

United States Courts  
Southern District of Texas  
FILED

**Michael N. Miloy, Clerk of Court**

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Plaintiffs

## JURY DEMANDED

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Defendant

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3. On August 30, 2004, this Court issued an Amended Scheduling Order which changed the trial setting from June, 2005 to February, 2005. The expert designations for Plaintiffs remained the same.

4. On August 13, 2004, Plaintiffs filed an Unopposed Motion to Extend Expert Witness Deadlines. Defendant graciously granted Plaintiffs a one month extension of time to designate their experts and provide expert reports. This Court granted Plaintiffs' motion on August 17, 2004 and allowed Plaintiffs to designate experts and provide expert reports by September 15, 2004.

5. On September 29, 2004, Defendant filed an Unopposed Motion to Extend Deadlines. In this motion, Defendant granted Plaintiffs another one month extension of time to designate their experts and provide expert reports. This Court granted Defendant's motion on October 6, 2004 and allowed Plaintiffs to designate experts and provide expert reports by October 15, 2004.

6. On October 15, 2004, Plaintiffs served Plaintiffs' Expert Disclosures and Expert Report of Kenneth G. McCoin, Ph.D., C.F.A. (hereinafter referred to as "McCoin") on Defendant. A true and correct copy of Plaintiffs' Expert Disclosures and Expert Report of McCoin is attached hereto as Exhibit "B". However, Plaintiffs did not provide Defendant with all information and documentation required under Rule 26 as set forth below.

7. On November 18, 2004, Defendant filed an Unopposed Motion to Extend Deadline for the Expert Deposition of Dr. McCoin. In this motion, Defendant requested until January 15, 2005 to depose Dr. McCoin due to schedule conflicts of Dr. McCoin. This Court granted Defendant's motion on November 23, 2004. This motion was necessary because Plaintiffs could not present Dr. McCoin by the court ordered deadlines.

8. On November 19, 2004, Defendant noticed Dr. McCoin's deposition, by agreement with Plaintiffs' counsel, for January 13, 2005 at 10:00 a.m.

9. On December 15, 2004, Defendant and Plaintiffs filed a Rule 29 Agreement and Local Rule 83.5 Agreement Regarding Supplemental Disclosures. In this agreement, both Defendant and Plaintiffs agreed to a deadline of December 24, 2004 for supplementation of all disclosures, responses and information as required under Rules 26(a)(1) and 26(a)(2). This agreement also provided that any supplemental disclosures, information, and/or responses not timely supplemented by 4:00 p.m. on December 24, 2004 would not be admissible at the time of trial. A true and correct copy of this agreement is attached hereto as Exhibit "C". This agreement was negotiated by counsel for Defendant due to Plaintiffs' prior bad acts as set forth in detail below.

10. On January 12, 2005, Plaintiffs' counsel notified Defendant's counsel that Dr. McCoin had been called to trial and was not available for a deposition on January 13, 2005. As a result, the deposition was rescheduled, by agreement, for Monday, January 17, 2005.

11. The deposition of Dr. McCoin was taken on January 17, 2005. Prior to the deposition, Dr. McCoin failed to produce a number of documents and other information as more particularly outlined below. At the deposition, Dr. McCoin, for the first time, provided Defendant with documents that Dr. McCoin relied upon to base his opinions. All efforts by Defendant to secure deadlines, including negotiating the Rule 29 Agreement, was to avoid precisely what happened at the deposition.

### **III.**

#### **Brief Factual Background**

12. Plaintiff Murphy has brought an action under Title VII - sex discrimination and age discrimination under the ADEA against Defendant.

13. Plaintiff McDaniel has brought an action under the ADEA for age discrimination, the ADA for disability discrimination and the FMLA for violations of the Family Medical Leave Act against Defendant.

14. Defendant terminated both employees because Plaintiffs' performance level and sales productivity had declined.

15. Plaintiff McDaniel is seeking exorbitant damages of \$700,000.00 from Defendant and Plaintiff Murphy is seeking exorbitant damages of \$1.5 million from Defendant.

#### IV.

##### **Rule 26 Requirements**

16. Rule 26(a)(2)(B) specifically provides as follows:

"...this disclosure shall, with respect to a witness who is retained or specially employed to provide expert testimony in the case.... be accompanied by a written report prepared and signed by the witness." The report **shall** contain the following information:

- (i) a complete statement of all opinions to be expressed and the basis and reasons therefor;
- (ii) the data or other information considered by the witness in forming the opinions;
- (iii) any exhibits to be used as a summary of or support for the opinions;
- (iv) the qualifications of the witness, including a list of all publications authored by the witness within the preceding ten years;
- (v) the compensation to be paid for the study and testimony; and
- (vi) a listing of any other cases in which the witness has testified as an expert at trial or by deposition within the preceding four years. *See Rule 26a(2)(B).*

17. Moreover, a party is under a duty to supplement an expert's report if said report is incomplete or incorrect in some material respect. *See Tenbarge v. Ames Taping Tool Systems, Inc.*, 190 F.3d 862, 865 (8<sup>th</sup> Cir. 1999).

18. The failure to meet the requirements of Rule 26(a)(2)(B) should preclude an expert witness from testifying at trial. *See Ortiz-Lopez v. Sociedad Espanola de Auxilio Mutuo Y Beneficiencia de Puerto Rico*, 248 F.3d 29 (1<sup>st</sup> Cir. 2001). No motion to compel is required where the expert witness disclosure was pursuant to a prior court order. *See Sierra Club, Lone Star Chapter v. Cedar Point Oil Co., Inc.*, 73 F.3d 546, 571 (5<sup>th</sup> Cir. 1996).

19. The sanction of exclusion is automatic and mandatory unless the sanctioned party can show that its violation of Rule 26(a) was either justified or harmless. The determination of whether a Rule 26(a) violation is justified or harmless is entrusted to the broad discretion of the district court. *See David v. Caterpillar, Inc.*, 324 F.3d 851, 857 (7<sup>th</sup> Cir. 2003); *see also Jacobsen v. Deseret Book Co.*, 287 F.3d 936, 952-53 (10<sup>th</sup> Cir. 2002); *NutraSweet Co. v. X-L Engineering Co.*, 227 F.3d 776, 785-86 (7<sup>th</sup> Cir. 2000); *Heidtman v. County of El Paso*, 171 F.3d 1038, 1040 (5<sup>th</sup> Cir. 1999).

## V.

### **Application of Facts to Rule 26 Requirements**

20. In this case, Plaintiffs' expert disclosures are fatally defective.

21. More specifically, Dr. Kenneth McCain's report fails to comply with Rule 26(a)(2)(B) because it fails to include the following:

- a) the data or other information considered by the witness in forming the opinions;
- b) any exhibits to be used as a summary of or support for the opinions; and
- c) the compensation to be paid for the study and testimony.

22. At the deposition, Dr. Kenneth McCoin, the expert witness, testified that the following exhibits were considered by Dr. McCoin in forming his opinions and were used in rendering his expert opinions but that the expert witness failed to provide these documents to Defendant:

- (a) Exhibit 2 - a 2 page spreadsheet consisting of a layout of a pre-termination and a post-termination calculations for Plaintiff McDaniel;
- (b) Exhibit 3 - handwritten notes by Dr. McCoin pertaining to Plaintiff McDaniel;
- (c) Exhibit 7 - a 2 page spreadsheet consisting of a layout of a pre-termination and a post-termination calculations for Plaintiff Murphy;
- (d) Exhibit 8 - handwritten notes by Dr. McCoin pertaining to Plaintiff Murphy; and
- (e) Exhibit 9 - Worklife Estimates: Effects of Race and Education; an Economic Report of the President; U.S. Department of Labor news release 04-1105.<sup>1</sup>

True and correct copies of items (a) through (e) are attached hereto as Exhibit "D".

