for
6 Summary Judgment clearly should be denied because of the
7 principle she is vicariously liable for the actions of her
8 agents.

9 If on the other hand, it was the corporation that was
10 acting, then there is another issue that arises under Utah
11 Code 16-10A-204 which says that an individual who presents
12 himself as a corporation knowing that he has not followed
13 the corporate requirements. That he is not properly
14 registered to do business in Utah or otherwise is personally
15 liable for the acts taken while representing themselves
16 as corporation. The Sterling vs. Pettit case is precisely
17 an example of individuals who were held personally liable
18 because they represented themselves, wrote checks on a
19 cancelled corporation, that presented itself as a company
20 as an incorporated company when in fact it was not.

21 Again in pursuing this issue, plaintiffs are
22 handicapped by the fact that only limited discovery
23 has occurred in this matter. It is instructive that Lynton
24 as an individual, was sufficiently aware of corporate
25 registration requirements that she did file for the trademark

1 under which these particular stamps are marketed. I think
2 the original filing for that was done in 1989 and that
3 filing was renewed in 1992. Each time that particular
4 trademark was held privately by Ms. Lynton. Those stamps
5 that she argues were produced by the corporation were then
6 marketed under a trademark that was held privately
7 by her. That doesn't necessarily prove anything except
8 that it proves that she had some awareness of licensing
9 and registration requirements. She may well have chosen
10 deliberately not to register in Utah until 1993 for whatever
11 reason.

12 In any case, Your Honor, given there are material disputed
13 facts in the record, it is the plaintiff's request
14 that the Defendant's Motion for Summary Judgment be denied
15 at this time. In the alternative, we would request
16 a 5 to 6 month continuance under Rule 56F to allow us
17 additional time to pursue discovery and be able to support
18 our claims that it was indeed Lynton and not the
19 corporation that was acting during the interim period.
20 Thank you.

21 THE COURT: Mr. Martin?

22 MR. MARTIN: The issue has been raised maybe
23 attacking Mrs. Lynton's objectives in not applying at an
24 earlier date. Although, the statute itself, pardon me, I
25 brought the wrong file, revised this corporation which

1 referred to really penalties that is imposed against
2 corporations. You cannot commence an action as a plaintiff
3 until you have registered, and that may not seek protection
4 of the Utah Courts until you are registered with the
5 Division of Corporations. Then it says that the failure
6 of a corporation to have authority to transact business in
7 this state , and this is the relevant part, does not
8 impair the validity of its corporate acts, nor does the
9 failure to prevent the corporation from defending
10 any proceeding in the State. I hate to use the word "clearly"
11 that it is over used. The corporations or foreign
12 corporations are foreign corporations when they are
13 in Utah when there is something to the contrary.

14 Now the allegations that has been made, although there
15 is no substance to that and there is no basis, there is
16 no evidence before the court that may be true. That there
17 was some deviousness in attempting to non-apply for that.
18 Dot Adventures Inc., was recognized as that when you do
19 business in Utah the INC only has this requirement where
20 you put on all the checks. It isn't just the checks. It
21 is the affidavit that we have provided to the court. The
22 affidavit which supports what the checks were and these
23 people all of the plaintiffs and the plant manager were
24 employees of Dot Adventures, Dot Adventures of Utah. Not
25 only that we provided certified copies of the Nevada

1 records, corporate records, we provided certified
2 copies of Utah Corporate records. This is just some
3 hollow claim that a business known operated as a valid
4 corporate entity was doing business. But now the question
5 has been raised as to her integrity. We would have to just
6 say to the court without being prepared to respond to
7 that. The recognition in Utah was first applied in August
8 of 1992. Then she was supposed, she had to get the papers
9 from Nevada to that time forward. We would just make a
10 representation to the court, that we can show that the first
11 time applying for was known. It was in August of 1992
12 prior to December 16th and 17th and moved to Utah
13 sometime in July. So finally got the records from Nevada
14 and applied in Utah the first part of January but
15 that is how those things occur. It is not some deviousness
16 and not some deception.

17 Now where we are is that in the Pettit Case it is
18 interesting where they cite that. One of the interesting
19 things about that is that Nevada corporation that was a
20 Nevada corporation later which the person coming here actually
21 entered into a lease himself on a race track. Then went
22 to a company saying that it was Bonneville Raceways.
23 Then went to an advertising company and procured
24 advertisements. Then on a subsequent date when the bill was
25 not paid, then a contract was written to Bonneville Raceways

1 a corporation which he signed then as president. It
2 appears at the first brush to be a corporate case but it is
3 not. It is a novation. The question is whether or not
4 this person after having personally incurred all of the
5 debt could say that contract which was subsequently
6 signed under his corporate capacity was a novation which
7 went back and released him as to personal liability. The
8 majority opinion said that obviously he is personally
9 liable. The interesting thing when you went back
10 through the statement of facts and say that oh by the way
11 the Nevada corporation was not in good standing at the time.
12 Just a little incident even if you want to argue this is
13 a corporate case. It is not. It is just a novation. The
14 novation didn't occur and wasn't part of the second contract
15 and he was not on the personal liability and that is the
16 Sterling vs. Pettit Case.

17 Now having presented the affidavit, the certified
18 copies from Nevada, the certified copies from Utah, copies
19 of the checks which are attached to the affidavit. The
20 fact that they were all employees of the Nevada Corporation
21 that moved to Utah and was engaged in a business here.
22 Now having presented that, then under Rule 56E, when the
23 Motion for Summary Judgment is made and supported, an
24 adverse party may not rest upon mere allegations or denials
25 in their pleadings. But his response by affidavit or

1 otherwise provide to the state must set forth specific
2 facts showing that there was and there is a genuine
3 issue for trial. If he does not so respond, then Summary
4 Judgment, if appropriate, shall be entered against him.
5 So having come in and shown now that by the certified
6 copies that Dot Adventures was a corporation certified
7 copies of the corporate records from the State of Utah that
8 Dot Adventures is in fact Dot Adventures Inc. The
9 affidavit of Mrs. Lynton that they were employees of the
10 corporation and the corporation was doing business and
11 the corporation had 70 employees. There isn't any evidence
12 that is used. We are not begging the issue. We are
13 not trying to deceive someone. We are just saying that to
14 just make the allegation cannot in the face of that, well
15 corporate records from both states and the affidavit and the
16 checks themselves under which they were all paid.

17 Dot Adventures Inc., now say that we have evidence
18 to show that the corporation didn't exist or was not
19 lawfully functioning or was under capitalized. There isn't
20 any evidence to show any of those. Those are mere allegations
21 and under Rule 56E where having come in and pleaded
22 that, they are not permitted just to repeat the allegation
23 that are made without any indication there is evidence
24 to support those issues at all. We would say not only is she
25 as an individual entitled to Summary Judgment but also the

1 accusations which are stated of being under funded should
2 be stricken or under capitalized should be stricken
3 from the record.

