STATE OF INDIANA
INDIANA CIVIL RIGHTS COMMISSION

REGINALD BAKER, Complainant, vs. ROMAN MARBLENE, Respondent.	Docket No.: EMra10110533

COMMISSION ORDER

On February 7, 2014, Noell F. Allen Administrative Law Judge ("ALJ") for the Indiana Civil Rights Commission ("ICRC") entered her Proposed Findings of Fact, Conclusions of Law, And Order ("the proposed decision").

On February 21, 2014, Complainant, Reginald Baker, filed "Complainant's Objections to Proposed Findings of Fact, Conclusions of Law, and Order.

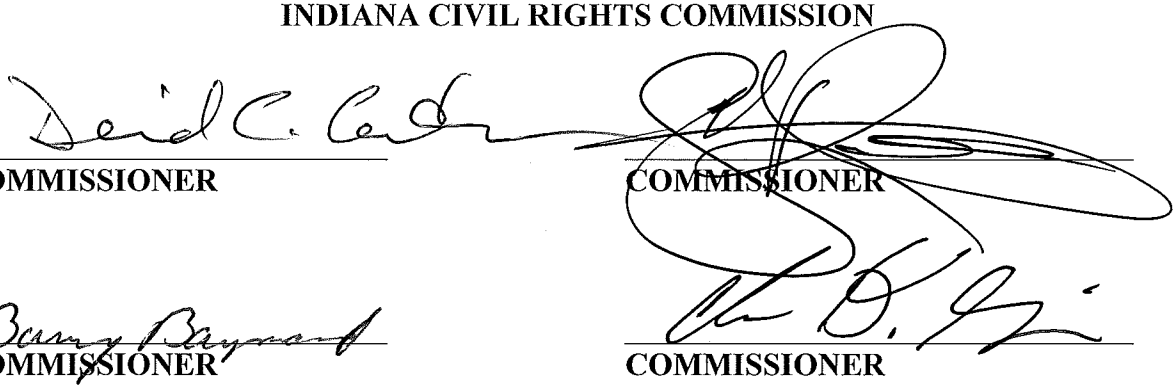
On February 27, Respondent, Roman Marblene, filed its "Response to Complainant's Objections.

On April 16, 2014, Baker filed his "Complainant's Brief in Support of Objections to Proposed Findings of Fact, Conclusions of Law, and Order.

On April 25, 2014, both parties presented oral arguments on objections to the ICRC Board. At the conclusion of oral arguments, the Board took the matter under advisement.

Having carefully considered the foregoing and being duly advised in the premises, the ICRC hereby **remands** this matter to the ALJ to conduct a hearing on the merits.

INDIANA CIVIL RIGHTS COMMISSION



COMMISSIONER **COMMISSIONER**

COMMISSIONER **COMMISSIONER**

Dated this 30th Day of May, 2014.

Served by Certified Mail on the following:

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STATE OF INDIANA
INDIANA CIVIL RIGHTS COMMISSION

REGINALD BAKER, Complainant, vs. ROMAN MARBLENE, Respondent.	Docket No.: EMra10110533

PROPOSED FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

On July 26, 2012, Respondent, Roman Marblene, by counsel, tendered its Motion for Summary Judgment ("Motion") and supporting briefs.

On September 5, 2012, Complainant, Reginald Baker, by counsel, filed its Complainant's Brief, Response, and Designation of Material in Opposition to Respondent's Motion for Summary Judgment ("Response").

On September 27, 2012, Respondent filed additional supplemental evidence. On October 3, 2012, Complainant filed his reply to the supplemental evidence.

Robert D. Lange, former Administrative Law Judge ("ALJ") for the Indiana Civil Rights Commission held a hearing on the Motion on October 4, 2012.

On December 26, 2012, ALJ Lange retired as ALJ without making a ruling on the Motion before the ICRC.

The Board of the ICRC appointed the undersigned to rule on matters before the ICRC. On December 13, 2013, the undersigned ALJ conducted a Status Conference telephone conference with Respondent's counsel, Rosemary Borek and Staff Counsel, Michael Healy for the ICRC, in the public interest, and on behalf of Complainant. Both parties declined the opportunity to make final arguments before the ALJ prior to a ruling on the Motion before her.

Having carefully considered the foregoing and being duly advised in the premises, the undersigned ALJ proposes the ICRC enter the following findings of fact, conclusions of law finds and rules as follows.

FINDINGS OF FACT

1. The evidence shows there is no genuine dispute of material fact and the adverse employment action imposed upon Complainant was not motivated by race.

2. Roman Marblene is a small company in Southern Indiana that manufactures molded bathroom fixtures. Employees are required to lift 60 pounds on his own or 120 pounds with the assistance of another employee.

3. Mr. Baker worked for Roman Marblene as a sprayer and was in charge of maintenance. The position required Mr. Baker to lift heavy items including marble vanity tops and buckets of pigment. The sprayer weighed roughly 20 to 25 pounds. One hand must hold the sprayer while the other hand is used to manipulate the hose attachments.

4. On December 28, 2009, during Roman Marblene's customary shut down period, Mr. Baker was involved in an automobile accident causing injury to his wrist.

5. On December 29, 2009, at a holiday party and still during the customary shut down period, the Respondent learned of Mr. Baker's injury. At that time, James Triantos, Manager, instructed Mr. Baker to seek medical attention.

6. Roman Marblene reopened for business on January 4, 2010. However, Mr. Baker did not report to work. Mr. Baker had a doctor's appointment for his wrist. Since Mr. Baker was the primary sprayer, Mr. Triantos instructed Mr. Baker to report to work to assist the other employees on how to reassemble and operate the sprayer. However, Mr. Baker did not report to work on January 4, 2010.

7. Mr. Baker returned to work on January 5, 2010 with a doctor's note restricting Mr. Baker from using 10 pounds of force. The physician was to reevaluate Mr. Baker's lifting ability within a week from January 5, 2010.

8. On January 21, 2010, Mr. Triantos requested Mr. Baker assist another employee in assembling a spray gun. Mr. Baker refused citing he could not do the job because of his restriction.

9. However, as of January 22, 2010, Mr. Baker had not seen the doctor. Mr. Triantos excused Mr. Baker from work until the physician released Mr. Baker without restriction. Mr. Triantos placed Mr. Baker on unpaid medical leave.

10. On March 23, 2010, Mr. Baker informed Mr. Triantos of his scheduled surgery for April 26, 2010. After the surgery, Mr. Baker would only be able to use one wrist for six weeks. Thereafter, Mr. Baker would be restricted to light to medium duty for six weeks.

11. On July 20, 2010, Mr. Baker informed Mr. Triantos he could return to work with lifting restrictions but was still experiencing pain while lifting. The doctor would reevaluate Mr. Baker on September 14, 2010.