23. Dr. McCoin testified that Plaintiffs' attorney did not request items (a) through (e) above and Dr. McCoin did not make such items available to Plaintiffs' attorney. However, Dr. McCoin testified that if Plaintiffs' attorney would have asked for the information, Dr. McCoin would have provided it to Plaintiffs' attorney. *See the deposition transcript of Kenneth McCoin attached hereto as Exhibit "E" at Page 10, Line 25 - Page 11, Line 4; Page 11, Line 24 - Page 12, Line 4.*

24. Moreover, Plaintiffs' attorney, Scott Newar, is of the opinion, as is reflected in the deposition of Kenneth McCoin, that he did not have to produce such information unless such

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<sup>1</sup>Dr. McCoin makes no reference in his expert report pertaining to this document. *See Exhibit "E", Page 22, Line 11 - Line 19.* However, Dr. McCoin uses the information and data from the report to form his opinions. *See Exhibit "E", Page 22, Line 20 - Line 24.*

information had been requested by Defendant's counsel. In fact, Mr. Newar, on the record, stated as follows:

**Starting Page 19, Line 14:**

Mr. Newar (attorney for Plaintiff): You can review these any time you want to, Mr. Meyer.

Mr. Meyer (attorney for Defendant): No, I couldn't have. You had a duty to produce them or let us know that they were available, and you chose not to do that.

Mr. Newar: That is incorrect, sir.

Mr. Meyer: We'll see.

**Ending Page 19, Line 20.**

25. Plaintiffs' attorney recognized the duty to disclose as reflected above and deliberately chose not to produce the information in order to gain an unfair advantage in this case.

26. In fact, it has been a common practice and pattern for Plaintiffs' attorney to completely ignore the federal rules in this case. As outlined in Defendant's Motion to Enforce the Parties' Rule 29 Agreement which is being filed simultaneously with this motion, Plaintiffs' attorney willfully failed to provide Defendant with addresses for 10 fact witnesses despite having entered into a Rule 29 Agreement with Defendant's counsel about supplementation. In addition, Plaintiffs' attorney violated this Court's order dated December 23, 2004 by failing to produce attorney time records for the period of November, 2004 through January, 2005. Furthermore, on the eve of trial, Plaintiffs' attorney informs Defendant's attorney that Plaintiffs intend on introducing records from the EEOC and the Harris County Hospital District which have never been produced to Defendant in this case.

27. Because of Plaintiffs' violations during the pendency of this case, Defendant's counsel negotiated a Rule 29 Agreement with counsel for Plaintiffs. The Rule 29 Agreement is very

clear in that the parties expressly agreed that any supplemental disclosures, information and/or responses required by Rule 26(a)(1) and Rule 26(a)(2) must be disclosed to the other party by 4:00 p.m. on December 24, 2004 or else the supplementation would not be admissible at trial. Plaintiffs' attorney has now breached this Rule 29 Agreement and Defendant's counsel respectfully requests that this Court enforce the parties' Rule 29 Agreement as well as the Plaintiffs' obligations to timely produce relevant documentation pursuant to Rule 26.

## **VI.**

### **Argument with Respect to Rule 26 Violations**

28. The testimony, report and evidence of Dr. McCoin should be excluded because Plaintiffs' attorney willfully failed to comply with Rule 26(a)(2)(B).

29. Plaintiffs' attorney was fully aware of requirements set forth in Rule 26(a)(2)(B) yet deliberately chose to ignore the rules.

30. Moreover, Plaintiffs had ample time to supplement Dr. McCoin's report as is required under Rule 26(a)(2)(B). Plaintiffs were put on notice and even agreed to supplement all information as is required by Rule 26(a)(2) as reflected in the Rule 29 agreement attached hereto as Exhibit "C". The Rule 29 agreement was very clear on its face. Nevertheless, Plaintiffs failed to do so.

31. It would be highly prejudicial to Defendant for this court to allow Dr. McCoin to testify and for Dr. McCoin's report to be admitted into evidence given the fact that Dr. McCoin's report is fatally flawed and due to the willful violations of Plaintiffs' attorney in this case.

32. Throughout this case, Plaintiffs' attorney has insinuated to this court that Defendant has been playing games and thwarting discovery. Yet, it is readily apparent that Plaintiffs are in fact the ones playing games.



33. Plaintiffs' counsel acted in bad faith by not providing this information and documentation on October 15, 2004 or thereafter by the parties' agreed deadline of December 24, 2004. It is unjustified and inexcusable for Plaintiffs' counsel to intentionally wait three (3) months before providing this information to Defendant in light of the fact that Plaintiffs' attorney was fully aware of the Rule 26 requirements.

34. Therefore, Defendant requests that this Court exclude Dr. McCoin from testifying in this case and further exclude Dr. McCoin's report from evidence in this case as a result of Plaintiffs' Rule 26 violations.

## **VII.**

### **Authority for Daubert Challenge**

35. There are eight (8) gates that must be passed to make an expert's testimony admissible. *See Daubert v. Merrell Dow Pharmaceutical, Inc.*, 509 U.S. 579 (1993); *Honeycutt v. Kmart*, 24 S.W.3d 357 (Tex. 2000)(per curiam); *Moore v. Ashland Chemical, Inc.*, 126 F.3d. 679, 688 (5<sup>th</sup> Cir. 1997) *rev'd en banc*, 151 F.3d 269 (5<sup>th</sup> Cir. 1998) (en banc), *cert. denied*, 526 U.S. 1064 (1999); *see also* FED. R. EVID. 702.

36. Although this section of the motion focuses on only two gates (i.e. reliability and methodological reliability), Defendant will address all of Dr. McCoin's shortcomings, if necessary, at the time of trial.

## **VIII.**

### **Argument in Support of Motion to Exclude Based on Daubert**

#### **A. Dr. McCoin's Opinions are Not Reliable**

37. Dr. McCoin should be struck as an expert witness in this case because Dr. McCoin's opinions are not sufficiently reliable.

### **1. Insufficient Data**

38. Dr. McCoin's opinions are unreliable because Dr. McCoin did not have sufficient facts or data in order to properly calculate back pay and front pay for both Plaintiffs.

39. In calculating back pay and front pay for Plaintiff Murphy, the only information provided to Dr. McCoin by Plaintiff Murphy and her attorney were the following items: (1) 2000 and 2001 W-2's; (2) 2003 W-2; and (3) one pay stub for 2004. In fact, Dr. McCoin testifies that "I wish I had more data, but that's all I've got. *See Exhibit "E", Page 54, Line 12 - Line 23.* Dr. McCoin also admits that if Plaintiff Murphy's income was less in 1998 or 1999 it would have influenced his opinions. Dr. McCoin further admits that he prepared his report based on "information he had" versus "information he desired." *See Exhibit "E", Page 55, Line 24 - Page 56, Line 24.*

40. The same, minuscule amount of information was provided to Dr. McCoin with respect to Plaintiff McDaniel as it relates to front pay. This has been an ongoing problem with Plaintiffs' counsel. Plaintiffs' counsel only provides the "good" information to Dr. McCoin so that Dr. McCoin can generate an incorrect expert report reflecting millions of dollars in damages as opposed to providing both "good" and "bad" information so that Dr. McCoin can generate a proper report.

41. Because Dr. McCoin did not have sufficient facts and data in order to calculate back pay and front pay, Dr. McCoin could not calculate any rate of error even though the rate of error can technically be calculated. *See Exhibit "E", Page 58, Line 25 - Page 59, Line 9; Page 81, Line 7 - Line 15.* Failing to know the rate of error for Dr. McCoin's calculation of back pay and front pay for Plaintiffs results in a flawed and unreliable report.

42. Moreover, Dr. McCoin did not take into consideration, when calculating front pay for Plaintiff Murphy, that Plaintiff Murphy had received services in exchange for salary. Dr. McCoin had no idea that Plaintiff Murphy worked for a contractor in an office setting in exchange for the contractor making repairs to her home and/or rental home. Dr. McCoin admits in his deposition that such “services in exchange for salary” should have been taken into consideration with respect to his calculations for Plaintiff Murphy. *See Exhibit “E”, Page 61, Line 18 - Page 63, Line 3.* This is yet another example of Plaintiffs’ attorney practice of not providing all relevant information to his expert so that a reliable report could be generated.