4 THE COURT: Well. I have read your memorandums
5 and motions , and it is the court's observation that in this
6 case that the only evidence really in front of this court
7 is the affidavit and the attachments with regard
8 to the Nevada corporation from the Utah corporation and the
9 statutes that have been cited. I don't believe that the
10 case cited by counsel is really applicable in this case.
11 At least, I find a number of distinguishing features in the
12 case and I don't think it is really reflective of the
13 situation here nor could we bottom this situation based on
14 that case and the laws that stems from it. If the law
15 is clear in that case and is consistent with prior rulings
16 from the Supreme Court, but it is simply not applicable here.
17 I am going to grant your Motion for Summary Judgment
18 on the basis that this was a Nevada corporation which
19 was moved to Utah. That all of the evidence before this
20 court is that they continued to operate as a Nevada
21 corporation moving its manufacturing plant to Utah it
22 did not domesticate timely actually but the statutes provide
23 that nevertheless even though they weren't, didn't
24 domesticate properly there may be some sanctions, but the
25 sanctions don't go to the point of saying that the party who

1 is the stockholder or officer becomes personally
2 liable. They continued to operate as a corporation
3 in the State of Utah. They paid checks under the name
4 of the corporation. The only distinction between the two
5 is the addition of Inc. The Utah Statute is required
6 that you use some distinctive terminology so that
7 people may know that it is a corporation and Nevada's
8 corporate law does not require that. Nevada's corporate
9 law is somewhat looser than Utah's law. And as a result
10 of that, a number of people actually incorporate in Nevada
11 as opposed to Utah even though they intend to use business
12 in Utah and then domesticate in Utah and file.

13 So I am going to grant your Motion for Summary
14 Judgment as it relates to Jeanette R. Lynton. You made
15 a Motion to Strike. I don't know how appropriate that is
16 or what you really want to do with that Motion to Strike.
17 That has not been addressed. You talk only about a Motion
18 to Strike the allegations of alter ego and under capitalized.
19 If in fact your Motion for Summary Judgment is granted,
20 I don't know what the Motion to Strike is going to
21 accomplish.

22 MR. MARTIN: Yes, I understand. What we would like
23 to do of course is and I have been in a situation where
24 the court has just granted that motion to not have
25 Jeanette Lynton and that changes the character of the name

1 of the case and that would seem to be surplus except
2 that it makes it a public record and there has been
3 an accusation made that it was under capitalized. That
4 is the only thing that we would primarily be concerned about.

5 THE COURT: Well, that right now that just stands
6 as a mere allegation and there is no substance behind that.

7 MR. MARTIN: I understand, Your Honor.

8 THE COURT: If she is removed as a defendant
9 in this case based on my granting your Motion, then I don't
10 know as that carries any weight but I have no problem
11 with granting the Motion to Strike for whatever value
12 that may give to you. There is no evidence of any under
13 capitalization and there is no evidence before the court
14 of an alter ego. Is there anything further you want me
15 to hear today? I notice that you have filed a Motion
16 recently with regard to depositions and the restructure
17 of those depositions by Ms. Jones. She has to have an
18 opportunity to respond to that.

19 MR. MARTIN: I have been in Mexico and we did not
20 really address that because we really thought that it would
21 be - -

22 THE COURT: It is but I want to make a comment on
23 that just for your benefit. When you do this you in fact
24 may become a witness which in fact then says that you can
25 no longer represent as counsel. So you may want to keep

1 that in mind.

2 MS. JONES: Okay. I had occasion to
3 consult briefly with Judge Davis in his capacity as I think
4 the chair at least on the committee of the Utah State Bar
5 with regard to interpreters and their use in the court
6 system. He suggested that it might be more, and he suggested
7 a number of possible other avenues that I will probably
8 pursue.

9 At the time I submitted this for the court, I did not
10 necessarily intend that to be the record, okay. It
11 was simply an issue that I was leaving town and I had
12 been unable to get in touch with my client. And really
13 indepth review of the depositions of some of them and I
14 realized that the timeliness upon which depositions
15 become approved had passed already. But given the particular
16 issues involved in these depositions, the fact that I did need
17 to review and that my client needed to review the video
18 tapes and that video tape was only limited. I only had
19 limited access to it. I wanted to submit something
20 to the court saying that I did have objections as they
21 stood to those depositions. And then I either discuss
22 it with counsel what further action might be taken and to
23 get in touch with another interpreter and sit down and
24 look at those video taped depositions or something.

25 THE COURT: I think that may be appropriate. I

1 only bring this up at this time because I didn't want
2 you to drop into a hole that you weren't aware of and then
3 find yourself not being able to represent your clients.
4 So I think you may want to just give that some consideration
5 as you and counsel discuss how to solve the problem and
6 maybe and I am not going to make any rulings or anything.
7 I just wanted to bring that to your attention that that
8 could possibly happen. I would presume that you would
9 rather be counsel for the plaintiff than a witness for the
10 plaintiff.

11 Okay, Mr. Martin will you prepare an order and submit
12 it to Ms. Jones for approval to form.

13 MR. MARTIN: Thank you.

14 THE COURT: And Ms. Jones if you will please
15 either sign that order approved to form or have an
16 objection register that objection so that I don't want to
17 become a babysitter for the order that is all.

18 MS. JONES: Yes.

19 THE COURT: I might indicate that our communication
20 between our offices have been good, Your Honor, so I
21 don't envision that there would be any problem.

22 THE COURT: Very good thank you. Do you want
23 to withdraw these? Do you want to have them made a part
24 of the file?

25 MS. JONES: Yes please. It is the original of both

1 the interrogatories.

2 THE COURT: The court won't read them unless they
3 are actually published for some particular purpose or
4 made reference to at the time of trial. They really ought
5 not to be in the file. Do you have any objection?

6 MR. MARTIN: I don't really know how to respond
7 to that.

8 MS. JONES: I made reference to them, Your Honor.

9 THE COURT: Yes, you made some reference to them
10 in the arguments.

11 MS. JONES: I would like them a part of the file.

12 THE COURT: We will make them a part of the file and
13 I just want to advise you that it is not my intention
14 to read them. The only advantage of having them in the
15 file, is that you have made some reference to them and
16 if you want to after this case is over with and completed
17 appeal the matter on the basis of my granting the Summary
18 Judgment. Thank you counsel.

