

IN THE SUPREME COURT OF THE STATE OF IDAHO

ERIK KNUDSEN,

Plaintiff-Appellant-
Cross Respondent,

vs.

J.R. SIMPLOT COMPANY, a Nevada
corporation,

Defendant-Respondent-
Cross Appellant.

Supreme Court Case No. 47020

CLERK'S RECORD ON APPEAL

Appeal from the District Court of the Fourth Judicial District, in and for the County of Ada.

HONORABLE DEBORAH A. BAIL

ERIKA BIRCH

ATTORNEY FOR APPELLANT

BOISE, IDAHO

BRIAN K. JULIAN

ATTORNEY FOR RESPONDENT

BOISE, IDAHO

CASE SUMMARY
CASE NO. CV01-17-13956

Erik Knudsen
Plaintiff,
 vs.
J.R. Simplot Company
Defendant.

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Location: **Ada County District Court**
 Judicial Officer: **Bail, Deborah A.**
 Filed on: **07/27/2017**
 Case Number History:
 Appellate Case Number: **47020-2019**

CASE INFORMATION

Case Type: **AA- All Initial District Court Filings (Not E, F, and H1)**
 Case Status: **05/07/2019 Appealed Case - Supreme Court Appeal**

DATE

CASE ASSIGNMENT

Current Case Assignment

Case Number	CV01-17-13956
Court	Ada County District Court
Date Assigned	08/25/2017
Judicial Officer	Bail, Deborah A.







PARTY INFORMATION

Plaintiff	Knudsen, Erik	<i>Lead Attorneys</i> Birch, Erika <i>Retained</i> 208-336-1788(W)
Defendant	J.R. Simplot Company	Julian, Brian Kenneth <i>Retained</i> 208-344-5800(W)

DATE

EVENTS & ORDERS OF THE COURT

INDEX

07/27/2017	Initiating Document - District	
07/27/2017	 Complaint Filed <i>and Demand for Jury Trial</i>	
07/27/2017	 Summons Issued <i>And Filed</i>	
07/27/2017	 Civil Case Information Sheet	
07/27/2017	Summons J.R. Simplot Company Unserved	
08/23/2017	 Notice of Appearance <i>Brian Julian for Defendant</i>	
08/23/2017	 Motion to Disqualify <i>Without Cause</i>	
08/25/2017	 Order for Disqualification of Judge	

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Without Cause

08/25/2017	 Notice <i>of Reassignment - Judge Bail</i>
09/11/2017	 Answer <i>Answer to Complaint and Demand for Jury Trial</i>
09/15/2017	 Notice <i>of Status Conference</i>
09/15/2017	 Notice of Change of Address <i>Plaintiff's Attorneys</i>
10/02/2017	 Notice of Service <i>of Discovery</i>
10/19/2017	 Stipulation <i>for Scheduling and Planning</i>
11/01/2017	CANCELED Status Conference (3:30 PM) (Judicial Officer: Bail, Deborah A.) <i>Vacated</i>
11/06/2017	 Motion <i>Joint Motion and Stipulation for Protective Order</i>
11/08/2017	 Notice of Appearance <i>Grant Burgoyne for Plaintiff</i>
11/24/2017	 Notice of Jury Trial & Scheduling Order
11/29/2017	 Amended <i>Notice of Jury Trial & Scheduling Order</i>
11/30/2017	 Motion to Disqualify <i>Alternate Judge (Judge Copsey_</i>
11/30/2017	 Order <i>to Disqualify Alternate Judge (Copsey)</i>
12/06/2017	 Notice of Service <i>of Discovery</i>
12/11/2017	 Notice of Service <i>Notice of Service of Discovery</i>
03/27/2018	 Notice of Service of Discovery Requests
04/13/2018	 Order <i>Protective Order</i>
04/20/2018	

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	 Witness Disclosure <i>Defendant's Expert Witness Disclosure</i>
04/30/2018	 Notice of Service <i>of Discovery</i>
05/11/2018	 Notice of Service <i>of Discovery</i>
05/16/2018	 Notice of Taking Deposition <i>Notice of Deposition of Plaintiff Erik Knudsen</i>
05/17/2018	 Stipulation <i>Rule 29 Stipulation Re: Out-of-State Witness</i>
05/30/2018	 Notice of Service <i>of Discovery</i>
05/31/2018	 Notice of Service
06/14/2018	 Notice of Service
06/19/2018	 Stipulation <i>to Extend Summary Judgment Deadline</i>
06/20/2018	 Motion for Summary Judgment
06/20/2018	 Affidavit <i>of Andrea J. Fontaine</i>
06/27/2018	 Memorandum In Support of Motion <i>Memorandum in Support of Defendant's Motion for Summary Judgment</i>
06/27/2018	 Affidavit <i>Affidavit of Brian K. Julian in Support of Defendant's Motion for Summary Judgment</i>
07/17/2018	 Motion <i>to Strike or in Alternative, an Extension to Prepare Expert</i>
07/17/2018	 Affidavit <i>of Brian K. Julian</i>
07/19/2018	 Notice of Hearing <i>9/5/18 at 3pm</i>
07/27/2018	 Request <i>Unopposed Request for Status Conference</i>
07/31/2018	 Motion to Compel
07/31/2018	

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 Memorandum In Support of Motion
to Compel

07/31/2018  Affidavit
of Andrea J. Fontaine in Support of Df's Mtn to Compel

08/06/2018  Notice of Hearing
Notice of Hearing re: Defendant's Motion to Compel 9/5/18 @ 3:00pm

08/13/2018  Response
Plaintiff's Response Memorandum Re: Defendant's Motion to Compel

08/20/2018  Motion
Defendant's Motion in Limine

08/20/2018  Motion
Plaintiffs Motions in Limine

08/20/2018  Memorandum In Support of Motion
Memorandum in Support of Plaintiff's Motions in Limine

08/22/2018  Memorandum
in Opposition to Defendant's Motion for Summary Judgment

08/22/2018  Miscellaneous
Statement of Disputed Facts in Support of Opposition

08/22/2018  Affidavit
of T. Guy Hallam in Support

08/22/2018  Miscellaneous
Exhibits to Aff of T. Guy Hallam in Support of Opposition

08/24/2018  Motion
Defendant's Motion to Strike Plaintiff's Statement of Disputed Facts

08/24/2018  Memorandum In Support of Motion
Memorandum in Support of Defendant's Motion to Strike Plaintiff's Statement of Disputed Facts


08/29/2018  Notice of Hearing
Notice of Hearing re: Defendant's Motion to Strike Plaintiff's Statement of Disputed Facts


08/29/2018  Reply
Reply to Memorandum in Opposition to Defendant's Motion for Summary Judgment


08/29/2018  Opposition to
Plaintiff's Opposition to Defendant's Motion to Strike Expert


08/29/2018  Affidavit
Affidavit of Erika Birch in Support of Opposition to Motion to Strike


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08/29/2018  Opposition to
Plaintiff's Opposition to Defendant's Motion to Strike SOF


08/30/2018  Motion
to Withdraw Defendant's Motion to Compel- Defendant


08/31/2018  Notice of Service
of Discovery - Defendant's 4th Supplemental Answers and Responses to Plaintiff's 1st Requests for Discovery to Defendant


09/04/2018  Jury Instructions Filed
Defendant's Proposed Jury Instructions


09/04/2018  Jury Instructions Filed
Plaintiff's Proposed


09/05/2018 **Motion for Summary Judgment (3:00 PM)** (Judicial Officer: Bail, Deborah A.)

09/05/2018  Report
Defendant's Supplemental Expert Witness Report


09/05/2018  Court Minutes

09/07/2018  Motion to Vacate
Trial


09/07/2018  Memorandum In Support of Motion
to Vacate Trial


09/07/2018  Affidavit
of Erika Birch


09/11/2018 **Motion to Continue (9:30 AM)** (Judicial Officer: Bail, Deborah A.)
Telephonic


09/11/2018  Court Minutes
Telephonic

09/18/2018 **CANCELED Jury Trial (9:30 AM)** (Judicial Officer: Bail, Deborah A.)
Vacated
4 days


11/13/2018  Decision or Opinion
Re: Motion for Summary Judgment


12/18/2018  Memorandum of Costs & Attorney Fees


12/27/2018  Stipulation
to Extend Deadline Oppositon to Attorney Fees and Costs


01/03/2019  Affidavit
Affidavit of Clarification Concerning Stipulation to Extend Deadline for Opposition to Fees and Costs

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01/03/2019  Motion
Unopposed Motion to Extend


01/09/2019  Response
Plaintiff's Objection to Defendant's Requests for Costs and Attorney's Fees


01/18/2019  Amended
Amended Memorandum and Affidavit of Costs and Attorney Fees


01/23/2019  Judgment


01/23/2019 **Dismissed With Prejudice** (Judicial Officer: Bail, Deborah A.)


01/23/2019 Civil Disposition Entered


02/06/2019  Motion
Motion to Reconsider


02/06/2019  Memorandum In Support of Motion
Memorandum in Support of Motion to Reconsider


02/06/2019  Affidavit
Affidavit of T. Guy Hallam, Jr. in Support of Motion to Reconsider


02/06/2019  Motion
Motion to Strike


02/22/2019  Notice of Hearing
03.13.19 @ 3:00 PM


03/06/2019  Opposition to
Defendant's Opposition to Plaintiff's Motion to Reconsider Order Granting Defendant's Motion for Summary Judgment

03/06/2019  Response
Defendant's Response to Plaintiff's Motion to Strike Defendant's Amended Memorandum and Affidavit of Costs and Attorneys' Fees

03/06/2019  Affidavit
Affidavit of Andrea J. Fontaine








03/06/2019  Affidavit
Affidavit of Laura Nessen

03/11/2019  Notice of Appearance
Notice of Appearance

03/11/2019  Reply
Reply Memorandum in Support of Plaintiff's Motions

03/13/2019 **Motion to Strike** (3:00 PM) (Judicial Officer: Bail, Deborah A.)

ADA COUNTY DISTRICT COURT
CASE SUMMARY
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03/13/2019	 Court Minutes
03/27/2019	 Amended Judgment
05/07/2019	 Notice of Appeal
05/07/2019	Appeal Filed in Supreme Court
05/24/2019	 Notice of Cross Appeal
06/18/2019	 Reporter's Notice of Transcript(s) Lodged - <i>Supreme Court No. 47020</i>
07/30/2019	 Amended Notice of Appeal <i>Amended Notice of Appeal</i>
09/18/2019	 Reporter's Notice of Transcript(s) Lodged - <i>Supreme Court No. 47020</i>

DATE	FINANCIAL INFORMATION	
	Defendant J.R. Simplot Company	
	Total Charges	365.00
	Total Payments and Credits	365.00
	Balance Due as of 9/19/2019	0.00
	Plaintiff Knudsen, Erik	
	Total Charges	450.00
	Total Payments and Credits	450.00
	Balance Due as of 9/19/2019	0.00

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IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

ERIK KNUDSEN,

Plaintiff,

vs.

J.R. SIMPLOT COMPANY, a Nevada
corporation,

Defendant.

**COMPLAINT AND DEMAND FOR
JURY TRIAL**

Case No. CV01-17-13956

Judge Norton, Lynn G.

Plaintiff Erik Knudsen by and through undersigned counsel, hereby complains against Defendant J.R. SIMPLOT COMPANY (“Simplot”) as follows:

NATURE OF THE CLAIMS

This lawsuit arises from Simplot’s recruitment, hire, employment, and ultimate termination of Mr. Knudsen. Specifically, Simplot falsely advertised, recruited and hired Mr. Knudsen for a Senior Packaging Engineer position in Boise, Idaho. Because of Simplot’s representations and promises to Mr. Knudsen, he quit his long-term career at another company. After Mr. Knudsen reported to work for his Engineer position with Simplot, he was told that he

would have to split his time between learning and training into that job, and taking on a completely separate position, one for which Mr. Knudsen had not applied for and was not interested in performing. Simplot later admitted to Mr. Knudsen that it knew of the falsity of its advertisement, recruitment and offer of the Engineer position. After Mr. Knudsen raised concerns about these misrepresentations, Simplot gave him an ultimatum: he could either continue to work in the position that he did not apply for or accept, or be fired/forced to resign.

PARTIES

1. Plaintiff Erik Knudsen is a citizen of Idaho and resides in Ada County. At all times relevant, he worked for J.R. Simplot Company in its Boise office, as an employee.

2. Defendant J.R. Simplot Company is a Nevada corporation with its principal place of business in Boise, Ada County. J.R. Simplot Company regularly conducts business in Ada County.

JURISDICTION AND VENUE

3. This Court has subject matter jurisdiction over Mr. Knudsen's claims and personal jurisdiction over J.R. Simplot Company under I.C. § 5-514.

4. Venue is proper with this Court under I.C. § 5-404, as Ada County is the county where J.R. Simplot Company has its principal place of business.

5. The amount in controversy exceeds the jurisdictional amount of ten thousand dollars (\$10,000).

GENERAL ALLEGATIONS

6. Simplot contacted Mr. Knudsen on June 5, 2015 via LinkedIn regarding an open position titled Senior Packaging Engineer 5.

7. At the time, Mr. Knudsen was working as a packaging engineer for a technology

company in Boise, Idaho where he had almost 14 years of tenure and no reason to believe that his successful employment there would not continue.

8. Mr. Knudsen applied for Simplot's Senior Packaging Engineer 5 position in early October 2015 based on the advertised job description and responsibilities.

9. In mid-October 2015, Mr. Knudsen received a phone interview where the job responsibilities were explained, and matched the advertised job description.

10. Mr. Knudsen was then invited to Simplot for his first panel interview scheduled on October 22, 2015.

11. A follow up panel interview occurred on site on October 29, 2015, where Mr. Knudsen was informed that if Simplot offered him the position, it would need to be reduced from an Engineer 5 to Engineer 4 due to his lack of food packaging experience. There was no indication of any other changes in the position's title or responsibilities.

12. Other than as indicated above, Simplot gave absolutely no indication that the Engineer position for which it was hiring for was other than as advertised.

13. On October 30, 2015, Mr. Knudsen received an offer letter for the Engineer 4 position. The offer letter did not have any indication of change in job responsibilities. The offer letter said, "[p]lease sign this letter as verification of your acceptance of the Engineer 4 position . . ." Mr. Knudsen accepted the job offer based on the job description and responsibilities that were advertised and articulated to him throughout the hiring process, and the position listed in the offer letter. He then gave notice of his resignation to his then-current employer.

14. November 20, 2015, was Mr. Knudsen's first day at Simplot and he was informed that his responsibilities had changed to include an additional scope of a "Startup Manager" position. He was told that his responsibilities were to be split equally between the Senior

Packaging Engineer job and the new addition of Startup Manager.

15. While this sudden change in Mr. Knudsen's job responsibilities left him feeling confused and stressed, he decided to wait to seek additional clarification about the Startup Manager position before he raised objections, especially given that it was his first day of work at his new job.

16. Mr. Knudsen was not given clear instruction of what was expected from him in the Startup Manager position or what it entailed. He also learned that Simplot had never had an official Startup Manager position, such that Simplot expected Mr. Knudsen to help identify the roles and responsibilities of the Startup Manager position.

17. Mr. Knudsen understood that his Engineer position included participating on teams for new product concepts; providing packaging material specifications and costs; researching new packaging technology; providing support to Research and Development on new and existing products; and supporting Engineering in the selection of new packaging equipment.

18. This was drastically different than the role and expectations of the newly formed Startup Manager position. That position was a project manager role that was ultimately responsible for all aspects of starting up a new production line with brand new equipment. After working with other managers for three months to outline the Startup Manager's responsibilities, Mr. Knudsen came to better understand that this position included such items as, creating a startup team; developing a start up strategy and plan, including costs and schedules; meeting with stakeholders to review project details; finalizing the startup plan; managing risks and resources; assuring a comprehensive training plan was in place and executed for all personnel; ensuring parts for the equipment are on site; initiating safety review throughout the plant; verifying mechanical and electrical completion; testing the machines involved with production;

and finally running the product and gathering startup reports.

19. As part of his Startup Manager responsibilities, Mr. Knudsen was also required to travel to Grand Forks, North Dakota where his first startup project involved the start of production of over 25 major pieces of new equipment.

20. Mr. Knudsen had no previous experience with these Startup Manager duties and was expected to perform at a Manager level, along with developing the roles and responsibilities of this position. Thus, not only was there a large discrepancy between the two job positions, but Mr. Knudsen was still learning the Engineer job functions such that he did not even have that base of experience to transfer to the Startup Manager position.

21. During the end of 2015 and beginning of 2016, Mr. Knudsen had several conversations with his management team articulating his lack of knowledge and experience to adequately fill the role of Startup Manager. Mr. Knudsen also expressed his concerns that due to his lack of knowledge and experience it would negatively impact his job to the point of discipline or termination. His supervisor assured him that would not be the case.

22. During April and May 2016 Mr. Knudsen was told that Senior Director of Engineering, Lyle Schook, was disappointed in his performance as Startup Manager.

23. Even though Mr. Knudsen's Engineer peers had been working at Simplot much longer than Mr. Knudsen, neither of them was asked to help take on the Startup Manager role or responsibilities.

24. Mr. Knudsen never received complaints about his performance as a Packaging Engineer.

25. Thus, Mr. Knudsen set-up a meeting with Mr. Schook, on June 6, 2016, to address the complaints he was hearing about. During this meeting Mr. Schook informed Mr. Knudsen

that his intentions from the beginning (*i.e.*, before hiring Mr. Knudsen) were to have Mr. Knudsen split his time between the Senior Packaging Engineer position and the Startup Manager job.

26. This infuriated Mr. Knudsen. Had he known that this was the plan from the outset, he would not have applied for, interviewed for, or accepted the position. Had he known that this was the plan, he would not have left his successful, almost 14-year career as an engineer for another company.

27. On June 21, 2016, Mr. Knudsen contacted Simplot Human Resources (HR) to try and find a solution to the discrepancy in the position that was offered and which he accepted, and the two positions that he was now being required to perform. In his email to Vice President of Human Resources Kayce McEwan, Mr. Knudsen began with “I’m in a tough situation . . . I desperately want to fix the unfortunate situation I’m in and am seeking advice on how to do it.” At the end of his email to Ms. McEwan, Mr. Knudsen said, “Simplot misrepresented a job opening, enticed me to leave a career with a company for which I had 14 years of service, and I’m now at risk of losing my job completely. . . I want to have a successful career here, and am running out of options. I hope you can help.”

28. Mr. Knudsen received no response to his email.

29. After waiting for over two weeks, Mr. Knudsen called the Simplot HR Hotline on July 8, 2016. This finally prompted a response from Ms. McEwan who contacted him via email to set-up a meeting the next week.

30. In the meantime, on July 11, 2016, Mr. Knudsen met with Kent Anderson, Director Technical Engineering and was put on an improvement plan based on his performance in his role as a Startup Manager.

31. Mr. Knudsen met with Ms. McEwan the following day and reiterated his concerns with the misrepresentations about the job offer and the predicament he was in. Ms. McEwan promised she would talk with his manager to see if there was some solution.

32. On August 5, 2016, Mr. Knudsen received a memo from Ms. McEwan that presented him with two options: either stay and continue in his current roles (*i.e.*, Startup Manager and Engineer) and work under the improvement plan, or “voluntarily resign” and sign a release of claims in exchange for ten weeks of pay.

33. Mr. Knudsen knew that he was unlikely to successfully complete the improvement plan and hence would end up with a termination on his record which would make finding replacement work much more difficult. However, he also was concerned about his ability to mitigate his damages within the 10-weeks that Simplot was willing to offer as severance conditioned upon releasing all claims. Given that his background has been fairly specialized in packaging engineering, Mr. Knudsen knew his job opportunities in Idaho were limited. As the sole financial provider for his wife and two young kids, having income and health insurance coverage was critical.

34. Mr. Knudsen felt he was being wrongfully punished by Simplot for not happily taking on a job position that he never wanted, was not qualified to fulfill *and* importantly for which he never would have applied for, interviewed for, or accepted.

35. Having no other choices, Mr. Knudsen sought legal counsel and hired an attorney to help negotiate a more viable solution.

36. Simplot refused to consider any alternative offers including an option to allow Mr. Knudsen to return to work in the Engineer position that he had applied for, interviewed for, and accepted.

37. On September 7, 2016 Mr. Knudsen, who had been on paid administrative leave since the August 5th memo was provided to him, learned that Simplot had apparently terminated him when he received a T. Rowe Price notice that stated, “We understand your employment status has recently changed.”

38. When Mr. Knudsen’s attorney reached out to Simplot’s attorney, he confirmed that Simplot had indeed terminated his employment effective September 1, 2016.

FIRST CAUSE OF ACTION
Fraud/Intentional Misrepresentation

39. Mr. Knudsen realleges and incorporates by reference all paragraphs set forth above.

40. Simplot made multiple material representations that the job position it was hiring for was a Senior Packaging Engineer position. These representations were included in the job announcement, throughout the interview process, and in the offer letter presented to Mr. Knudsen.

41. Simplot knew of the falsity of these representations. Mr. Knudsen was informed on his first day at Simplot, after his acceptance of the Packaging Engineer position, that he would be splitting his time between the Engineer position and a Start-up Manager position. Later, Mr. Schook, Senior Director of Engineering, who also participated on the second panel interview board, admitted that he never intended for the Senior Packaging Engineer to be the full-time position it was represented to be.

42. These false representations were material as they dealt with the nature of employment and were the reason that Mr. Knudsen applied for and ultimately accepted the position at Simplot.

43. Simplot intended Mr. Knudsen to act on its false representations.

44. Mr. Knudsen relied on these material, false representations when he quit his long-time secure job in order to work as an Engineer at Simplot.

45. There was no reason for Mr. Knudsen not to believe the representations presented in Simplot's job advertisement, throughout the interview process, and finally in the offer letter. He reasonably relied on this information in accepting the Engineer job offered to him and in submitting his notice of resignation to his then-employer of almost 14 years.

46. But-for these misrepresentations of the position, Mr. Knudsen would not have left his previous career and would have not accepted the Senior Packaging Engineer 4 position at Simplot.

47. Mr. Knudsen has suffered injuries and damages because of Simplot's misrepresentations.

SECOND CAUSE OF ACTION

Promissory Estoppel

48. Mr. Knudsen realleges and incorporates by reference all paragraphs set forth above.

49. As described above, Simplot made multiple representations, including in its offer letter, that it was hiring Mr. Knudsen for the Engineer position.

50. Mr. Knudsen relied on these representations in accepting the position at Simplot and leaving his long-time career with another company.