12. On September 14, 2010, Mr. Baker advised Mr. Triantos through a document from his physician that Mr. Baker could return to work on September 14, 2010 but additional appointments may be necessary for numbness. Mr. Triantos had additional questions about this medical report and instructed Mr. Baker to return with clarification from the doctor.

13. On October 13, 2010, Mr. Baker returned with a doctor's note clarifying that Mr. Baker was released to return to work with no restrictions. However, the doctor provided commentary on the note indicating impaired or improved strength. Although the note cleared Mr. Baker to return to work without restriction, Mr. Triantos wanted a note from the physician ensuring Mr. Baker was 100 per cent cleared.

14. Because of the instruction given by Mr. Triantos, Mr. Baker responded by saying, "You keep screwing me and screwing me but coming up a little bit short." "You're trying to put it up my ass." Mr. Triantos terminated Mr. Baker's employment thereafter.

15. No other employees were on leave as a result of not being "100 percent".

a. Larry Bauer worked for Roman Marblene Co., Inc. as a truck driver and delivered its products to customers. Bauer had a defibrillator device used to shock a patient's heart and restore its natural rhythmic beat. Bauer also had a double knee replacement. Bauer performed heavy lifting. Roman Marblene had never given Bauer any problems about this even though Bauer was not 100 percent.

b. Lacey Gleitz, office manager, who was responsible for performing administrative work, had sitting, moving, and standing restrictions. These restrictions did not prevent Ms. Gleitz from performing the essential functions of the job.

16. Any Conclusion of Law that should have been deemed a Finding of Fact is hereby adopted as such.

CONCLUSIONS OF LAW

1. Summary Judgment is available in administrative proceedings, following the procedure set forth in Indiana Trial Rule 56. Ind. Code § 4-21.5-3-23. Trial Rule 56 provides that summary judgment "shall be rendered forthwith if the designated evidence shows that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." T.R. 56(c).

2. Mr. Baker contends he was a victim of discrimination when the Respondent harassed him and subjected Mr. Baker to different terms of employment due to his race. Specifically, whether Respondent forced Mr. Baker to take unpaid leave while recovering from a wrist injury, refusing to allow Mr. Baker to return to work until he was 100 per cent healed, and ultimately discharging Mr. Baker from employment.

3. The prima facie case requirement applicable in Title VII (see 42 U.S.C.S. § 2000e-2) actions, as set forth in *Moore v. City of Charlotte*, 754 F.2d 1100, (4th Cir. 1985), cert. denied, should apply to cases under the Indiana Civil Rights Law. Specifically, an employee claiming racially disparate treatment by an employer must establish a prima facie case by showing:

a. (1) the employee is a member of a protected class;
b. (2) the employee suffered an adverse employment action;
c. (3) the employee met the Respondent's legitimate job expectations; and
d. (4) similarly-situated employees of a different race were treated more favorably.

After the employee establishes a prima facie case, the employer may advance a rationale for treating the compared employees differently.

4. Mr. Baker is a member of a protected by virtue of his race, African-American.

5. Mr. Baker did not suffer an adverse employment action when the Respondent placed Mr. Baker on unpaid leave on January 22, 2010, as argued by Baker. An adverse employment action is one that significantly alters the terms and conditions of the employee's job. *Griffin v. Potter*, 356 F.3d 824, 829 (7th Cir. 2004). To be actionable, the action must be materially adverse, not "merely an inconvenience or a change in job responsibilities." *Id.* Assuming being placed on an upaid leave is an adverse employment action (a reasonable assumption, given the loss of wages

that would accompany it), this argument fails. *See Harroun v. S. Wine & Spirits of Ill., Inc.*, 2010 U.S. Dist. LEXIS 88632, 38 (N.D. Ill. Aug. 23, 2010).

6. Whether the plaintiff proceeds by the direct or indirect method of proof, he must show a materially adverse employment action. A materially adverse employment action is something "more disruptive than a mere inconvenience or an alteration of job responsibilities." For purposes of Title VII, an adverse employment action is a significant change in the claimant's employment status such as hiring, discharge, denial of promotion, reassignment to a position with significantly different job responsibilities, or an action that causes a substantial change in benefits. *Rhodes v. Ill. DOT*, 359 F.3d 498, 504 (7th Cir. Ill. 2004) (internal citations omitted).

7. Roman Marblene placed Mr. Baker on unpaid leave to allow Mr. Baker to take time off from work in order to heal from his wrist injury. The Respondent relied on the reports of a physician who did not clear Mr. Baker to return to work without the risk of re-injuring or exacerbating the existing injury.

8. Mr. Baker suffered an adverse employment action when the Respondent terminated Mr. Baker's employment on October 13, 2010.

9. Mr. Baker did not meet the Respondent's legitimate business expectations. Mr. Baker was required to lift at least 20 to 25 pounds in order to operate the spray gun. However, after Mr. Baker's injury, he could not. According to Mr. Baker's own testimony, he had difficulty opening a can of soda. Mr. Baker ultimately had surgery on the affected wrist. As time went on, Mr. Baker's physician reported Mr. Baker's inability to use force on the wrist. When Mr. Baker's physician cleared Mr. Baker to return to work in October 2010, Mr. Triantos questioned the medical report. Mr. Baker's reaction to Mr. Triantos did not meet Respondent's legitimate business expectation by using foul language in an insubordinate-like manner.

10. The record is void of sufficient evidence to show similarly situated employees of a different race who were treated more favorably than Mr. Baker. Although Mr. Baker provided several examples of employees who had medical issues and the Respondent allowed the individuals to work while recovering from said medical issues, those medical issues did not prevent the workers from completing the essential functions of their job.

11. The ALJ will further conclude that even if Complainant had established his *prima facie* case, *arguendo*, the Respondent has articulated a legitimate non-discriminatory reason for terminating Mr. Baker. Mr. Triantos ultimately terminated Mr. Baker when Mr. Baker told his

supervisor "You keep screwing me and screwing me but coming up a little bit short," and "You're trying to put it up my ass." Such language to a supervisor, absent provocation, is unprofessional conduct should be grounds for termination.

12. Administrative review of this proposed decision may be obtained by the filing of a writing identifying with reasonable particularity each basis of each objection within fifteen (15) days after service of this proposed decision. IC 4-21.5-3-29(d).

13. Any Finding of Fact that should have been deemed a Conclusion of Law is hereby adopted as such.

ORDER

1. For the foregoing reasons, the Motion for Summary Judgment is hereby **GRANTED**.
2. Baker's complaint of discrimination is hereby **DISMISSED**.