## **2. Rate of Error**

43. Furthermore, Dr. McCoin utilized “Worklife Estimates: Effects of Race and Education” dated February, 1986 which is put out by the U.S. Department of Labor to form his opinions in this case. However, Dr. McCoin does not know what the rate of error is, if any, for this table and has never sought to determine the rate of error for this table. *See Exhibit “E” at Page 13, Line 15 - Page 14, Line 11.* The rate of error would be extremely beneficial in determining the validity of the information relied on by Dr. McCoin to form his opinions in this case.

## **3. Benefits**

44. Moreover, Dr. McCoin’s opinions are based on his review of the “Employer Costs for Employee Compensation”. When applying this information to the Plaintiffs’ case, Dr. McCoin assumes that both Plaintiffs received “legally required benefits” while working at Gallery Furniture. Yet, Dr. McCoin admits in his deposition that he is not aware of the actual benefits that both Plaintiffs received while working for Gallery Furniture. *See Exhibit “E”, Page 31, Line 25 - Page 34, Line 3.*

45. Dr. McCoin had a duty to determine the actual benefits Plaintiffs in this case were receiving rather than to just assume certain facts. Assumptions are not reliable.

#### **4. Sales**

46. In addition, Dr. McCoin opinions are based on his review of the "Economic Report of the President 2004".<sup>2</sup> The expert witness takes into consideration the wage growth table B-49 and the consumer price index table B-60, but such information does not have any adjustments for regional peculiarities nor does it deal with sales in general not to mention sales in the furniture industry. *See Exhibit "E", Page 20, Line 5 - Line 21.*

#### **5. Health of Plaintiffs**

47. In forming his opinions, Dr. McCoin did not take into consideration the health of either Plaintiff in this case. Rather, Dr. McCoin took into consideration the "average health" of both Plaintiffs. Yet, Dr. McCoin admitted that health can play a role in the amount of time one would work in their lifetime. *See Exhibit "E", Page 17, Line 16 - Page 18, Line 4.*

48. Dr. McCoin was not aware that Plaintiff Murphy had previous knee surgery and was still suffering from aches and pains as a result of standing on her feet all day. In addition, Dr. McCoin was not aware that Plaintiff McDaniel previously underwent double coronary bypass surgery as well as an aortic aneurysm and that Plaintiff McDaniel was still smoking cigarettes.

49. In fact, Dr. McCoin made no adjustments in his calculations with respect to the actual health of either Plaintiff. *See Exhibit "E", Page 17, Line 24 - Page 18, Line 4.*

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<sup>2</sup>This report is not mentioned anywhere in Dr. McCoin's report yet Dr. McCoin relies on the information in the report to form his opinions. *See Exhibit "E", Page 48, Line 22 - Page 49, Line 17.*

50. Assumptions do not apply in this case unless they have a proper foundation for making them and relying on them. It was inappropriate for Dr. McCoin to assume that both Plaintiffs were in average health. Assuming average health for both Plaintiffs provides incorrect work life expectancies for each Plaintiff and thus, renders the information relied on by Dr. McCoin relating to the Plaintiffs' work life expectancies to be totally flawed and incorrect. Therefore, Dr. McCoin's testimony and report are not reliable.

**B. The Methodology is Not Reliable**

51. Dr. McCoin admits in his deposition that the methodology used by an economist in making a determination of back pay and front pay is all about data. Data has to be provided and then questions can be asked about the data. An economist needs enough data, both pre event and post event, in order to formulate a sustainable income for the Plaintiffs. *See Exhibit "E", Page 84, Line 6 - Page 91, Line 14.*

52. Dr. McCoin admits that minimum standards exist as to how much data an economist needs in order to render an opinion, but Dr. McCoin does not know what the minimum standards are. *Id.*

53. Dr. McCoin further admits that having only 2 years worth of data in order to calculate back pay and/or front pay may or may not be enough to render a reliable opinion on the issue of back pay and/or front pay. *See Exhibit "E", Page 96, Line 23 - Page 97, Line 4.* Dr. McCoin even admits that having information on 2004 wages would help to give a more scientifically valid report. *See Exhibit "E", Page 97, Line 12 - Line 18.*

54. Because Dr. McCoin had insufficient data as to both Plaintiffs in order to calculate back pay and front pay, then the methodology used by Dr. McCoin is unreliable and thus, Dr. McCoin's testimony and report should be struck.

**C. Expert Witness Should be Excluded**

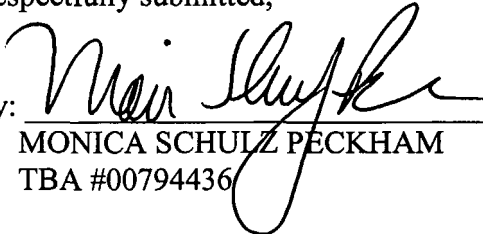
55. Because Dr. McCain's testimony and report do not meet the requirements set forth in *Daubert* and its progeny, Dr. McCain and his report should be excluded from trial.

56. To allow Dr. McCain to testify and to allow the report of Dr. McCain to be admitted into evidence would be highly prejudicial to Defendant and would also result in an unfair trial due to the unreliability of the expert and report.

WHEREFORE, Defendant Gallery Model Homes, Inc. d/b/a Gallery Furniture respectfully prays that this Honorable Court enter the following Order:

- (a) Barring Plaintiffs' expert, Dr. McCain, from testifying at trial in this cause or from otherwise offering any opinion evidence in this case; and
- (b) Ordering any and all other relief this court deems fair and just.

Respectfully submitted,

By:   
MONICA SCHULZ PECKHAM  
TBA #00794436

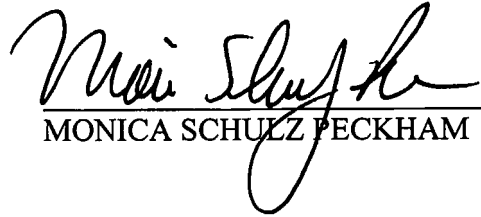
ATTORNEY IN CHARGE FOR DEFENDANT,  
GALLERY MODEL HOMES, INC. d/b/a  
GALLERY FURNITURE

OF COUNSEL:

MEYER, KNIGHT & WILLIAMS, LLP  
KURT W. CARPENTER, TBA #24027671  
8100 Washington Avenue, Ste. 1000  
Houston, Texas 77007  
Tel 713.868.2222  
Fax 713.868.2262

**CERTIFICATE OF SERVICE**

I hereby certify that on the 4<sup>th</sup> day of February, 2005, a true and correct copy of the attached **Defendant's Motion to Exclude Dr. Kenneth McCain's Testimony, Report and Evidence and Request for Hearing** was served on Scott Newar, Plaintiffs' attorney of record, via certified mail, return receipt requested.

  
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MONICA SCHULZ PECKHAM

1135 McFadden  
Beaumont, TX 77701  
Phone 409-833-4999  
Fax 409-838-6941

**SCOTT NEWAR**  
ATTORNEY AT LAW

700 Louisiana, 25th Floor  
Houston, TX 77002-2728  
Phone 713-220-9155  
Fax 713-223-9319

January 24, 2005

Ms. Monica Peckham  
Meyer, Knight & Williams  
8100 Washington Avenue, Suite 1000  
Houston, Texas 77007

**FAX: 713-868-2262**

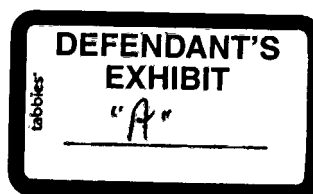
Re: *Marilyn Murphy and Martin G. McDaniel, Individually, And On Behalf of Others Similarly  
Situating v. Gallery Model Homes, Inc., d/b/a Gallery Furniture, No. H-04-0621 (J. Rainey)*

Dear Ms. Peckham:

In response to your January 21, 2005 letter regarding your planned Motion to Strike Dr. McCain and Motion to Exclude Evidence, you are hereby advised that the Plaintiffs are opposed to said motion(s).