51. Mr. Knudsen's reliance was reasonable and justified.

52. Mr. Knudsen suffered economic losses in that he gave up a stable career to take a job that he was not qualified for or interested in fulfilling, and was ultimately terminated by Simplot. Mr. Knudsen was then unemployed and without benefits for himself and his family for a substantial period of time.

53. Simplot could have reasonably foreseen that offering Mr. Knudsen the position would cause him to quit his previous job and be unprepared, unable and/or unwilling to perform the alternate position of Start-up Manager.

THIRD CAUSE OF ACTION
Good Faith & Fair Dealing

54. Mr. Knudsen realleges and incorporates by reference all paragraphs set forth above.

55. There was an employment agreement between Simplot and Mr. Knudsen when he signed the offer letter accepting the Engineer position.

56. Implied within this agreement was a covenant of good faith and fair dealing.

57. Simplot did not act in good faith or deal fairly when it unilaterally changed his position from a fulltime Engineer position to a partial Engineer position and Start-up Manager position -- a position that Mr. Knudsen was not qualified for nor interested in performing.

58. Despite numerous attempts by Mr. Knudsen and his attorneys to cure this breach, Simplot refused to allow Mr. Knudsen to perform the job for which he was led to believe he was being hired to perform and the position that he accepted.

59. That breach of the covenant of good faith and fair dealing led to Mr. Knudsen's termination from Simplot.

60. Mr. Knudsen suffered injuries and damages as a result of Simplot's breach.

FOURTH CAUSE OF ACTION
Negligent Infliction of Emotional Distress

61. Mr. Knudsen realleges and incorporates by reference all paragraphs set forth above.

62. Simplot had a legal duty to: not commit fraud in inducing Mr. Knudsen to accept

employment at Simplot and at the same time give up his long-term employment with another company; to not breach its promises with Mr. Knudsen; to not breach the covenant of good faith and fair dealing; and to exercise ordinary care to prevent unreasonable, foreseeable risks of harm to him.

63. Simplot breached its duties as set forth above in the preceding causes of action.

64. As a result of Simplot's actions, Mr. Knudsen suffered emotional distress.

65. Simplot's breach of the above mentioned duties are the actual and proximate cause of Mr. Knudsen's emotional injuries.

66. Mr. Knudsen physically manifested his emotional distress through suffering depression, anxiety, reduced self-esteem, irritability, weight loss, lack of sleep, nightmares, embarrassment, reclusive behavior, and a compromise in his immune system.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff requests that the Court enter judgment in his favor and against Defendant, and award the following relief:

- a. Back pay and benefits, in amounts to be determined at trial;
- b. Front pay and benefits if appropriate;
- c. Compensatory (emotional distress) damages;
- d. Reasonable attorney fees and costs of this action as consequential damages and pursuant to I.C. § 12-120 including § 12-120(3);
- e. Pre and Post judgment interest as allowable by law;
- f. An award to compensate for any tax consequences; and
- g. All further relief as the Court deems just and equitable.

PLAINTIFF DEMANDS A JURY TRIAL ON ALL ISSUES SO TRIABLE.

DATED this 27th day of July, 2017.

STRINDBERG & SCHOLNICK, LLC

/s/ Erika Birch

Erika Birch

Attorney for Plaintiff

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Attorneys for Defendant

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

ERIK KNUDSEN,

Plaintiff,

vs.

**J.R. SIMPLOT COMPANY, a Nevada
corporation,**

Defendant.

Case No. CV01-17-13956

**ANSWER TO COMPLAINT AND
DEMAND FOR JURY TRIAL**

COMES NOW, Defendant J.R. Simplot Company, by and through its counsel of record,
Anderson, Julian & Hull, LLP, and answers Plaintiff's Complaint and Demand for Jury Trial
("Complaint") as follows:

FIRST DEFENSE

The Complaint fails to state a claim against Defendants upon which relief can be granted.

SECOND DEFENSE

Defendant denies each and every allegation of Plaintiff's Complaint not specifically expressly admitted herein.

NATURE OF THE CLAIMS

The Nature of the Claims section includes a statement of Plaintiff's case and/or legal conclusions, to which a response is not required. To the extent the Nature of the Claims section includes factual allegations asserted against Defendant, Defendant denies the same.

PARTIES

1. With respect to Paragraph 1 of Plaintiff's Complaint, Defendant admits that Plaintiff worked for J.R. Simplot Company ("Simplot") in Caldwell as an employee, which office is now located in Boise, but lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained therein, and therefore denies the same.

2. Defendant admits Paragraph 2 of Plaintiff's Complaint.

3. Defendant admits Paragraph 3 of Plaintiff's Complaint.

4. Defendant admits Paragraph 4 of Plaintiff's Complaint.

5. With respect to Paragraph 5 of Plaintiff's Complaint, Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained therein, and therefore denies the same.

6. With respect to Paragraph 6 of Plaintiff's Complaint, Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained therein, and therefore denies the same.

7. With respect to Paragraph 7 of Plaintiff's Complaint, Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained therein, and therefore denies the same.

8. With respect to Paragraph 8 of Plaintiff's Complaint, Defendant admits only that Plaintiff applied for a Senior Packaging Engineer position in October 2015. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations and therefore denies the same.

9. With respect to Paragraph 9 of Plaintiff's Complaint, Defendant admits only that Plaintiff was given a phone interview in October 2015. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations and therefore denies the same.

10. Defendant admits Paragraph 10 of Plaintiff's Complaint.

11. With respect to Paragraph 11 of Plaintiff's Complaint, Defendant admits that a follow up panel interview occurred on or around October 29, 2015, and that Simplot informed Plaintiff the position would need to be reduced from an Engineer 5 to Engineer 4 due to Plaintiff's lack of food packaging experience. Defendant admits there was no indication of any other changes in the position's title or responsibilities except to the extent it was explained to Plaintiff that he would need to obtain additional food packaging experience to perform his role as Engineer 4.

12. With respect to Paragraph 12 of Plaintiff's Complaint, Defendant admits that it gave no indication that the Engineer position for which it was hiring was other than as stated in Defendant's Answer to Paragraph 11.

13. With respect to Paragraph 13 of Plaintiff's Complaint, Defendant admits only that an offer letter was sent to Plaintiff on October 30, 2015, and that said letter speaks for itself. Defendant denies any and all allegations or interpretations inconsistent with the letter. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations and therefore denies the same.

14. Defendant denies Paragraph 14 of Plaintiff's Complaint. Specifically, Plaintiff's start date was November 23, 2016. Defendant denies Plaintiff's responsibilities were changed to include a "Startup Manager" position and further avers such position does not exist. Defendant denies Plaintiff was told that his responsibilities were to be split equally between the Senior Packaging Engineer job and the new addition of Startup Manager and further avers that Startup Manager was an assignment included in the original advertised job duties that was to be approximately 10% of his workload and was not assigned to Plaintiff until January or February of 2016.

15. Defendant denies Paragraph 15 of Plaintiff's Complaint.

16. Defendant denies Paragraph 16 of Plaintiff's Complaint.

17. With respect to Paragraph 17 of Plaintiff's Complaint, Defendant lacks knowledge or information sufficient to form a belief as to the truth of what Plaintiff understood, and therefore denies the same.

18. With respect to Paragraph 18 of Plaintiff's Complaint, Defendant lacks knowledge or information sufficient to form a belief as to the truth as to Plaintiff's expectations and understanding and therefore denies the same.

19. With respect to Paragraph 19 of Plaintiff's Complaint, Defendant admits that Plaintiff was required to travel to Grand Forks, North Dakota for the production of equipment but denies that Plaintiff was acting in a separate capacity than Engineer 4.

20. With respect to Paragraph 20 of Plaintiff's Complaint, Defendant is without knowledge or information sufficient to form a belief as to Plaintiff's "previous experience" and therefore denies the same except that Plaintiff represented himself as having "8 years of operations program management experience." Defendant admits Plaintiff was expected to perform at a Manager level. Defendant denies the remaining allegations in Paragraph 20 and further avers that the Startup Manager assignment was not a separate position.

21. With respect to Paragraph 21 of Plaintiff's Complaint, Defendant admits the first three sentences but denies the remaining allegations contained therein.

22. With respect to Paragraph 22 of Plaintiff's Complaint, Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and therefore denies the same.

23. With respect to Paragraph 23 of Plaintiff's Complaint, Defendant admits only that while Plaintiff was employed at Simplot, no other Simplot employee was asked to perform the job Plaintiff was hired to perform. Defendant further avers that since Plaintiff left Simplot, an Engineer with less alleged experience than Plaintiff performed the Startup Manager assignment and completed it.

24. Defendant denies Paragraph 24 of Plaintiff's Complaint.

25. With respect to Paragraph 25 of Plaintiff's Complaint, Defendant admits only that a meeting with Mr. Schook occurred on or around June 6, 2016. Defendant lacks knowledge or information sufficient to form a belief as to the truth of who set up the meeting or why it was set

up and therefore denies the same. Defendant denies the remaining allegations as stated and further avers that it was always intended for Plaintiff to perform managerial assignments, as indicated in the originally advertised position.

26. With respect to Paragraph 26 of Plaintiff's Complaint, Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained therein, and therefore denies the same.

27. With respect to Paragraph 27 of Plaintiff's Complaint, Defendant admits only that Plaintiff sent an e-mail to Kayce Ewan and that said e-mail speaks for itself. Defendant denies any and all allegations or interpretations inconsistent with the e-mail.

28. With respect to Paragraph 28 of Plaintiff's Complaint, Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and therefore denies the same.

29. With respect to Paragraph 29 of Plaintiff's Complaint, Defendant admits the allegations but, on information and belief, avers that the HR investigation was initiated on July 7, 2016.

30. With respect to Paragraph 30 of Plaintiff's Complaint, Defendant admits only that Plaintiff was put on an improvement plan on July 11, 2016, but denies Plaintiff's placement on an improvement plan was based on his performance in his Startup Manager assignment. Defendant further avers that Plaintiff's placement on an improvement plan was based on his overall performance at Simplot.

31. Defendant admits Paragraph 31.

32. With respect to Paragraph 32 of Plaintiff's Complaint, Defendant admits that Ms. McEwan sent a memo to Plaintiff on August 5, 2016, and that said memo speaks for itself. Defendant denies any allegations or interpretations inconsistent with the memo.

33. With respect to Paragraph 33 of Plaintiff's Complaint, Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained therein, and therefore denies the same.

34. With respect to Paragraph 34 of Plaintiff's Complaint, Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained therein, and therefore denies the same.

35. With respect to Paragraph 35 of Plaintiff's Complaint, Defendant denies Plaintiff had "no other choice" as Simplot specifically provided him the option of returning to work and doing his job. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations, and therefore denies the same.

36. Defendant denies Paragraph 36 of Plaintiff's Complaint.

37. With respect to Paragraph 37 of Plaintiff's Complaint, Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained therein, and therefore denies the same.

38. With respect to Paragraph 38 of Plaintiff's Complaint, Defendant denies the allegations as stated and further avers that multiple communications were provided to Plaintiff and his attorney regarding his employment at Simplot. Defendant admits that Plaintiff's employment was ultimately terminated on September 1, 2016, when Plaintiff refused to return to continue in his current role.

FRAUD/INTENTIONAL MISREPRESENTATION

39. Defendant restates and re-alleges its answer to Paragraphs 1-38 as though fully set forth herein.

40. With respect to Paragraph 40 of Plaintiff's Complaint, Defendant admits only that Simplot made multiple representations that the job it was hiring for was a Senior Packaging Engineer and further avers that such position required "project management", as was specifically communicated to Plaintiff in the job announcement and throughout the interview process.

41. Defendant denies Paragraph 41 of Plaintiff's Complaint.

42. Defendant denies Paragraph 42 of Plaintiff's Complaint.

43. Defendant denies Paragraph 43 of Plaintiff's Complaint.

44. Defendant denies Paragraph 44 of Plaintiff's Complaint.

45. With respect to Paragraph 45 of Plaintiff's Complaint, Defendant lacks knowledge or information sufficient to form a belief as the truth of what Plaintiff believed or relied upon and therefore denies the same. Defendant denies that any representation presented by Simplot concerning job requirements omitted information concerning "project management."

46. With respect to Paragraph 46 of Plaintiff's Complaint, Defendant denies any false representations were made. Additionally, Defendant lacks knowledge or information sufficient to form a belief as to the truth of what caused Plaintiff to apply for a job at Simplot and leave his job at his previous employer.

47. Defendant denies Paragraph 47 of Plaintiff's Complaint.

PROMISSORY ESTOPPEL

48. Defendant restates and re-alleges its answer to Paragraphs 1-47 as though fully set forth herein.

49. With respect to Paragraph 49 of Plaintiff's Complaint, Defendant admits only that it hired Plaintiff as a Senior Packaging Engineer. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations and therefore denies the same.

50. With respect to Paragraph 50 of Plaintiff's Complaint, Defendant lacks knowledge or information sufficient to form a belief as to the truth of what Plaintiff relied on when choosing to apply for a job at Simplot and leave his job at his previous employer.

51. With respect to Paragraph 51 of Plaintiff's Complaint, Defendant is unsure what reliance Plaintiff is claiming to be reasonable and justified and therefore denies each and every allegation within Paragraph 51.

52. With respect to Paragraph 52 of Plaintiff's Complaint, Defendant lacks knowledge or information sufficient to form a belief as to the truth of the losses allegedly incurred by Plaintiff and therefore denies the same.

53. Defendant denies Paragraph 53 of Plaintiff's Complaint.

GOOD FAITH AND FAIR DEALING

54. Defendant restates and re-alleges its answer to Paragraphs 1-53 as though fully set forth herein.

55. Defendant denies Paragraph 55 of Plaintiff's Complaint and further avers that Plaintiff's employment was at-will.

56. With respect to Paragraph 56 of Plaintiff's Complaint, to the extent Plaintiff asserts the existence of the doctrine of the implied covenant of good faith and fair dealing as it applies generally to Plaintiff's employment relationship with Simplot, Defendant admits only that the doctrine of the implied covenant of good faith and fair dealing, as it is interpreted by Idaho law, speaks for itself and denies any allegation or interpretation inconsistent with the doctrine.

57. Defendant denies Paragraph 57 of Plaintiff's Complaint.

58. Defendant denies Paragraph 58 of Plaintiff's Complaint.

59. Defendant denies Paragraph 59 of Plaintiff's Complaint.

60. With respect to Paragraph 60 of Plaintiff's Complaint, Defendant lacks knowledge or information sufficient to form a belief as to the truth of the damages allegedly incurred by Plaintiff and therefore denies the same.

NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS

61. Defendant restates and re-alleges its answer to Paragraphs 1-60 as though fully set forth herein.

62. Defendant denies Paragraph 62 of Plaintiff's Complaint.

63. Defendant denies Paragraph 63 of Plaintiff's Complaint.

64. Defendant denies Paragraph 64 of Plaintiff's Complaint.

65. Defendant denies Paragraph 65 of Plaintiff's Complaint.

66. With respect to Paragraph 66 of Plaintiff's Complaint, Defendant lacks knowledge or information sufficient to form a belief as to the truth of what damages were allegedly suffered by Plaintiff and therefore denies the same.

PRAYER FOR RELIEF

67. With respect to the claims set forth in Plaintiff's Prayer for Relief, Defendant denies each and every allegation and claim set forth therein.

68. Defendant denies that Plaintiff is entitled to judgment or any of the relief requested in Plaintiff's Complaint.

THIRD DEFENSE

Plaintiff has failed to establish a *prime facia* case supporting his claims as required by law.

FOURTH DEFENSE

Plaintiff failed to take reasonable steps to mitigate the claimed or alleged damage.

FIFTH DEFENSE

Plaintiff has failed to plead with particularity his claim for fraud in accordance with Idaho Rule of Civil Procedure 9.

SIXTH DEFENSE

Plaintiff has failed to set forth any agreed upon or inherent duty implicating the implied covenant of good faith and fair dealing.

SEVENTH DEFENSE

Pursuant to Idaho Code § 6-801, Plaintiff is comparatively responsible for the damages alleged in Plaintiff's Complaint.

EIGHTH DEFENSE

Defendant is not liable to Plaintiff for the claims alleged in Plaintiff's Complaint because Plaintiff was an at-will employee.

NINTH DEFENSE

Plaintiff's own negligence was the sole and proximate cause of the Plaintiff's alleged injuries and damages.

TENTH DEFENSE

Plaintiff cannot seek damages or equity because Plaintiff comes to Court with unclean hands.

ELEVENTH DEFENSE

Plaintiff cannot seek damages because an at-will employee has no reasonable expectation of continued employment.

TWELFTH DEFENSE

Plaintiff waived any right to seek recovery against Defendant by knowingly and voluntarily accepting and performing the position with Simplot, which specifically and expressly required project management.

THIRTEENTH DEFENSE

Plaintiff waived any right to seek recovery against Defendant by knowingly and voluntarily accepting an at-will position with Simplot.

FOURTEENTH DEFENSE

Plaintiff's claims may be barred by the doctrine of after-acquired evidence.

FIFTEENTH DEFENSE

Plaintiff's claims, in whole or in part, may be barred by the applicable statute of limitations.

DEMAND FOR JURY TRIAL

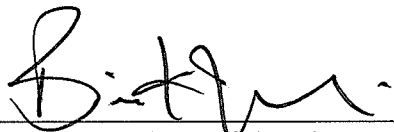
Pursuant to Idaho Rule of Civil Procedure 38(b), Defendants hereby demand a trial by jury as to all issues so triable in this matter.

WHEREFORE, Defendants pray for judgment as follows:

1. That the Complaint and Demand for Jury Trial be dismissed with prejudice and that Plaintiff takes nothing thereby;
2. For judgment against Plaintiff and in favor of Defendants for costs and attorney fees incurred in the defense of this matter; and,
3. For such other and further relief as this Court may deem just and proper under the circumstances.

DATED this 11th day of September, 2017.

ANDERSON, JULIAN & HULL LLP

By 

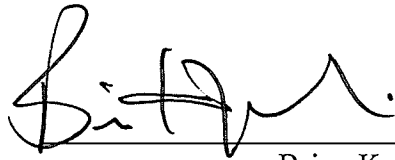
Brian K. Julian, Of the Firm
Attorneys for Defendant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 11th day of September, 2017, I served a true and correct copy of the foregoing **ANSWER TO COMPLAINT AND DEMAND FOR JURY TRIAL** by delivering the same to each of the following attorneys of record, by the method indicated below, addressed as follows:

Erika Birch
Guy Hallam
STRINDBERG & SCHOLNICK, LLC
802 W. Bannock, Ste. 308
Boise, ID 83702
T: (208) 336-1788
F: (208) 278-3708
E: erika@idahojobjustice.com
guy@idahojobjustice.com
Attorneys for Plaintiff

- U.S. Mail, postage prepaid
- Hand-Delivered
- Overnight Mail
- Facsimile
- E-Mail
- iCourt/e-File



Brian K. Julian

FILED By: Jan Vilho Deputy Clerk
Fourth Judicial District, Ada County
CHRISTOPHER D. RICH, Clerk

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

ERIK KNUDSEN,
Plaintiff(s),
vs.
J.R. SIMPLOT COMPANY,
Defendant(s).

Case No. CV01-17-13956
AMENDED
NOTICE OF TRIAL SETTING
AND ORDER GOVERNING
FURTHER PROCEEDINGS

This case is set for Jury Trial to commence on **Tuesday, September 18, 2018 at 9:30 A.M.**, and continue for four (4) days. **No trial proceedings will be held on Mondays because it is the Court's criminal calendar day. NOT LATER THAN FORTY-FIVE (45) DAYS PRIOR TO TRIAL, THE COURT MUST BE ADVISED OF THE NEED FOR AN INTERPRETER FOR ANY PARTY OR WITNESS.**

IT IS HEREBY FURTHER ORDERED:

1. All pretrial motions, with the exception of Motions in Limine, shall be filed at least sixty (60) days before the trial date. *A Judge's copy of all motions and memoranda in support thereof should be filed directly with chambers. *Motions in Limine must be filed not later than thirty (30) days prior to trial. No Motions filed after that time will be considered. Motions in Limine shall be heard on the morning of trial, unless otherwise scheduled by the Court.*

- a. The last day to file written discovery (interrogatories and requests for production of documents) shall be no later than May 1, 2018.
- b. The plaintiff(s) shall disclose all expert witnesses to be used at trial by no later than March 23, 2018.
- c. The defendant(s) shall disclose all expert witnesses to be used at trial by no later than April 20, 2018.

- d. The last day for the taking of any discovery depositions shall be no later than May 31, 2018.
- e. The last day to file amendments to join any additional parties shall be no later than March 8, 2018
- f. ****MOTIONS FOR SUMMARY JUDGMENT SHALL BE FILED NO LATER THAN NINETY (90) DAYS PRIOR TO TRIAL.**

****IT IS ADVISABLE TO SCHEDULE YOUR MOTION FOR HEARING AS SOON AS FEASIBLE.**

****ALL WITNESSES ARE TO BE IDENTIFIED BY NAME AND ADDRESS.**

2. Thirty (30) days before the trial date, counsel for all parties to the action shall hold a Final Pretrial Conference for exchange of information, and shall provide a list of all witnesses, all exhibits, and shall discuss the possibility of obtaining admissions of fact and stipulations regarding the authenticity of documents which will avoid unnecessary proof, and shall discuss such other matters as may aid in the disposition of the case.

3. Not later than seven (7) days before trial: (a) each attorney shall certify to the Court, in writing, that such Final Pretrial Conference has taken place, and furnish with such certification a list of the names of persons disclosed as possible witnesses pursuant to Rule 16(a)(4), and a descriptive list of all exhibits proposed to be offered in evidence, reciting which exhibits counsel have agreed may be received in evidence without objection and those to which no objection will be made on grounds other than irrelevancy or immateriality; or (b) in lieu thereof, all counsel may join in submitting a written stipulation in conformance with Rule 16(b).

4. Any objection to the date of this trial must be made by any party within fifteen (15) days from the date of this notice.

5. All exhibit lists must be submitted to the Court seven (7) days prior to trial.

6. All requested jury instructions must be submitted to the Court, *BOTH hard copy AND emailed to lsimsdouglas@adaweb.net* (in Word format) fourteen (14) days prior to trial.

7. This Order shall control the subsequent course of the action unless modified for good cause shown to prevent manifest injustice.

8. The Court may impose appropriate sanctions for violation of this Order, which may include assignment of the trial date to another case.