So Ordered this 7th day of February, 2014

Hon. Noell F. Allen
Administrative Law Judge
Indiana Civil Rights Commission

Served by Certified Mail on February _____, 2014 on the following:

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and to be personally served on the following attorney of record:

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STATE OF INDIANA
CIVIL RIGHTS COMMISSION

DOCKET NO. EMra10110533

REGINALD BAKER,
Complainant,

v.

ROMAN MARBLENE CO., INC.,
Respondent.

COMPLAINANT'S OBJECTIONS TO PROPOSED FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

COMES NOW Michael C. Healy, Staff Counsel for the State of Indiana, Civil Rights Commission ("ICRC"), in the public interest, on behalf of Complainant, Reginald Baker ("Complainant" or "Baker"), and hereby files his objections to Proposed Findings of Fact, Conclusions of Law and Order ("proposed decision"), filed February 7, 2014.

Complainant hereby objects to the following Proposed Findings of Fact: 1, 8, 9, 14 and 15.

Complainant hereby objects to the following Proposed Conclusions of Law: 3, 5, 6, 7, 9, 10 and 11.

Complainant hereby objects to the following Proposed Orders: 1 and 2.

Each of Complainant's objections shall be discussed separately.

In the Seventh Circuit, where Indiana is located, in order to prevail at a hearing, it is not necessary to present a prima facie case of discrimination, but it is only necessary to present evidence of pretext. The prima facie case can be skipped entirely, according to *Reyes v. St. Xavier Univ.*, 500 F.3d 662 (7th Cir. 2002); *Abioye v. Sundstrand Corp.*, 164 F.3d 364 (7th Cir. 1998),

However, in this case, the uncontroverted evidence is that (1) Baker was the only African American employee working at Respondent, Roman Marblene Co., Inc. ("Respondent"); (2) All other Respondent employees were Caucasians; (3) Baker was able to perform all of the essential functions of the job, with or without reasonable accommodations, and at the standard set by the employer (Baker did not request or receive any accommodations); (4) Baker was placed on involuntary and unpaid medical leave by Respondent; (5) Similarly situated employees with more severe disabilities or impairments were NOT placed on involuntary and unpaid medical leave; and (6) Respondent's proffered reasons for its actions were pretextual and unworthy of credence. As such, Respondent's actions constitute unlawful discrimination and retaliation against Complainant.

Respondent is a small company, having less than fifteen (15) employees. During his employment, Baker was in charge of maintenance and preformed spraying and set up work. Baker's job required him to operate a spray gun and, at times, lift heavy products such as marble vanity tops and buckets of pigment.

The following are statements of fact which are completely supported by the evidence contained in the record of proceedings:

Comparator No. 1:

Larry Bauer ("Bauer"), Caucasian, is a truck driver who delivered products to customers by truck. He had a defibrillating device used to shock a patient's heart and restore it its natural rhythmic beat. Bauer also had a double knee replacement. Bauer also performed heavy lifting, though he was not supposed to do this. Roman Marblene never gave him any problems in returning to work.

Comparator No. 2:

Shawn Belty ("Belty"), Caucasian, also worked for Respondent. Belty was a grinder. He has a blood clotting disease affecting both his heart and lungs. He would have to leave work to undergo heart therapy, and was gone from work between one (1) and two (2) hours each day. Respondent never gave him any problems concerning returning to work, although he was not working at 100 per cent.

Comparator No. 3:

Lacey (Hadley) Gleitz ("Gleitz"), Caucasian, was the office manager at Respondent. Gleitz experienced a serious back injury, and was unable to stand, sit or move, but was not placed on involuntary, unpaid medical leave. On occasion, she asked her co-workers for assistance in performing her tasks, unlike Complainant. Gleitz testified that Respondent's owner, **James Triantos** ("Triantos"), Caucasian, changed all of the work place rules with respect to Baker. According to Gleitz's testimony, Baker was the only Roman Marblene employee docked pay for calling off of work on one occasion.

Complainant objects to the assigned Administrative Law Judge's ("ALJ's") Proposed Finding of Fact No. 15: "No other employees were placed on leave as a result of not being 100 per cent". That of course is precisely the point. If the employees named by the ALJ, Bauer and Belty, were not placed on unpaid medical leave, then why was Complainant? That is the reason why these (Caucasian) employees are comparators to Complainant.

David Hunter ("Hunter"), Caucasian, was Respondent's production manager. Hunter, not Triantos, was Baker's immediate supervisor throughout the entire period that Baker worked for Respondent. In this small company, Hunter was in a position to see what Baker was able to do. Hunter testified that he saw Baker use a spray gun, one of the important tasks of the job.

Hunter also testified that Baker helped him to carry materials weighing over 100 pounds, **even after his injury.** Hunter also testified that Baker never had any difficulties handling any of his job responsibilities.

Respondent's entire case rests upon one incident only: that Baker was unable to change the head on a spray gun because it would take more than ten pounds of force, which Complainant could not perform. This statement by Respondent has been completely contradicted by the testimony of Gleitz, who was present at work on the day in question, and witnessed the exchange between Baker and Triantos. According to both Gleitz and Baker, Triantos asked Baker to change the head of the spray gun---believed to be the only one on the premises. Baker replied that he could not do this because co-worker Dan Brown ("Brown"), Caucasian, was using it to apply his spray liquid granite. According to Gleitz, Baker was not in any manner being insubordinate to Triantos, yet Triantos was being hostile toward Baker.

Triantos' testimony was that Baker could not use the spray gun because it took more than ten (10) pounds of force and Baker was unable to do this. This must be considered highly suspect in light of the testimony of Hunter, who reported seeing Baker lift over 100 pounds, even after his injury. This incident was used as an excuse to place Baker on involuntary and unpaid medical leave, against Baker's wishes, but there was no reason to do this in the first place.

The ALJ makes much of Baker's deposition testimony that, after his injury, he couldn't lift a can of soda pop. This is misleading, because Baker's actual testimony was that he could not open a can of soda pop **with his left hand on the day after his injury.** Baker's actual statement was:

A: [I] couldn't pick up a 12-ounce can ***with that hand.***

See Baker Deposition, pp. 65-66 (emphasis added)

Q: So you did all of those things with one (the other) hand?

A. Yes, sir.

Id. at p. 66

Q. Was there any work that was done on that day?

A. I put the gun together, spayed all the way up until it was time for the party. Carried tops---double bowl tops, single bowl tops; cleaned up my booth; took all the paper out; lifted up the pot, the pressure pots, cleaned it out; had the floor all clean; retook the gun apart, and shut down.

Id. at p. 65

Q. Now you went to work the next day, then, the next day, January 5th, correct?

A. Yes, sir. I worked for two weeks doing everything; carrying tops, spraying, putting the gun together, taking the gun apart.