19 MR. MARTIN: Thank you, Judge.

20 MS. JONES: Thank you.

21 THE BAILIFF: Everyone please arise, court will
22 be in recess.

23 (WHEREUPON, this matter was concluded)
24
25

C E R T I F I C A T E

STATE OF UTAH)
: ss.
COUNTY OF WASATCH)

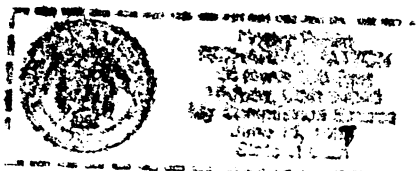
THIS IS TO CERTIFY that the HEARING was reported
by me in Stenotype, and thereafter caused by me to be
transcribed into typewriting by Richard C. Tatton and that a
full, true and correct transcription of said HEARING was so
taken.

I FURTHER CERTIFY that I am not of kin or otherwise
associated with any of the parties to said cause of action
and that I am not interested in the event thereof.

WITNESS my hand and official seal at Midway,
Utah, this 27th day of September, 1995.

Richard C. Tatton
RICHARD C. TATTON, CSR.

My commission expires:
June 15, 1997



Tab 24

1 IN THE FOURTH JUDICIAL DISTRICT COURT FOR UTAH COUNTY

2 STATE OF UTAH

3 * * *

4 **FILED**

5 Fourth Judicial District Court
of Utah County, State of Utah

6 **CARMA B. SMITH, Clerk**

Deputy

10-13-95

8 WALTER SEMIDEY

9 Plaintiff,)

10) Civil No. 930400503

11 HEARING TRANSCRIPT

12 vs.)

13)
14 JEANETTE R. LYNTON)

15 Defendant.)
16)
17)

18 BE IT REMEMBERED that on Friday, February the
19 10th of 1995, the HEARING was video taped before the
20 Honorable Boyd L. Park at the Fourth Judicial District
21 Court Building and was transcribed by Richard C. Tatton,
22 a Certified Shorthand Reporter and Notary Public in and
23 for the State of Utah.
24
25

A P P E A R A N C E S

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For the Defendant: Mr. Loren D. Martin
Attorney at Law
36 South State Street #1200
Salt Lake City, Utah 84111

P R O C E E D I N G S

THE COURT: This is in the matter of Walter Semidey
et al, vs. Dot Adventures Inc., et al. This is a Motion
for Summary Judgment brought by the defendants basically
seeking to dismiss all causes of action primarily, for
failure to state a cause. Mr. Martin are you ready?

1 MR. MARTIN: Yes sir.

2 THE COURT: Ms. Jones are you ready?

3 MS. JONES: Yes sir.

4 THE COURT: All right, Mr. Martin.

5 MR. MARTIN: Thank you, Your Honor. If it please
6 the court there are nine causes of action alleged in the
7 complaint. The entire matter rests upon a single incident
8 which involves some 50 employees. Many months later, these
9 four filed this complaint, and it was served approximately
10 a year after the incident. All employees work in a single
11 large area engaged in fabrication, shipment of a single
12 product. The area in which they work is a large single
13 heated warehouse facility containing cafeteria. I know
14 that this may be some review, Your Honor.

15 THE COURT: Go right ahead. I am not - -

16 MR. MARTIN: Containing a cafeteria area, work
17 space, office, restrooms and shipping. The product consists
18 of a variety of decorative rubber stamps which are widely
19 marketed from the single location in Orem.

20 On one day the 16th or 17th of December and that is not
21 very relevant in any dispute between the parties, an
22 employee had reported that there were \$20.00 missing and taken
23 from her purse. Work was stopped. A search was conducted.
24 The money was not found. The employees were asked each
25 individually to display their pockets, their pocket books,

1 one at a time to a supervisor in either the women's
2 restroom or the men's restroom. No money identifiable
3 as being stolen was found. Everyone went back to work.

4 During the entire time no person left. No force
5 was used. No force was displayed or inferred. No door
6 was blocked. No guard was posted. None was inferred. No
7 person made any objection then or after. Everyone went
8 to the cafeteria area. Every person walked one at a time
9 through the proposed checking process. No person objected
10 to the process. Everyone including all the plaintiffs
11 went back to work.

12 No one ever complained the next day. No one ever
13 so much as wrote an unsigned note of complaint. No one
14 objected at the Christmas Party. Finally, more than
15 six months later when these four persons, plaintiffs, were
16 working at other companies, someone, somehow, got together
17 and persuaded the four that they ought to go back and file
18 a lawsuit to see what damages they could do to their former
19 employer.

20 Having never made any objection while they were there,
21 these people now want to go back and persuade this court
22 that the conditions there were so oppressive, discriminatory,
23 foul, harmful, malicious and disgusting as to warrant
24 court intervention demanding punitive damages, exemplary
25 damages and compensation unspecified, when they themselves

1 never raised one finger of objection. Their own conduct,
2 Your Honor, we say speaks more loudly than their words.

3 The facts as set forth in Defendant's Memorandum in support
4 of this Motion for Summary Judgment are not contested.
5 No person was injured. No person was singled out. No one
6 ever complained of the nature of the work space. No one
7 ever complained that the working conditions were
8 inherently damaging. No person ever died or complained
9 of illness. No person ever complained that the working
10 space was not adequate. No one complained that it was
11 unhealthy or cramped or in anyway injurious to health. No
12 person was impressed into the labor. No person was an
13 indentured servant. Every person had requested employment.
14 Everyone was free to come and go. No one ever complained
15 about the work hours. Every person was paid the wages as
16 agreed. Many people still freely work there. Many people
17 have worked there for many years. No intent to injury
18 has ever been alleged. No injury ever occurred. The
19 entire case hinges upon plaintiff's feelings and emotions.
20 No one ever said that they suffered a loss. They were even
21 paid for the time during the period of questioning or
22 checking. No one was ever docked any hours for such
23 interruptions. No one has ever claimed that their careers
24 had been damaged nor is there any claim they were damaged
25 in their abilities or opportunities for employment. They

1 all have affirmatively stated that they have since improved
2 their individual employment positions both in level
3 and earnings.

4 Maybe I am too much of a romantic. I have never been
5 accused of that but in the history of the American Labor
6 Movement, this has got to be a first. I mean I don't
7 pretend to know everything that has happened but this
8 is unique. My old grandfather was a Coal Miner. That
9 condition, we all know what that was. That was a part of
10 our history. Complaints were made, severe battles fought,
11 injuries inflicted and the conditions were improved. Anyone
12 looking back at our nation's history can easily see that the
13 American Labor Movement developed through hard times, through
14 the Industrial Revolution to our present body of law. Those
15 were tough times and they were tough people.

16 Yet, looking at this case, we can see the struggle
17 where we have been to develop the body of law that we have
18 at the present time and it was hard and harsh, and we could
19 see that, but where we have people who are taking a position
20 that having been employed and now moved to higher paying
21 jobs being unable to show any injury and never rising
22 at all to make any complaint except to go back and say that
23 their own sensibilities were injured while they worked
24 at this former place of employment, and then ask the court
25 to come in and give them regress for an issue which now is

1 moot does not fit within that body of law or development
2 of law, to say that there can be a regress for feelings,
3 for emotions.