Sincerely,

  
Scott Newar





**MARILYN MURPHY AND  
MARTIN G. MCDANIEL,  
INDIVIDUALLY, AND  
ON BEHALF OF OTHERS  
SIMILARLY SITUATED**

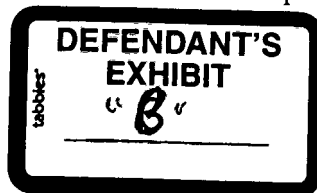
**v.**

**Defendant**

## JURY DEMANDED

Plaintiffs, Martin G. McDaniel and Marilyn Murphy, make these Expert Disclosures pursuant to FRCP 26 and the Local Rules of the Southern District of Texas:

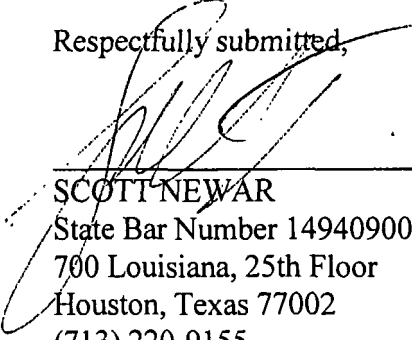
1. Kenneth G. McCoin. 7670 Woodway, Suite 171, Houston, Texas 77063. Telephone: 713-626-0144  
Dr. McCoin will testify as the Plaintiffs' economic damages resulting from Defendant's allegedly discriminatory actions. A copy of Dr. McCoin's report is attached hereto as Exhibit A.
2. Dr. Janette ("Jan") Bateman. Bateman Family Practice. Address: 3203 E. Broadway, #100, Pearland, Texas 77581. Telephone: 281-485-8876. Dr. Bateman has been a treating physician of Martin G. McDaniel at relevant times and may offer expert testimony pertaining to her evaluation, diagnosis, and treatment of Mr. McDaniel and the latter's physical and mental condition at relevant times, including following his termination by Defendant. Plaintiff has provided Defendant with medical records pertaining to his treatment by Dr. Bateman and, therefore, knows or can readily ascertain the factual bases of her opinions.
3. Dr. Jackie Snell. Bateman Family Practice. Address: 3203 E. Broadway, #100, Pearland, Texas 77581. Telephone: 281-485-8876. Dr. Snell has been a treating physician of Martin G. McDaniel during relevant times and may offer expert testimony pertaining to her evaluation, diagnosis, and treatment of Mr. McDaniel and the latter's physical and mental condition at relevant times, including following his termination by Defendant. Plaintiff has provided Defendant with medical records



pertaining to his treatment by Dr. Snell and, therefore, knows or can readily ascertain the factual bases of her opinions.

4. Dr. David A. Ott. Surgical Associates of Texas, P.A. Texas Heart Institute. St. Luke's Hospital. Telephone: 713-791-4900. Dr. Ott has been a treating physician of Martin G. McDaniel during relevant times and may offer expert testimony pertaining to his evaluation, diagnosis, and treatment of Mr. McDaniel and the latter's physical and mental condition at relevant times, including, but not limited to, 2001, when he treated Mr. McDaniel for coronary artery disease. Plaintiff has provided Defendant with medical records pertaining to his treatment by Dr. Ott and, therefore, knows or can readily ascertain the factual bases of his opinions.
5. Dr. Surendra Jain. Dr. Jain has been a treating physician of Martin G. McDaniel during relevant times and may offer expert testimony pertaining to his evaluation, diagnosis, and treatment of Mr. McDaniel and the latter's physical and mental condition at relevant times, including, but not limited to, 2001, when he treated Mr. McDaniel for coronary artery disease. Plaintiff has provided Defendant with medical records pertaining to his treatment by Dr. Jain and, therefore, knows or can readily ascertain the factual bases of his opinions.
6. Dr. Khoa Van Pham. Harris County Hospital District. Dr. Van Pham has been a treating physician of Marilyn Murphy during relevant times and may offer expert testimony pertaining to his evaluation, diagnosis, and treatment of Ms. Murphy and the latter's physical and mental condition at relevant times, including following her termination by Gallery. Plaintiff has provided Defendant with medical records pertaining to his treatment by Dr. Van Pham and, therefore, knows or can readily ascertain the factual bases of his opinions.
7. Dr. Asaf Quadeer. Address: 7333 North Freeway, Suite 111, Houston, Texas. Telephone: 713-692-6191. Dr. Quadeer has been a treating physician of Marilyn Murphy during relevant times and may offer expert testimony pertaining to his evaluation, diagnosis, and treatment of Ms. Murphy and the latter's physical and mental condition at relevant times, including following her termination by Gallery.
8. Eliot P. Tucker. Tucker Vaughn, 712 Main, Suite 1600, Houston, Texas 77002. Telephone: 713-228-9524. Mr. Tucker is an attorney licensed to practice law in the State of Texas and practices employment law. Mr. Tucker will offer expert testimony with respect to any application for attorney's fees filed by the Plaintiffs and will testify that the requested fees are reasonable in light of the *Johnson* factors. The factual bases for Mr. Tucker's opinion will be provided to Defendant at the time any fee application is filed, in accordance with FRCP 54.
9. Scott Newar. 700 Louisiana, Suite 2550, Houston, Texas 77002-2728. Mr. Newar is Plaintiffs' counsel and will offer expert testimony with respect to any application for attorney's fees filed by the Plaintiffs and will testify that the requested fees are reasonable in light of the *Johnson* factors. The factual bases for Mr. Newar's opinion will be provided to Defendant at the time any such fee application is filed, in accordance with FRCP 54.

Respectfully submitted,



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SCOTT NEWAR

State Bar Number 14940900

700 Louisiana, 25th Floor

Houston, Texas 77002

(713) 220-9155

(713) 223-9319 (Fax)

ATTORNEY-IN-CHARGE FOR PLAINTIFF

### **CERTIFICATE OF SERVICE**

I hereby certify that, on October 15, 2004, a copy of the Plaintiffs' Expert Disclosures was served upon the Defendant through its attorney, Monica Schulz Peckham, Meyer, Knight & Williams, 8100 Washington Avenue, Suite 1000 Houston, Texas 77007, by fax and e-mail in accordance with Rule 5 of the Federal Rules of Civil Procedure and the Local Rules of the Southern District of Texas.



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Scott Newar

KENNETH G. MCCOIN, PH.D., C.F.A.  
7670 Woodway, Suite 171  
HOUSTON, TEXAS 77063  
PH 713 626 0144 ♦ FAX 713 334 7307

AN APPRAISAL OF THE PECUNIARY LOSS OF MS. MARILYN J. MURPHY  
October 13, 2004

This is an appraisal of the pecuniary loss incurred by Ms. Marilyn J. Murphy, which is said to have occurred as a result of alleged wrongful termination of employment. It spans two periods: the "past" and the "future." The *past* (or "back pay") measures pecuniary loss from January 12, 2002, the assumed date the pecuniary loss began (loss date), until January 17, 2005, the reference date (assumed date of trial). The *future* (or "front pay") measures pecuniary loss from reference date through her expected remaining worklife.

**Methodology** Pecuniary loss measures a worker's lost net compensation over the worker's lifetime. Net compensation is defined as wages (cash income) plus fringe benefits (non-cash income) less work-related expenses. Net compensation is then adjusted for the probability that a person will work (by applying a worklife statistic). This adjusted net compensation is often referred to as *expected* net compensation. Economists generally express future net compensation in "real" terms, that is, in after-inflation dollars. In the case of future pecuniary loss, expected future net compensation is reduced to its present-day value by "discounting" at the expected future *real* rate of interest.

**Real Rate of Interest** Because all expected future net compensation is paid today in cash, as a lump sum, it is "discounted" (reduced in value) to its present value. This "present value" is that particular amount of money calculated to provide (replace) expected future net compensation on a yearly basis, when combined with interest income earned from its balance (the "unused" portion). If interest income is to provide (replace) expected future net compensation, it must meet three conditions: it must be free from the risk of default; it must provide money income in a timely fashion (on schedule); and it must respond to inflation in the same manner as nominal compensation. Short-maturity investments, such as U. S. Treasury bills, fulfill these requisites. From 1973 to 2004, the annual *real* return from bills was 1.5 percent. As with any investment, the real return varies from year to year.

**Future Real Compensation Growth** Even in a non-inflationary economy, compensation of workers tends to grow due to personal merit, increased experience and other individual and societal factors. Since 1973, the growth of real compensation, due to societal factors, has grown about 0.8 percent per year. It is assumed this trend will continue.