Q. So you were doing that with your right hand?

A. Yes.

Q. But did you do the spraying with the gun just like any other day?

A. Just like any other day. And I pulled the molds through into the oven. Big panel molds that probably weigh 200 pounds, 300 pounds, I pulled them into the oven, anything that come through.

Id. at p. 81

A. **I could do everything with my right hand and it would be in working order.**

Id. at p. 82 (emphasis added)

This is consistent with the eyewitness testimony of Gleitz and Hunter, below. Hunter stated that he was present and oversaw Baker's work every day, and throughout his employment with Respondent, Baker---without any limitations---was able to and did operate a spray gun. According to Gleitz, the only reason that Baker could not perform the task was because the tool was being used by someone else.

Hunter testified as follows:

5. I was present and I oversaw Baker's work every day that Baker worked at Roman Marblene Co., Inc. Throughout, Baker was able to and did operate a spray gun.

See Hunter Affidavit, 10/3/12, paragraph 5

6. Despite Baker's injury, he was able to perform all of his job duties upon his return. During this time, Baker also helped me to lift and carry such items as faux marble and faux granite tops, weighing between 125 and 150 pounds. Baker also ran a spray gun, which required him to pull heavy molds into the ovens.

8. Baker never refused to perform an assigned task.

12. To my knowledge, Baker was the only African American employed by Roman Marblene Co., Inc.

See Hunter Affidavit, 8/27/12, paragraphs 6, 8 and 12

Likewise, Gleitz testified as follows:

13. To my knowledge, Baker was the only African-American employed by Roman Marblene Co., Inc.

See Gleitz Affidavit, 8/27/12, paragraph 13

4. On January 22, 2010, I was present at work and I personally witnessed President Jim Triantos ("Triantos") ask Reginald Baker ("Baker") to change the head on a spray gun. Baker replied that he could not work on the gun at the time because co-worker Dan Brown was presently in the process of spraying spray granite with the gun.

5. Baker was not being insubordinate to Triantos, but Triantos was being hostile to Baker.

6. At no time did I ever hear Baker say to Triantos or anyone that he could not use a spray gun because of physical limitations, or because it took more than ten (10) pounds of force to do so.

See Gleitz Affidavit, 10/2/12, paragraphs 4-6

As to the issue of Baker's termination, there are conflicting reports. Respondent's view is that Complainant's belligerent behavior was responsible for his termination. However, it is clear

that, by October, 2010, Baker had (a) filed a Complaint of Discrimination with the ICRC, alleging discrimination in being forced to take involuntary, unpaid medical leave; and (b) presented numerous medical release forms over a period of several months in an effort to return to work. During October, Baker presented Respondent with a completely clean bill of health, with no restrictions placed upon him at all:

- "Sitting work only, maximum lifting 5 pounds" is not checked.
- "Light work, lifting 20 pounds maximum" is not checked;
- "Medium work, lifting 50 pounds maximum" is not checked.
- "Heavy work, lifting 100 pounds maximum" is not checked.

(See Exhibit L, attached to Triantos' Deposition)

On that occasion, Triantos again refused to consider allowing Baker to return to work, saying instead that he now wanted to see all of Complainant's medical records! This is viewed as a set up, a desperate attempt to prevent Baker from coming back to work; or, alternatively, provoke an outburst from Baker designed to permit Triantos to terminate him, precisely what occurred in this instance. This act is both discriminatory and retaliatory.

The ALJ states in her Proposed Conclusion of Law No. 11 that: "[S]uch language [as was used by Baker] to a supervisor, ***absent provocation***, is unprofessional conduct [and] should be grounds for termination." (emphasis added) This is precisely the point. Triantos' actions were of such an odious nature that they were guaranteed to provoke just such an outburst from any reasonable person, including Baker.

The ALJ also erred in her Proposed Conclusion of Law No. 5, stating that Baker did not suffer an adverse employment action by being placed on unpaid, involuntary medical leave. The Seventh Circuit, where Indiana is located, defines "adverse employment action" quite broadly.

McDonnell v. Cisneros, 84 F.3d 256, 258-259 (7th Cir. 1996) The case law here holds that being forced to take unpaid leave of absence falls into the category of material adverse employment actions. *Arizanovska v. Wal-Mart Stores, Inc.,* 682 F.3d 698 (7th Cir. 2012)

In *Arizanovska, supra*, the Seventh Circuit Court of Appeals held:

> Wal-Mart has not cited any case---nor are we aware of any---in which an employment action was found not to be materially adverse merely because it was consistent with a broader company policy. In fact, such a finding would allow companies to retaliate, and even discriminate with impunity so long as the employment action complained of was consistent with some internal policy; a company's employment policy should not be used to shield liability in that way.

(Arizanovska, 682 F.3d at 704)

The ALJ also erred in her Proposed Conclusion of Law No. 9 in writing that "Complainant did not meet Respondent's legitimate business expectations." This proposed conclusion is unsupported by the substantial evidence contained in the records of proceedings. Respondent did not have such legitimate business expectations; or, if it did, Complainant met them, according to the weight of the testimony and supporting documents. The remaining discussion should have properly addressed the third prong of the burden shifting analysis: whether the employer's proffered reasons were pretextual and unworthy of credence. The ALJ declined to do this. In her Proposed Decision, the ALJ elected not to discuss this important issue, which Complainant believes has been abundantly demonstrated. This fact alone could be grounds for reversal.

Proposed Conclusion of Law No. 7 is also erroneous, by stating: "Roman Marblene placed Mr. Baker on unpaid leave to allow Mr. Baker to take time off from work in order to heal form his wrist injury." This Proposed Conclusion of Law is just such an example of using Respondent's proffered reasons without taking into account whether those reasons were pretextual.

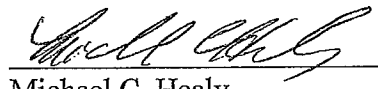
Proposed Conclusion of Law No. 10 is also erroneous, in stating that "[t]he record is void of sufficient evidence to show a similarly situated employee of a different race who was treated more favorably than Mr. Baker." This Proposed Conclusion is factually incorrect as the overwhelming evidence shows that similarly situated Caucasian co-workers, Bauer, Belty and Gleitz, were all treated more favorably than Baker in that they all were permitted to continue to work at Roman Marblene, despite being less than 100 percent. All were similarly situated to Baker. All suffered substantial injuries. All were permitted to work without forced unpaid medical leave. And all were Caucasian, that is, except Baker.

Each of the facts and circumstances as cited above reveals that there are genuine issues of material fact in dispute and that summary judgment should have been denied.

For each of these reasons, Complainant also objects to Proposed Orders 1 and 2, granting Respondent's Motion for Summary Judgment and dismissing Complainant's Complaint.