4 The law as we try to address those issues as
5 was well stated and has been before and will be stated
6 again, does not provide regress for every rudeness or every
7 hurt sensibility. The regress isn't there. And then when
8 we come back into court and try and respond and say that
9 this was by consent all of these things, all of these things
10 which are alleged to have happened to them. If it was
11 consensual then there is no cause of action. Then the
12 allegation was well our feelings didn't permit us to
13 consent. That is inconsistent with the large body for
14 development of labor law. At least say something to
15 object, any word but there wasn't any word.

16 The bottom line is that the law doesn't recompense or
17 make a cause of action for rudeness.

18 Now going to the specific of the causes of action that
19 are alleged. No. 1, wrongful detention. There is a quote
20 in the Criminal Section as the basis for establishing the
21 civil cause of wrongful detention. The definition is laid
22 out in the Criminal Code. It is in the same section that
23 comes down through custodial interference and the
24 substantial deprivation of liberty. Yet, there is
25 absolutely no show of force in this case, there is none while

1 the door is closed. Well, the door is always closed it
2 happened to be winter. The best we have.

3 The assault, there is no showing that there is any
4 intent to inflict any injury. While there was a fear of,
5 so the allegation goes, when I was told that I had to go
6 into the restroom, I had a fear that I might be improperly
7 touched. That constitutes an assault the fact that I had this
8 fear of imminent improper touching. That is the allegation.

9 Battery, well I was touched. They had me take off my shoes.
10 One woman said that they had, they told, just taking it at
11 the very best facts, she did all of those things when requested.
12 Taken the facts most favorable to what was asked even if it
13 may be disputed that it was asked.

14 False imprisonment requires the alleged offender demonstrate
15 the force or the threat of force was used. There is no force
16 or threat of force.

17 How can a person know if the person is disagreeing if
18 they don't say, "I disagree" or not walk over. How can someone
19 say I did not get consent, while all of their actions and
20 conduct would indicate that they consent and there was no
21 injury and none was intended.

22 From looking at it, I can say I was offended but
23 there wasn't even a statement was made that I was offended.
24 Now they come back with allegations of wrongful detention.
25 assault, battery, false imprisonment, intentional and

1 reckless infliction of emotional distress. That can't be
2 based merely upon negligence. There has to be much more
3 of placing a person in harm's way. The fact that a conduct
4 is claimed to be extremely offensive is not itself
5 sufficient to create a cause of action and that Sams vs. Eccles
6 Case is cited.

7 Intrusion into physical privacy is another cause of
8 action because the plant manager asked me if he had a Temple
9 Recommend. Does that create a cause of action? Those
10 things which we have seen that body of law that says if
11 you go and take someone their private affairs or a photograph
12 and publicize that on the news and the paper and subject
13 them to a malicious ridicule that line of cases now is
14 attempted to be drawn into if I go and a person in a work
15 place happens to ask me if I go to church. That is an
16 actionable cause is what they are asking this court to
17 impose.

18 Intrusion into personal belongings is a new sort of a
19 thing because they asked me to open my wallet when I was
20 there and show what was in my wallet. Intrusion into
21 personal belongings or intrusion into personal affairs. I
22 don't know where these come from. There is one line and
23 one case which I think is in Washington. The case was cited
24 and they cite that for authority. In Clammoth Valley
25 Washington where the person was subject to severe

1 harassment during the work place. Was ordered to sit
2 next to the person who had been the principal abuser.
3 The people were in minority. Then the company and the
4 people who were employed by the one company went out into the
5 community to tell people these people were thieves and
6 could not be trusted, and they could not be employed
7 somewhere else. The court there in Washington said that
8 is outrageous when there is such affirmative conduct taken
9 to destroy another person. Here now we come in with this
10 and this case. It is not every touching or laying on of
11 hands that constitutes an assault or battery, gentle touching.
12 None of the men say that they were touched. The woman
13 claims that she was touched. Yet, six months later is
14 the very first time and principally our argument would
15 say first of all these types of cases which they are quoting
16 in our reply to our response when I went down through them,
17 they don't stand for what was, they are stretched to the
18 point where they really did not apply. I can go through
19 those but I think the court has had the opportunity to
20 look at the papers on the these cases.

21 It is an unusual case. It is a case which seems in
22 a sense to be not a cause of action but a cause. That is
23 why we are making this Motion for Summary Judgment. I
24 know that Summary Judgment is difficult. But we come in
25 on the Motion for Summary Judgment and as the rule required

1 went through and marshalled all of the evidence by quoting
2 the depositions that have been taken. The rules require
3 of course if any of that fact is disputed, then you just go
4 through and say this fact is disputed. The argument that
5 comes back, of course, because it was not disputed. To
6 simply to say well it is for a jury to see whether any
7 sensibilities were hurt or not. The law does not permit
8 regress for hurt feelings and without enormous something
9 that we can actually for years know. Your Honor it has
10 been associated with some physical injury.

11 Now we have gone past that point where we can look into
12 some sensibilities much more than we used to years ago.
13 This goes well beyond that and there was no objection ever
14 made. It was consensual, no objection. They did not
15 walk in without complaint, walked out and go to the Christmas
16 Party and everybody go back to work without a single
17 complaint. And now want to go back and establish a body
18 of law that says even though I am not working at the
19 company any more, I can go back six months to a year and
20 say wait a minute, I felt really bad while I was working
21 there. I don't think they are doing their business right.
22 I think they ought to do it different. I think there is other
23 people there that would say so if they had enough gumption
24 and get up so I am going to speak for them and that is where
25 I say it is not a cause of action it seems to be a cause.

1 Thank you, Your Honor.

2 THE COURT: Ms. Jones.

3 MS. JONES: Your Honor, counsel, as we know in
4 order to prevail on their motion this morning, the defendants
5 must show that first there are no material facts in dispute.
6 Secondly, they are entitled to judgment as a matter of law.
7 As you know again, in ruling on this motion all the
8 evidence before the court and all disputed issues must
9 be considered in the light most favorable to the plaintiffs
10 because we are the party opposing this motion.

11 The defendants failed to meet the first prong, even
12 the first prong. They argued here that there are no material
13 facts in dispute. This is quite simply. Your Honor, not
14 the case.

15 The defendants have admitted that all of the plaintiffs
16 were checked as they called the physical search of the
17 plaintiffs and their property for allegedly missing a \$20.00
18 bill.

19 They claim that the plaintiffs consented to the search.
20 The plaintiffs adamantly dispute this, Your Honor. They
21 were coerced by threats of job loss and slander to remain
22 away from their areas of work to enter a bathroom
23 individually and submit to a physical search. Whether or
24 not the plaintiff's consented or were coerced, is an
25 extremely material fact vital to the determination of the

1 issues in this case.