9. Notice is hereby given, pursuant to Idaho Rule of Civil Procedure 40(d)(1)(G), that an alternate judge may be assigned to preside over the trial of this case if the assigned judge is unavailable. The following is a list of potential alternate judges:

Hon. G. D. Carey
Hon. Cheri Copsey
Hon. Renae Hoff
Hon. James Judd
Hon. D. Duff McKee

Hon. Thomas Neville
Justice Gerald Schroeder
Hon. Darla Williamson
Hon. Ronald Wilper
All Sitting Fourth District Judges

Unless a party has previously exercised their right to disqualification without cause under Rule 40(d)(1), each party shall have the right to file one (1) motion for disqualification without cause as to any alternate judge not later than ten (10) days after service of this notice.

DATED the 29th day of November, 2017.



DEBORAH A. BAIL
District Judge

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on the 29th day of November, 2017, I mailed (served) a true and correct copy of the within instrument to:

ERIKA BIRCH
ATTORNEY AT LAW
VIA-EMAIL – erika@idahojobjustice.com

BRIAN JULIAN
ATTORNEY AT LAW
bjulian@ajhlaw.com

CHRISTOPHER D. RICH
Clerk of the District Court



By: Jan Vilho Signed: 11/29/2017 02:55 PM
Deputy Court Clerk

ERIKA BIRCH (Bar No. 7831)
GUY HALLAM (Bar No. 6101)
STRINDBERG & SCHOLNICK, LLC
1516 W HAYS ST
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guy@idahojobjustice.com

Attorneys for Plaintiff

**IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA**

ERIK KNUDSEN,

Plaintiff,

vs.

J.R. SIMPLOT COMPANY, a Nevada
corporation,

Defendant.

**RULE 29 STIPULATION RE:
OUT-OF-STATE WITNESS**

Case No. CV01-17-13956

Judge: Deborah A. Bail

The parties are currently completing depositions of fact witnesses in this matter. One witness, Craig Lamberton, an employee of the Defendant, currently resides in Bathurst, Australia. Attempts were made to find a certified court reporter in/around Bathurst, Australia, but no qualified persons were located.

THEREFORE, the parties hereby stipulate and agree as follows:

1. Deponent Craig Lamberton will be sworn in, and administered the oath, via telephone and video from Boise, Idaho.

2. The deposition will take place on May 30, 2018 at 5:00 PM MST from the offices of Associated Reporting Inc., 1109 Main St. #220, Boise, ID 83702.
3. Good cause exists for the parties' stipulation that the certified court reporter in Boise, Idaho, can administer the oath to Mr. Lamberton via telephone/video, pursuant to Rule 29 and Rule 30(c)(1) of the Idaho Rules of Civil Procedure.
4. The deposition of Mr. Lamberton may be used in the same way as any other deposition. I.R.C.P. 29.

DATED this 17th day of May, 2018.



Erika Birch
T. Guy Hallam, Jr.
Attorneys for Plaintiff



Brian Julian
Andrea Fontaine
Attorneys for Defendant

CERTIFICATE OF SERVICE

I hereby certify that on this 17 day of May, 2018, a true and correct copy of the foregoing pleading was served on the following via electronic filing system:

Brian K. Julian
Andrea Fontaine
ANDERSON, JULIAN & HULL, LLP
250 S. 5th Street, Ste. 700
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Boise, Idaho 83707-7426
bjulian@ajhlaw.com
aifontaine@ajhlaw.com


Dunja Subasic

Brian K. Julian, ISB No. 2360
Andrea J. Fontaine, ISB No. 7175
ANDERSON, JULIAN & HULL LLP
C. W. Moore Plaza
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Telephone: (208) 344-5800
Facsimile: (208) 344-5510
E-Mail: bjulian@ajhlaw.com
ajfontaine@ajhlaw.com
iCourt/e-File: service@ajhlaw.com

Attorneys for Defendant

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

ERIK KNUDSEN,

Plaintiff,

vs.

**J.R. SIMPLOT COMPANY, a Nevada
corporation,**

Defendant.

Case No. CV01-17-13956

**DEFENDANT'S MOTION FOR
SUMMARY JUDGMENT**

COMES NOW, Defendant J.R. Simplot Company, by and through its counsel of record, Anderson, Julian & Hull, LLP, and hereby files this Motion for Summary Judgment pursuant to Idaho Rule of Civil Procedure 56. As set forth in the Affidavit of Andrea J. Fontaine, this motion is not presently accompanied by a Memorandum in Support of Defendant's Motion for Summary Judgment. The parties have stipulated that the deadline for the Motion for Summary Judgment is extended from June 20, 2018, to July 2, 2018. However, there being no order currently effectuating the stipulation and, in an abundance of caution, Defendant files this Motion for

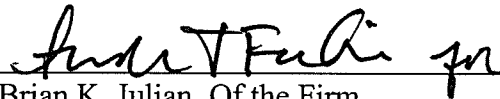
DEFENDANT'S MOTION FOR SUMMARY JUDGMENT - 1

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Summary Judgment for the purpose of preserving the same. Defendant will supplement with the Memorandum in Support of Defendant's Motion for Summary Judgment upon the parties' agreed upon deadline of July 2, 2018.

DATED this 20th day of June, 2018.

ANDERSON, JULIAN & HULL LLP

By  for
Brian K. Julian, Of the Firm
Attorneys for Defendant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 20th day of June, 2018, I served a true and correct copy of the foregoing **DEFENDANT’S MOTION FOR SUMMARY JUDGMENT** by delivering the same to each of the following attorneys of record, by the method indicated below, addressed as follows:

Erika Birch
T. Guy Hallam
Grant Burgoyne
STRINDBERG & SCHOLNICK, LLC
1516 W. Hays St.
Boise, ID 83702
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F: (208) 278-3708
E: erika@idahojobjustice.com
guy@idahojobjustice.com
grant@idahojobjustice.com
Attorneys for Plaintiff

- | | |
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| <input type="checkbox"/> | U.S. Mail, postage prepaid |
| <input type="checkbox"/> | Hand-Delivered |
| <input type="checkbox"/> | Overnight Mail |
| <input type="checkbox"/> | Facsimile |
| <input checked="" type="checkbox"/> | E-Mail |
| <input checked="" type="checkbox"/> | iCourt/e-File |



Brian K. Julian

Brian K. Julian, ISB No. 2360
Andrea J. Fontaine, ISB No. 7175
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Facsimile: (208) 344-5510
E-Mail: bjulian@ajhlaw.com
ajfontaine@ajhlaw.com
iCourt/e-File: service@ajhlaw.com

Attorneys for Defendant

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

ERIK KNUDSEN,

Plaintiff,

vs.

**J.R. SIMPLOT COMPANY, a Nevada
corporation,**

Defendant.

Case No. CV01-17-13956

**AFFIDAVIT OF ANDREA J.
FONTAINE**

STATE OF IDAHO)
) ss:
County of Ada)

Andrea J. Fontaine, having been first duly sworn upon oath, deposes and says:

1. That, at all times relevant, your affiant has been an attorney duly licensed to practice law within the State of Idaho. As such, your affiant has been a member of the law firm of Anderson, Julian and Hull, LLP, attorneys for Defendant J.R. Simplot Company (“Simplot”)

in the above-entitled action. The information contained herein is of your affiant's own personal knowledge.

2. The Motion for Summary Judgment in this matter, according to the Court's scheduling Order, was June 20, 2018.

3. In anticipation of this deadline, the parties completed all depositions in time to file a timely Motion for Summary Judgment.

4. As of June 15, 2018, the parties had not been provided any of the ten (10) deposition transcripts requested of the court reporter.

5. On June 18, 2018, the parties received some but not all of the deposition transcripts, and were informed that the remaining transcripts would not be available until June 22, 2018.

6. In light of the delay of the transcripts, and in order to fully support the Motion for Summary Judgment with relevant and accurate citations to materials in the record, the parties stipulated and agreed to extend the Motion for Summary Judgment deadline from June 20, 2018, to July 2, 2018. Plaintiff's response is due July 30, 2018, pursuant to this stipulation.

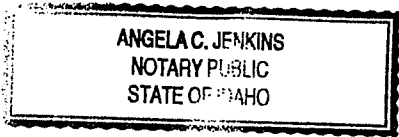
7. In the absence of a present order approving the parties' recent Stipulation to Extend the Motion for Summary Judgment deadline, and wishing to preserve its right to submit a motion for summary judgment in this matter, Defendant submits this motion with the intent to supplement with the memorandum in support on July 2, 2018.

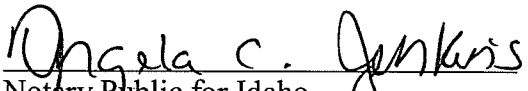
FURTHER your Affiant saith naught.



Andrea J. Fontaine

SUBSCRIBED AND SWORN to before me this 20th day of June, 2018.





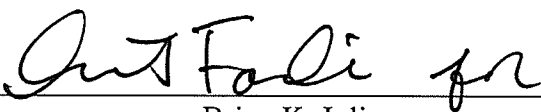
Notary Public for Idaho
Residing at Boise, Idaho
Commission Expires: 7/27/21

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 20th day of June, 2018, I served a true and correct copy of the foregoing **AFFIDAVIT OF ANDREA J. FONTAINE** by delivering the same to each of the following attorneys of record, by the method indicated below, addressed as follows:

Erika Birch
T. Guy Hallam
Grant Burgoyne
STRINDBERG & SCHOLNICK, LLC
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Boise, ID 83702
T: (208) 336-1788
F: (208) 278-3708
E: erika@idahojobjustice.com
guy@idahojobjustice.com
grant@idahojobjustice.com
Attorneys for Plaintiff

- | | |
|-------------------------------------|----------------------------|
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| <input type="checkbox"/> | Hand-Delivered |
| <input type="checkbox"/> | Overnight Mail |
| <input type="checkbox"/> | Facsimile |
| <input checked="" type="checkbox"/> | E-Mail |
| <input checked="" type="checkbox"/> | iCourt/e-File |



Brian K. Julian

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Andrea J. Fontaine, ISB No. 7175
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Facsimile: (208) 344-5510
E-Mail: bjulian@ajhlaw.com
ajfontaine@ajhlaw.com
iCourt/e-File: service@ajhlaw.com

Attorneys for Defendant

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

ERIK KNUDSEN,

Plaintiff,

vs.

**J.R. SIMPLOT COMPANY, a Nevada
corporation,**

Defendant.

Case No. CV01-17-13956

**MEMORANDUM IN SUPPORT OF
DEFENDANT'S MOTION FOR
SUMMARY JUDGMENT.**

COMES NOW, Defendant J.R. Simplot Company ("Simplot"), by and through its counsel of record, Anderson, Julian & Hull, LLP, and hereby submits its Memorandum in Support of Defendant's Motion for Summary Judgment. Because the causes of action raised by Plaintiff Erik Knudsen ("Knudsen") have never been recognized by any Idaho court and because there is no good reason to modify Idaho law, the Complaint should be dismissed in its entirety.

I. INTRODUCTION

Knudsen brings this hiring fraud action against Simplot because he was asked to perform an assignment he did not want. Knudsen contends that asking an engineer to perform a "startup"

assignment after he is hired is grounds for a fraud claim, promissory estoppel and breach of the covenant of good faith and fair dealing if the assignment was not specifically disclosed during hiring. However, Knudsen's subjective dislike of the assignment is under no interpretation of law the basis of a compensable injury, particularly for an at-will employee. To find otherwise would create an entirely new cause of action in Idaho; one which would allow an employee to dictate the specific assignments he or she may be delegated based not on any express or implied contractual term, but because the employee was unaware of the assignment at the time of hire.

II. STATEMENT OF FACTS

In the fall of 2015, Knudsen applied for a Senior Packaging Engineer position at Simplot. (Aff. of Brian K. Julian, Ex. A, Dep. of Erik Knudsen, June 7, 2018 ("Knudsen Dep.") 6:14-24.) Knudsen was an engineer at HP at the time he applied for the position at Simplot. (Id. at 14:1-11.) While at HP, Knudsen had acted as "program manager," overseeing a team in China that was responsible for getting a printer into production. (Id. at 22:18-24:17.) Specifically, Knudsen was responsible for figuring out the supply chain, determining the manufacturer, meeting cost targets and scheduling to ensure worldwide availability for the launch date. (Id.)

The job that Knudsen applied for at Simplot likewise required leadership and project management skills. According to the Senior Packaging Engineer Job Announcement ("Job Announcement") for Simplot's Food Group, the position required "project management related to packaging equipment operation and capabilities." (Julian Aff. Ex. B, Dep. of Kent Anderson, June 4, 2018, ("Anderson Dep.") Ex. 33.) The Sr. Packaging Engineer is responsible for "identifying and managing projects related to cost reduction opportunities." (Id.) The job required "[i]nternational and domestic travel as required up to 40% to support plant test runs for new products, material trials, vendor trials, ..." (Id.) In applying for the Senior Packaging

Engineer job, Knudsen emphasized “program management.” (Knudsen Dep. Ex. 54.) His work as the program manager for HP was the “highlight” of his resume. (Id. at 139:21-25.)

Knudsen was selected for an interview, which was conducted by two interview panels. (Julian Aff. Ex. C, Dep. of Laura Nessen, May 31, 2018 (“Nessen Dep.”) 44:5-12.). One panel addressed technical issues related to food packaging while the other panel addressed leadership. (Id.) The reason for the divided panel was that Simplot needed an engineer who was not merely technically proficient. (Anderson Dep. 12:25-13:22.) As a small division, the Food Group engineers are expected to lead efforts for all ongoing projects. (Id.) Any person with the job title “engineer” is expected to accept assignments relating to the various Food Group projects, wherever they are occurring. (Julian Aff. Ex. D (Dep. of Kayce McEwan May 31, 2018 (“McEwan Dep.”) 40:5-41:6.)

Lyle Schook, the Senior Director of Engineering, was on the leadership panel. (Julian Aff. Ex. E, Dep. of Lyle Schook, May 23, 2018 (“Schook Dep.”) 20:1-5.) Mr. Schook focused on Knudsen’s leadership “because that’s what I was looking for and that’s what we really needed.” (Id. at 20:6-10.) Mr. Schook noted that in a small group, such as the Food Group engineers, technical skills are the “ante” into the group, but leadership is critical. (Id. at 20:11-17.) As recalled by Mr. Schook:

And I remember Erik talking about his China experience and how he led what I consider our project—program management teams; that Erik was very good at coordinating and leading and had some good examples behind those. It was – it was outstanding from my experience, since I had done international as well.

So the leadership characteristics, his willingness to do whatever it took and lead people, was – was the focus of that interview.

(Id at 20:20-21:4.) Schook stated that in 35 years he had never hired anyone without experience in the industry, but Knudsen sold himself as a leader, which is why he was hired. (Id. at 219:21-

221:8.) Knudsen admits that he emphasized his leadership experience from the project he headed in China and that it was the “highlight” of his resume. (Knudsen Dep. 139:21-25.) Despite emphasizing his project management skills, Knudsen failed to mention that he hated his project management experience at HP and “swore” he would never do that kind of work again. (Id. at 137:4-140:11.) Knudsen admitted that if he told the interview panels that he would not perform project management, he would not get hired. (Id. at 216:11-18.) No mention of a specific assignment known as the “startup manager” was mentioned during the interview. (Knudsen Dep. 57:8-10.) Knudsen was informed that he would be designing packaging for new products (id. 57:11-17), *in addition* to receiving cross-functional experience (id. at 65:20-66:2). Knudsen does not recall any other specifics of what was discussed during the interview. (Knudsen Dep. 215:19-216:18.)

Knudsen was ultimately selected for the job based on his demonstrated leadership capabilities, not for his technical abilities. (Anderson Dep. 105:18-106:11.) Knudsen lacked the necessary food packaging experience, so the job was downgraded a level with the communicated expectation that Knudsen would quickly gain knowledge of food packaging. (Schook Dep. 21:17-22:22; 34:7-18.) On October 30, 2015, Knudsen received a job offer level for *Engineer 4*. The offer letter included Knudsen’s job title of *Engineer 4*, a statement of his salary and benefits and a notice that “Employment is at the will of either the employee or the Company.” (Julian Aff. Ex. F, Dep. of Tim Lalley, May 14, 2018 (“Lalley Dep.”) Ex. 6.) Knudsen was provided the same salary he had at HP. (Julian Aff. Ex.G, Dep. of Rebecca Nichols, May 30, 2018 (“Nichols Dep.”) Ex. 23 at SIMPLOT 038.)

Knudsen reported to work on November 23, 2015. (Lalley Dep. Ex. 8.) In an inter-office memo, Schook reported that Knudsen would report to Kent Anderson beginning on or around

December 16, 2015, and that Knudsen would be receiving cross functional experience to support both packaging materials and packaging operations. (Id.) Simplot's intent was to provide operational experience so that Knudsen could understand the plants. (Schook Dep. 59:4-61:15.) To assist Knudsen in his transition to a packaging engineer at Simplot, a development plan was established. (Lalley Dep. at Ex. 7.) The purpose of the development plan was to get Knudsen up to speed on all of the factories and equipment and to gain an understanding of the operations. (Anderson Dep. 66:1-67:12.) Notably, nothing about a "startup" assignment was noted in the development plan.

On February 23, 2016, Simplot's board approved a project for an equipment upgrade in Grand Forks, North Dakota. (Anderson Dep. 26:15-27:8.) It was around that time that the engineering team decided that Knudsen would be provided the temporary startup manager assignment. (Id. at 8:18-9:15.) Simplot did not know that Knudsen would be provided the startup assignment prior to that time. (Id. at 8:18-25.) The reason for providing Knudsen the assignment was to give him the opportunity to obtain experience with food equipment and materials and because Knudsen had spoken of prior leadership experience with HP. (Id. at 9:23-10:18.)

In no way was Knudsen assigned a separate job position. (Id. at 43:19-44:5.) There is no position at Simplot called "startup manager." (McEwan Dep. 46:24-48;19; Schook Dep. 221:15-22.) The startup assignment was always intended to be a temporary assignment specific to the Grand Forks project and, as the name implies, ended once the project was up and running. (Schook Dep. 27:10-20.) The startup assignment involves coordinating people and activities to ensure successful startup of the equipment. (Anderson Dep. 12:2-13:22.) A startup assignment is within the realm of what a Simplot engineer does. (Id. at 13:23-14:5.) It was within the realm of what a program manager would do, which was Knudsen's selling point at his interview. (Id.

at 25:18-26:1.) Prior to construction, the startup assignment was to take only ten hours per week. (Schook Dep. 65:20-69:1) It was the ideal role for Knudsen to gain the necessary experience and to ultimately be promoted more quickly. (Id. at 181:10-182:13.) Knudsen was provided all the necessary support, including individual coaching, and Simplot “wasn’t going to let him fail.” (Id.) Knudsen was not asked to be the project manager, which was performed by Simplot employee Byron Smith. Knudsen was simply assigned one discrete task within the entire project. (Id. at 47:4-51:6.)

Knudsen worked on some training for the Grand Forks project, but the majority of his time from February 2016 until his last month of employment was intended to be spent as a packaging engineer. (Anderson Dep. 44:8-25.) Anderson informed Knudsen that the startup assignment was not a separate position or one that should take the majority of his time. (Id. at 45:1-25.)

However, Knudsen demonstrated an inability to engage in the startup assignment, showing “almost disdain for what [Simplot] was asking him to do to learn the Operations equipment and plants.” (Schook Dep. Ex. 19.) Knudsen rejected his assigned role, which was a combination of operational and packaging engineer. (Anderson Dep. 94:20-95:25.) Knudsen only wanted to do what two other Food Group engineers, Jason Schwark and Tim Lalley, were doing. (Schook Dep. 106:17-111:1.) But Knudsen’s role was different than Schwark and Lalley’s role. Knudsen was expected to learn Simplot’s products and facilities before he could have the independence of Schwark and Lalley and so that he could engage in sales and marketing (Id.) Knudsen’s role was to support Schwark and Lalley when they needed help packaging projects while simultaneously learning Food Group operations. (Id. at 111:6-11.)

Up until June 20, 2016, Knudsen's primary work with respect to the startup assignment had been to prepare training. (Anderson Dep. 41:13-25.) Knudsen had also been asked to help with developing a "startup process," but it overwhelmed Knudsen and the process was taken away from him. (Id.) On June 20, 2016, Anderson told Knudsen that he was expected to actively take on the role of startup manager, which was "a means to an end to understand the operational side and issues." (Id. at Ex. 36.) On June 21, 2016, Anderson met with Schwark and Lalley, who reported to Anderson that Knudsen refused to help them on a project because he said he was too busy with the startup assignment. (Id.)

On June 22, 2016, Anderson had a meeting with Knudsen to discuss Knudsen's stated inability to help out with packaging projects. (Anderson Dep. 87:22-89:1.) Anderson explained to Knudsen that the startup assignment was not a separate job and that it was supposed to take up roughly ten hours per week. (Id. at Ex. 36.) During the meeting, which turned into a heated exchange, Knudsen stated in no uncertain terms that he would not perform the startup assignment. (Id. at 88:18-89:1, Ex. 36.) Knudsen stated that the reason he did not want to do the startup assignment was because it stressed him out, caused personal issues with his marriage and he did not want to go back to the role that he had hated at HP. (Id. at Dep. Ex. 36.)

Despite being informed that the startup assignment was nothing more than a temporary assignment, Knudsen contacted HR Director, Kayce McEwan. (McEwan Dep. 16:13-17:3.) Knudsen also filed an internal complaint through Simplot's grievance process. (Id.) Knudsen expressed that he felt he was being put into a position, with respect to the startup assignment, for which he was not hired. (McEwan Dep. 49:1-25.) HR disagreed with Knudsen. As stated by Ms. McEwan, there was confusion on Knudsen's part. (McEwan Dep. 49:15-50:8.) Simplot was not asking Knudsen to perform a separate job but to participate on one project. (McEwan Dep.

46:24-48:19.) The startup role was simply the assignment Knudsen would perform for a single project in his position as a Packaging Engineer. (Id.) Knudsen's supervisor was not informed of the HR Complaints at that time. (Anderson Dep. 101:14-102:13.)

On June 23, 2016, HR Manager Laura Nessen met with Knudsen about his altercation with Mr. Anderson. (Nessen Dep. Ex. 31.) Ms. Nessen expressed surprise that Knudsen felt tricked into taking the job because when interviewing for the position, Simplot emphasized that it was specifically looking for leadership attributes to help with both the operations side and the materials. (Id.) In follow-up to the altercation, Mr. Schook offered his opinion about Knudsen's job performance, noting that Knudsen was refusing to perform the startup assignment despite the fact that it was a great opportunity to learn the equipment and materials, for which he lacked experience. (Schook Dep. Ex. 19.)