WHEREFORE, and for each and every aforestated reason, Michael C. Healy, Staff Counsel for the State of Indiana, Civil Rights Commission, in the public interest, on behalf of Complainant, Reginald Baker, hereby respectfully requests that his Objections to Proposed Findings of Fact, Conclusions of Law and Order, filed February 7, 2014, be sustained.

Respectfully submitted,



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CERTIFICATE OF SERVICE

The undersigned hereby certifies that he served one (1) copy of the foregoing on the following by depositing a copy in the receptacle located in the offices of the Indiana Civil Rights Commission, from which regular deliveries are made, to the Mail Section of the Department of Administration, whose duty it is to affix the proper postage on such materials and deposit them in the United States Mail, first class, postage pre-paid, this 21st day of February, 2014:

Reginald Baker
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Corydon, IN 47112

STEPHENSON MOROW & SEMLER, P.C.
By: Wayne E. Uhl, Esq. and
Rosemary L. Borek, Esq.
3077 E. 98th Street, Suite 240
Indianapolis, IN 46280

Service waived on Respondent at counsel's request

Michael C. Healy

STATE OF INDIANA
CIVIL RIGHTS COMMISSION

DOCKET NO. EMra10110533

REGINALD BAKER,
Complainant,

v.

ROMAN MARBLENE COMPANY, INC.,
Respondent.

RESPONSE TO COMPLAINANT'S OBJECTIONS

Reginald Baker was injured off-duty in a car accident. He tried to return to work but was physically unable to perform his job, and in fact later required surgery. Several months later, when Baker tried to return to work but the company owner questioned him, Baker became angry, saying to the owner, "You keep screwing me and screwing me, but you keep coming up short" and "You're trying to put it up my ass." Baker was then fired for insubordination.

The Administrative Law Judge (ALJ) correctly concluded, based on the undisputed evidence, that Baker would be unable to show that he was discriminated against on the basis of his race, which is the ultimate question in this case. To the contrary, Roman Marblene had legitimate, nondiscriminatory reasons to refuse Baker's requests to return to work and eventually terminate his employment. The ALJ's order granting summary judgment in Roman Marblene's favor should be affirmed.

Rather than repeat arguments previously made, Roman Marblene respectfully refers the Commission to its Brief in Support of Motion for Summary Judgment (filed 7/26/12) and its Reply in Support and Motion to Strike or Exclude Evidence (filed 9/27/12), and incorporates those documents. This response will be limited to certain arguments made in Complainant's Objections.

A. *Prima facie* case cannot be "skipped entirely."

Baker relies on precedent of the U.S. Court of Appeals for the Seventh Circuit because Indiana is located in the Seventh Circuit. But Indiana looks to U.S. Supreme Court precedent in its interpretation of the Indiana Civil Rights law, adopting the burden-shifting test used by that court in evaluating discrimination cases under Title VII of the Civil Rights Act of 1964. *Filter Specialists*, 906 N.E.2d 835, 839-842 (Ind. 2009) (citing, *inter alia*, *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973); *Texas Dep't of Community Affairs v. Burdine*, 450 U.S. 248 (1981); *Desert Palace, Inc. v. Costa*, 539 U.S. 90 (2003)). That test starts with the four-part *prima facie* case of race discrimination.

In any event, the Seventh Circuit has never held that the *prima facie* case can be "skipped entirely." It has held that the *prima facie* case is unnecessary in cases where the employer has put forward a legitimate reason for its action that is not pretext for discrimination. *Abioye v. Sundstrand Corp.*, 164 F.3d 364, 368 (7th Cir. 1998) ("When the defendant has proffered an explanation for termination that the court determines to be non-pretextual, the court may avoid deciding whether the plaintiff has met his *prima facie* case and instead decide to dismiss the claim because there is no showing of pretext.").

As the ALJ held, Baker failed to meet three of the four elements of the *prima facie* test.

1. Baker could not do the job.

First and most important, the evidence was that with his injury, Baker could not perform his job (that is, could not meet his employer's legitimate expectations) (ALJ Conclusion 9). The job required heavy lifting with both arms (Triantos Declaration ¶¶ 7-9). Baker testified the injury to his arm left him unable to even pick up a 12-ounce soda can (Baker Dep. 65). He

needed help to do his job (*id.* 65-66). Baker returned to work on January 5, 2010, with a doctor's order that he not use more than 10 pounds of force with his left hand:

> Q What did you understand that it meant that you should not use more than 10 pounds of force with your left hand?
>
> *A* ***That I shouldn't try to use my left hand, pretty much.***
>
> Q And your left hand was not very useful at that point anyway, right?
>
> *A* ***I couldn't hold on to something. I couldn't have twisted the cap off with it like I normally do, sir, if that's what you're asking me.***

(Baker Dep. 84-85, emphasis added.)

For the next two weeks, Baker still could not grab or squeeze with his left hand, and the hand was pretty much useless (Baker Dep. 79, 84-85). He was allowed to try to work until he refused to perform a task saying that he was unable to do it because it would take more than 10 pounds of force (Triantos Decl. ¶¶ 19-20).

This inability was not confined to Baker's first days back as he implies. Physical therapy in February 2010 was ineffective and Baker had surgery in April 2010 from which he had to recover (Triantos Decl. ¶¶ 25-31). As late as September 2010 the doctor said that Baker was "improving" but still experiencing numbness (Triantos Decl. ¶ 29). Therefore, from January through September 2010, Baker was simply unable to do the job, defeating his *prima facie* case that his medical leave was imposed due to his race.

Baker presented testimony of other employees (Gleitz and Hunter) suggesting—contrary to Baker's own testimony and his doctors' restrictions—that Baker was able to perform his job better than the owner thought. As argued by Roman Marblene in its reply (Reply at 3-5), these employees' opinions are too vague and conclusory to contradict the clear evidence of Baker's inability.

2. Baker's medical leave was not an "adverse action."

Second, the ALJ correctly held that putting Baker on medical leave for nine months was not an "adverse employment action" giving rise to liability for discrimination (ALJ Conclusions 5-7). Adverse actions are usually terminations, suspensions or demotions. In this case, Roman Marblene declined to allow Baker to return to work when his doctors imposed medical restrictions under which he was simply unable to do his job. This was not an "adverse employment action." (Baker's termination at the end of the nine months, on the other hand, was an adverse action (ALJ Conclusion 8).)

3. Baker was not treated worse than similarly situated white employees.

Third and finally, Baker failed to show that similarly situated white employees were treated more favorably. The three white employees cited by Baker were discussed more fully in Roman Marblene's reply (Reply at 5-6), but to summarize:

Lacey Gleitz was the office manager, and worked with a back problem that made it difficult to sit, move or stand. But the only job function that she was unable to perform was vacuuming, a task that was sometimes performed by other employees for her. Her back problem did not render her unqualified to perform office work in the same way that Baker's hand injury prevented him from performing heavy manufacturing work.