**Earnings** Ms. Murphy was employed as a sales manager for a furniture store. Her average annual earnings for the two years ending in 2001 expressed in the purchasing power of 2001 dollars, were \$89,792. Wage growth for the years since 2001 is assumed to equal the national average of all workers; therefore, her earnings for the years 2002 through 2005 equal \$91,861, \$94,835, \$97,870 and \$101,001, respectively.

**Benefits** A worker earns income in the form of benefits, which are expenditures by the employer for the benefit of the employee but are not reported as earned income. A U. S. Department of Labor study (USDOL: 04-1105, 6/04) reports that for workers in sales occupations, employers provide benefits equal to 20.0 percent of cash wages. Ms. Murphy's benefits are estimated to equal 12 percent of wages.

**Alternative Employment** In December, 2003, Ms. Murphy began alternative employment in furniture sales. In 2003, she earned \$675. Presently, her annual rate of pay is about \$30,669. She receives only those benefits that are legally required, an amount equal to 9.5 percent of wages plus \$2,400 per year for medical insurance allowance. All other assumptions, are the same as the pre-termination case.

**RE: Ms. Marilyn J. Murphy**

October 13, 2004

Page 2 of 2

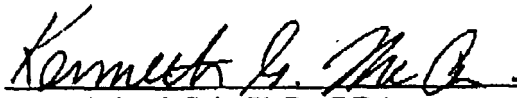
**Worklife Expectancy** Ms. Murphy was born June 25, 1948. A woman 56.6 years of age (age at reference date), who has 12 to 14 years of schooling, would on average work 6.9 years during her remaining lifetime (USDOL bulletin 2254). Her life expectancy at reference date is about 26.1 years or to about age 83.1 (U.S. life table 2001, 02/04).

**Findings** Pecuniary loss is measured as the difference between pre-termination compensation and alternative employment compensation. The results of the analysis are given in Table I.

Table I  
**PECUNIARY LOSSES**

	PAST	FUTURE	Past & Future
Pre-Termination Compensation	\$320,600	\$748,501	\$1,069,101
Less: Alternative Employment Compensation	41,171	260,798	301,969
NET PECUNIARY LOSS	279,429	487,703	767,132

These findings may change upon the receipt of additional information.



Kenneth G. McCain Ph.D., C.F.A.

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Houston, Texas 77002-2728

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7670 Woodway, Suite 171  
HOUSTON, TEXAS 77063  
PH 713 626 0144 ♦ FAX 713 334 7307

AN APPRAISAL OF THE PECUNIARY LOSS OF MR. MARTIN G. MCDANIEL  
October 13, 2004

This is an appraisal of the pecuniary loss incurred by Mr. Martin G. McDaniel, which is said to have occurred as a result of alleged wrongful termination of employment. It spans two periods: the "past" and the "future." The *past* (or "back pay") measures pecuniary loss from January 12, 2002, the assumed date the pecuniary loss began (loss date), until January 17, 2005, the reference date (assumed date of trial). The *future* (or "front pay") measures pecuniary loss from reference date through his expected remaining worklife.

**Methodology** Pecuniary loss measures a worker's lost net compensation over the worker's lifetime. Net compensation is defined as wages (cash income) plus fringe benefits (non-cash income) less work-related expenses. Net compensation is then adjusted for the probability that a person will work (by applying a worklife statistic). This adjusted net compensation is often referred to as *expected* net compensation. Economists generally express future net compensation in "real" terms, that is, in after-inflation dollars. In the case of future pecuniary loss, expected future net compensation is reduced to its present-day value by "discounting" at the expected future *real* rate of interest.

**Real Rate of Interest** Because all expected future net compensation is paid today in cash, as a lump sum, it is "discounted" (reduced in value) to its present value. This "present value" is that particular amount of money calculated to provide (replace) expected future net compensation on a yearly basis, when combined with interest income earned from its balance (the "unused" portion). If interest income is to provide (replace) expected future net compensation, it must meet three conditions: it must be free from the risk of default; it must provide money income in a timely fashion (on schedule); and it must respond to inflation in the same manner as nominal compensation. Short-maturity investments, such as U. S. Treasury bills, fulfill these requisites. From 1973 to 2004, the annual *real* return from bills was 1.5 percent. As with any investment, the real return varies from year to year.

**Future Real Compensation Growth** Even in a non-inflationary economy, compensation of workers tends to grow due to personal merit, increased experience and other individual and societal factors. Since 1973, the growth of real compensation, due to societal factors, has grown about 0.8 percent per year. It is assumed this trend will continue.

**Earnings** Mr. McDaniel was employed as a sales manager for a furniture store. His average annual earnings for the three years ending in 2001 expressed in the purchasing power of 2001 dollars, were \$51,248. Wage growth for the years since 2001 is assumed to equal the national average of all workers; therefore, his earnings for the years 2002 through 2005 equal \$52,429, \$54,126, \$55,858 and \$57,646, respectively.

**Benefits** A worker earns income in the form of benefits, which are expenditures by the employer for the benefit of the employee but are not reported as earned income. A U. S. Department of Labor study (USDL: 04-1105, 6/04) reports that for workers in sales occupations, employers provide benefits equal to 20.0 percent of cash wages. Mr. McDaniel's benefits are estimated to equal the occupational average.

**Alternative Employment** On or about July 1, 2002, Mr. McDaniel began alternative employment in furniture sales. In 2003, he earned \$21,924. Earnings are assumed to have increased at the same rate as all workers and thus he is expected to earn about \$23,350 in 2005. He receives only those benefits that are legally required, an amount equal to 9.5 percent of wages. All other assumptions, are the same as the pre-termination case.

**RE: Mr. Martin G. McDaniel**

October 13, 2004

Page 2 of 2

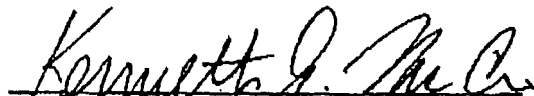
**Worklife Expectancy** Mr. McDaniel was born February 18, 1943. A man 61.9 years of age (age at reference date), who has 12 to 14 years of schooling, would on average work 5.1 years during his remaining lifetime (USDOL bulletin 2254). His life expectancy at reference date is about 18.7 years or to about age 80.7 (U.S. life table 2001, 02/04).

**Findings** Pecuniary loss is measured as the difference between pre-termination compensation and alternative employment compensation. The results of the analysis are given in Table I.

Table I  
**PECUNIARY LOSSES**

	PAST	FUTURE	Past & Future
Pre-Termination Compensation	\$196,068	\$344,310	\$540,378
Less: Alternative Employment Compensation	62,011	127,253	189,264
NET PECUNIARY LOSS	134,057	217,057	351,114

These findings may change upon the receipt of additional information.



Kenneth G. McCoin Ph.D., C.F.A.

Mr. Scott Newar  
LAW OFFICES OF SCOTT NEWAR  
700 Louisiana, Suite 2500  
Houston, Texas 77002-2728

## RESUME

### KENNETH G. McCOIN

ADDRESS:                      Office    7670 Woodway, Suite 171  
   Houston, Texas 77063

   Home    7814 Del Monte  
   Houston, Texas 77063

TELEPHONE:                      Office    (713) 626-0144  
   Fax      (713) 334-7307  
   Home    (713) 977-0222  
   Email    kgmccoin@swbell.net

---

PRESENT ACTIVITIES:                      President, Waterford International Asset Management, Inc. (4/88 to present). Economic and financial analysis.

PROFESSIONAL EXPERIENCE:                      Principal, Private Equity, Inc. (9/81 to 9/87). Private Equity NASD direct participation broker/dealer.

   President (3/78 -- 9/81) Mosher, McCoin & Sims, Inc., investment advisors.

   Chief Economist (1976-1978), Economist (1974-1976) American General Capital Management, Inc. Investment advisors and mutual fund managers.

TEACHING EXPERIENCE:                      Adjunct Professor Business and Economics, Houston Baptist University, 1978 to present. Courses taught: investments, corporate finance.

   Lecturer in Administrative Science, Jess H. Jones School of Administration, Rice University 1985-1986.