2 The defendants contend that their actions in verbally
3 abusing, physically searching and falsely imprisoning the
4 plaintiffs were not outrageous or deliberately calculated
5 to insult and demean them. The plaintiffs dispute this
6 characterization of the facts. The only possible purpose
7 of the search was to insult and demean them because even if
8 a \$20.00 bill had been found, there would have been no way
9 to prove that the \$20.00 bill was the one allegedly stolen.

10 There were 35 to 40 people searched in this case, Your
11 Honor. Let me make it clear that at a very strong
12 contributing factor to the passivity of the work force was
13 the fact that all of them were Hispanic, Spanish speaking.
14 Many of them don't understand the laws of this country.
15 They don't understand their rights. They are on the whole
16 unskilled labor and have limited job prospects if at all.

17 Their jobs were important to them. They were threatened
18 specifically by the Defendant Esquivel that as he put it
19 if anybody in this group wants to object to this search let
20 him speak up now and we will know who the thief is.

21 The defendants argue that the plaintiff's consent. As
22 I cited in my objection to this motion, Your Honor, the
23 Restatement of Torts explains that if a reasonable person
24 would not understand from the words or conduct the consent
25 is given, the other is not justified in acting upon the

1 assumption of consent even though he honestly so believes
2 and there is no apparent consent.

3 Furthermore, in determining whether someone has ,
4 whether on the alternative coercion has been used , it is
5 not certain that the duress has to be of a type to which
6 a person of ordinary firmness or a reasonable person would
7 yield. Though this may be important in determining whether
8 the other party's will was actually overboard. Age, sex,
9 mental capacity I would add race, background, familiarity
10 with the procedures of this country, the relation
11 of the parties and antecedent circumstances all may be
12 significant. The type of conduct to which the other party
13 consents is also important.

14 The defendant's further claim that there was no evidence
15 that they intruded into the plaintiff's personal affairs.
16 On the contrary, plaintiffs give specific examples of
17 an intrusive and illegal personal questions in an employment
18 interview, Your Honor. This was not as the defendants
19 have characterized it a routine conversation after
20 employment. The plaintiff's give specific examples
21 of the search of a physical search of their persons, purses,
22 pockets, wallets, and lunch bags and other bags they may
23 have happened to have with them.

24 Finally, Your Honor, the defendants have argued
25 that there is no evidence to support plaintiff's allegations

1 of intentional or reckless infliction of emotional
2 distress.

3 On the contrary, plaintiff's affidavit cites numerous
4 examples of an on going pattern of deliberate
5 verbal harassment and put downs. Plaintiffs have cited
6 repeated accusations that they were thieves, robbers,
7 wet backs and lazy good-for-nothings. One of the plaintiffs
8 has testified that she was required as a way of demeaning
9 her to clean up dog feces out of a carpet. The culmination
10 of this abuse, Your Honor, was only the culmination of
11 said abuse was the requirement that they submit to a
12 physical search of their person and possessions.

13 The defendants have claimed here that there was in
14 actuality no physical touching. Specifically, in the
15 case of Ms. Santiago, Your Honor, that is definitively not
16 the case. Ms. Santiago states in her affidavit that not
17 only was she forced to undue her waste band but undue
18 her blouse, undue her bra so that the supervisor could run
19 her hands all around her waist and up and down her midriff.
20 She was also subjected, Your Honor, to the deliberately
21 insulting procedure of the supervisor running a pencil
22 through her hair.

23 It is clearly Utah Law that where the facts of a case
24 are amenable to different interpretations and where issues
25 of reasonableness are to be determined, those issues must

1 be decided by trial. This case is a classic example of
2 precisely those issues.

3 Defendants wish to characterize their actions as normal
4 and appropriate investigative checking to protect the
5 plant and other workers from theft. Defendants claim that Mr.
6 Esquivel's harangues, and accusations were well intentioned,
7 motivational talks to the work force. Defendants also for
8 good reason wish to characterize the plaintiffs failure
9 to object when threatened as freely giving consent to
10 their imprisonment and search.

11 On the contrary, it is the plaintiff's reasonable
12 contention that these were intentionally tortious acts designed
13 to humiliate and demean the plaintiff and also designed to
14 dominate and control and force their submission to assault,
15 battery, invasion of their personal affairs and interference
16 with their liberty.

17 The defendants have claimed that there were no damages.
18 As the affidavits of the relatives of the parties will show
19 Your Honor, and they are on the record, there was severe
20 stress, severe emotional distress. And in at least one case,
21 the incapacity to work productively for some period of
22 time.

23 The underlying facts of this case may be interpreted
24 in different ways, and the reasonableness of the actions
25 of the defendants and the plaintiffs may also be interpreted

1 in different ways.

2 The crucial point of this case. Your Honor, is which
3 of these characterizations is right and because the
4 facts are clearly disputed a trial is necessary to interpret
5 and to determine the reasonability of the parties' actions.
6 Therefore, plaintiff's respectfully request that the
7 Defendant's Motion for Summary Judgment be denied. Thank you.

8 THE COURT: Let me ask you a couple of questions.

9 MS. JONES: Yes.

10 THE COURT: In your memorandum the only as I recall
11 and I'll ask you this has been my recollection, if this is
12 not appropriate. The only reference you have made as
13 to attached exhibits. You have not referred to any of the
14 other records anywhere is that correct?

15 MS. JONES: That is correct, Your Honor. I think
16 that the specific exhibits and defendants have cited the
17 depositions. I have an objection on the record to the use
18 of those depositions because I consider the translation
19 and interpretation of those depositions significantly
20 flawed, to say the least. We have them on video tape. If it
21 becomes necessary, I would be willing or would consider
22 at least paying someone.

23 THE COURT: You have never raised that before?

24 MS. JONES: Excuse me?

25 THE COURT: You have never raised that anywhere in

1 your argument that has been raised and objection to the
2 citing to the record because the record was not accurate.