Shawn Belty, like Baker, was not permitted to come to work until he was 100 percent. After he returned he was allowed time off to attend therapy appointments. He had a medical restriction against lifting 65 pounds alone or 125 pounds with assistance, but this restriction was within his job duties. Thus Belty was not comparable to Baker, who had a 10-pound lifting restriction, admitted that his left hand was essentially useless, and refused to perform a routine task due to his restriction.

Larry Bauer was a truck driver who returned to work with a restriction on lifting, so he was moved from a full-time installer job to a part-time delivery position where he lifts within his restriction and with mechanical assistance. There is no evidence that Baker could have been moved to a position within the physical limitations imposed by his doctors.

Thus it is clear that none of the white employees held up by Baker for comparison was similarly situated to him. As far as Roman Marblene knew, they were all capable of performing the essential functions of their jobs. Baker, on the other hand, was given the opportunity to perform with his injured left hand, but proved unable to do so.

As for the termination, Baker has never presented evidence or argued that any white employee was as grossly insubordinate to his employer as Baker was. Baker has admitted that during their discussion on October 12, 2010, Baker told Triantos, "You keep screwing me and screwing me, but you keep coming up short" and "You're trying to put it up my ass." (Baker Dep. 123-124.) This was the comment that triggered his termination. Baker has not shown that any white employee engaged in similar insulting of the company owner but was not fired.

B. Legitimate reasons for employer actions.

As found by the ALJ, Roman Marblene articulated legitimate, non-discriminatory reasons for its actions. In particular, Baker's insubordinate and angry statements to the owner of the company were a strong reason to terminate the employment relationship. Baker's lame excuse that he was provoked cannot justify this conduct.

Prior to that, Roman Marblene had good, non-racial cause to refuse to permit Baker to return to work until he was fully able to function. Baker's job required him to lift heavy objects, and any impairment presented a threat of serious injury to other employees or himself. In

addition, the owner was concerned that if Baker, whose original injury occurred off the job, would re-injure himself on the job and be entitled to worker's compensation benefits.

C. No evidence of pretext.

Finally, there was no substantial evidence that the reasons articulated by Roman Marblene were a pretext for race discrimination. In order to establish pretext, Baker must show that the reasons articulated by Roman Marblene were deliberate falsehoods to cover up discrimination. The Commission is not called upon to decide whether the reasons were mistaken or poor management because the Commission is not a super personnel department reviewing the wisdom or propriety of a business decision. The Commission is concerned only with whether the reason offered by the employer is the true one instead of race. *Powdertech, Inc. v. Joganic*, 776 N.E.2d 1251, 1259 (Ind. Ct. App. 2002) (reversing denial of summary judgment).

Conclusion

On the undisputed facts of this case, the ALJ correctly concluded that the evidence was insufficient to make out a case of race discrimination, so summary judgment was the correct result. This is true both as to the decision to place Baker on medical leave for nine months, and the decision to terminate his employment for insubordination. The ALJ's decision should be adopted as the Commission's final order.

Respectfully submitted,

STEPHENSON MOROW & SEMLER

Wayne E. Uhl, Attorney No. 14463-49

Counsel for Respondent

CERTIFICATE OF SERVICE

I certify service of this document on the following person(s) by U.S. mail on February 27, 2014:

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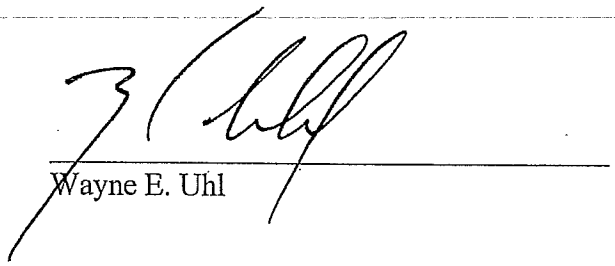

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STATE OF INDIANA
CIVIL RIGHTS COMMISSION

DOCKET NO. EMra10110533

REGINALD BAKER,
Complainant,

v.

ROMAN MARBLENE CO., INC.,
Respondent.

COMPLAINANT'S BRIEF IN SUPPORT OF OBJECTIONS TO PROPOSED FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

COMES NOW Michael C. Healy, Staff Counsel for the State of Indiana, Civil Rights Commission ("ICRC"), in the public interest, on behalf of Complainant, Reginald Baker ("Complainant" or "Baker"), and hereby submits his Brief in Support of Objections to Proposed Findings of Fact, Conclusions of Law and Order ("proposed decision"), filed February 7, 2014.

The uncontroverted evidence is that (1) Baker was the only African American employee working at Respondent, Roman Marblene Co., Inc. ("Respondent"); (2) All other Respondent employees were Caucasians; (3) Baker was able to perform all of the essential functions of the job, with or without reasonable accommodations, and at the standard set by the employer (Baker did not request or receive any accommodations); (4) Baker was placed on involuntary and unpaid medical leave by Respondent; (5) Similarly situated employees with more severe disabilities or impairments were NOT placed on involuntary and unpaid medical leave; and (6) Respondent's proffered reasons for its actions were pretextual and unworthy of credence. As such, Respondent's actions constitute unlawful discrimination and retaliation against Complainant.

Respondent is a small company, having less than fifteen (15) employees. During his employment, Baker was in charge of maintenance and preformed spraying and set up work.

Baker's job required him to operate a spray gun and, at times, lift heavy products such as marble vanity tops and buckets of pigment.

The following are statements of fact which are completely supported by the evidence contained in the record of proceedings:

Comparator No. 1:

Larry Bauer ("Bauer"), Caucasian, is a truck driver who delivered products to customers by truck. He had a defibrillating device used to shock a patient's heart and restore it its natural rhythmic beat. Bauer also had a double knee replacement. Bauer also performed heavy lifting, though he was not supposed to do this. Roman Marblene never gave him any problems in returning to work.

Comparator No. 2:

Shawn Belty ("Belty"), Caucasian, also worked for Respondent. Belty was a grinder. He has a blood clotting disease affecting both his heart and lungs. He would have to leave work to undergo heart therapy, and was gone from work between one (1) and two (2) hours each day. Respondent never gave him any problems concerning returning to work, although he was not working at 100 per cent.