On July 11, 2016, Knudsen was placed on a Performance Improvement Plan ("PIP") (Anderson Dep. 132:7-9; Shaw Dep. Ex. 16.) The purpose of the PIP was to improve communication, not to assume things and to participate to a greater degree. (Anderson Dep. 139:17-23.) This included not assuming the startup manager was a full-time position rather than a temporary assignment. (Id. at 144:6-19.) Knudsen was not considered for termination; Simplot wanted him to understand the job expectations more clearly. (Id. at 139:7-16.) On August 3, 2016, Anderson learned of Knudsen's HR Complaints for the first time. (Id. at 101:14-102:13.)

On August 5, 2016, Ms. McEwan met with Knudsen and memorialized the conversation in a memo. (Knudsen Dep. Ex. 60) She explained that "the purpose of our Group Engineering Team is to ensure all of our plants are running effectively, so it is very typical for engineers on the team to be assigned to projects temporarily, in a variety of roles, at any of our facilities. These assignments are intended to be temporary in nature, but are critical to the success of our

manufacturing facilities.” (Id.) Simplot gave Knudsen two options: either he could continue in his current role, which includes involvement on engineering projects across the North American Food Group, while continuing to work on the PIP, or he could voluntarily resign with ten weeks of separation pay. (Id.) Knudsen selected neither, despite being given over one month paid administrative leave to make a decision. (Id. at Ex. 61.) Simplot was unable to keep Knudsen on administrative leave while he continued to refuse to do his job, and on September 7, 2016, Simplot provided notice of the termination. (Id. at 61 & 67.)

Knudsen left before construction on the Grand Forks project began. (Schook Dep. 165:13-17.) In February 2017, a junior level engineer, who made half the salary as Knudsen and had no leadership experience, completed the startup assignment with stellar results. (Anderson Dep. 23:1-17; Schook Dep. 178:9-15.) The startup assignment was not a permanent position. Anderson, a mechanical engineer, is currently acting as the project manager for a \$390 million project for which no startup manager has been assigned. (Id. at 14:13-15:1;35:22-36:6.) Food Group engineers are expected to fill necessary leadership roles for projects, whether they are a process engineer, an electric engineer or a packaging engineer. (Schook Dep. 65:20-68:9.)

II. SUMMARY JUDGMENT STANDARD

Summary judgment must be entered when “the pleadings, depositions, and admissions on file, together with the affidavits, if any, show 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. Idaho R. Civ. P. 56(c). All factual inferences are drawn in favor of the nonmoving party; however, motions for summary judgment are decided upon facts shown, not upon facts that might have been shown. *Verbillis v. Dependable Appliance Co.*, 107 Idaho 335, 689 P.2d 227 (Ct. App. 1984). Summary judgment is appropriate when the nonmoving party fails to make a showing sufficient to

establish the existence of an element essential to that party's case on which that party will bear the burden of proof at trial. *Patterson v. State, Dep't of Health & Welfare*, 151 Idaho 310, 315, 256 P.3d 718, 723 (2011).

III. LAW & ANALYSIS

A. Simplot Made No Intentional Representation to Knudsen.

Simplot made no representation concerning a potential "startup" assignment, and absent any representation, Knudsen's fraud claim fails as a matter of law. The Idaho Supreme Court has outlined the elements essential to prove fraud as follows:

(1) a representation; (2) its falsity; (3) its materiality; (4) the speaker's knowledge of its falsity or ignorance of its truth; (5) his intent that it should be acted on by the person and in the manner reasonably contemplated; (6) the hearer's ignorance of its falsity; (7) his reliance on the truth; (8) his right to rely thereon; and (9) his consequent and proximate injury.

Faw v. Greenwood, 101 Idaho 387, 389, 613 P.2d 1338, 1340 (1980). All elements of fraudulent misrepresentation must be established by clear and convincing evidence. *Sharp v. Idaho Inv. Corp.*, 95 Idaho 113, 121 504 P.2d 386, 394 (1972). All these elements must be found to exist, "and the absence of any one of them is fatal to recovery." Knudsen admits that there was absolutely no statement regarding the "startup manager" assignment during his interview. (Knudsen Dep. 57:8-10). Without a representation, either that Knudsen would or would not be delegated a startup manager assignment, Knudsen's prima facie case fails as a matter of law.

1. Simplot's Representations Concerning the Packaging Engineer Position Were True.

Every representation made in the job announcement and interview process was true. "In addition to the falsity of representations it must be shown that the party making them knew them to be false, or that he made them recklessly, without knowledge of their truth or falsity. If he honestly believed the representations to be true, and they were not recklessly made, then he is not

liable for fraud.” *Parker v. Herron*, 30 Idaho 327, 164 P. 1013, 1014 (1917). Knudsen cannot establish that any statement made by Simplot during the hiring process was false or that any statement was made without an absolute belief that it was true.

Simplot’s representations concerning the Packaging Engineering position were entirely true and encompassed the future startup assignment. The Job Announcement included “*project management* related to packaging equipment operation and capabilities.” (Anderson Dep. Ex. 33) (emphasis added.) The Sr. Packaging Engineer is responsible for “identifying and managing projects related to cost reduction opportunities” (id), which includes the leadership qualities expected for a startup assignment (Schook Dep. 23:8-21.) The hiree was expected to “[w]ork directly with plant locations to specify primary and secondary packaging materials ...” (Anderson Dep. Ex. 33), which, again, requires a combination of leading packaging projects (Schook Dep. 23:22-9). Knudsen was informed he would need cross-functional experience. (Knudsen Dep. 65:20-66:2.)

Moreover, a job announcement does not include each individual task that could possibly be performed in the future. The Job Announcement addressed leadership, whether that occurred in meetings, training or startup; not all specifics of the job are included with each line item. (Schook Dep. 23:7-21.) As noted by Ms. McEwan, “[T]here is no job out there within our project engineering group that will describe all the roles necessary for a project.

Finally, Simplot could not have knowingly made any misrepresentation about the startup manager assignment as being included or excluded under the penumbra of a packaging engineer’s duties because the Grand Forks project was not approved until four months after Knudsen was interviewed. (Anderson Dep. 26:15-27:8.) Knudsen was provided the job he

interviewed for and there was no false representation concerning his job duties at the time of hire.

2. **Fraud Cannot Be Based on a Predictions About Future Events.**

Generalized statements about Knudsen's future job duties were not misrepresentations of existing fact and therefore cannot form the basis of a fraud claim. Fraud cannot be based on prediction. *April Beguesse, Inc. v. Rammell*, 156 Idaho 500, 489, 328 P.3d, 509 (2014). In general, "the representation forming the basis of a claim for fraud must concern past or existing material facts." *Maroun v. Wyreless Sys., Inc.*, 141 Idaho 604, 615, 114 P.3d 974, 985 (2005). A promise concerning future events can only be actionable if accompanied by misrepresentations of existing facts, without which the promise would not have been acted upon. *Sharp v. Idaho Inv. Corp.*, 95 Idaho 113, 504 P.2d 386 (1972). A present intent to misrepresent cannot be inferred from evidence that the defendant did not ultimately meet the plaintiff's expectations. *Thomas v. Medical Center Physicians, P.A.*, 138 Idaho 200, 61 P.3d 557 (2002).

Knudsen's claim lacks any misrepresentation of an existing fact. Knudsen admits that no affirmative statement concerning the startup assignment had been made, thus, there could be no promise or statement about an existing fact upon which Knudsen relied in determining whether to take the job. There is no position entitled "Startup Manager," and this discrete assignment could neither be guaranteed nor categorically barred for the Packaging Engineering position at the time of hire where the Grand Forks project had not yet been approved. Simplot did not, nor could it have, made any false representation about a future, unknown event, and Knudsen's claim fails as a matter of law.

3. **Simplet Had No Knowledge that Knudsen Would Consider the Startup Assignment to Be Undesirable or that He Would Consider the Assignment to Be An Entirely Separate Job.**

Knudsen's subjective disdain for the startup assignment was unknown to Simplet until seven months after he was hired and cannot form the basis of a fraud claim. "Materiality refers to the importance of the misrepresentation in determining the plaintiff's course of action." *Aspiazu v. Mortimer*, 139 Idaho 548, 550, 82 P.3d 830, 832 (2003). The test for materiality can be either objective or subjective. *Edmark Motors, Inc. v. Twin Cities Toyota*, 111 Idaho 846, 727 P.2d 1274 (Ct.App. 1986). Citing to the Restatement (Second) of Torts, the *Edmark Motors* Court explained that a representation is "material" if

- (a) a reasonable man would attach importance to its existence in determining his choice of action in the transaction in question; or
- (b) the maker of the representation knows or has reason to know that its recipient regards or is likely to regard the matter as important in determining his choice of action, although a reasonable man would not so regard it.

Id. (citing Restate (Second) of Torts § 538(2) (1977)).

As previously established, Knudsen admits there was no representation concerning the startup assignment, thus, the first required element of materiality is missing; there was no statement for a reasonable person to attach importance to concerning the startup assignment. Furthermore, a reasonable person in Knudsen's position, who had sixteen years of engineering experience and significant project management and leadership experience would not consider a short, temporary assignment to be critical to his decision to choose a job with Simplet. (Schook Dep. 87:1-11.) In fact, given Knudsen's prior experience, which he emphasized during his interview, he should have expected such an assignment. (*Id.*) Moreover, the person who ultimately performed the job had far less experience as an engineer and completed the job with no problems. Michael Whiting did not have specific mention of a startup assignment in his job

description because it was not Simplot's practice to list every potential assignment, yet he did not make any complaints upon receiving the assignment. In fact, the assignment was a boon to his career and made him more marketable as an engineer. (Schook Dep. 199:11-200:1.) Knudsen's subjective disdain of a particular assignment common in the industry does not establish the necessary element of "materiality."

With respect to second prong of the materiality analysis, Simplot did not produce the Job Announcement and interview statements with knowledge that Knudsen would consider any represented job duties to be finite and all-encompassing of every potential assignment or that he would reject an offer of employment based on knowledge of a potential job assignment. Lacking from the record is any evidence that Simplot knew Knudsen would hate the job assignment. In fact, Knudsen knew that if he disclosed such a personal distaste he would not get the job. (Knudsen Dep. 216:11-18.) Knudsen's idiosyncratic view of the startup assignment cannot serve as a basis for fraud.¹

4. **Simplot Made No Misrepresentation Concerning the Startup Assignment Upon Which Knudsen Could Justifiably Rely.**

Knudsen was not justified in relying on his subjective belief that a Packaging Engineer should not have to perform a startup assignment. In order to establish justifiable reliance, "[t]he recipient of a fraudulent misrepresentation of intention is justified in relying upon it if the existence of the intention is material and the recipient has reason to believe that it will be carried out." Restatement (Second) of Torts § 544 (1977)(cited by *Gray v. Tri-Way Const. Services, Inc.* 147 Idaho 378, 210 P.3d 63 (2009). "Whether the recipient has reason for this belief depends upon the circumstances under which the statement was made, including the fact that it was made

¹ Though Plaintiff has failed to plead this case as fraud by omission, *see* Pl.'s Compl. ¶¶ 39-47, such a claim would also fail based on the lack of materiality and lack of duty owed to Plaintiff.

for the purpose of inducing the recipient to act in reliance upon it and the form and manner in which it was expressed.” Restatement (Second) of Torts § 544, cmt. a.

Absent a formal agreement, discussions pertaining to potential employment terms do not establish justifiable reliance. *Gray*, 147 Idaho 386-387; 210 P.3d at 71-71. In that case, Gray quit his job with Albertson’s after entering into negotiations with Tri-Way to expand the company’s operations into Arizona. *Id.* at 381, 201 P.3d at 66. Prior to quitting his job at Albertson’s, Gray provided a proposed employment agreement outlining his pay and future ownership interest in the company. *Id.* Gray quit his job and started working for Tri-Way before any employment agreement was officially reached. *Id.* at 381-381, 201 P.3d at 66-67. Efforts to reach an employment agreement continued for months after Gray began working for Tri-Way but no agreement was ultimately reached. Gray filed suit against Tri-Way asserting, *inter alia*, fraud and promissory estoppel. The district court entered summary judgment in favor of Tri-Way, stating, “[W]e agree with the district court that Gray had no reason to believe that Tri-Way would carry out the terms of the employment agreement.... Gray began work on June 1, 2004, without a formal agreement in place at his own risk. Thus, the fact that Tri-Way never informed Gray that it rejected the terms of the employment agreement, or the fact that Tri-Way allowed Gray to begin work without an agreement in place, does not establish justifiable reliance on Gray’s part.” *Id.* at 387, 201 P.3d at 72.

In this case, the parties discussed in general terms what Simplot anticipated Knudsen’s job responsibilities would entail. There was no discussion one way or the other about the specific assignment of startup manager in Grand Forks, as that project had not received Board approval. If Knudsen wanted a guarantee that he would not be asked to perform certain types of assignments, he would have been required to negotiate a contract of employment. Without such

an agreement, Simplot was entitled to assign a task of limited duration and scope that fell well within the Responsibilities outlined in the Job Announcement. Even if the precise term of “startup manager” was not expressed in the Job Announcement, Simplot was entitled to assign an engineering leadership role to an engineer with significant leadership experience and sixteen years of practice in the industry, who was receiving a salary of \$105,000 plus benefits. Like the plaintiff in *Gray*, Knudsen could not justifiably rely on any generalized representation concerning the terms of his employment with Simplot that were not reduced to a formal agreement. Knudsen’s fraud claim therefore fails as a matter of law.

Finally, Knudsen did not express his unwillingness to perform the assignment until he told his supervisor in June 2016 that he refused to do it. Knudsen admitted that he specifically withheld his unwillingness to perform such a leadership role during the hiring process because he knew he would not get the job if he did. . (Knudsen Dep. 137:4-140:11.) Absent knowledge that Knudsen had a subjective disdain for this type of assignment, Simplot could have no intent to mislead Knudsen one way or the other about a startup assignment for the purpose of inducing Knudsen to accept the job offer. In fact, given that the startup assignment had the potential to be such a boon to an engineer’s career, it would make no sense for Simplot to hide such a fact for the purpose of eliciting an acceptance of a job offer. Knudsen was not justified in relying on any representation that he perceived to exclude the possibility of a startup assignment where he failed to communicate that he would refuse to perform such an assignment due to his own highly personal and subjective job preferences.

5. Simplot Did Not Cause Knudsen’s Alleged Damages.

Knudsen cannot circumvent the employment at-will doctrine by characterizing his claim as fraudulent hiring. Knudsen, as an at-will employee, could be terminated at any time and for

any reason. He cannot therefore substantiate any compensable injury as a result of leaving his employment at Simplot under a hiring fraud theory when he was guaranteed no expectation of continued employment. Courts considering a post-termination tort action for damages resulting from hiring fraud consider the claim a straightforward attempt to circumvent the employment-at-will doctrine. *See Fry v. Mount*, 554 N.W.2d 263, (Iowa 1996) (to allow promises concerning terms of employment as a basis for recovery in tort “would permit an at-will employee like Fry to potentially recover in tort on the same factual grounds on which the law would deny him recovery in contract.”); *see also Edwards v. Central Georgia HHS, Inc.*, 253 Ga.App. 304, 558 S.E.2d 815 (2002) (the promises upon which the plaintiff claims he relied were unenforceable even absent any fraud at the time of their utterance because the underlying employment contract, being terminable at will, is unenforceable).

For example, in *Kubicek v. J. Walter Thompson U.S.A., Inc.*, 902 F.2d 33 (6th Cir. 1990)², the plaintiff alleged that he was induced to leave a job in Germany by fraudulent representations made by employer JWT regarding future job assignments. *Id.* at *1. Specifically, Kubicek alleged he was “recruited” by JBT based on his experience with European advertising and that he was specifically hired to work on a proposed special project team which was to develop new design concepts for advertising Ford Motor Company automobiles. *Id.* JWT later decided not to form the special team and instead placed Kubicek as a senior art director. Kubicek was placed on probation due to Kubicek’s disappointing performance in that role. Kubicek was ultimately terminated and brought an action in fraud. *Id.* at * 2. The court rejected that Kubicek suffered a compensable injury when he left his job in Germany for the higher paying

² Simplot cites to this decision not for its precedential value but because of the striking factual similarities to the present matter and the instructional analysis provided the court.

position with JBT, even if Kubicek could otherwise establish the other elements of a fraud claim because he was an at-will employee. *Id.* at *5.

In upholding summary judgment in favor of JBT, the Sixth Circuit court cited several cases suggesting that an employee who gives up a current job to accept an at-will position cannot set forth a recognized cause of action in fraud. *Id.*; citing *Ullman v. Olwine, Connelly, Chase, O'Donnell & Weyher*, 123 F.R.D. 237 (S.D. Ohio 1987) (holding that an employee that leaves one position in favor of another higher-paying, at-will position may not maintain a claim for fraud); *Romack v. Public Service Co. of Indiana*, 499 N.E.2d 768, 775 (Ind.App. 1986) (holding that leaving one job to accept another does not constitute a “sufficient independent detriment to support a constructive fraud claim.”). *See also Epifani v. Johnson*, 65 A.D.3d 224, 230 (The at-will employment doctrine bars a cause of action sounding in fraudulent inducement, even where the circumstances pertain to a plaintiff’s acceptance of an offer of a position rather than his or her termination.). Because Kubicek earned less in Germany than his salary at JWT and was given ample chances to demonstrate his abilities, he suffered no compensable injury as a result of JWT’s representations. *Id.* The court additionally determined that Kubicek’s damages were too speculative where the probability that Kubicek would lose his job simply because he was assigned a different task than he initially expected was not reasonably certain. *Id.*; *see also*

Under Knudsen’s theory of recover, Simplot could terminate Knudsen at any time and for any reason, but it could not assign him a task that Knudsen subjectively believed was not specifically set forth in the Job Announcement or interview process. Such a flaw in logic contravenes the employment at-will doctrine. If Knudsen wanted any guarantee of employment, including length of employment or specific duties, he was required to have an employment

agreement specifying such conditions. As it is, Knudsen cannot recover in fraud the damages that are specifically precluded by the employment at-will doctrine.

Moreover, like the plaintiff in *Kubicek*, Knudsen's alleged damages are too remote and speculative. The probability that Knudsen would abandon his job simply because he was assigned a different task than he initially expected was not reasonably certain. Knudsen cannot establish that he was damaged by anything Simplot said at hiring when he left his equal paying job at HP, was provided every chance to succeed and then left his job at Simplot based on his personal job dissatisfaction.

Knudsen's distress at being assigned an unwanted job task simply does not give rise to a fraud cause of action in Idaho, and his claim must be dismissed as matter of law. To find otherwise would require a jury to believe that (1) Simplot lured Knudsen away from HP by posting a Job Announcement on the Internet knowing somehow that Knudsen would interpret the Job Announcement to be all-inclusive of every possible assignment; (2) Knudsen would interpret interview discussions emphasizing leadership to mean that Knudsen would not have to take any leadership assignments; (3) Simplot knew Knudsen would be assigned a startup assignment at the time of hiring even though the Grand Forks project was not approved; (4) Knudsen would refuse to perform the startup assignment, despite the fact that it was intended to enhance his job performance; (5) Knudsen would reject any and all attempts to help him perform his job, and would eventually abandon his job rather than perform a PIP. A jury could not reasonably credit such an elaborate hoax, and Knudsen's fraud claim must be dismissed as a matter of law.

B. Promissory Estoppel Is of No Significance to Knudsen's Case in the Absence of an Employment Agreement Concerning His Specific Job Duties

Promissory estoppel is merely a substitute for consideration and cannot provide the terms of an employment agreement. "The doctrine of promissory estoppel requires reliance on a

specific promise. *Gilbert v. City of Caldwell*, 112 Idaho 386, 392, 732 P.2d 355, 361 (1987). A party seeking to avail itself of the doctrine of promissory estoppel must show that:

(1) the detriment suffered in reliance was substantial in an economic sense; (2) substantial loss to the promisee acting in reliance was or should have been foreseeable by the promisor, and (3) the promise must have acted reasonably in justifiable reliance on the promise as made.

Mohr. v. Shultz, 86 Idaho 531, 540, 388 P.2d 1002, 1008 (1964). “Promissory estoppel is simply a substitute for consideration, not a substitute for an agreement between the parties. *Lettunich v. Key Bank Nat. Ass’n*, 141 Idaho 362, 367, 109 P.3d 1104, 1109 (2005).

Merely suffering a detriment is not sufficient to invoke the doctrine of promissory estoppel; there must be a sufficiently definite agreement. *Id.* In *Lettunich*, the plaintiff purchased over \$400,000 cows based on oral representations from KeyBank that it would fund the cattle term loan and operating line of credit. *Id.* at 365, 109 P.3d at 1107. Subsequent to the purchase, Key Bank refused the financing. *Id.* at 366, 109 P.3d at 1108. The plaintiff sued claiming, inter alia, that the doctrine of promissory estoppel prevented KeyBank from denying enforceability of an oral promise. *Id.* Summary judgment in favor of KeyBank was upheld by the Idaho Supreme Court, which stated, “Lettunich clearly suffered a detriment when he purchased cattle without a way to pay for them. The doctrine of promissory estoppel is of no consequence because there is evidence of adequate consideration. What is lacking is a sufficiently definite agreement.” *Id.* at 368, 109 P.3d at 1110.

One of the few cases addressing promissory estoppel in the context of hiring held that an employer could not promise career type employment but ultimately provide only temporary employment. *Havey v. Maximus, Inc.*, 2014 WL 6474051 (D. Idaho Nov. 19, 2014) (unpublished). In that case, the defendant call center hired new employees to meet the demands of its new center. Maximus hired both “regular capacity” employees, who worked at-will

without a contractually defined period of time but which was as “career” type employment, and “limited service” employees who only worked for a defined period of time. *Id.* at *1. Plaintiffs accepted regular capacity employment believing they were pursuing a career opportunity with Maximus. *Id.* When they were let go as part of a reduction in force, they brought suit alleging, *inter alia*, promissory estoppel because Maximus deviated from the original agreement between the parties. *Id.* *5. In interpreting Idaho law, the U.S. District Court determined the plaintiffs could state a claim under Rule 12(b)(6) because promissory estoppel was used as a substitute for consideration, not a substitute for an agreement between the parties. “Here, Plaintiffs pled that Maximus said it was offering ‘regular capacity’ or career type employment, but actually offered temporary employment.” *Id.* Thus, a defined agreement was in place when the suit was filed.