   Lecturer in Finance and Economics, University of Houston, 1975 to 1985. Instructor of Finance 1971 - 1974, Teaching Fellow, University of Houston 1970-1971. Subjects taught (graduate and under-graduate): corporation finance, money and banking, managerial economics, investments, micro-economics.



Program Director, Intensive Management Development Institute, Houston, Texas. Financial management instruction for corporations.

**EDUCATION:**

Chartered Financial Analyst, 1979

Investment Management Program Stanford University, 1976

Ph.D. (1974) University of Houston. Areas of Defense: macro-economics, micro-economics, econometrics, monetary economics, corporation finance and investments. Dissertation: The Relative Performance of Open-End Investment Companies During Periods of Rising and Falling Securities Prices, 1974.

B.B.A. (1970) University of Houston Major: Finance

**PUBLICATIONS:**

"The Bond Refunding Decision: One Face or Two?"

"The Rate of Discount in Bond Refunding," Financial Management, Autumn, 1974 (with T. H. Mayor).

Instructor's Manual Security Analysis and Portfolio Management, Holt, Rinehart, and Winston, 1971.

**PRESENTED PAPERS:**

"Inflation, Common Stock Prices, and Financial Planning", International Association of Financial Planners, Connecticut and Western Massachusetts Chapters, Hartford, Connecticut, May, 1976.

"Inflation and Common Stock Prices: 1976 and Beyond", Houston, Chapter, National Association of Business Economists, April 1976.

"The inflation Outlook for 1976", Houston Chapter, National Association of Business Economists, October, 1975.

"Wall Street and The Pension Reform Act of 1974: Implications for Labor Managers", Ad Hoc Association of Directors of Human Relations, Motorola Executive Institute, Oracle, Arizona May 1975.

"Discriminate Analysis of Consumer Credit Applications", Managers and Directors Annual Conference -- Texas Credit Union League, March, 1972, Houston, Texas

**TEACHING AWARD:**

Outstanding Faculty Award 2001-2002, Houston Baptist University, Professional MBA Program.

HONOR SOCIETIES:

Omicron Delta Epsilon (International Honor Society in Economics)

Beta Gamma Sigma (Honor Society in Business Administration)

PROFESSIONAL SERVICE:

Economic Studies Committee, Investment Company Institute, Washington, D.C. The committee is chartered to study and assess the impact of developments in the economy and in the financial markets on investment companies.

Abstractor: Financial Analyst Digest, 1990

Faculty member 4<sup>th</sup> Annual Advanced Expert Witness Course, State Bar of Texas, February 2004

PROFESSIONAL ASSOCIATIONS:

American Economic Association

American Finance Association

Houston Society of Financial Analysts

Financial Analysts Association

National Association of Business Economists

President, Houston Chapter 1977

Vice-President, Houston Chapter 1976

In the last four years, I have testified in the following cases:

CAUSE #	CASE NAME	COUNTY	NUMBER				
	Allamang, Francis G.	Harris	S	1999-40872	Gonzales, Porfirio	Harris	S
	Andriotis, Nicholas	Harris	S	99-04-37485	Gonzalez, Hector	Harris	S
	Arrington, Daleam	Harris	S	G-01-466	Gooley, Jacob	Galveston	F
G-00-548	Ashby, Henry	Harris	F	8328-JG98	Griffin, Sandle	Brazoria	
G-01-048	Authement, Brandon	Galveston	F	00-3375-F	Hale, Madeleine	Dallas	S
E-157317	Averette, Michael	Harris	S	G-01-453	Hall, Antonio	Galveston	F
	Babin, Joey L.	Galveston	F		Hallman, David	Galveston	F
98-12984	Bailey, Dalton K.	Travis	S	18,702-A	Hancock Construction	Cameron	S
B-160,694	Ball, Jerry L. Sr.	Cameron	S	01-00132-CV	Hanna, Victoria	Montgomery	S
	Barber, David	Galveston	F	00-5-55,003-C	Hardt, Charles A.	Victoria	S
00-400-3	Batey, Norman E.	Travis	S	CIV 01-0253 pg/tp	Harkins, Michael	Harris	S
7-99-cv-015-x	Beeson, Richard	Dallas	F	A-191,842	Harrison, Antoinette M.	Jefferson	
	Benigay, Flora	Harris	S		Hatchey, Louis W.	Galveston	10
	Blackledge, Brian	Harris	S	348-177833-99	Hernandez, David	Fort Worth	S
	Bodanheimer, Robert M.	New Orleans	S	V-00-94	Hershberger, Joseph J.	Victoria	F
111,385	Branning, Rebecca	Fort Bend	240		Herzer, Anna	Harris	S
	Brice, Ricky A.	Jefferson			Hill, David W.	Dallas	S
98-08227	Briceno, Naomi	Travis	S	DF-00-08848-K	Holton, Ladd	Dallas	S
	Brown, Derek	Harris	S		Horn, Sherry	Harris	S
A-99-CA-784-JN	Browne, Donna	Travis	F	G-00-229	Horton, Billy R.	Galveston	F
C-159-01-E	Cadriel, Kristian	Hidalgo	S	98-11405	Hrabal, Stephen	Dallas	S
	Caillouette, John V.	Harris	S		Ison, Shane C.	Jefferson	S
	Calhoun, Michael E.	Harris	F	99-27178	Izquierdo, Billy	Harris	S
	Cameron, Victor E.	Galveston	F		James, Christopher	Harris	S
99-CVQ-00472-02	Castillo, Rick	Harris	S		Janssen, Christopher	Victoria	G
01-CI-06379	Castro, Karen	Bexar	S	D-162,893	Jordan, Vertrick	Jefferson	
	Caudell, Joseph	Galveston	F	01-20957	Keane, Kelly A.	Harris	S
	Caudle, Dickey F.	Jefferson	S	G-01-196	Kelso, James	Harris	S
	Chandler, Mark A.	Harris	S	G-01-203	Kenney, Daniel B.	Galveston	F
LR-C-99-495	Chu, Nancy	Harris	S		Kilgore, Dwight	Harris	S
00-41623	Cofsky, Jeff S.	Davidson	F	401-12118-01	Kirkby, Elizabeth	Dallas	S
	Cole, Charles B.	Harris	S		Klson, Daniel	Harris	S
4399	Collett, Lanny M.	Harris	S	00 V-0114	Krause, Louis	Harris	S
	Cook, David	Harris	S		Laffitte, Lee	Galveston	F
	Cortey, Robert H.	Harris	S		Lawrance, Chris	Harris	S
01-18844	Curry, Donald C.	Harris	S	02-cv-122846	Lazano, Prisciliano	Fort Bend	S
G-01-509	Dalton, R. N.	Galveston	F		Leal, Nicholas	Harris	S
	Davalos, Uvaldo	Harris	S		Lewis, James E.	Harris	S
	Dawson, Daniel E.	Dallas	F	A-166,121	Lewis, Terry L.	Jefferson	S
	Day, Leonard B.	Galveston	122		Lindsey, Cordell	Harris	S
SA-00-ca-0755F8	Deatherage, Michael	Bexar	F		Lopez, Jose	Cameron	S
	DeBellefeuille, Gerald	Galveston	F	8164,247	Lowell, Gary	Jefferson	S
	Demar, Kayle	Harris	S	G-98-268	Luke, Roy	Galveston	F
	Dewberry, Lawanna	Harris	S	G-00-033	Macula, George A.	Galveston	F
98-25084	Dickson, Frank	Harris	S		Mainer, Kevin	Harris	S
	Dodds, Jimmie	Harris	S	G-00-789	Major, Eddie	Galveston	F
3-38549	Downey, Donna	Anderson	S		Malaney, Kevin J.	Galveston	F
	Doxay, JoAnn	Harris	S		Mann, Cathy L.	Dallas	S
97-3900	Doyle, Carl V.	Calcasieu	S		Marshall, Lionel	Harris	S
	Edgin, John L.	Galveston	F		Martin, Gary	Fort Worth	S
99-C-504	Engle, John S.	Cass	S	99-031083-E	Martinez, Fidencio	Cameron	S
99-00531	Epstein, Erica	Harris	S	01-44589	Martinez, Judith	Harris	S
	Ferguson, Matthew	Harris	S	G-00-303	Mauldin, Edwin E.	Galveston	F
00-C110073	Ferrall, Tiffany L.	Bexar	S	99-29377	McClung, Kendle	Harris	S
	Fields, Vanessa	New Orleans	S	96-43633	McCoy, Keith	Harris	S
Arbitration	Fina Oil	Harris	S	2-99-CV-378-J	McDonald, Randy J.	Harris	S
	Fina Oil v Stolt	Harris	S	G-99-380	McGuire, Chadwick	Galveston	F
	Florence, Darrell	Harris	S		McKinley, Joe L.	Galveston	F
	Flowers, Bobby A.	Harris	S	33,389	McWilliams, Kendall	Hutchinson	S
	Foussell, Dudley L.	Galveston	F		Maggs, Geoffrey R.	Fort Worth	S
	Frige, Marcia	Harris	S	G-00-023	Mendez, Jose	Galveston	F
1-00CV-034	Gaddis, Courlin	Jefferson	F	00-508,625	Michulka, Kenneth	Harris	S
98-04131-C	Gallardo, Margarito	Dallas	S	50,881-272	Mirales, Roberto A.	Harris	S
	Gallo, Crystal J.	Harris	S	G-00-728	Monroe, Freddie	Harris	F
CC-00-07118-C	Gallups, Charles J.	Dallas	S		Moore, Shannon	Harris	S
96-08-04831	Galvan, Kristal	Cameron	S	01-30047	Moore, Tierra	Harris	S
98-38084	Garcia, Juan V.	Harris	S	C-855-00-A	Morales, Miguel	Hidalgo	S
	Gaskamp, Bobby	Harris	S	2000-21189	Morris, Lionel	Harris	S
E-155,535	Geldard, Robert M.	Jefferson	S		Moultie, Hebert	Galveston	F
	Gerald, Elizabeth	Harris	S	01-27313	Nelson, Joseph A.	Galveston	F
	Gilman, Timothy A.	Dallas	S	G-01-187	Nguyenm Thang	Harris	S
	Glass, Harrell	Travis	S		Norris, Glenn	Harris	F