Comparator No. 3:

Lacey (Hadley) Gleitz ("Gleitz"), Caucasian, was the office manager at Respondent. Gleitz experienced a serious back injury, and was unable to stand, sit or move, but was not placed on involuntary, unpaid medical leave. On occasion, she asked her co-workers for assistance in performing her tasks, unlike Complainant. Gleitz testified that Respondent's owner, **James Triantos** ("Triantos"), Caucasian, changed all of the work place rules with respect to

Baker. According to Gleitz's testimony, Baker was the only Roman Marblene employee docked pay for calling off of work on one occasion.

These are legitimate comparators. This being a small business, less than fifteen (15) employees, and some employees had at times needed to assist other employees with their other job functions.

David Hunter ("Hunter"), Caucasian, was Respondent's production manager. Hunter, not Triantos, was Baker's immediate supervisor throughout the entire period that Baker worked for Respondent. In this small company, Hunter was in a position to see what Baker was able to do. Hunter testified that he saw Baker use a spray gun, one of the important tasks of the job. Hunter also testified that Baker helped him to carry materials weighing over 100 pounds, **even after his injury.** Hunter also testified that Baker never had any difficulties handling any of his job responsibilities.

Respondent's entire case rests upon one (1) incident only: that Baker was unable to change the head on a spray gun because it would take more than ten pounds of force, which Complainant could not perform. This statement by Respondent has been completely contradicted by the testimony of Gleitz, who was present at work on the day in question, and witnessed the exchange between Baker and Triantos. According to both Gleitz and Baker, Triantos asked Baker to change the head of the spray gun---believed to be the only one on the premises. Baker replied that he could not do this because co-worker Dan Brown ("Brown"), Caucasian, was using it to apply his spray liquid granite. According to Gleitz, Baker was not in any manner being insubordinate to Triantos, yet Triantos was being hostile toward Baker.

Triantos' testimony was that Baker could not use the spray gun because it took more than ten (10) pounds of force and Baker was unable to do this. This must be considered highly suspect

in light of the testimony of Hunter, who reported seeing Baker lift over 100 pounds, even after his injury. This incident was used as an excuse to place Baker on involuntary and unpaid medical leave, against Baker's wishes, but there was no reason to do this in the first place.

The ALJ makes much of Baker's deposition testimony that, after his injury, he couldn't lift a can of soda pop. This is misleading, because Baker's actual testimony was that he could not open a can of soda pop **with his left hand on the day after his injury.** Baker's actual statement was:

> A: [I] couldn't pick up a 12-ounce can ***with that hand.***

See Baker Deposition, pp. 65-66 (emphasis added)

> Q: So you did all of those things with one (the other) hand?
>
> A. Yes, sir.

Id. at p. 66

> Q. Was there any work that was done on that day?
>
> A. I put the gun together, spayed all the way up until it was time for the party. Carried tops---double bowl tops, single bowl tops; cleaned up my booth; took all the paper out; lifted up the pot, the pressure pots, cleaned it out; had the floor all clean; retook the gun apart, and shut down.

Id. at p. 65

> Q. Now you went to work the next day, then, the next day, January 5th, correct?
>
> A. Yes, sir. I worked for two weeks doing everything; carrying tops, spraying, putting the gun together, taking the gun apart.
>
> Q. So you were doing that with your right hand?
>
> A. Yes.
>
> Q. But did you do the spraying with the gun just like any other day?

A. Just like any other day. And I pulled the molds through into the oven. Big panel molds that probably weigh 200 pounds, 300 pounds, I pulled them into the oven, anything that come through.

Id. at p. 81

A. **I could do everything with my right hand and it would be in working order.**

Id. at p. 82 (emphasis added)

This is consistent with the eyewitness testimony of Gleitz and Hunter, below. Hunter stated that he was present and oversaw Baker's work every day, and throughout his employment with Respondent, Baker—without any limitations—was able to and did operate a spray gun. According to Gleitz, the only reason that Baker could not perform the task was because the tool was being used by someone else.

Hunter testified as follows:

5. I was present and I oversaw Baker's work every day that Baker worked at Roman Marblene Co., Inc. Throughout, Baker was able to and did operate a spray gun.

See Hunter Affidavit, 10/3/12, paragraph 5

6. Despite Baker's injury, he was able to perform all of his job duties upon his return. During this time, Baker also helped me to lift and carry such items as faux marble and faux granite tops, weighing between 125 and 150 pounds. Baker also ran a spray gun, which required him to pull heavy molds into the ovens.

8. Baker never refused to perform an assigned task.

12. To my knowledge, Baker was the only African American employed by Roman Marblene Co., Inc.

See Hunter Affidavit, 8/27/12, paragraphs 6, 8 and 12

Likewise, Gleitz testified as follows:

13. To my knowledge, Baker was the only African-American employed by Roman Marblene Co., Inc.

See Gleitz Affidavit, 8/27/12, paragraph 13

4. On January 22, 2010, I was present at work and I personally witnessed President Jim Triantos ("Triantos") ask Reginald Baker ("Baker") to change the head on a spray gun. Baker replied that he could not work on the gun at the time because co-worker Dan Brown was presently in the process of spraying spray granite with the gun.

5. Baker was not being insubordinate to Triantos, but Triantos was being hostile to Baker.

6. At no time did I ever hear Baker say to Triantos or anyone that he could not use a spray gun because of physical limitations, or because it took more than ten (10) pounds of force to do so.

See Gleitz Affidavit, 10/2/12, paragraphs 4-6

As to the issue of Baker's termination, there are conflicting reports. Respondent's view is that Complainant's belligerent behavior was responsible for his termination. However, it is clear that, by October, 2010, Baker had (a) filed a Complaint of Discrimination with the ICRC, alleging discrimination in being forced to take involuntary, unpaid medical leave; and (b) presented numerous medical release forms over a period of several months in an effort to return to work. During October, Baker presented Respondent with a completely clean bill of health, with no restrictions placed upon him at all:

- "Sitting work only, maximum lifting 5 pounds" is not checked.
- "Light work, lifting 20 pounds maximum" is not checked;
- "Medium work, lifting 50 pounds maximum" is not checked.
- "Heavy work, lifting 100 pounds maximum" is not checked.

(See Exhibit L, attached to Triantos' Deposition)

On that occasion, Triantos again refused to consider allowing Baker to return to work, saying instead that he now wanted to see all of Complainant's medical records! This is viewed as a set up, a desperate attempt to prevent Baker from coming back to work; or, alternatively,

provoke an outburst from Baker designed to permit Triantos to terminate him, precisely what occurred in this instance. This act is both discriminatory and retaliatory.

The ALJ states in her Proposed Conclusion of Law No. 11 that: "[S]uch language [as was used by Baker] to a supervisor, ***absent provocation***, is unprofessional conduct [and] should be grounds for termination." (emphasis added) This is precisely the point. Triantos' actions were of such an odious nature that they were guaranteed to provoke just such an outburst from any reasonable person, including Baker.