In this case, Simplot never promised Knudsen that he would only perform certain assignments or that he would never be provided a startup assignment. As in *Lettunich*, promissory estoppel cannot supply consideration for an agreement that never came to be. Simplot never promised that a statement of generalized, anticipated job responsibilities in a job announcement would meet the wholly subjective requirements of what Knudsen believed a packaging engineer would perform at Simplot. There was no agreement about the terms of Knudsen’s job other than that he would act as Packaging Engineer at Simplot, that he would be paid \$105,000 plus benefits and that he would be working in Caldwell, Idaho. Absent an agreement, promissory estoppel does not substitute for consideration but is a theory having no application to the present case.

Relatedly, absent an agreement, Knudsen could not justifiably rely on any generalized statement concerning Knudsen’s job duties. Knudsen failed to inquire whether he would be asked to perform the leadership roles that put “stress” on his marriage in the past. He failed to

obtain any information that was uniquely within his knowledge as to what he could or could not accept in terms of job duties. Knudsen's subjective job expectations do not amount to justifiable reliance. Moreover, unlike *Harvey*, this is not a situation where Knudsen was made any guarantee with respect to the duration of employment, which is the only time that a court has held that promissory estoppel could supply the missing consideration.

Finally, Knudsen suffered no detriment. Knudsen did not forego a higher paying job at HP. Knudsen was provided an opportunity to take on an assignment that could have catapulted his career. Knudsen was provided an opportunity to learn more about food packaging so that he could reach the Senior Packaging Engineer position for which he initially applied. Knudsen would not be allowed to fail at the startup assignment. Knudsen was not terminated. The PIP was provided for the purpose of allowing Knudsen to remain a Simplot employee and to thrive in that capacity. The fact that Knudsen left Simplot of his own volition because he refused to perm the startup assignment was not proximately caused by any representation made by Simplot during his interview but was a choice that Knudsen made.

Indeed, the same damages issues that plagued his fraud claim are present in this promissory estoppel claim. Simplot did not proximately cause any damages allegedly suffered by Knudsen when he left an equal paying job at HP, was provided every opportunity to succeed at Simplot and then ultimately abandoned his job because he did not like an assignment. Knudsen can establish no element of a prima facie case for promissory estoppel.

C. The Covenant of Good Faith and Fair Dealing Cannot Supply Non-Existent Contractual Terms.

Knudsen did not have a contract that afforded him the ability to pick and choose which job assignments he would accept, and in the absence of such agreement, the covenant of good faith and fair dealing does not apply to Knudsen's claim. Idaho law recognizes a cause of action

for breach of an implied covenant of good faith and fair dealing. *Metcalf v. Intermountain Gas Co.*, 116 Idaho 622, 778 P.2d 744 (1989). Such a covenant is found in all employment agreements, including employment-at-will relationships. *Mitchell v. Zilog*, 125 Idaho 709, 874 P.2d 520 (1994). An action by one party that violates, qualifies or significantly impairs any benefit or right of the other party under an employment contract, whether express or implied, violates the covenant. *Metcalf*, 116 Idaho at 627, 778 P.2d at 749. The covenant does not create a “for cause” requirement nor does it analyze “the amorphous concept of bad faith”. *Id.* “Instead, the covenant is an objective determination of whether the parties have acted in good faith in terms of enforcing the contractual provisions.” *Jenkins v. Boise Cascade Corp.*, 141 Idaho 233, 243, 108 P.3d 380, 390 (2004). “The implied covenant of good faith and fair dealing arises only regarding terms agreed to by the parties.” *Taylor v. Browning*, 129 Idaho 483, 491, 927 873, 881 (1996). The implied covenant “does not inject substantive terms into the contract”. *Jones v. Micron Technology, Inc.*, 129 Idaho 241, 923 P.2d 486 (Ct. App. 1996). Absent an agreement among the parties that an employee would never be treated in what he perceives to be “less than an ideal manner”, there is no breach of the covenant of good faith and fair dealing. *Van v. Portneuf Medical Center*, 147 Idaho 552, 562, 212 P.3d 982, 992 (2009).

There is no position at Simplot entitled “Startup Manager,” thus, Knudsen’s theory that Simplot “unilaterally” changed Knudsen’s job title is without a factual basis. *See Compl.* ¶ 57. Knudsen was a packaging engineer who was eventually delegated a startup assignment for the Grand Forks project after it was approved in February 2016. There is no substantive term of Knudsen’s at-will employment agreement contrary to the delegations of such an assignment. Knudsen is attempting to insert a substantive term into an at-will employment agreement based

on his subjective perception of what he thought his job should entail. Idaho law expressly disallows Knudsen's attempt to insert terms not inherent in the employment agreement.

Moreover, Knudsen cannot obtain damages based on his decision to leave Simplot. A breach of the implied covenant is a breach of the employment contract, and the potential recovery is in contract damages, not tort damages. *Idaho First National Bank v. Bliss Valley Foods*, 121 Idaho 266, 289, 824 P.2d 841, 864 (1991). However, under no interpretation of Knudsen's employment agreement is he entitled to damages for voluntarily terminating, and simply asserting a breach of the implied covenant does nothing to change the nature of his damages under a contract theory.

Finally, it is absurd to argue that even if Simplot had modified Knudsen's job position after hiring him, which Simplot expressly denies, Knudsen is somehow entitled to one particular set of job functions *ad infinitum*. Absent an employment agreement to the contrary, Simplot was entitled to assign Knudsen to any role within the realm of *Engineer 4* at any time, and to hold otherwise places an extreme and unreasonable burden on employers to check an employee's job announcement every time a job duty arises that falls within the employee's knowledge and skills. The implied covenant does not apply here, and the claim must be dismissed as a matter of law.

D. Simplot Owed No Legal Duty to Knudsen that Would Support a Claim of Negligent Infliction of Emotional Distress.

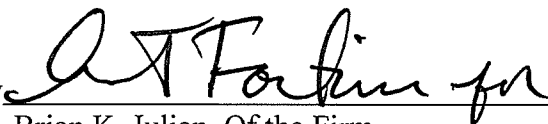
Simplot owed no duty to Knudsen where his injury was not foreseeable. It was not foreseeable that Knudsen would refuse to accept a job assignment encompassing knowledge and skills previously displayed by Knudsen at HP and included in an engineer's professional realm of expertise. "Idaho recognizes the tort of negligent infliction of emotional distress where the employer owes the employee a legal duty." *Hatheway v. Board of Regents of University of Idaho*, 155 Idaho 255, 270, 310 P.3d 315, 330 (2013). "A legal duty is one recognized by law

that requires the defendant to conform to a certain standard of conduct.” *Id.* This standard of conduct has been described as “a duty to exercise ordinary care to ‘prevent unreasonable, foreseeable risks of harm to others.’” *Nation v. State, Dept. of Correction*, 144, 177, 190, 158 P.3d 953, 966 (2007) (citation omitted).

In this case, no reasonable juror could find that Knudsen’s emotional distress was foreseeable when he was asked to perform the very duties he boasted about in his job interview. No reasonable juror could find that Knudsen’s emotional distress was foreseeable when he was asked to perform a temporary assignment that fell directly within in his skillset and experience. Finally, no reasonable juror could find that Knudsen’s emotional distress was foreseeable when he admittedly kept hidden his secret disdain for the leadership duties associated with the temporary assignment until seven months after his date of hire. Simplot owed no duty to Knudsen, and his negligent infliction of emotional distress claim fails as a matter of law.

DATED this 27th day of June, 2018.

ANDERSON, JULIAN & HULL LLP

By  for
Brian K. Julian, Of the Firm
Attorneys for Defendant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 27th day of June, 2018, I served a true and correct copy of the foregoing **MEMORANDUM IN SUPPORT OF DEFENDANT'S MOTION FOR SUMMARY JUDGMENT** by delivering the same to each of the following attorneys of record, by the method indicated below, addressed as follows:

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| <input type="checkbox"/> | U.S. Mail, postage prepaid |
| <input type="checkbox"/> | Hand-Delivered |
| <input type="checkbox"/> | Overnight Mail |
| <input type="checkbox"/> | Facsimile |
| <input type="checkbox"/> | E-Mail |
| <input checked="" type="checkbox"/> | iCourt/e-File |



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Attorneys for Defendant

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

ERIK KNUDSEN,

Plaintiff,

vs.

**J.R. SIMPLOT COMPANY, a Nevada
corporation,**

Defendant.

Case No. CV01-17-13956

**AFFIDAVIT OF BRIAN K. JULIAN
IN SUPPORT OF DEFENDANT’S
MOTION FOR SUMMARY
JUDGMENT**

STATE OF IDAHO)
) ss:
County of Ada)

Brian K. Julian, having been first duly sworn upon oath, deposes and says:

1. That, at all times relevant, your affiant has been an attorney duly licensed to practice law with in the State of Idaho. As such, your affiant has been a member of the law firm of Anderson, Julian and Hull, LLP, attorneys for Defendant J.R. Simplot Company (“Simplot”)

in the above-entitled action. The information contained herein is of your affiant's own personal knowledge.

2. Attached hereto as Exhibit A are true and correct copies of transcript excerpts and exhibits from the deposition of Erik Knudsen, dated June 7, 2018.

3. Attached hereto as Exhibit B are true and correct copies of transcript excerpts and exhibits from the deposition of Kent Anderson, dated June 4, 2018.

4. Attached hereto as Exhibit C are true and correct copies of transcript excerpts and exhibits from the deposition of Laura Nessen, dated May 31, 2018.

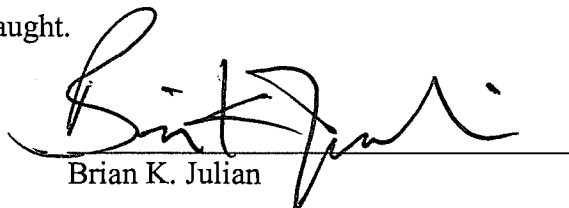
5. Attached hereto as Exhibit D are true and correct copies of transcript excerpts and exhibits from the deposition of Kayce McEwan, dated May 31, 2018.

6. Attached hereto as Exhibit E are true and correct copies of transcript excerpts and exhibits from the deposition of Lyle Schook, dated May 23, 2018.

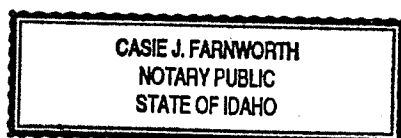
7. Attached hereto as Exhibit F are true and correct copies of exhibits from the deposition of Tim Lalley, dated May 14, 2018.

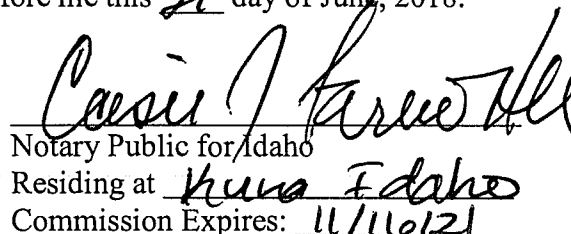
8. Attached hereto as Exhibit G is a true and correct copy of an excerpt from Exhibit 21 from the deposition of Rebecca Nichols, dated May 30, 2018.

FURTHER your Affiant saith naught.


Brian K. Julian

SUBSCRIBED AND SWORN to before me this 21st day of June, 2018.



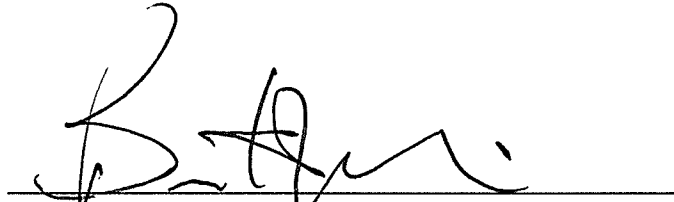

Notary Public for Idaho
Residing at Idaho
Commission Expires: 11/16/21

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 27th day of June, 2018, I served a true and correct copy of the foregoing **AFFIDAVIT OF BRIAN K. JULIAN IN SUPPORT OF DEFENDANT'S MOTION FOR SUMMARY JUDGMENT** by delivering the same to each of the following attorneys of record, by the method indicated below, addressed as follows:

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| <input type="checkbox"/> | Hand-Delivered |
| <input type="checkbox"/> | Overnight Mail |
| <input type="checkbox"/> | Facsimile |
| <input checked="" type="checkbox"/> | E-Mail |
| <input checked="" type="checkbox"/> | iCourt/e-File |



Brian K. Julian

EXHIBIT A

Deposition of
Erik Knudsen

Date: 6/7/2018

Case: Knudsen v. J.R. Simplot

Case No: CV-01-17-13956

CONTAINS CONFIDENTIAL TESTIMONY

Reporter: Andrea J. Couch, CSR#716, RDR, CRR, CBC

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ASSOCIATED REPORTING & VIDEO

Pages: 1 to 219

1 contest. I'll try to plug through this as
2 efficiently as possible, but to tell you the truth,
3 I'm not sure how long it's going to take.

4 A. Okay.

5 Q. Sometimes it's hard to judge.

6 A. Okay.

7 Q. But I will do my best to get through
8 this as quickly as possible.

9 Same things that your attorneys have
10 said before. If I ask you a question, you don't
11 understand it, make me rephrase it. I certainly
12 have an obligation to ask you a fair question, one
13 that you understand.

14 I'm going to go through a number of
15 exhibits. I'm just going to tell you, sometimes
16 it's just a way of me keeping track of paper. So
17 if I hand you an exhibit, don't think it
18 necessarily means a critical document. It may mean
19 it's just something historical --

20 A. Okay.

21 Q. -- and the court reporter can keep track
22 of the exhibits and they're all together.

23 A. Okay.

24 Q. Just so you're not --

25 I've seen some witnesses go, "Why are we

1 **Q. Okay. And I'm just going to jump to**
2 **this. It's probably out of place in my outline,**
3 **but why was it that you decided to apply for the**
4 **Simplot job out of HP?**

5 **A. I thought -- I had been working in the**
6 **printer industry for a long time, and I thought it**
7 **might be a good -- just something different.**

8 **I had respected Simplot quite a bit just**
9 **from living here -- kind of knew about them -- and**
10 **I thought food might be kind of an interesting**
11 **change for me.**

12 **Q. Did you have any disputes with anyone at**
13 **HP in 2014 that inspired you to apply for other**
14 **work?**

15 **A. I certainly had a dispute with someone.**
16 **It didn't inspire me to look elsewhere.**

17 **Q. What dispute are you talking about?**

18 **A. A director.**

19 **Q. Who was that?**

20 **A. Her name was Laura Reardon.**

21 **Q. What was the dispute?**

22 **A. So I had been -- I had worked my way up**
23 **to have responsibility for one of the most**
24 **important programs in LaserJet for that year, and I**
25 **had been doing a really, really good job for -- at**

[14]

1 Q. (BY MR. JULIAN) Okay. Handing you
2 what's been marked as 52.

3 (Deposition Exhibit No. 52 was marked.)

4 MS. BIRCH: Thanks.

5 Q. (BY MR. JULIAN) Do you recognize that
6 document?

7 MS. BIRCH: Take your time to look through
8 it if you need to, Erik.

9 THE WITNESS: Autobahn is the two-year
10 project, just for your reference, that I was
11 referring to. It says, "Autobahn/Moto."

12 I do recognize it. I haven't read
13 through the entire thing.

14 Q. (BY MR. JULIAN) And honestly, I don't
15 think I'm going to ask you any real detailed
16 questions about it because I think you explained
17 it.

18 This was the project you were talking
19 about that you had an issue with that you were in
20 charge of, basically?

21 A. Right.

22 Q. Okay. In Singapore?

23 A. It was actually China.

24 Q. China? Okay.

25 A. There was --

1 Part of the team was in Singapore, so
2 when we say Singapore, China, it's --

3 Q. It's --

4 A. Yeah.

5 Q. And were you considered the project
6 manager?

7 A. I was considered the program manager for
8 the operations portion.

9 Q. Okay. And is that --

10 We've heard terms --

11 A. Yeah.

12 Q. -- and I'm sure every company has its
13 own lexicon.

14 A. Yeah, definitely. Definitely.

15 Q. Tell me what your understanding of your
16 job was as compared to --

17 You've heard the term "project manager"
18 at Simplot.

19 A. Right.

20 Q. How did those two terms differ --

21 A. So --

22 Q. -- if they did?

23 A. Yeah. I think at HP, you can't really
24 make -- I don't -- we can't make a --

25 I'd rather stay away from the Simplot.

1 So my role at HP for those eight years
2 is you had basically a group of people doing the
3 design work for a printer. So this included
4 writing all the code, doing all of the hardware
5 design, doing the R&D portion.

6 And then I was a program manager. I was
7 an operations or manufacturing program manager
8 leading up a team that was responsible for getting
9 this printer into full-scale production.

10 And so there was a lot of details around
11 that. I was responsible for figuring out what the
12 supply chain would be, who the contract
13 manufacturer would be, making sure that we were
14 meeting our cost targets, our efficiency targets,
15 quality, and that we would -- we had a schedule and
16 a good plan for making sure that we had proper
17 worldwide availability at launch date.

18 **Q. And you were on location in China for**
19 **this event?**

20 A. Yeah. So most of my time was spent in
21 Boise doing lots of planning, lots of nightly calls
22 with the China team.

23 But when there was an actual build of
24 any kind of significance, like a prototype build or
25 starting of production, I would -- I would attend

[24]

1 A. Yeah. I think --

2 There was definitely the technical part
3 and then the leadership where I was interviewing
4 with the leadership team. I don't know if you want
5 to call it leadership, but it seemed like they were
6 more wanting to find out how I might fit into
7 the -- to the team. So would I be a good fit.

8 **Q. Was anything ever mentioned about a**
9 **startup manager role?**

10 A. No.

11 **Q. Do you recall anything specifically**
12 **stated in the interview process that defined what**
13 **you would be doing at Simplot?**

14 A. Definitely.

15 So we talked in the technical interview
16 about what I would be doing, and I was designing
17 packaging for new products.

18 **Q. Okay. At the time of the interview, was**
19 **it represented who you would be reporting to?**

20 A. Yes. I believe that was Craig
21 Lamberton.

22 **Q. And did Craig Lamberton indicate that**
23 **that might be for a short period of time because he**
24 **was scheduled to go back to Australia?**

25 A. No, not at all. Actually, that was news

[57]

1 this wasn't really something that you look at the
2 fine print on.

3 Q. But you did ask some details about your
4 job such as, "Do you care if I don't start until
5 November because I want to use up my two weeks' HP
6 vacation?"

7 A. Sure.

8 Q. And you ask, "Well, that will be on
9 Thanksgiving week. Do I get that one as a paid
10 holiday?"

11 Do you remember asking that?

12 A. Yeah. I was trying to figure out how to
13 make -- pay the bills --

14 Q. Right.

15 A. -- and switch jobs, sure.

16 Q. And you found there was a way to
17 communicate those questions and get responses,
18 correct?

19 A. Yes.

20 Q. Do you recall during the interview
21 process that you were told that you would likely be
22 receiving cross-functional experience?

23 A. I don't remember that in particular.

24 Q. Okay.

25 A. But I definitely -- part of the role

1 would be cross-functional. You're working with
2 business teams, I'm sure.

3 **Q. Let's look at Exhibit 23 in your book.**

4 A. Okay.

5 **Q. And this is an announcement dated**
6 **November 30th, 2015, correct?**

7 A. I don't think I have the right document.

8 MS. BIRCH: Exhibit 23?

9 MR. JULIAN: Yes.

10 MS. BIRCH: Is the folder for the --

11 It's Erik's folder, senior packaging
12 engineer folder.

13 THE WITNESS: So which --

14 MR. JULIAN: It's going to be in here.

15 THE WITNESS: Which page?

16 MR. JULIAN: I'll find it.

17 I believe it's Simplot 95.

18 THE WITNESS: 95.

19 MR. JULIAN: Yeah. I apologize. I didn't
20 realize where that came from.

21 THE WITNESS: That's fine.

22 Okay. Got it there.

23 **Q. (BY MR. JULIAN) That's the one. Thank**
24 **you.**

25 **Do you recognize this document?**

1 But I had worked enough in manufacturing
2 that it just -- it wasn't -- it didn't really bring
3 out my strengths.

4 Q. But when you say it is a job that
5 you would never -- you swore you would never do
6 again, you're referring to a similar job that you
7 did at HP, correct?

8 A. Yes..

9 Q. And we're talking about that job --
10 You didn't really like the stress of
11 being the project manager, correct?

12 A. No. I actually like stress.

13 Q. Okay.

14 A. I don't -- I don't -- I don't shy away
15 from stressful stuff.

16 Q. What was it that you swore you would
17 never do again then?

18 A. So on the manufacturing side with HP,
19 it's a lot of -- a lot of problem-solving. Like --

20 No. That's not the right word. Take it
21 back.

22 You'll have issues in manufacturing
23 where things won't work correctly. And what I
24 like -- the term that I used to like to use was
25 "firefighting." So it was very much a firefighting

[137]

1 role. Like smack the mole. There's a problem
2 here, here, here, here. And that's kind of the
3 nature of manufacturing.

4 So I did that at HP for eight years.
5 That whack-a-mole kind of thing. And then I had --
6 I had left that, and I didn't want to get into that
7 type of role again. I wanted to get into more of a
8 strategic-type -- type role.

9 Q. But when you interviewed, you emphasized
10 your project management experience at HP, correct?

11 A. Yeah.

12 Q. Did you ever tell the interviewers that,
13 "That's all good and fine, but I don't want to
14 return to assisting with problem-solving with
15 manufacturing"?

16 A. Why would I say that? I'm not going to
17 volunteer that type of information.

18 Q. Well, because it's honest, isn't it?
19 You never wanted to go back to that. You swore you
20 didn't want to go back to that, correct?

21 A. That wasn't asked.

22 Q. Why don't you volunteer that and say,
23 "By the way, I don't want to do this kind of job"?

24 A. Why would I volunteer -- why would I
25 just say -- I mean, there's -- I don't -- I also

1 wouldn't want to be a lawyer. I mean, why would
2 I -- that -- that sounds crazy to say --

3 Q. Don't you think --

4 MS. BIRCH: Hold on. You guys are talking
5 over each other.

6 MR. JULIAN: We are. I appreciate that.

7 THE WITNESS: Sorry.

8 Q. (BY MR. JULIAN) And your point is: Why
9 would you volunteer that?

10 A. It wasn't asked.

11 Q. Okay. And you didn't volunteer it,
12 though?

13 A. (Witness indicates.)

14 Q. I mean, let me just set this forth.
15 You agree that they were looking at you
16 for some of your leadership skills, correct?

17 A. In the interview, I was interviewing for
18 a packaging engineering position. They asked about
19 my interview -- my leadership skills, and I
20 volunteered. And of course I talk about that.

21 Q. And you emphasized not only in your
22 resume but in your interview the successful project
23 that you headed in China?