CAUSE #	CASE NAME	COUNTY	NUMBER				
317,814	Nusebeck, Henry	Jefferson	S	00-55013	Williams, Michael J.	Harrison	F
CC-00-03244-C	Onizine, Lydia	Harris	S	G-99-CV-484	Williams, Murry	Harris	S
G-00-058	Ortman, Samantha H.	Dallas	S	G-01-198	Wilson, Elton	Galveston	F
17-183717-00	Osbom, Richard	Harris	S	C-98-298	Wilson, Steve	Galveston	F
	Parfall, Eric J.	Galveston	F		Yau, Wen	Harris	S
	Parker, Crawford D.	Fort Worth	S		Young, Paul A.	Nueces	F
	Parks, Bobby L.	Harris	S				
C32500C	Patrick, James M.	Harris	S				
	Pearson, Phillip W.	Hidalgo	S				
109,347	Pennington, Angela R.	Fort Worth	S				
G-99-177	Pennington, Patrick J.	Fort Bend	S				
13906-JG00	Pequeno, Juan	Cameron	F				
	Perez, Mary L.	Harris	F				
	Perry, Steve C.	Brazoria					
	Pope, Steven D.	Harris	S				
	Powell, Charles J.	Dallas	S				
	Powell, Kenneth	Galveston	F				
01-41542	Puckett, Jonathan	Harris	S				
99-55233	Raine, Terrell	Galveston	F				
	Reese, James C.	Harris	S				
	Resendez, Jonathan	Harris	S				
	Royce, Juan P.	Cameron	S				
G-00-238	Rimer, Timothy	Galveston	F				
	Rivas, Jesus, Jr.	Harris	S				
	Roberts, Warren J.	Harris	S				
	Robertson, Julius	Harris	S				
E-157, 317	Robin, Bryan	Jefferson	S				
99-10991	Rodriguez, Christina	Maverick	S				
	Rodriguez, Kimberly	Travis	S				
	Rosales, Jose	Harris	S				
	Ross, Charles	Harris	S				
153-179148-99	Ruacho, Andrea I.	Fort Worth	S				
99-5967-F	Russell, Janice N.	Harris	S				
90-38885	Sanchez, Christian	Nueces	S				
01-36254	Santana, Kessie	Harris	S				
	Santos, Enrique	Harris	S				
	Schulze, John P.	Nueces	S				
	Scott, Kevin E.	Harris	S				
	Scott, Madison	Dallas	S				
G-00-854	Seago, William	Galveston	F				
2-99cv0152-4h	Sealy, Tamara (John)	Harrison	F				
	Serrata, Pete G.	Harris	S				
	Simmons, Dexter	Harris	S				
CC-99-08344-E	Simon, Gerald A.	Galveston	F				
	Small, Neal C.	Dallas	S				
	Smart, Karen	Harris	S				
	Smith, Kenneth R.	Galveston	10				
G-01-301	Sneed, Donald	Galveston	F				
	Sneed, Jonathan K.	Fort Worth	S				
99-23669	Standley, Kristen A.	Harris	S				
B-182,007	Stanford, Curtis	Jefferson	S				
	Stewart, Lennette	Harris	S				
G-00-500	Summers, Joseph	Galveston	F				
58,840	Syzdek, David	Harris	S				
C-00-408	Tezzeno, Manuel	Galveston	F				
	Thomas, David K.	Harris	S				
G-01-434	Tortillas	Galveston	F				
99-CI-15703	Trevino, Julian G.	Bexar	S				
	Trujillo, Joaquin	Harris	S				
	Trujillo, Mario M.	Harris	S				
99-01594-9	Turney, Roy	Dallas	S				
22,347	Tymel, Ronald	Brazoria	S				
	Urias Jr., Gilberto	Harris	S				
	Vargas, Ricardo	Harris	S				
	Vasques, Miguel	Harris	S				
UN-00-3577	Vancas, Mayden	Travis	S				
	Villareal, Claudio	Harris	S				
	Watson, James O	Galveston	F				
	Weatherford, Teresa L.	Harris	S				
99-23840	Weaver, Tami	Harris	S				
1:99-CV-0159	Webb, Earnest A.	Jefferson	F				
99-14106	West, Barbara	New Orleans	S				
00-64362	West, Karta	Harris	S				
	Williams, Kelvin	Galveston	F				