The ALJ also erred in her Proposed Conclusion of Law No. 5, stating that Baker did not suffer an adverse employment action by being placed on unpaid, involuntary medical leave. The Seventh Circuit, where Indiana is located, defines "adverse employment action" quite broadly. *McDonnell v. Cisneros,* 84 F.3d 256, 258-259 (7th Cir. 1996) The case law here holds that being forced to take unpaid leave of absence falls into the category of material adverse employment actions. *Arizanovska v. Wal-Mart Stores, Inc.,* 682 F.3d 698 (7th Cir. 2012)

In *Arizanovska, supra,* the Seventh Circuit Court of Appeals held:

> Wal-Mart has not cited any case---nor are we aware of any---in which an employment action was found not to be materially adverse merely because it was consistent with a broader company policy. In fact, such a finding would allow companies to retaliate, and even discriminate with impunity so long as the employment action complained of was consistent with some internal policy; a company's employment policy should not be used to shield liability in that way.

(Arizanovska, 682 F.3d at 704)

The ALJ also erred in her Proposed Conclusion of Law No. 9 in writing that "Complainant did not meet Respondent's legitimate business expectations." This proposed conclusion is unsupported by the substantial evidence contained in the records of proceedings. Respondent did not have such legitimate business expectations; or, if it did, Complainant met them, according to the weight of the testimony and supporting documents. The remaining

discussion should have properly addressed the third prong of the burden shifting analysis: whether the employer's proffered reasons were pretextual and unworthy of credence. The ALJ declined to do this. In her Proposed Decision, the ALJ elected not to discuss this important issue, which Complainant believes has been abundantly demonstrated. This fact alone could be grounds for reversal.

Proposed Conclusion of Law No. 7 is also erroneous, by stating: "Roman Marblene placed Mr. Baker on unpaid leave to allow Mr. Baker to take time off from work in order to heal form his wrist injury." This Proposed Conclusion of Law is just such an example of using Respondent's proffered reasons without taking into account whether those reasons were pretextual.

Proposed Conclusion of Law No. 10 is also erroneous, in stating that "[t]he record is void of sufficient evidence to show a similarly situated employee of a different race who was treated more favorably than Mr. Baker." This Proposed Conclusion is factually incorrect as the overwhelming evidence shows that Caucasian co-workers Bauer, Belty and Gleitz, were all treated more favorably than Baker in that they all were permitted to continue to work at Roman Marblene, despite being less than 100 percent. All suffered substantial injuries. All were permitted to work without forced unpaid medical leave. All were Caucasian except Baker.

The legal requirement is that the employees be "similarly situated", not "identically situated". *See Coleman v. Donahoe,* 667 F.3d 835, 848 (7th Cir. 2012); *Rodgers v. White,* 657 F.3d 511, 518 (7th Cir. 2011) "The question is not whether the employer classified the comparators the same way, but whether the employer subjected them to different policies". *Coleman,* 667 F.3d at 848 Respondent had a form for its employees to submit if they were absent of had to see a doctor. However, employees also notified Respondent by phone without penalty

when they needed to see a doctor. Baker called off work one day in January of 2010. He was docked pay for failing to submit a required form, the first employee ever to be so treated. Others were not docked their pay for doing this. Respondent changed its rules as of the day that Baker called off work. Additionally, employees Belty, Bauer and Hunter, like Baker, all had to perform lifting of parts as a part of their job. This is a small business and employees here help one another out and sometimes perform the same or similar tasks.

A thorough reading of the pleadings in this case reveals the loathing that Triantos felt for Complainant.

First, it must be stated that Triantos did not hire Baker. Triantos instead inherited Baker from the previous owner. Baker had been employed there since 1999, at least six (6) years before Triantos took over in 2005. See Baker dep., p. 20; Triantos dep., p. 8. During Triantos' tenure, he subjected Baker to viewing unrequested, interracial pornography. Triantos dep., pp. 14-16; Baker dep., pp. 55-56 "This is why white people have problems with black people", said Triantos to Baker. Id. Baker was also subjected to racial slurs uttered by Triantos' own brother. Baker dep., p. 132

Next, the following events occurred thereafter:

- January 22, 2010: Baker was placed on unpaid medical leave;
- March 18, 2010: Baker filed his ICRC Complaint;
- February to October, 2010: Triantos rejected every attempt that Baker made to return to work, despite his having submitted medical release forms;
- October 13, 2010: Triantos terminated Baker after what must be considered deliberate

provocation on his part. Baker's doctor gave Baker a clean bill of health just one (1) day prior to this. Baker showed the medical release form to Triantos. Triantos, however, already decided he would never allow Baker to work there again and refused to do so.

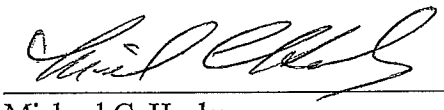
It can be surmised that at least one (1) reason why Triantos terminated Baker was Triantos' animus due to Baker filing his ICRC Complaint.

Complainant Baker is not the only person who questions the veracity of the employer's actions. Even Triantos' own employees attribute dishonest motives to Triantos in his dealings with Baker: See Hunter Affidavit (8/27/12), paragraphs 6, 8 and 12; Hunter Affidavit (10/3/12), paragraph 5; Gleitz Affidavit (8/27/12), paragraph 13; Gleitz Affidavit (10/2/12), paragraphs 4 through 6. These employees worked closely with both Baker and Triantos. Rarely in ICRC cases litigated here has the workforce issued such a sweeping condemnation of their own employer.

The assigned ALJ chose to believe the employer's story in its entirety without considering Complainant's own version of the events. Each of the facts and circumstances as cited above reveals that (a) there are genuine issues of material fact still in dispute; (b) Complainant should be entitled to a Hearing on the merits of his claim; and (c) summary judgment should have been denied.

WHEREFORE, and for each and every aforestated reason, Michael C. Healy, Staff Counsel for the State of Indiana, Civil Rights Commission, in the public interest, on behalf of Complainant, Reginald Baker, hereby respectfully requests that his Objections to Proposed Findings of Fact, Conclusions of Law and Order, filed February 7, 2014, be sustained.

Respectfully submitted,



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CERTIFICATE OF SERVICE

The undersigned hereby certifies that he served one (1) copy of the foregoing on the following by depositing a copy in the receptacle located in the offices of the Indiana Civil Rights Commission, from which regular deliveries are made, to the Mail Section of the Department of Administration, whose duty it is to affix the proper postage on such materials and deposit them in the United States Mail, first class, postage pre-paid, this 16th day of April, 2014:

Reginald Baker
325 Beechmont Drive
Corydon, IN 47712

STEPHENSON MOROW & SEMLER
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