24 A. Of course. Yeah. It's the highlight of
25 my resume.

1 Q. But the fact is you never wanted to go
2 back to that kind of job again, according to what
3 you told Laura Nessen.

4 A. So?

5 Q. And you never told them that?

6 A. I'm sorry. I don't understand the
7 question.

8 Q. Did you ever tell anyone in your
9 interview that, "Yeah, I did project management,
10 but I'm not going to do that job again"?

11 A. No.

12 Q. Okay.

13 (Deposition Exhibit No. 57 was marked.)

14 Q. (BY MR. JULIAN) Again, we're just
15 keeping track of some documents. There's one that
16 we've marked as Exhibit 57.

17 Do you recognize this document?

18 A. No.

19 Q. Maybe go to the second page.

20 A. Oh. This looks like something --
21 I typed this. Okay.

22 Q. And you recall now, don't you, that you
23 used the Simplot internal grievance process online?

24 A. Is that the hotline?

25 Q. Yeah.

1 something.

2 Q. Before you got the offer of employment
3 at Micron, had you received any other offers of
4 employment?

5 A. No.

6 MS. BIRCH: Okay. I don't have anything
7 else.

8

9

FURTHER EXAMINATION

10 BY MR. JULIAN:

11 Q. You were asked at the start of this that
12 based on the interview, what was your understanding
13 as to the roles in project management that was
14 mentioned in the job description, and I didn't hear
15 you say anything about the interview. You gave me
16 your -- your --

17 A. Right.

18 Q. -- impression.

19 What was said specifically in the
20 interview that you recall that gave you your
21 impression as to what would be involved with
22 project management, if you remember?

23 A. I don't remember. Tim Lalley had been a
24 friend of mine for a while, and he said, "It's kind
25 of the similar stuff that you were working on at HP

[215]

1 as a packaging engineer."

2 Q. But you simply don't recall what every
3 person said or --

4 A. Of course not.

5 Q. -- statement made?

6 And, of course, you wanted to get hired?

7 A. Sure. I wanted a -- I would like a -- I
8 wanted an offer that I could consider,

9 Q. Okay.

10 A. I wasn't ready to, like, bail on HP yet.

11 Q. And you knew that if you said, "I don't
12 really want to be managing other projects like I
13 did for HP," you probably wouldn't get hired?

14 A. No.

15 Q. You knew that?

16 A. Of course, yeah.

17 Q. "Yes"?

18 A. Yes.

19 MR. JULIAN: That's all I have.

20 THE WITNESS: Okay.

21 MR. JULIAN: Thanks.

22 ///

23 ///

24 ///

25 FURTHER EXAMINATION

ERIK KNUDSEN

946 N. Yarmouth Place, Eagle, Idaho 83616 • 208.850.3291 • erik.knudsen12@gmail.com

Accomplished HP LaserJet professional seeking Senior Packaging Engineering Position with Simplot.

PACKAGING ENGINEERING ~ TEAM-BUILDING & LEADERSHIP ~ PROGRAM MANAGEMENT

PROFILE OF QUALIFICATIONS

Dependable and committed leader offering 7 years of packaging engineering and 8 years of operations program management experience. Proven success in leading domestic and global teams through complex challenges and initiatives. Able to precisely identify project requirements and steer completion according to demanding timeline, scope, and budget parameters. Possesses a strong blend of interpersonal, strategic planning, prioritization, decision making, and supervisory talents. Enthusiastic and resourceful trail blazer and change agent; constantly striving to fuel improvements to product output, market positioning, cost reduction, and quality levels. Inherent leadership attributes; highly regarded for abilities in mentoring, coaching, inspiring, and influencing.

Selected Achievements:

- Led 20+ member cross-functional team comprised of Ink and LaserJet employees to develop and execute a complex new Operations NPI model for revolutionary Enterprise Ink printer. Standardized process for executing new supply chain while simultaneously meeting global launch date, business needs, and quality objectives.
- Directed business leads, engineers, and master level architects through the NPI release process of 10 LaserJet printers while meeting timeline, quality, and availability requirements.
- Captured \$10M+ in annual savings by leading global teams to seamlessly consolidate manufacturing processes for five products across multiple factories to one site.
- Championed efforts to enhance OOBE for all LaserJet printers, resulting in accolade from PC Magazine for including pre-installed toner cartridges.
- Drove groundbreaking changes in package design and development methods to decrease package size by 71% over previous product, saving \$12M+ annually in materials and freight.

PROFESSIONAL EXPERIENCE

Hewlett-Packard Company, Boise, Idaho

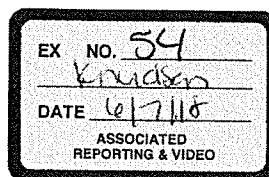
2002 to Present

Packaging Engineer, LaserJet Division (2015 to present)

NPI Manufacturing Program Manager, LaserJet Division (2006 to 2014)

- Applied significant leadership expertise toward directing, motivating, and coordinating NPI teams in creating detailed manufacturing plans for prototype builds and ramp for new LaserJet printers.
- Formulated manufacturing goals, guided worldwide team to attain goals, and accurately measured and monitored metrics against defined targets.
- Designed back-end program schedules encompassing contract manufacturer's capabilities, quality objectives, lab delivery timelines, transit times, supply goals, and introduction dates.

Continued ...



SIMPLOT 000042

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Professional Experience continued ...

- Influenced contract manufacturers through all NPI phases by setting clear expectations, leading weekly meetings, building trusting relationships, providing meaningful feedback, and coaching through ambiguous scenarios.
- Critically analyzed and evaluated complex prototype build quotes and negotiated with contract manufacturers to optimize pricing.
- Key advisor and primary point of contact for all manufacturing and supply chain related issues and items.
- Drove unified efforts among R&D teams, regions, and all manufacturing partners to ensure production readiness by maintaining open and constant lines of communications.
- Communicated with senior management regarding manufacturing status, supply chain conditions, and manufacturing strategy and escalations.
- Prudently anticipated risks to ramp start-up, established suitable contingency plans, and coordinated rework as needed to achieve 100% of quality requirements.

Senior Packaging Engineer, LaserJet Division (2006)

Packaging Engineer, LaserJet Division (2002 to 2005)

- Designed, tested, and released innovative, high-impact and cost-efficient packaging solutions for high-volume LaserJet printers.
- Negotiated with Canon to improve printer robustness.
- Established packaging development methods to support new supply chain models, providing engineers with consistency in project management and design activities.
- Managed vendors and negotiated with OEMs to optimize budget compliance, quality, and efficiency.
- Leveraged exceptional communication skills to interface with regional and international stakeholders to support flawless release of eight new products.
- Proactively developed and standardized Excel program to aid packaging engineers in choosing most cost-effective package size.

Agilent Technologies, Rohnert Park, California

2000 to 2002

Packaging Engineer, Electronic Products Solutions Group

- Designed, tested, documented and approved packaging for electronic test equipment in precise alignment with time-sensitive product release dates.
- Achieved productivity requirements by convincing management to create job requisitions for packaging technician and an additional packaging engineer.
- Researched and secured quality crating vendors for production line moves to Malaysia, fostered cohesive relationships with suppliers, and performed TQRDCE (Technical, Quality, Response, Delivery, Cost, and Environment) assessments.
- Examined and approved crate designs or recommended specific improvements to meet established requirements.
- Markedly decreased product damage complaints by identifying root cause and directing team in establishing written and photographic packaging instructions for assembly line workers; concurrently expedited assembly time by 75%.

EDUCATION

Master of Science, Packaging Science, Michigan State University, East Lansing, MI
Bachelor of Science, Textile Materials Science, North Carolina State University, Raleigh, NC

Personal and Confidential

DATE: August 5, 2016
TO: Erik Knudsen
FROM: Kayce McEwan
SUBJECT: Your Employment with the J.R. Simplot Company

Erik,

I appreciate you meeting with me and sharing your concerns with how your role has changed from what you believed the role was intended to be when you were hired into the Company in November of 2015.

I have investigated more around the responsibilities assigned to you as part of the project in Grand Forks, to help me better understand how this work relates to your job.

As we discussed when we were together, the purpose of our Group Engineering Team is to ensure all of our plants are running effectively, so it is very typical for engineers on the team to be assigned to projects temporarily, in a variety of roles, at any of our facilities. These assignments are intended to be temporary in nature, but are critical to the success of our manufacturing facilities.

I will assume, based on our conversation, that this may not have been made clear to you during the interview process.

Unfortunately, this type of work is an integral part of the job you were hired for, and it is not possible to remove these types of responsibilities from the role.

At your request, I have evaluated the options available to you, and believe we have two options:

1. You continue in your current role, which includes involvement on engineering projects across the North American Food Group, and continue to focus on the improvement plan presented to you by your supervisor.
2. You voluntarily resign your position with the Company. As requested, we would be willing to provide you with assistance in this transition, which would include 10 weeks of separation pay, in exchange for a signed release of all claims against the Company.

Erik, I'd like you to take the time to carefully consider both of these options before making a

EX NO.	600
	Knudsen
DATE	6/17/16
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Erik Knudsen
Page 2
08/05/2016

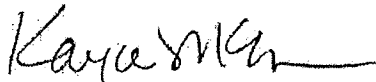
If you choose option #1, I will work with both you and your supervisor to provide support as requested to help you be successful in this role. It will be incumbent upon you to meet the expectations outlined for this position, and if any part of the role is unclear, to seek that clarity from your supervisor.

If you choose option #2, we will terminate your employment effective August 12, 2016, and I will prepare a separation agreement for your review. As this is a legal document, it would be appropriate for me to review this document in detail with you, so you understand the implications of signing.

Information provided in this letter is to be kept strictly confidential, and should only be shared with family, financial or legal counsel. This offer is unique to your situation, and sharing any provisions with others within the Company is strictly prohibited, and may result in the offer being revoked.

Erik, please feel free to reach out to me via email over the weekend, should you have any questions in regards to what's being offered here.

Sincerely,



Kayce McEwan
Sr. Director Human Resources, NAFG



J.R. Simplot Company
6360 S Federal Way,
Boise, Idaho 83716

Personal and Confidential

DATE: September 7, 2016
TO: Erik Knudsen
FROM: James Pegram
SUBJECT: Your Employment with the J.R. Simplot Company

Erik,

This memo is in follow-up to discussions you had with Kayce McEwan before I returned to Food Group regarding your position as an Engineer 4. I understand from reviewing the file your conversations with Kayce led to you being presented with the following options:

1. You continue in your current role, which includes involvement on engineering projects across the North American Food Group, and continue to focus on the improvement plan presented to you by your supervisor.
2. You voluntarily resign your position with the Company. As requested, we would be willing to provide you with assistance in this transition, which would include 10 weeks of separation pay, in exchange for a signed release of all claims against the Company.

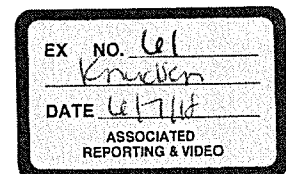
On August 5, 2016, you were placed on paid administrative leave while you considered your options. The deadline for you to make a decision on which option you were choosing was end of business on Monday, August 8, 2016. On August 9, 2016, Simplot's in house counsel was contacted by your attorney asking for the date to be extended to August 17, 2016. We granted this request. On August 17, 2016 we received another correspondence from your attorney indicating you would not accept either option listed above.

Since you had not yet made a decision, your attorney was informed that the options outlined above would remain open to you until August 31, 2016 at 5 pm. Your attorney again responded that neither option was acceptable. The Company had a pressing need to have someone performing the functions of your role, and could no longer continue to keep you on paid administrative leave in the absence of you making a decision. As a result, the decision was made to terminate your employment so a replacement could be hired. That decision was effective September 1, 2016.

We're sorry that things didn't work out for you with Simplot. A packet regarding benefit information will be sent to you under separate cover. If you have any other questions including how to retrieve any personal belongings left in your work area, feel free to contact me or to have your attorneys contact Simplot counsel, whichever you prefer. Best of luck in your future endeavors.

Sincerely,

James Pegram
Sr. Director Human Resources, NAFG



SIMPLOT 001152

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CORPORATE HEADQUARTERS

September 9, 2016

SENT VIA E-MAIL AND U.S. MAIL

Sarah Q. Simmons
STRINDBERG SCHOLNICK
802 Bannock, Ste 308
Boise, ID 83702

Re: Employee Erik Knudsen

Dear Sarah:

I am in receipt of your letter dated September 8, 2016 regarding former Simplot employee Erik Knudsen. It seems that there is some confusion regarding Mr. Knudsen's termination, and it is my hope that this letter will help to clarify the situation.

First, I'd like to clarify that Simplot did not lure Mr. Knudsen away from HP and into his position with Simplot. Mr. Knudsen sought out employment with Simplot. He confirmed this in his own employment application, which states that he became aware of the job opening via a LinkedIn search. It was his choice to leave his employment with HP, and Mr. Knudsen made that choice after seeing the job posting and choosing to apply. The job duties assigned to Mr. Knudsen during his tenure with Simplot are consistent with the information available to him at the time he made the choice to leave HP.

Mr. Knudsen's employment was terminated because he was unwilling to perform the duties assigned to him in his role with Simplot. He was assigned to a temporary project where he was the Start-Up Manager for a packaging upgrade project in Grand Forks, ND. The duties of the Start-Up Manager fall well within the scope of projects that Mr. Knudsen was expected to handle. Indeed, the job advertisement for Mr. Knudsen's position at Simplot states that the position is responsible for, among other things, "project management related to packaging equipment operation and capabilities." Mr. Knudsen even touted his leadership and project management experience on his résumé and during his interviews. However, Mr. Knudsen was not willing to manage the first packaging project to which he was assigned at Simplot.

His unwillingness led to an altercation with his supervisor and later a meeting with Human Resources Director, Kayce McEwan. In that meeting, Mr. Knudsen stated

EX NO.	67
	Knudsen
DATE	9/7/16
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that he wasn't sure if this position was going to work for him, and he expressed a desire to be offered the choice to stay in the role or be offered a separation package. Simplot granted that request and gave him a written memorandum with the two options to consider. Mr. Knudsen did not choose either option.

For nearly a month, Mr. Knudsen performed no work for Simplot and was still paid by the Company. He was given a deadline to submit a resignation if he wished to receive a separation package, and his resignation was never submitted. In addition, at no time was it ever expressed that he was willing to come back and perform the duties assigned to him in his position as Senior Packaging Engineer. The assertion in your letter that he made a reasonable request to be placed in the position for which he applied is simply not correct. Rather, Mr. Knudsen wanted to be able to pick and choose the functions of that position that he was willing to perform and the functions that he was not. Such an arrangement was not agreeable to Simplot for obvious business reasons.

As a result, Simplot was left with an employee unwilling to perform his job and unwilling to resign, even when generously offered 10 weeks of pay to help him transition to other employment. Given the importance of the packaging upgrade project Mr. Knudsen had been assigned to and the need to have an employee performing Mr. Knudsen's assigned duties, Simplot was forced to take action. Simplot had communicated in advance to your firm that Mr. Knudsen's employment would be terminated September 1, 2016 if a choice had not been made between the two options above by August 31, 2016 at 5:00 pm. Since Mr. Knudsen did not make a choice, his employment was terminated September 1, 2016.

On that same date, a leadership transition occurred in the Food Group Human Resources Department. James Pegram returned to his position as Senior Director of HR, and Kayce McEwan transitioned to work on special projects. That transition and the communication that was needed to bring Mr. Pegram up to speed on the status of Mr. Knudsen's situation caused a short delay in providing Mr. Knudsen with confirmation that his employment had been terminated—a consequence, again, that he was given notice of two weeks prior.

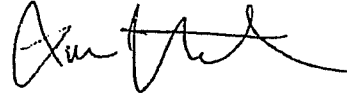
While you have requested a copy of Simplot's neutral reference policy, no such policy exists. However, should a prospective employer request information from Simplot regarding Mr. Knudsen, that employer will simply be given confirmation that Mr. Knudsen worked here as a Senior Packaging Engineer and the duration that he held that position.

I have also requested that Mr. Knudsen's phone number be returned to him. I do not have personal knowledge of what is necessary to process that return, but I will continue to follow-up to see that it is returned.

September 9, 2016
Sarah Q. Simmons
Page 3

I hope this letter includes enough detail for you to better understand Simplot's position in this matter. If you find that this letter lacks any detail, as you allege of Mr. Pegram's memo, please let me know and I will do my best to provide whatever you require.

Regards,

A handwritten signature in black ink, appearing to read "Luke Howarth", with a stylized flourish extending to the right.

Luke Howarth
Assistant General Counsel
J.R. Simplot Company

LMH:jd

000101

EXHIBIT B

**Deposition of
Kent Anderson**

Date: 6/4/2018

Case: Knudsen v. J.R. Simplot

Case No: CV-01-17-13956

Reporter: Andrea J. Couch, CSR#716, RDR, CRR, CBC

Associated Reporting & Video

Phone: (208) 343-4004

Fax: (208) 343-4002

Email: production@arvboise.com

Internet: www.arvboise.com



ASSOCIATED REPORTING & VIDEO

Pages: 1 to 181

1 Will you do that?

2 A. Yes.

3 Q. That's important because if you answer
4 my question, I'm going to assume that you
5 understood it. So feel free, if you want me to
6 state something in a different way, if you don't
7 understand it, just let me know and I'll make sure
8 that we're on the same page, okay?

9 A. Yes.

10 Q. Good.

11 Do you agree that Erik Knudsen was hired
12 by Simplot as a packaging engineer?

13 A. Yes.

14 Q. Do you agree that Erik was not told
15 before his first day that he was going to be a
16 startup manager at the Grand Forks plant?

17 A. Yes.

18 Q. Did you know that Erik was going to be
19 the startup manager at the Grand Forks plant before
20 he was interviewed?

21 A. No.

22 Q. Did you know that before he was hired?

23 A. No.

24 Q. When did you find out?

25 A. It was probably around February 2016.

1 **Q. And he was hired November 23rd, 2015.**

2 **Does that sound about right to you?**

3 **A. Sounds about right.**

4 **Q. Okay. So you're saying that you didn't**
5 **find out he was going to be the startup manager**
6 **until some four months later, give or take?**

7 **A. Yeah, roughly speaking. I mean, I don't**
8 **remember the exact date that we had decided that**
9 **that's what we wanted him to do.**

10 **Q. Okay. Who told you that he was going to**
11 **be the startup manager?**

12 **A. I don't recall. We talked about it as a**
13 **team. I don't know that there was any one**
14 **individual who said, you know, "This is the**
15 **decision. We're going to do this."**

16 **Q. What did you think when you were told**
17 **that he was going to be the startup manager?**

18 **A. Well, I was probably part of the**
19 **decision. I don't know that I was told. I -- I**
20 **wasn't told he was going to be the startup manager.**

21 **Q. Okay. I'm sorry. I didn't mean to**
22 **suggest to the contrary.**

23 **So why did you, as part of the team that**
24 **made the decision that Erik was going to be the**
25 **startup manager, why did you think that was a good**

1 **fit?**

2 A. Well, for a couple of reasons.

3 One is I thought it was a great
4 opportunity to give him some experience with our
5 equipment and our materials. You know, when we
6 hired him, he was coming from HP. It's not a food
7 company. We do different types of packaging than
8 that, and we wanted to give him some exposure to
9 our factories and our equipment and our materials.
10 And so -- thought it was a great learning
11 opportunity, actually.

12 And then that coupled with, you know,
13 when we interviewed him, he, you know, stated a lot
14 about his leadership, his experience running a
15 program for HP in China, if I remember correctly.
16 So there was some leadership there and -- and, you
17 know, we wanted to tap into that and see if he --
18 he could lead an effort of some startup activities.

19 **Q. Did you ask Erik before he was assigned**
20 **the startup manager position whether he thought it**
21 **was a good fit?**

22 A. No.

23 **Q. Did you talk to Erik about the startup**
24 **manager position before it was assigned to him?**

25 A. I guess I don't understand the question

1 A. I don't recall.

2 **Q. What does a startup manager do for**
3 **Simplot, just generally?**

4 A. Generally speaking, it's a -- someone
5 who helps coordinate the efforts around startup.

6 You know, there's different aspects of
7 startup, whether it's making sure our spare parts
8 are there or that individuals are trained or
9 coordinating when we're going to have vendors there
10 to support our startup or making sure that
11 materials that we need on hand are going to be
12 there.

13 It's really kind of a coordination role.
14 It's not --

15 Any one of those aspects isn't done by
16 that particular individual. The startup manager
17 does not do all of those tasks, but it's a -- it's
18 a role to help coordinate and ensure that some of
19 those activities are -- are completed.

20 And then work -- work with the team, the
21 other -- the other project managers and people on
22 the team, to, you know, talk about progress and --
23 and, you know, the work that's being done, making
24 sure the tasks are -- are -- are being completed.

25 **Q. Okay. And you'd agree with me, wouldn't**

1 **you, that the tasks that you just described, the**
2 **job duties of a startup manager, are different than**
3 **those for a packaging engineer at Simplot?**

4 A. No, not necessarily. A packaging
5 engineer --

6 You know, we're -- our engineering group
7 is a group of people who are leaders. We don't --

8 We're not just a technical group. In
9 fact, pretty rarely do we get in and just do all of
10 the technical engineering. We're -- we're a small
11 group of people who -- who lead efforts that --
12 that are going on.

13 Another aspect of startup, of course, is
14 when we start the equipment up, you know, what --
15 what equipment is running correctly, what --
16 what -- you know, what problems we're having with
17 the equipment and coordinate with -- with vendors
18 to come in and support us. Or, you know, is there
19 something that we can do in our settings to change?
20 Is there something on our materials that are wrong?

21 But that support of the startup when
22 we're commissioning or starting up the equipment.

23 **Q. Okay.**

24 A. But, you know, our -- our engineering
25 group are engaged in a lot of different items that

1 are a part of -- part of engineering, of being part
2 of a project. And the startup manager
3 responsibility, especially when it's part of a
4 packaging project, you know, it's definitely within
5 the realm of -- of what our engineering group does.

6 **Q. Have you ever been a startup manager?**

7 A. I personally?

8 **Q. Yeah.**

9 A. Have not.

10 **Q. Okay. You're an engineer, though,**
11 **right?**

12 A. I am an engineer.

13 **Q. Okay. What -- what's your engineering**
14 **background?**

15 A. I'm a mechanical engineer, I'm a
16 technical engineer. Currently, as an example, I'm
17 the director of technical engineering, and I -- you
18 know, functionally my job is to work on the front
19 end of the design. And I have a peer that's the
20 director of project management.