3 MS. JONES: Excuse me. I do specifically state
4 that in my objection. Your Honor.

5 THE COURT: Where at?

6 MS. JONES: That was on file - -

7 THE COURT: In your argument?

8 MS. JONES: In my, quite possibly, let me find
9 a page, Page 7, the second paragraph.

10 THE COURT: Where is your formal objections?

11 MS. JONES: They were previously filed probably
12 October.

13 THE COURT: Who made the transcripts from them?

14 MS. JONES: The problem that we are dealing with
15 on the depositions, Your Honor, is that they were video
16 taped. Most of them were video taped. The tail end of one
17 was not. There was an interpreter present. My objections
18 that were filed with the court with that formal objection,
19 have to do and the only transcript were English transcripts.
20 None of the Spanish was transcribed. My objection has to do
21 with the fact that when I went back and reviewed
22 the video tapes, there were substantial inaccuracies in
23 the translation and interpretation. I can give you one
24 example. I can't cite exactly which deposition it was.
25 okay, but counsel for the defendant asked a question

1 something to the affect so you were searched, okay, or
2 they searched you. The interpreter said , actually excuse
3 me, counsel for the defendant said, "So they checked you,
4 okay you were checked." The interpreter used a term
5 "revisar" which in Spanish, Your Honor, means to search.
6 It also means to check. It has both possible interpretations.
7 Now the person giving the deposition artfully understood the
8 search meaning. What he replied was, "Si me revisaron"
9 they searched me." Of course when the interpreter then
10 translated it back what he said was, "Yes, they checked
11 him or yes, they checked me." Okay, a minor detail.
12 They were consistent inaccuracies throughout with those
13 problems. Given the circumstances and given what I
14 understood at the time to be an agreement between counsel,
15 that we would later go over those and revise the translations
16 if necessary. I didn't spend the whole , all of the
17 deposition objecting to all of these issues.

18 THE COURT: I would have expected in your
19 memorandum that if you are going to object to any of the
20 depositions specifically with the areas that he has cited,
21 that you would have raised that and given me some argument
22 to the contrary. You have given me simply the fact that
23 they have not been transcribed correctly. What does that
24 mean to me? That doesn't mean anything. Does that mean
25 everything was inaccurate? Does it mean - -

1 MS. JONES: No.

2 THE COURT: Does it mean that some minuscule thing
3 was inaccurate. You need to address yourself to the specific
4 areas that he is using to bring his motion.

5 MS. JONES: I would respond too, Your Honor, that
6 wasn't a major issue because he limited the use of the
7 depositions to areas that I had not filed a formal objection
8 or that had not asked for a retranslation of.

9 THE COURT: Then you have no objections to his
10 citations?

11 MS. JONES: I have no objections to his citations.
12 However, and this is my point. I do not consider that those
13 depositions as taken give an accurate picture of what actually
14 took place given the problems with the interpretation and
15 the translation.

16 THE COURT: Well, let me just turn over to a few
17 things. I am looking at MUJI. When you get down to
18 drafting the jury instructions, I am rather familiar with
19 this book. I was on the Board of District Judges when we
20 approved it. False imprisonment, the plaintiff has a
21 burden of proving each of the following elements to prevail
22 on a claim of false imprisonment. We don't have any jury
23 instruction on wrongful detention. I assume that is all
24 one in the same thing. The defendant acted intending
25 to confine or restrain the plaintiff. That is one. Two,

1 the defendant's action resulted in the confinement or
2 restraint of the plaintiff. Three, the plaintiff
3 was conscious of the confinement or restraint or was
4 harmed by it. Four, defendant acted without having
5 reasonable grounds to believe that the plaintiff committed
6 an offense. And a person is restrained when that person
7 is not free or reasonably that person is not free to leave
8 a place to which that person has been confined and does not
9 consent to the restraint.

10 I don't find anywhere, where you meet that burden. Tell
11 me where you meet that burden?

12 MS. JONES: I will submit, Your Honor, that we
13 have clearly stated, No. 1, that the defendants were
14 confined in an area, not their work area in the area of
15 the cafeteria that they were confined there.

16 THE COURT: Who has testified to this?

17 MS. JONES: It is in the affidavit, Your Honor.
18 Obviously, at this point we don't have testimony.

19 THE COURT: Well, we are at a point where
20 Summary Judgments have been filed and you need to, the
21 burden is on you. You need to come forward with something
22 that is a material issue of fact or your ability to meet
23 the minimal requirements by the jury instructions.

24 MS. JONES: I would submit, Your Honor, that I
25 believe we can meet those. I can go through them

1 specifically.

2 THE COURT: You have to demonstrate that to this
3 court. You are well aware as I am as Mr. Martin is, that
4 courts don't like to particularly grant Summary Judgments.

5 MS. JONES: Yes.

6 THE COURT: But we will grant them if it appears
7 that no reasonable mind is going to agree with you on your
8 allegations which are simply broad spread with a broad
9 brush. We have to get down to the nitty gritty of these
10 and how are you going to actually prove these.

11 The next thing that bothers me and in your whole
12 allegations is that even if they are true, how is your
13 people been damaged? The fact that they say, "Oh, gee whiz
14 I went home and I had a hard time for a couple of
15 months. I couldn't even go look for a job." You have
16 got to have some reasonable degree of medical certainty
17 as to their damages. You don't have any of that anywhere.
18 You don't have any doctor's testimony, any expert's testimony.

19 MS. JONES: Well, Your Honor, if it please the
20 court, the defendants haven't asked for any list of witnesses.

21 THE COURT: That doesn't matter. It is your
22 burden. They can go in there with their head in the sand
23 because it is your burden to carry.

24 MS. JONES: At trial. I submit that at trial
25 we will be in a position.

1 THE COURT: Well. but you have got to at this point
2 and time, you have got to convince me that there is either
3 some material issue of fact which needs to go to a jury.
4 And then further, you have got, if it is not material, well
5 let me back up. If there are any material issues of
6 fact in this case that are disputed, then it goes to the jury.
7 I will not give a Motion for Summary Judgment. What Mr.
8 Martin is saying is there is no really material issues of
9 fact in this case. Even when you get down through and
10 you walk through everything, even if we let you walk through
11 these things which is now mostly on feelings and there
12 was no objection at the time, do you take issue with that?

13 MS. JONES: The fact that there was no objections
14 at the time?

15 THE COURT: Yes, that there was any objections.

16 MS. JONES: As I stated, Your Honor, my clients
17 felt that any attempt to object would result in immediate
18 termination.

19 THE COURT: That is a feeling. What have you got
20 besides a feeling? You can't Cross Examine feelings. What
21 have you got that is material evidence that there were
22 threats of job loss and threats of slander if they didn't
23 submit to this search or whatever term you want to use?

24 MS. JONES: I have the testimony of three of
25 the witnesses, plaintiffs excuse me that Mr. Esquivel

1 specifically told them, the whole crowd of them that if
2 anyone objected that, you know, cynically and sarcastically,
3 if anybody doesn't want to be searched go ahead and object and
4 we will know who the thief is.

5 THE COURT: But that is not in any of the
6 depositions?

7 MS. JONES: It is not in the depositions. Well,
8 no, that is not true. That is not true. It is in the
9 depositions. I would have to go back - -

10 THE COURT: That language is in some of the
11 depositions?

12 MS. JONES: That language is in at least one - -

13 THE COURT: But you didn't cite that language
14 in your memorandum?

15 MS. JONES: I cited, instead to the affidavits
16 which I submit are more correctly translated and more accurate
17 picture of what took place.