United States Courts  
Southern District of Texas  
FILED

DEC 16 2004

**Michael N. Milby, Clerk**

~~~~~

Plaintiffs

# JURY DEMANDED

Defendant

# I

tabbles®

**DEFENDANT'S  
EXHIBIT**

"C"

responses and information, includes all supplementation for interrogatories, requests for production and disclosures under Rules 26(a)(1) and 26(a)(2) of the Federal Rules of Civil Procedure.

2. Plaintiffs and Defendant agree that this agreement does not apply to any disclosures, information and/or responses that may be required pursuant to a Court order with respect to Defendant's Motion to Compel.

3. Plaintiffs and Defendant agree that any supplemental disclosures, information, and/or responses not timely supplemented by 4:00 p.m. on December 24, 2004 shall not be admissible at the time of trial.

Dated: \_\_\_\_\_

*(see attached)*

\_\_\_\_\_  
Scott Newar, Attorney for Plaintiffs  
Marilyn Murphy and Martin G. McDaniel

Dated: 12/14/04

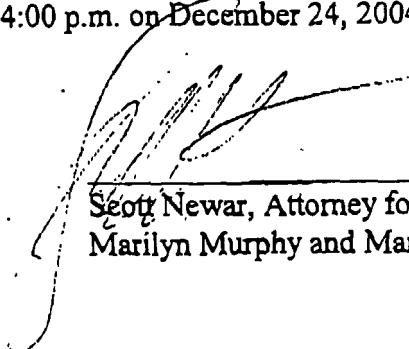
*Moni Schulz*  
\_\_\_\_\_  
Monica Schulz Peckham, Attorney for  
Defendant Gallery Model Homes, Inc.  
d/b/a Gallery Furniture

for production and disclosures under Rules 26(a)(1) and 26(a)(2) of the Federal Rules of Civil Procedure.

2. Plaintiffs and Defendant agree that this agreement does not apply to any disclosures, information and/or responses that may be required pursuant to a Court order with respect to Defendant's Motion to Compel.

3. Plaintiffs and Defendant agree that any supplemental disclosures, information, and/or responses not timely supplemented by 4:00 p.m. on December 24, 2004 shall not be admissible at the time of trial.

Dated: 12/14/04

  
\_\_\_\_\_  
Scott Newar, Attorney for Plaintiffs  
Marilyn Murphy and Martin G. McDaniel

Dated: \_\_\_\_\_

\_\_\_\_\_  
Monica Schulz Peckham, Attorney for  
Defendant Gallery Model Homes, Inc.  
d/b/a Gallery Furniture

#2  
McCoin



| Martin G. McDaniel |       |           |            | 01/12/02 | INFLATION | 2001 |
|--------------------|-------|-----------|------------|----------|-----------|------|
| Year               | CPI   | REPORTED  | ANNUALIZED |          | ADJUSTED  | AGE  |
| 1999               | 166.6 | 48,006.16 | 48,006.16  |          | 51,031.76 | 56.9 |
| 2000               | 172.2 | 54,905.69 | 54,905.69  |          | 56,468.05 | 57.9 |
| 2001               | 177.1 | 46,245.77 | 46,245.77  |          | 46,245.77 | 58.9 |
| 2002               | 179.9 | 21,924.37 | 21,924.37  |          |           | 59.9 |
| 2003               | 184.0 | 21,924.37 | 21,924.37  |          |           | 60.9 |
| 2004               | 190.0 |           |            |          |           | 61.9 |
| 2005               | 196.5 |           |            |          |           | 62.9 |
| AVG                |       | 38,601.27 | 38,601.27  |          | 51,248.53 |      |

Martin McDaniel

Sale Mgr

DOB: 2-18-43

DOI: 1-12-02

DOT: 1- -05

RTW: about 7-1-02

EDV: HS+

White / male

Wage 13.79/hr + 200 wk

Sched 40 + O.T. avg 15/hr

DOH: 8-15-97

|     |           |
|-----|-----------|
| 99) | 47,006.16 |
| 00) | 54,905.69 |
| 01) | 46,245.77 |
| 02) | 4,634.61  |
| 03) | 21,924.37 |
| 04) |           |



| A  | B                                 | C                | D     | E           | F               | G                      | H                      | I                | J                      | K                      | L                         | M |
|----|-----------------------------------|------------------|-------|-------------|-----------------|------------------------|------------------------|------------------|------------------------|------------------------|---------------------------|---|
|    | Age                               | Years            | Date  |             |                 |                        | Past                   | Future           | Past+ Future           |                        |                           |   |
| 1  |                                   |                  |       |             |                 |                        |                        |                  |                        |                        |                           |   |
| 2  | Event Date                        | 53.550           | 28.7  | 1/12/2002   |                 |                        | 320,600                | 748,501          | 1,069,100              |                        |                           |   |
| 3  | Trial Date                        | 56.564           | 26.1  | 1/17/2005   |                 |                        | -41,171                | -260,798         | -301,969               |                        |                           |   |
| 4  | Est Death                         | 83.100           | 26.1  |             |                 |                        | 279,429                | 487,703          | 767,131                |                        |                           |   |
| 5  | Rtr to work                       | 55.431           | 27.8  | 11/30/2003  |                 |                        |                        |                  |                        |                        |                           |   |
| 6  | Worklife                          | Trial Date       | 6.9   | 73.31%      |                 |                        |                        |                  |                        |                        |                           |   |
| 7  |                                   |                  |       |             |                 |                        |                        |                  |                        |                        |                           |   |
| 8  |                                   |                  |       |             |                 |                        |                        |                  |                        |                        |                           |   |
| 9  | Marilyn J. Murphy                 |                  |       | 06/25/48    | PRE-TERMINATION |                        |                        | POST-TERMINATION |                        |                        |                           |   |
| 10 | YEAR                              | Fraction of Year | AGE   | Growth RATE | 91,861          | 12.00% Fringe Benefits | ADJ NET COMPEN- SATION | 0                | 17.20% Fringe Benefits | ADJ NET COMPEN- SATION | PRE-EVENT LESS Post-Event |   |
| 11 | 2002                              | 0.9671           | 54.52 | 2.30%       | 101,001         | 10,661                 | 99,502                 | 0                | 0                      | 0                      | 99,502                    |   |
| 12 | 2003                              | 1.0000           | 55.52 | 3.24%       | 88,841          | 11,380                 | 106,215                | 675              | 116                    | 995                    | 105,220                   |   |
| 13 | 2004                              | 1.0000           | 56.52 | 3.20%       | 94,835          | 11,744                 | 109,614                | 30,669           | 5,274                  | 38,343                 | 71,271                    |   |
| 14 | 2005                              | 0.0466           | 56.56 | 3.20%       | 97,870          | 565                    | 5,269                  | 1,474            | 254                    | 1,832                  | 3,436                     |   |
| 15 | Totals                            | 3.0137           |       |             | 4,704           | 34,350                 | 320,600                | 32,818           | 5,644                  | 38,462                 | 282,137                   |   |
| 16 | Past Worklife Totals              |                  |       |             | 286,250         | 34,350                 | 320,600                | 32,818           | 5,644                  | 41,171                 | 279,429                   |   |
| 17 |                                   |                  |       |             |                 |                        |                        |                  |                        |                        |                           |   |
| 18 |                                   |                  |       |             |                 |                        |                        |                  |                        |                        |                           |   |
| 19 | 2005                              | 0.9534           | 57.52 | 0.00%       | 96,297          | 11,556                 | 107,853                | 30,176           | 5,190                  | 35,366                 | 51,466                    |   |
| 20 | 2006                              | 1                | 58.5  | 0.80%       | 101,809         | 12,217                 | 114,027                | 31,904           | 5,487                  | 37,390                 | 54,426                    |   |
| 21 | 2007                              | 1                | 59.5  | 0.80%       | 102,624         | 12,315                 | 114,939                | 32,159           | 5,531                  | 37,689                 | 54,876                    |   |
| 22 | 2008                              | 1                | 60.5  | 0.80%       | 103,445         | 12,413                 | 115,858                | 32,416           | 5,575                  | 37,991                 | 55,329                    |   |
| 23 | 2009                              | 1                | 61.5  | 0.80%       | 104,272         | 12,513                 | 116,785                | 32,675           | 5,619                  | 38,295                 | 55,786                    |   |
| 24 | 2010                              | 1                | 62.5  | 0.80%       | 105,107         | 12,613                 | 117,719                | 32,937           | 5,664                  | 38,601                 | 56,246                    |   |
| 25 | 2011                              | 1                | 63.5  | 0.80%       | 105,947         | 12,714                 | 118,661                | 33,200           | 5,710                  | 38,910                 | 56,710                    |   |
| 26 | 2012                              | 1                | 64.5  | 0.80%       | 106,795         | 12,815                 | 119,610                | 33,466           | 5,755                  | 39,221                 | 57,178                    |   |
| 27 | 2013                              | 1                | 65.5  | 0.80%       | 107,649         | 12,918                 | 120,567                | 33,734           | 5,801                  | 39,535                 | 57,649                    |   |
| 28 | 2014                              | 0.48323          | 66.5  | 0.80%       | 52,436          | 6,292                  | 58,728                 | 16,432           | 2,826                  | 19,257                 | 28,088                    |   |
| 29 | Totals                            | 9.4367           |       |             | 986,382         | 118,366                | 1,104,748              | 309,099          | 53,157                 | 362,256                | 742,492                   |   |
| 30 | Worklife Adj Totals               | 12.450           |       |             | 723,165         | 86,780                 | 809,945                | 226,616          | 38,972                 | 265,588                | 544,357                   |   |
|    | Discounted Future Worklife Totals |                  |       |             | 668,304         | 80,197                 | 748,501                | 209,424          | 36,016                 | 245,440                | 487,703                   |   |

EXHIBIT  
#7  
macdon