21 Currently, I'm not working as -- in my
22 functional area. I'm the project manager for a
23 \$390 million project. I'm not a project manager,
24 per se, but I was asked; given an assignment. It's
25 an engineering project, so I'm outside of my

1 **Q. Didn't he tell you after he was assigned**
2 **the startup manager position that he didn't have**
3 **any knowledge about how to start up a food**
4 **packaging line?**

5 A. He may have, but even if he did, you
6 know, we weren't going to let him fail.

7 This was a training opportunity. This
8 is a chance for him to learn. We wouldn't have
9 said, "Hey, you're -- you're in this all by
10 yourself. Hey, Erik, you're on an island. You're
11 the startup guy. If you screw up, it's on you."
12 That -- that would have never happened ever.

13 In fact, the guy we ended up assigning
14 the startup manager after he left was a junior guy.
15 Extremely junior. Made half the salary as Erik.
16 No leadership skills. He did phenomenal. He was a
17 phenomenal startup manager. He did great.

18 **Q. I appreciate all of that, sir, but I**
19 **don't think you answered my question.**

20 My question was: Did Erik tell you
21 after he was assigned the startup manager position
22 that he didn't have any knowledge about how to
23 start up a food packaging line?

24 A. I don't recall. He may have.

25 **Q. Didn't he express concerns to you that**

1 head, and he didn't know what to do. That's why we
2 pulled it back. We needed to work on our process
3 some more.

4 **Q. Are you sure that you didn't have those**
5 **conversations with him in November of 2015?**

6 A. Positive.

7 **Q. Wasn't he in that role as the project**
8 **manager in November of 2015, December of 2015?**

9 A. He was never a project manager.

10 **Q. I'm sorry. I said project manager**
11 **instead of startup manager.**

12 A. I'm listening.

13 **Q. I appreciate that. So let me ask that**
14 **question again the right way.**

15 **Wasn't he in the role as startup manager**
16 **in November or December of 2015?**

17 A. No, he was not.

18 **Q. And Erik had no prior startup manager**
19 **experience.**

20 **Is that right?**

21 A. I don't know. I don't know that we
22 asked him, but he had been a program manager for
23 HP. That was part of his selling point in his
24 interview, that he had this leadership experience
25 running a -- running a large project that would

[25]

1 involve startup.

2 **Q. But you -- you already told me that**
3 **project manager and startup manager are not the**
4 **same thing, right?**

5 A. They're not the same role, per se, but a
6 project manager would be involved in startup.

7 **Q. Sure. But it's different job duties?**

8 A. Conceivably. I mean, they are differ --
9 they are some different functions. A project
10 manager has some additional duties, but it
11 encompasses a -- a startup manager.

12 A start -- a project manager is
13 responsible for the whole project, including
14 startup.

15 **Q. Is it your testimony that the first time**
16 **Erik was told he was going to be the startup**
17 **manager at Grand Forks was February 2016?**

18 A. I don't recall. I -- I really don't
19 recall exactly when the conversation happened.

20 This much I do know. The project was
21 approved February 23rd, 2016. We may have talked
22 about, you know, what roles some people might play,
23 but the project wasn't officially approved yet
24 until February 23rd.

25 And we wouldn't likely officially move

1 forward with a number of those assignments until we
2 knew that that was going to occur. Startup is on
3 the tail end of the project, so they're not
4 typically the first assignments or roles that we're
5 filling out either.

6 But that's not to say that we hadn't
7 maybe potentially had some conversations about who
8 could potentially fill the role.

9 **Q. And, again, when you say "we," you're**
10 **not talking about conversations that you would have**
11 **had with Erik, right?**

12 A. No.

13 **Q. You're talking about conversations that**
14 **you and the leadership team about -- had about who**
15 **you were going to assign?**

16 A. Correct. Who were possibilities.
17 Again, we're not deciding for sure, especially
18 before a project is approved. We're not going to
19 say, "This person is going to be the startup
20 manager." We don't even have an approved project
21 yet.

22 Ahead of that date, it would have been
23 just, "What are some possibilities? Just throw out
24 some ideas. What -- what could we do here?"

25 **Q. Didn't you have a pretty good sense,**

1 a purchase of a bag sealer to taking the lead as
2 the startup manager for the Grand Forks packaging
3 project."

4 A. Yes.

5 Q. Did I read that correctly?

6 A. Yes.

7 Q. So when did those things occur?

8 A. I -- I don't know for sure, but, like I
9 pointed out, if -- if that date -- if that date is
10 the stamp of when it got put in the system, this
11 could have -- this conversation could have taken
12 place in March.

13 Q. Okay. Had you already --

14 But in March, you'd already taken away
15 the work as startup manager on the process, right,
16 from him?

17 A. We had asked -- we had asked him that --
18 We told him that we would work on
19 developing the process. It was still on our intent
20 to have him be the startup manager, but he wasn't
21 working on the work flow portion of the startup.

22 We had to develop, you know, what it
23 meant to be a startup manager, what tools were
24 going to be developed, what process flow we were
25 going to do. We had taken that piece away from

1 Q. But you don't know when that occurred?

2 A. No.

3 Q. Do you have any notes that you could
4 look at to help refresh your recollection?

5 A. No.

6 Q. Are there any documents that you could
7 look at to help refresh your recollection?

8 A. No.

9 Q. Is there anyone you could talk to about
10 that issue to help you refresh -- refresh your
11 recollection?

12 A. I could ask people, yeah.

13 Q. Who would you ask?

14 A. Maybe Byron Smith, the project manager;
15 other -- other people in the engineering leadership
16 team.

17 Q. Could you ask Erik?

18 A. Possibly.

19 Q. Okay. So as of March 2016, are you
20 saying that he was the startup manager for the
21 Grand Forks project?

22 A. Yeah.

23 Q. And that was his title --

24 A. Start --

25 Q. -- beginning February of 2016?

1 A. What -- what do you mean by "title"?

2 **Q. Startup manager.**

3 A. On the project? Sure. His job title
4 was not startup manager. His job title, he's a
5 packaging engineer.

6 **Q. Right.**

7 A. But on the project, yeah.

8 **Q. Okay. How much of his time in**
9 **February was he spending as a packaging engineer as**
10 **opposed to as a startup manager?**

11 A. Mostly packaging engineer.

12 **Q. Okay. What about March?**

13 A. Mostly packaging engineer.

14 **Q. April?**

15 A. Same.

16 **Q. May?**

17 A. Same.

18 **Q. June?**

19 A. Same.

20 **Q. July?**

21 A. Same.

22 **Q. So it's your testimony that between**
23 **February 2016 and July 2016, most of his time**
24 **should have been spent as a packaging engineer?**

25 A. Correct.

1 **Q. Did you tell Erik that?**

2 A. Yes.

3 **Q. And was that --**

4 **Did Erik tell you that the startup**
5 **manager position was taking more time than the**
6 **packaging engineer position?**

7 A. He said that he thought it should -- it
8 would take more time, and that's where he and I
9 didn't necessarily see that that was the case. I
10 didn't see -- especially in July or June or May or
11 April that it would take more than 50 percent of
12 his time.

13 **Q. And you told him that?**

14 A. Yeah.

15 **Q. Did he tell you what he was spending his**
16 **time on as a startup manager?**

17 A. That was part of the problem with some
18 of our -- our interaction. I -- I had a hard time
19 getting out of Erik exactly what he was working on.

20 **Q. What do you mean by that?**

21 A. He was a pretty poor communicator about
22 what he was working on.

23 **Q. Okay.**

24 A. It was part of his performance
25 improvement plan in July.

1 **Is that the development plan you were**
2 **just talking about?**

3 A. Yeah. You know, development plan or,
4 you know -- it's -- it's an onboarding document,
5 you know, to help get him; you know, a basis for --
6 for our operations and what we do. Yeah.

7 **Q. Okay. Did you have any role in**
8 **preparing that plan?**

9 A. No.

10 **Q. Who did?**

11 A. Craig Lamberton.

12 **Q. So you see in the development area, it**
13 **says "GF Plant" on there?**

14 A. Yeah.

15 **Q. And it looks like he was supposed to**
16 **spend two days at the Grand Forks plant in**
17 **January of 2016.**

18 **Do you see that?**

19 A. Yeah.

20 **Q. To gain an understanding of the Grand**
21 **Forks operation and build relationships?**

22 A. Yeah. It says the same thing about
23 Othello and Moses Lake and West Memphis and
24 Irapuato.

25 **Q. Why does it say the same thing?**

1 A. So that he could go understand all of
2 our factories, look at the equipment. You know,
3 two days isn't a lot of time to spend in factories,
4 but, you know, it's a chance to go and look at what
5 our operations are, what the differences and
6 nuances of the different facilities are.

7 We have different equipment in all the
8 facilities, and so a chance to just get out and
9 see, you know, as an onboarding. You know, "Hey,
10 what is Simplot all about? What are all of the
11 different things that we do and who are the people
12 involved and what kind of equipment do we have?"

13 **Q. Sure. I probably didn't ask my question**
14 **very well.**

15 **Each of those plants says the same thing**
16 **as far as the expected outcome. "Gain**
17 **understanding of the GF operation," right?**

18 A. Sure.

19 **Q. Okay. And that's Grand Forks, GF?**

20 A. That is Grand Forks. GF stands for
21 Grand Forks.

22 **Q. Okay. So my question is: Why does it**
23 **say, "Gain an understanding of the Grand Forks**
24 **operation," for each of those plants?**

25 A. Probably an error. I -- I didn't write

1 well, though.

2 And as of June 20, 2016, he was trying
3 to do what you'd asked him to do, right --

4 A. Yeah.

5 Q. -- provide you with some insight as to
6 what he was working on?

7 A. Absolutely.

8 Q. Okay. So this was a good first shot?

9 A. Sure.

10 Q. Okay.

11 (Deposition Exhibit No. 36 was marked.)

12 Q. (BY MR. HALLAM) Sir, you've been handed
13 what's been marked Exhibit 36.

14 Do you see at the top it's an e-mail
15 from you to Laura Nessen and Lyle Schook dated
16 June 23rd, 2016?

17 A. Yes.

18 Q. You wrote that?

19 A. I did.

20 Q. Do you remember writing that?

21 A. Absolutely.

22 Q. Why did you write it?

23 A. Because we had a meeting on June 22nd
24 that -- probably a meeting I'll never forget.

25 Q. Why do you say that?

1 A. Because the interaction was something I
2 never would have expected from -- from someone.

3 **Q. What do you mean?**

4 A. Well, you know, as the -- as the
5 document states, you know, it was around that time
6 frame that our startup process was developed, so we
7 gave him the startup process and -- and templates.

8 And then what really prompted the
9 meeting on the 22nd, as this states, is that I had
10 gotten word from Jason and Tim that Erik said that
11 he would not be able to help out with any packaging
12 material projects because he was going to spend too
13 much time on -- on the Grand Forks startup
14 activities.

15 And so I went in to have a discussion
16 about that because that wasn't my understanding.
17 And so, you know, I went in to understand that.

18 And at the beginning of the -- near the
19 beginning of the meeting as we were talking, you
20 know, Erik got heated and said, "I am not going to
21 do that fucking job," and, "I am not going to be
22 the startup manager, and I totally understand the
23 ramifications of that," and -- and handed me the
24 startup work flow and the processes and, you know,
25 basically told me he was not going to do the job in

1 very strong terms.

2 **Q. Okay. Did he tell you why?**

3 A. Yeah. He --

4 In fact, I document it right here.

5 He said that working on a job like that
6 stressed him out. He admitted that that particular
7 job he told us about in -- in China for HP, that
8 that job, he hated it, hated every minute of it.
9 It stressed him out; that it, you know, had a very
10 large impact on his family, and he didn't want to
11 go through that again and --

12 Yeah. Just said he didn't want to do
13 it.

14 **Q. Okay. What did you tell him?**

15 A. You know, I really tried to, you know,
16 calm the situation down; understand, you know,
17 where he was coming from. You know, it -- to me,
18 it was -- it was a heated discussion that we
19 weren't going to get too many places with at that
20 time.

21 I don't recall, you know, all the
22 things. I know there was some back-and-forth
23 questions to understand why, but I -- but I even
24 believe I mention in here that -- that I said,
25 "Hey, let's cool off and reconvene on -- on Friday

1 **into that startup manager position?**

2 A. I don't recall that.

3 **Q. But apparently, on June 1st, he was**
4 **officially put back in the startup manager**
5 **position, but no one told him until the 20th?**

6 A. Well, I don't know about officially.
7 Must not have been officially if no one told him.

8 June 1st, there was a meeting where the
9 startup plan was -- was presented to the team, but
10 we probably had a slip in communication and did
11 not -- likely didn't tell him.

12 And that's why I did it on June 20th.

13 **Q. Okay.**

14 A. "Officially, our plan is in place now.
15 We would like you to do it."

16 **Q. Whose slip in communication was that?**

17 A. It could have been mine or Byron's.

18 **Q. Or both?**

19 A. Or both.

20 **Q. So if you go back to the first page, you**
21 **say on the second paragraph, "When Erik was hired**
22 **to fill an open position in November/December of**
23 **2015, it was meant to be a dual role, both**
24 **packaging materials and operational packaging."**

25 A. Correct.

1 **Q. Do you see that?**

2 A. Yes, which is --

3 **Q. When was Eric told that?**

4 A. Well, it was in the job announcement as
5 well, the previous exhibit you showed us. The job
6 announcement, November 30th.

7 **Q. I thought you said he wasn't hired for**
8 **that one.**

9 A. He was hired as an operate -- it wasn't
10 startup. It was operational.

11 So Craig Lamberton, when he was with
12 the -- when he was with the company --

13 When we say "materials," you know, we're
14 talking about film, corrugated. "Operational"
15 means a little bit more of the equipment, like the
16 baggers and the case packers. When Craig was with
17 the company, Craig knew both operational and
18 packaging materials. When we --

19 We knew we were going to lose Craig and
20 we knew we didn't have a 100 percent workload for
21 somebody to -- a new employee to come in and work
22 on packaging materials and we had a need for the
23 equipment side of things. And that's what the
24 intent was all along for this person, to work on
25 both the equipment and the materials.

1 in his role in packaging, both operational and
2 materials, we felt he needed this training
3 opportunity with -- to be part of the Grand Forks
4 packaging team and be part of a startup.

5 **Q. So this was a training opportunity for**
6 **him?**

7 A. That's the way I viewed it.

8 **Q. Okay. Did you tell him that when he was**
9 **assigned the role?**

10 A. Yeah. Multiple times.

11 **Q. The end of your e-mail, you say, "You**
12 **have performance concerns."**

13 A. Uh-huh. Yes.

14 **Q. Do you know if before June 23rd, Erik**
15 **had already raised his concerns with HR?**

16 A. I did not know that.

17 **Q. Did they tell you that?**

18 A. When? I -- I know when they told me, if
19 that's what your question is.

20 **Q. Sure. When did they tell you?**

21 A. August 3rd.

22 **Q. Okay. On August 3rd, someone from HR**
23 **told you that Erik had previously communicated his**
24 **concerns?**

25 A. Yes.

1 **Q. Who told you that?**

2 A. Kayce McEwan.

3 **Q. What did she tell you?**

4 A. She told me that he had called the
5 complaint line and complained about what we were
6 asking him to do.

7 **Q. What else did she tell you?**

8 A. She said that they were looking into it
9 and would get back to me. It was a pretty short
10 conversation.

11 **Q. Did anyone tell you that before he
12 called the complaint line, he e-mailed HR?**

13 A. No.

14 **Q. Do you know when he contacted HR first?**

15 A. No.

16 **Q. So back to Exhibit 36, you say that,
17 "Erik -- one of Erik's performance concerns is he
18 struggles with engagement. He has felt very
19 insecure about not knowing how to engage in
20 something that he knows nothing about."**

21 **Did I read that correctly?**

22 A. That's what it says in the document,
23 yes.

24 **Q. Why is that a performance concern?**

25 A. The performance concern was he struggles

1 You know, in November it was quite the
2 opposite, actually. He told us that he was a
3 leader, that he had leadership qualities. That
4 he -- he ran a big project for HP, that -- that --
5 that he liked it. That's why we hired him.

6 **Q. Do you know what the project for HP**
7 **entailed?**

8 A. Not in a lot of detail.

9 **Q. Was it a manufacturing operation?**

10 A. It was assembling and packaging HP
11 equipment.

12 **Q. Was it using equipment or was it hand**
13 **assembling?**

14 A. I don't know. It might -- knowing
15 China, it was probably --

16 I -- I don't know for sure.

17 **Q. Okay. Do you --**

18 **As you sit here today, do you think**
19 **there's a difference between assembling printers**
20 **and packaging --**

21 A. Absolutely.

22 **Q. -- food products?**

23 A. Absolutely, but -- but we weren't hiring
24 him for his technical reasons. That's why we
25 needed to get him trained with our equipment and

1 our materials. We knew the technical side was
2 different.

3 What we assumed, and I guess we assumed
4 wrongly, is that -- that the leadership pieces that
5 he was selling us on, that he could organize a big
6 effort to go do a startup in a foreign country
7 with -- with lots of people and different things,
8 that -- that -- you know, that he had the
9 leadership skills that we were looking for.

10 That's why we were hiring him. Not for
11 the technical reasons.

12 **Q. Was he a startup manager at that project**
13 **for HP?**

14 A. Not that I'm aware of. He was a
15 program -- or a project manager. But a project
16 manager is responsible for everything on the
17 project.

18 **Q. Aren't there other ways that you could**
19 **have trained Erik on the operational side?**

20 A. This was the best way.

21 **Q. Weren't there other ways?**

22 A. Maybe.

23 **Q. Didn't your process, as far as the**
24 **training program for him, Exhibit 7, the**
25 **development program, have other ways to train him,**

1 Q. If you look at Exhibit 41, that's the
2 Monday following that Friday, right?

3 A. Yes.

4 Q. And did you --
5 When did you draft that?

6 A. July 11th.

7 Q. You drafted the performance improvement
8 plan July 11th?

9 A. Yes.

10 Q. Did you get it approved by HR?

11 A. I don't know if I got it approved. I
12 sent it to them.

13 Q. Okay. Did they comment on it?

14 A. I don't recall.

15 Q. Did they change it?

16 A. Not that I'm aware of.

17 Q. Did Schook comment on it?

18 A. I believe so. I think his comment was
19 it needed more timelines and deliverables.

20 Q. Okay. You didn't put that in there,
21 though, did you?

22 A. Not on July 11th, I didn't.

23 Q. Did you put it in some other time?

24 A. If I did, I don't remember, and I can't
25 find a copy.

1 **it?**

2 A. Yes.

3 **Q. Okay. So you said that you told Erik**
4 **that the plan, the performance improvement plan,**
5 **must be followed, right?**

6 A. Yes.

7 **Q. What would have happened if he hadn't**
8 **followed the performance improvement plan?**

9 A. I don't know. I hadn't gotten to that
10 conclusion. Obviously, as we were talking about
11 before, we -- we needed to continue working on
12 developing this -- this improvement plan.

13 But, you know, part of the reason we
14 were going through this effort on this improvement
15 plan is just to help him understand more -- more
16 clearly what the expectations were.

17 **Q. What were your thoughts on what the**
18 **expectations were after July 11th, 2016?**

19 A. He needed to improve his communications
20 and not assuming things and participate and be --
21 be engaged.

22 My expectations were that he needed to
23 make some changes.

24 **Q. Was he not engaged at that time?**

25 A. Not to the level that we wanted him to,

1 drafted to HR and Lyle Schook after you gave it to
2 Erik.

3 Is that right?

4 A. Yes. And it looks like I wrote it on
5 Friday, the 8th.

6 Q. Okay. You note in your e-mail that you
7 let Erik know he jumped to the conclusion that you
8 didn't trust him and that his lack of communication
9 was more of the issue than "my intent in
10 communication."

11 You could see why Erik might come to the
12 conclusion that you didn't trust him, right?

13 A. In that particular case, yeah.

14 Q. Okay.

15 A. But this was a reoccurring behavior.
16 Like, he jumped to the conclusion that -- that
17 Grand Forks startup manager would be 100 percent of
18 the time when it wasn't our intent to be
19 100 percent of the time.

20 Q. Okay. What other conclusions did you
21 take an issue with him jumping to?

22 A. That's the one that I recall, but let me
23 point out in the performance improvement plan,
24 Number 2, "Take positive intent and don't assume
25 things without communication."

Simplot

FOOD GROUP

Senior Packaging Engineer (Food Group – Caldwell, ID)

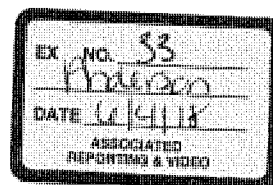
The J.R. Simplot Company is a diverse, privately held organization, with roots firmly planted in agriculture and agriculture-related businesses. These endeavors have been around for centuries and will continue to be a vital part of the global economy. We currently have a position available for a Senior Packaging Engineer. This position will be based out of our Engineering Facility in Caldwell, ID.

Summary:

This position is responsible for The J. R. Simplot Food Group packaging development efforts to include packaging design and specification, testing packaging materials, establishing written packaging specifications, and project management related to packaging equipment operation and capabilities. Supports foodservice customers and retail customers in packaging design, with particular emphasis on retail packaging design that delivers the presentation and consumer appeal attributes as designated by the client.

Responsibilities:

- Participate on teams for new product concepts and provide packaging material specifications and costing. Research new packaging technology and provide recommendations when required.
- Provide support to R&D for new and existing products and assist in testing and production runs when necessary. Support Engineering in the selection of new packaging equipment. May require providing research on new packaging technology and/or packaging equipment.
- Responsible for the packaging material specifications, supplier development, and packaging material qualifications for division frozen potato-processing facilities, vegetable operations, and other ventures and projects as needed.
- The Sr. Packaging Engineer will work directly with the plant locations to specify primary and secondary packaging materials to protect the finished product while maximizing packaging efficiency with the equipment and load ability for warehousing and transportation and minimizing material costs.
- Responsible for identifying and managing projects related to cost reduction opportunities.
- Work qualifying new suppliers and/or new or alternate materials. Act as a liaison between plant locations and suppliers for any supplier related issues or trials.



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- This position is also responsible for maintaining and specifying the technical packaging portion of our Packaging internet based specification system for all required types of packaging for all plant locations.

Requirements:

- Bachelor's degree in Engineering from a 4-year college or university and ten years related experience in FMCG environment highly preferred.
- 10 + years related experience and/or training.
- Comprehensive knowledge covering all aspects related to packaging structures and equipment.
- Strong knowledge of factory operations and packaging equipment to transfer a theoretical application into real-time production.
- Ability to effectively communicate with colleagues in different departments, including, but not limited to, plant operations, marketing, and senior management.
- Demonstrates successful project management, documentation, presentation, and problem-solving skills.
- Must have a valid driver's license and the ability to obtain a valid U.S. passport for required travel to facilities in Mexico and Canada.
- International and domestic travel as required up to 40% to support plant test runs for new products, material trials, vendor visits, packaging audits, and packaging material complaint resolution.