18 THE COURT: There is a rule also that says that
19 anything that you submit by way of affidavit and a motion
20 which is contrary to the discovery is not to be considered
21 by the court.

22 MS. JONES: I would submit, Your Honor, that nothing
23 that we have sent in, submitted by affidavit is contrary.
24 That there were questions that were not asked, and there
25 was information that was not volunteered in the deposition.

1 And that information the plaintiff have a valid right to
2 supplement those depositions with their affidavit where
3 necessary.

4 THE COURT: Well, let me draw your attention
5 to the assault elements. The defendant is liable to the
6 plaintiff for assault if one, the defendant acted
7 intending to cause harmful or offensive contact with the
8 plaintiff or imminent apprehension of such contact.
9 Two, as a result the plaintiff was thereby put in imminent
10 apprehension of harm or contact. Three, the plaintiff
11 suffered injuries approximately caused by the defendant's
12 action.

13 Now if what Mr. Martin tells me is true that all of these
14 people have actually , are not employed in jobs which
15 are better paying then the one they had there, where is
16 your damage? Where is your damage?

17 MS. JONES: There is substantial and significant
18 damage - -

19 THE COURT: Pardon me.

20 MS. JONES: There is substantial and significant
21 damage to the health and well being.

22 THE COURT: Have you got any doctor expert
23 testimony to that affect?

24 MS. JONES: To this point, no Your Honor. My
25 clients are poor enough and were poor enough at the time that

1 they could not afford to go and be evaluated.

2 THE COURT: Unfortunately, that is not a good
3 reason. And now to have them examined, how long has
4 this been over a year, two years whatever it is. What
5 doctor is going to be able to go back and say, "Gee whiz,
6 I can reconstruct the fact that you were emotionally
7 damaged." Then how do you put a dollar figure to that? That
8 burden is yours.

9 Let me take another step. Intentional infliction of
10 emotional distress. To prove the claim of intentional
11 infliction of emotional distress, the plaintiff must prove
12 each of the following elements. One, outrageous conduct by
13 the defendant. Two, the defendant intended and this is
14 and two, the defendant intended to cause emotional
15 distress or acted with reckless disregard to the probability
16 of causing emotional distress. And three, the plaintiff's
17 suffered severe or extreme emotional distress which was
18 approximately caused by the defendant's outrageous
19 conduct. Even if we get to trial and I let you go to trial,
20 what are you going to convince the jury that there was
21 extreme emotional distress where you have absolutely no
22 expert coming in to testify that these people suffered any
23 damages as a result of this? Are you not just spinning
24 your wheels and taking up a lot of court's time for no
25 cause of action?

1 MS. JONES: I don't think so, Your Honor. I would
2 submit that these plaintiffs were damaged and - -

3 THE COURT: What are you going to use for
4 evidence for that?

5 MS. JONES: If we have to, we will get expert
6 testimony. As it stands, we have the testimony of family
7 that witnessed this.

8 THE COURT: Well- -

9 MS. JONES: The people that associated with them
10 in their daily lives that witnessed the distress, depression,
11 the pressure.

12 THE COURT: Okay, anything further you want to tell
13 the court?

14 MS. JONES: Anxiety caused by this.

15 THE COURT: Any of them ever go to a doctor?

16 MS. JONES: They couldn't afford to, Your Honor.

17 THE COURT: Do they have a medical plan where they
18 worked?

19 MS. JONES: No, they did not.

20 THE COURT: Anything else?

21 MS. JONES: Excuse me.

22 THE COURT: Anything else you want to tell me?

23 MS. JONES: I would submit that we can prove
24 those issues on each of those that you have stated each of
25 those issues we can prove. I have nothing further.

1 THE COURT: Mr. Martin.

2 MR. MARTIN: Just the one comment, Your Honor- -

3 THE COURT: You have to come up here. We have
4 video recording and if you are not standing up here it doesn't
5 do as good a job as it ought to.

6 MR. MARTIN: All these new fangled rules.

7 THE COURT: Yes, they are getting too complicated
8 for me.

9 MR. MARTIN: I think that counsel was quoting,
10 as I recall from the Restatement and the last phrase of
11 the Restatement was or no apparent consent, was the phrase
12 I remember. I don't know exactly where that was.

13 MS. JONES: That is not what it says.

14 MR. MARTIN: You can help us with that at the end
15 of that quote.

16 Then just the questions and I can understand the
17 questions and the nature of the Labor Law that we have at the
18 present time as discriminatory processes in the employment.
19 So the interview questions where we don't even dare now days
20 attach photograph or ask any of the questions about social
21 life, I guess, if the person is not hired.

22 THE COURT: This all runs to labor discrimination
23 and whether or not you are terminated or not hired.

24 MR. MARTIN: None of this happened in this case.

25 THE COURT: I have a real problem relating that

1 to this case.

2 MR. MARTIN: The interpreter, we had an
3 interpreter by the way on the depositions which was not a
4 certified interpreter the first time. There was some
5 objection made to that and so we hired a certified
6 court interpreter for the other three depositions which
7 were conducted, Your Honor. The first one, we had a person
8 who was qualified in speaking Spanish and you can see the
9 nature of the dispute over that, a word here or there.
10 I don't think there is anything else, Your Honor.

11 THE COURT: Ms. Jones, I am concerned about your
12 ability to prove the elements that are required by the
13 jury instructions in this case. Now you may feel like that
14 you can do this with additional discovery or whatever.

15 Right at this point and time, I don't think there is
16 anything here that would convince me that you could do
17 this. I haven't seen any material, real material issues
18 of fact. But it does bother me. I just hate to
19 dismiss this case when we have a situation of there may be
20 something there, but by the same token I think it is almost
21 a waste of time case. I am concerned about your ability
22 to meet any of those elements or at least all of them. I
23 am really concerned about your ability to meet damages
24 even if you get to the jury on some of these other things.
25 But until you have had an opportunity to maybe to look a

1 little deeper , I am a little concerned about the granting
2 the motion as well, because if your clients have some sort
3 of claim there. I am sure that the threats of job
4 loss and the threats of slander which you allege pushed
5 them into submitting to a search or a check or whatever it
6 was. If that is all true, then at least will be denied
7 on the part of the defendants here. I don't know who will
8 be coming in for witnesses on the part of the defendants.
9 Maybe other people that work there and say that never
10 happened. But I can tell you , your people thoughts and
11 feelings that are not appropriate for Cross Examination
12 and may not even be admitted into evidence. It may not even
13 get to question on those. So you have got to have something
14 specific, something that you can tie too to get anywhere.

15 Now I just spent three weeks in a case somewhat
16 similar to this and just plain flat no caused. I wasn't
17 all that happy about spending three weeks on a case
18 that I felt from day one was not going anywhere. So I
19 am really inclined to grant motions for Summary Judgment
20 to save a lot of court time and a lot of effort.

21 What I am going to do which is contrary to the rules
22 actually, I am going to give you some time to demonstrate
23 to this court that you can actually prove some of these.
24 You give me names of witnesses who will testify that there is
25 some damages there. You give me what you believe to be

1 appropriate translations of the depositions if they
2 have any bearing on this case whatsoever so that
3 we can not have a question of improper translation of the
4 depositions. If it requires reopening depositions you
5 better do that because I am concerned about the affidavits
6 in and of themselves. This is something that comes on board
7 after discovery, and some of it apparently is somewhat
8 contrary to discovery and that bothers me. I will give you
9 that opportunity.

10 I will give you 30 days to get that done and prove to
11 this court that this court should not grant you, should not
12 grant Mr. Martin's Motion for Summary Judgment. I will
13 give him an opportunity to respond to it. If I need
14 a further hearing I will ask for it, okay.

15 MR. MARTIN: Do we have a specific date for
16 that, Your Honor.

17 THE COURT: 30 days from today is March 9th.

18 THE CLERK: It would be the 11th.

19 THE COURT: Let's go the following Monday.

20 MR. MARTIN: The 13th and response time, Your Honor?

21 THE COURT: How much time do you need?

22 MR. MARTIN: Two weeks, Your Honor, let's say 14
23 days after that if we may?

24 THE COURT: Sure. And then if either one of you
25 want a further hearing - -

1 MR. MARTIN: The 27th, Your Honor?

2 THE COURT: That will be fine. If you want a

3 further hearing ask for it. If you don't and I feel

4 like we need one I will ask for it. If I don't think and

5 you don't ask and I don't think we need one I will just

6 rule on it.

7 MR. MARTIN: Very good. Thank you, Your Honor.

8 THE COURT: Thank you. Okay, I realize this

9 is a little unusual Mr. Martin.

10 MR. MARTIN: It is an unusual case, Your Honor.

11 In fact, when I sat down I wish I could help more. Do you

12 wish an order prepared, Your Honor?

13 THE COURT: Would you please? If you would prepare

14 an order and submit it to Ms. Jones for approval to form.

15 MR. MARTIN: Yes sir.

16 THE COURT: Okay, thank you, counsel.

17 (WHEREUPON, this matter was concluded)

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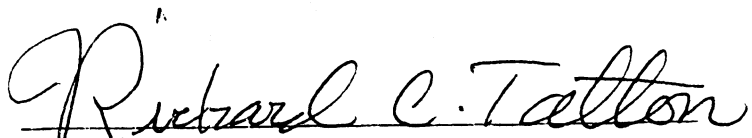
C E R T I F I C A T E

STATE OF UTAH)
: ss.
COUNTY OF WASATCH)

THIS IS TO CERTIFY that the HEARING was
video taped and transcribed by Richard C. Tatton and that
it was done to the best of my ability.

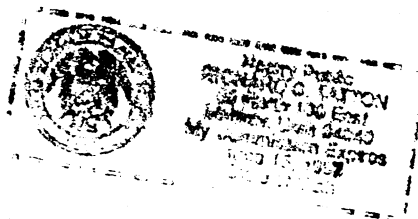
I FURTHER CERTIFY that I am not of kin or otherwise
associated with any of the parties to said cause of action
and that I am not interested in the event thereof.

WITNESS my hand and official seal at Midway,
Utah, this 4th day of October, 1995.


RICHARD C. TATTON, CSR

My commission expires:

June 15, 1997



Tab 25

95 FEB 24 AM 11:19

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IN THE FOURTH JUDICIAL DISTRICT COURT
STATE OF UTAH
125 North 100 West, Provo, Utah 84601

WALTER SEMIDEY, ANGEL
SANTIAGO, HUMBERTO
BARDALES, and ROSA
MAZARIEGOS,

Plaintiffs,

vs.

DOT ADVENTURES, INC.,
a Nevada Corporation, et al.

Defendants

INTERIM ORDER
REGARDING DEFENDANT'S
MOTION FOR SUMMARY
JUDGMENT

Civ. No. 930400503 PI
Judge Boyd L. Park

This matter came before the Honorable Boyd L. Park, Judge presiding, for hearing on, February 10, 1995, in regard to Defendant's Motion for Summary Judgment. Attending were Marti L. Jones, counsel for the Plaintiffs, and Jeanette Lynton, President of DOT Adventures, Inc., and her counsel, Loren D. Martin. Having reviewed the pleadings and heard argument, the Court Orders the following:

1. The Court grants Plaintiff until March 13, 1995, to show any basis they may have as to why this matter should continue, and that full Summary Judgment as requested by Defendant's should not be granted as to all remaining alleged causes of action. As a minimum, Plaintiff shall provide the following:

a) a list of witnesses for trial and a proffer as to what each witness will say, including the specifics as to what they will say about their damages, along with supporting corroboration or expert witnesses, if any;

b) any tangible evidence that would support Plaintiff's claim for damages; and

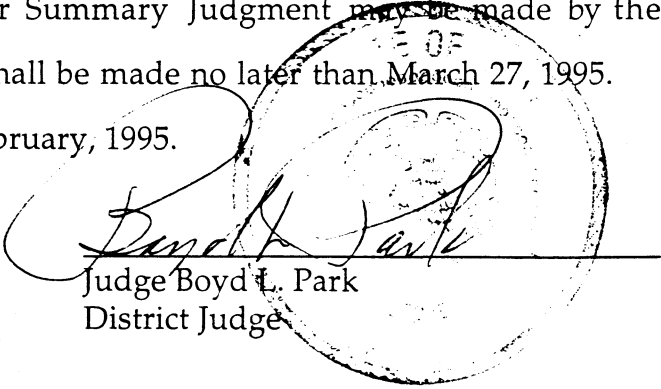
c) any appropriate testimony to be presented at trial.

All documents which Plaintiffs may wish to file with the Court for further consideration shall be received and filed on or before close of business on March 13, 1995.

2. Defendant shall have until March 27, 1995, to reply.

3. If any party feels further oral argument is needed, the respective party shall make such request. If no further hearing is requested, a decision regarding Defendant's Motion for Summary Judgment may be made by the Court. Any request for hearing shall be made no later than March 27, 1995.

DATED this ²⁴15th day of February, 1995.


Judge Boyd L. Park
District Judge

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing ORDER REGARDING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT, was mailed, postage fully prepaid, on the 15th day of February, 1995 to the following:

Law Offices of Linda Q. Jones
Linda Q. Jones,
Marti L. Jones
40 South 100 West, Suite 303
Provo, Utah 84604

Jamie E. McDaniel