Application Instructions

External Candidates:

- Click **Apply Now** if viewing this posting from the Simplot website **OR**
- Visit www.simplot.com/careers
- Select **Job Search**
- Select **Current Opportunities**
- Select **All open positions**
- Apply to **Job ID # 2828**

Please prepare a cover letter outlining your interest and qualifications and submit with your resume via our online application process described above. For best results, please upload your resume as a Microsoft Word or Adobe PDF document. This process includes additional job relevant questions, so plan on at least 20 minutes when you apply.

When a position is in the interview stage or has been filled, it will no longer appear on our Simplot Careers website. If you experience any technical difficulties when applying through our online system, please contact our Employment Center for assistance at careers@simplot.com.

The J.R. Simplot Company is proud to be an Equal Opportunity Employer and all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, national origin, sexual orientation, disability status, protected veteran status, or any other characteristic protected by law.

Anderson, Kent

From: Anderson, Kent
Sent: Thursday, June 23, 2016 11:29 AM
To: Nessen, Laura
Cc: Schook, Lyle
Subject: Notes on Erik Knudsen

Laura,

The following is some documentation on a series of interactions and communications between myself and Erik Knudsen that led to a discussion that occurred Wednesday, June 22nd.

When Erik Knudsen was hired to fill an open position in November/December 2015, it was meant to be a dual role – both packaging materials and operational packaging. A transition plan was set in place by Craig Lamberton, which included items in both arena's, including spending a lot of time on the plant floor to understand packaging related issues with both materials and packaging equipment.

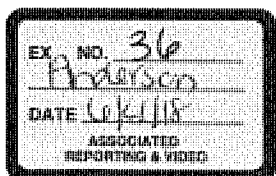
Erik has been receiving work on the packaging materials side from Jason Schwark and Tim Lalley. He has picked up some tasks such as (5) new SKU's for the vegetable business, Schwann's backseal issue, providing packaging materials support for the new Twyst product that is being developed, and was also assigned to work on a pallet height optimization study.

To pick up some experience more on the operational side of packaging, to get more familiar with the packaging equipment that we use, very early on, we asked Erik to take the role of start-up manager for the \$22MM packaging project that we're doing in Grand Forks. While we had a start-up manager on the GF Line 2 upgrade that we did in February 2015, admittedly we had not developed a detailed job description for a start-up manager, or even a process to follow when putting together a start-up plan. At first, we tested the waters with Erik to see if he could help with the development of the start-up plan, and develop the role of a start-up manager. When he interviewed, he had sold the fact that he was a program manager for a new product manufacturing line in Asia, and led a group of people. We were hoping to tap into the leadership skills that he had touted in the interview process. The thought around being a start-up manager was to give Erik floor experience starting up a new packaging line with new baggers, case packers and palletizing. Being on the floor during start-up was felt to be a great opportunity to fully understand the operational side of packaging engineering. Being a start-up manager was a means to an end.

After struggling for some time in working with Erik, it was evident that there were too many unknowns, and Erik was struggling to jump in help develop the start-up plan. He admitted that he was lost, that we were talking about things that he had no background, and felt that he was adding no value. It was decided that, for a time, we would not ask Erik to lead the effort of developing the start-up process or the role of start-up manager, and asked him to focus on just the training piece. Erik seems to have moved the training portion of the Start-Up roll forward as requested. However, his position is a level such that we expect his role to be self-starting and leading rather than being told what to do.

Erik continued to attend team meetings with James & Byron and others to continue developing our start-up process. However, he continued to admit that he felt bad because he felt like he added no value to the discussions. The start-up plan was presented to the engineering leadership team on June 1st. At that time, much more of the activities around start-up were defined, and we felt that we could transfer it back to Erik.

In discussions with Byron, there was no official communication about Erik taking the role of start-up manager again – more than just training. Despite that, Erik in a packaging team off-site meeting, introduced himself as the start-up manager. When we went to Grand Forks on June 13th and 14th, he introduced himself as the start-up manager.



On Tuesday, June 7th, Erik had a one on one discussion with Lyle. Lyle shared with him some feedback that it appeared that Erik was not engaged. From Lyle's perspective, it appeared that Erik was not jumping into the operational side of the things that we needed, and was more comfortable with the materials side.

I had a meeting with Erik on Monday, June 20th where I shared with him that we wanted him to be the start-up manager. This was the first time that we shifted from him focusing on training to taking on the lead role of being a start-up manager. I shared with him the vision of why we wanted him to be the start-up manager – it was a means to an end to understand the operational side and issues.

On Tuesday, I met with Jason Schwark and Tim Lalley and they had shared with me they had a conversation with Erik where Jason had requested Erik to help with a Costco product at Pasco. Erik shared that he likely would not be able to help because he was the start-up manager.

I met with Erik on Wednesday, June 22nd to ask him why he told Jason that he likely wouldn't be able to help. I shared with him that I didn't view the start-up manager being a full time job. I told him that my thoughts were it was roughly 10 hours/week, and that the rest of the time could be filled with support with the packaging materials group. Erik shared that he thought the start-up manager was a full time position. I expressed some concern that he made those assumptions and made statements to Jason that he couldn't support, without talking to me.

At that point, Erik became very heated, and used some very strong language. He vented that I never praise him for his work, and am always critical of him. He told me in no uncertain terms that he would not be doing the start-up manager job. He handed me the start-up process that was printed out, and said that he was not going to do that. He told me he understood the ramifications of what he was saying, and verbalized that he felt he would get fired. I expressed to him that I had not reached that conclusion, and to stop assuming the outcome.

After things cooled down a little, I gave him the opportunity to share with me the things that I was doing to impact him. He voiced that he was frustrated because we never asked him what he wanted to do. He shared with me, that even though he sold himself on leadership skills and his experience as a program manager at HP, that when he was in that role at HP he hated it. It stressed him out, and caused personal issues with his marriage. He verbalized that when I told him he was to assume the role of start-up manager on June 20th, that it brought back all the horror of being a program manager at HP. He expressed that he does not like the execution role, and that he would rather work on his creative side.

We left the conversation that we would touch base again on Friday, after the situation cooled, and we both thought about the things that were shared in the discussion.

I have attempted to describe the facts of the events that led up to the discussion with Erik yesterday, and the response I received in regards to working as the start-up manager.

In addition to these facts, there have been some performance concerns. They are as follows:

1. Erik struggles with engagement. He has felt very insecure about not knowing how to engage in something that he knows nothing about. He doesn't ask questions, or take the initiative to learn the operational side of packaging.
2. He doesn't communicate well the things that he is working on.
3. He doesn't show a sense of urgency.

Kent Anderson
Director of Technical Engineering
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EXHIBIT C

Deposition of
Laura Nessen

Date: 5/31/2018

Case: Knudsen v. J.R. Simplot

Case No: CV-01-17-13956

Reporter: Andrea J. Couch, CSR#716, RDR, CRR, CBC

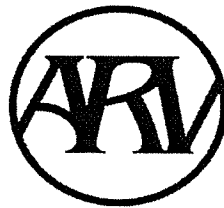
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1 **How many interviews were there?**

2 A. Two. We had two candidates that we were
3 interviewing face-to-face. We had several phone --
4 phone screens, but we brought two in face-to-face.

5 **Q. And Mr. Knudsen, how many interviews did**
6 **he have?**

7 A. So he had -- I believe --
8 So there was one interview but two
9 panels.

10 **Q. Okay.**

11 A. So there was a panel for the technical
12 side and a panel for the leadership competencies.

13 **Q. And -- and so that could be looked at as**
14 **one interview with two panels or two interviews, I**
15 **suppose.**

16 A. Yeah. We consider it one interview --

17 **Q. Okay.**

18 A. -- with two panels.

19 **Q. Okay.**

20 A. I --

21 **Q. Okay.**

22 A. Well, I do. I guess I can't speak for
23 other people, but --

24 **Q. And then was there a follow-up**
25 **interview?**

Conversation with Erik Knudsen 06/23/2016

Met with Kent Anderson at ~ 9:00 AM regarding an altercation between himself and Erik Knudsen the day before. He asked if I would be willing to talk with Erik.

Erik said that it has been a bad 7 months. He feels like he was tricked – that what he was told during the interview process isn't what he is doing. He said he was told he would be doing packaging, not startups. He said that he had to do that work at HP and he didn't like it. It was stressful and he took the stress home with him – and now he is being asked to do what he swore he would never do again. He said he left a good job at HP to come to what he thought was a stable company. His parents are moving to Boise. He said that jobs in his line of work are hard to come by in Boise.

He said he sent Kayce an email a couple of days ago about his frustrations. He wasn't sure who he was supposed to work with, because Lyle was involved.

He said that he doesn't know the equipment, which is why he doesn't speak up. He said that he is the type of person who only talks when he knows what he is talking about.

I told him that I remember clearly that when we were interviewing for his position, we were specifically looking for someone with strong leadership attributes and also a strong technical understanding of packaging – because we needed someone who could help with Packaging Equipment on the operations side and also the materials – that is why we had such a hard time filling the position, so I was surprised to hear that he felt tricked. He said he is good at leadership. I said that this project in Grand Forks was given to him because of what we thought he brought to the table. I told him that there is obviously a disconnect and in order for this to work, we need to figure out where the problem is, but I wanted him to understand that we are just as frustrated as he is.

I told him that I needed to address the issue of how he responded to Kent yesterday. I told him that his behavior was completely inappropriate and unacceptable and he is pretty lucky, because most managers would have just walked him out right at that point. But that I need to be clear – if it happens again, he will be walked out – maybe not by Kent, but someone will walk him out. He understood. I then said that how I interpreted that situation was a lot of built up frustration that exploded – he agreed. I told him he can use me to avoid having so much emotion involved. That I am here to help with things like that. That I can help with having conversations that may seem uncomfortable. He understood.

I asked if he had any ideas on how to help the situation. He said communication is terrible here. I asked him to think about ways he could help improve communications. I asked if anything has worked in the past – he said that he used to meet with Byron, because he thought Byron was the most knowledgeable, and when Kent found out about it, it caused all kinds of issues, and it ended. But he felt like he was learning a lot from Byron. I asked if something like that would work with Kent – he said probably, he just asked Byron because he thought he knew more about it.

I said, so tomorrow you and Kent will be meeting again to determine if this is going to work or not, correct? He said that he wants to figure out a way to make it work. I asked him to think about ways we could help him be successful (communication processes, feedback processes, technical learning, etc). I told him that he has to build a relationship with his boss, to be successful.

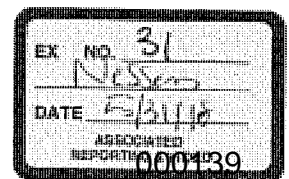


EXHIBIT D

Deposition of
Kayce McEwen

Date: 5/31/2018

Case: Knudsen v. J.R. Simplot

Case No: CV-01-17-13956

Reporter: Andrea J. Couch, CSR#716, RDR, CRR, CBC

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1 So it would have been in the past,
2 recruited and hired for them, so -- but, again,
3 they continue to evolve, so I wouldn't quite be an
4 expert today.

5 **Q. Well, when you were talking with Erik in**
6 **that first meeting and he said he didn't want to**
7 **continue in that role, had you determined whether**
8 **or not startup manager was a part of the packaging**
9 **engineering job?**

10 A. So let me explain my understanding of
11 the project.

12 So being in food group, I'm very -- was
13 very much familiar with the project in Grand Forks,
14 and I -- what I know about the projects that we
15 have and our project engineering team, they are
16 assigned to projects all the time.

17 And so as it was laid out for me in the
18 discussions --

19 And I don't know if it's as clear here
20 in the e-mails. It may be --

21 When he described that role, to me that
22 was a project role, the same that we had done --
23 the same that we're doing today in Portage, the
24 same that we're doing today in Pasco. That is the
25 type of role that we have.

1 So to me, I don't see them as two
2 different things. I see that the -- any person
3 with the title "engineering" that sits in my
4 engineering group within food group, this is the
5 role they play. They get involved in projects, and
6 those projects are all over the world.

7 **Q. How many of the company's packaging**
8 **engineers have done startup work?**

9 A. I -- I can't tell you that. I don't
10 know.

11 **Q. Okay. When we refer to "engineering,"**
12 **what are we referring to?**

13 A. When I'm referring to engineering for
14 the purpose of this conversation, I look at it my
15 project engineering group that -- it was easier
16 when they sat out in Caldwell at the building
17 across from the plant because I could identify them
18 as a group. Now they mostly sit on the third floor
19 of our new building downtown here.

20 **Q. Right.**

21 **Well, when you were having this**
22 **conversation with Erik, where were they located?**

23 A. They were in Caldwell at our engineering
24 building.

25 **Q. All right. Are those -- are those --**

1 startup -- I can't remember what they called it --
2 a startup manager for this project?

3 Q. Right.

4 Is it a fair characterization of the
5 e-mail he sent you that he was saying, "I don't
6 think it's appropriate that having hired me to be a
7 packaging engineer, I'm being expected to be a
8 startup manager"?

9 Is that a fair characterization of his
10 complaint?

11 A. That is the way he's presented it.
12 Absolutely.

13 Q. All right. Did you do anything to
14 determine whether there was any validity to that
15 complaint?

16 A. I --

17 MR. JULIAN: And I think I'm confused with
18 "validity." Validity that he truly believed it or
19 that he had a fair basis for believing it?

20 It's kind of a -- I'm -- I'm confused.

21 THE WITNESS: Yeah. I'm sorry.

22 MR. JULIAN: And maybe there's no other
23 better way to do it.

24 Q. (BY MR. BURGOYNE) Let -- let -- let me
25 ask it this way: Did it matter to you whether or

1 not --

2 His feeling that it was inappropriate
3 that he be asked to be a startup manager, did it
4 matter to you? Was it relevant to what you were
5 going to do?

6 A. So maybe this is -- this will be more
7 helpful. Tell me if it doesn't answer your
8 question.

9 So the discussion was --

10 The way Erik presented it to me was
11 that, "I was hired for this job. They're asking me
12 to do a different job." That's not at all the way
13 that I view that and will continue to view that,
14 especially in a project engineering group.

15 So part of what I hope I did in that
16 meeting -- but I can't validate that I did -- was
17 try to explain what project engineering is and that
18 nobody was asking him to do a different job. They
19 were asking him to participate on a project. This
20 is the role you play on the project. When you're
21 on a project, you will play a particular role.

22 My job description doesn't tell me that
23 I'm going to come sit in depositions, but the
24 reality is I have to come do it. It's just part of
25 the role.

[47]

1 And, again -- and my knowledge of the
2 project engineering group and what they -- what
3 they are responsible for doing, we have engineers
4 on site at the plants that keep the equipment
5 maintained, they do the work to keep the plants
6 running.

7 The project engineering group is --
8 is -- exists for the purpose of big projects that
9 we do where we're adding equipment, adding lines,
10 expanding a facility. And so there's probably 20
11 different things that have to be done, and we use a
12 combination of internal project engineers and
13 external contractors to do different things of the
14 work.

15 I'm not an engineer, so what a startup
16 manager means, I can't technically tell you the
17 difference of it, but everything that was shared
18 with me sounded just like what I would see anybody
19 else being asked to do for a particular project.

20 **Q. I think we've come back to where we**
21 **started.**

22 A. Okay.

23 **Q. And unfortunately, I just don't**
24 **understand that answer.**

25 A. Okay.

1 Q. What do you base that on? Is it --
2 This question is not that difficult,
3 okay?

4 I just want to know: Erik comes to you
5 in his e-mail and he says, "I was hired to be a
6 packaging engineer. I'm being asked to be a
7 startup manager, and I don't feel that's
8 appropriate."

9 Did it matter to you whether or not he
10 felt it was appropriate?

11 A. Did it matter to me?

12 Q. Right.

13 Was it -- was it sufficiently --

14 A. Everything he --

15 Q. -- important that he felt that way that
16 you felt you needed to look into whether or not it
17 was appropriate?

18 A. It absolutely mattered to me that he was
19 concerned about it. Part of my investigation was
20 to understand the information he's brought forward.

21 The way I interpreted it is there was
22 confusion on his part. Because the way he
23 described it is, "I'm being put into a position
24 that's not what I was hired for," and that's not at
25 all the way I looked at that.

1 And unfortunately, we just don't have
2 the opportunity for people to come in and do just a
3 defined job, sitting in Caldwell doing just the
4 same types of activities. We have too many things.
5 And all of the work exists outside of Caldwell, now
6 Boise. We don't have --

7 Even though I have engineers sitting on
8 the third floor, they do zero work for that
9 building there.

10 **Q. Did --**

11 A. All the work is outside.

12 **Q. Did you do anything to determine whether**
13 **or not any packaging engineer had ever been asked**
14 **to fulfill this kind of role before?**

15 A. No, I didn't. And it sounded like, from
16 what I recall from some of the information shared
17 with me -- Erik, I believe, shared with me some
18 information that had been shared with him on that
19 as well.

20 It looked like maybe it was something in
21 terms of the definition behind the specific
22 responsibilities might have been new for them. But
23 I didn't see anything in there that looked like we
24 were taking someone out of the job they were hired
25 for and putting them into a completely different

[50]

EXHIBIT E

Videotaped Deposition of
Lyle Schook

Date: 5/23/2018

Case: Knudsen v. J.R. Simplot

Case No: CV-01-17-13956

Reporter: Abigail L. Manzano, RPR, CSR, SRL #1069

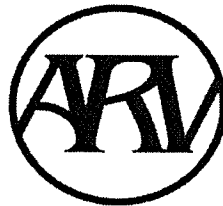
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1 A. In fact, I think I have it in writing in
2 one of the e-mails you have, is that I clearly had
3 said, I'm looking for you to lead the packaging,
4 you know, hopefully.

5 Because at the time, I had Jason and Tim
6 who didn't have the leadership skills. They had
7 technical skills, but I was looking for a leader
8 and that's why I --

9 But Erik sold us on his leadership
10 skills, not his technical skills. Not his --

11 He didn't have any in our industry. I
12 wouldn't have considered hiring somebody, usually,
13 with that. Except of the way he described the
14 teams he'd been in the leadership and how he was
15 willing to -- to lead those teams and was excited
16 to come on board.

17 So that was the reason I gave my thumbs
18 up on the hire for Erik.

19 **Q. Okay. And I probably didn't ask my**
20 **question very well.**

21 **What I was trying to ask you was: Did**
22 **you tell Erik you were putting him in the startup**
23 **manager role at the Grand Forks plant just to get**
24 **him operational experience?**

25 A. Did I tell him that?

1 **Q. Yeah.**

2 A. I don't -- I don't recall saying that,
3 no. I recall that was very valuable and we wanted
4 him to, yes. But I don't recall saying that
5 statement, not just for that.

6 As I said, I looked at him as trying to
7 get him leadership skills, as we -- that he had
8 leadership skills.

9 **Q. Did you --**

10 A. So no, I -- I wouldn't have said just
11 that.

12 **Q. Did you ask him if he wanted the startup**
13 **manager position?**

14 A. No.

15 **Q. Did you ask him if he believed he had**
16 **the experience to perform in the startup manager**
17 **position?**

18 A. No.

19 **Q. Did you ask him anything about the**
20 **startup manager position before he was assigned to**
21 **it?**

22 A. I don't recall the timing of when he was
23 actually assigned.

24 But we did discuss, I think, that this
25 would be a great opportunity to learn our equipment

1 **Q. Tell me who else was on the leadership**
2 **panel with you.**

3 A. That I recall: Kent Anderson,
4 James Turner, Byron Smith, myself, and our HR
5 person. Can't recall her name.

6 **Q. Okay. What sort of questions did you**
7 **ask Erik?**

8 A. What I can recall is I really dug into
9 his leadership because that's what I was looking
10 for and that's what we really needed.

11 We're a very small organization. So
12 anybody I am on a panel of, I dig into leadership.

13 Because if you have technical skills,
14 those are kind of what I've always called the "ante
15 into our group." And we look for, what is your
16 experience in leadership? What is your qualities?
17 How do you come across? Give me examples.

18 We do interview-based, competency-based
19 interview questions. So give me a time when --

20 And I remember Erik talking about his
21 China experience and how he led, what I consider
22 our project -- program management teams; that Erik
23 was very good at coordinating and leading and had
24 some good examples behind those. It was -- it was
25 outstanding, from my experience, since I had done

1 international as well.

2 So the leadership characteristics, his
3 willingness to do whatever it took and lead people,
4 was -- was the focus of that interview.

5 **Q. Okay. At any point during that**
6 **interview panel that you sat on, did anyone tell**
7 **Erik that he might be put into a startup manager**
8 **position at the Grand Forks plant?**

9 A. No.

10 **Q. Do you recall anyone on the interview**
11 **panel that you were on asking him about his startup**
12 **manager experience?**

13 A. No.

14 **Q. And the senior packaging engineer**
15 **position that he applied for doesn't say anything**
16 **about being a startup manager, right?**

17 A. Not specifically that. But it says
18 coordinating and leading -- leading projects, which
19 is part of startup management.

20 It's a leadership role, so it doesn't
21 specifically say that, that I recall.

22 **Q. You want to look at it? Because I**
23 **happen to have it right here.**

24 A. That's great. That's great.

25 But you do realize Erik was not a senior

1 packaging engineer, correct?

2 **Q. Well, you tell me.**

3 A. No, he didn't have the qualification.
4 So with --

5 I told the group, because he didn't have
6 any background experience, we didn't want to hire
7 him at the same level as Jason and Tim. He didn't
8 have -- he wasn't near at that level.

9 So we offered him a level lower, which
10 he accepted. He accepted a packaging engineer
11 role.

12 **Q. Okay.**

13 A. So he was not a senior --

14 That's why, if you look at the
15 reportings, he reported to a director, where the
16 senior packaging engineers reported to me and --

17 **Q. So --**

18 A. Erik was well aware of that.

19 So -- so the whole idea was to groom
20 him, get him quickly into the knowledge, and then
21 raise him to that level -- was our -- was our hope.

22 That, obviously, didn't happen.

23 **Q. So if I understand your testimony --**

24 A. Yes.

25 **Q. Well, let me just finish this.**

1 If you look at Exhibit 1, is that, to
2 **your knowledge, the position that Erik applied for?**

3 A. Yes.

4 **Q. And that was for senior packaging**
5 **engineer, right?**

6 A. Correct.

7 **Q. So tell me on there --**

8 **When you were saying earlier that it**
9 **includes startup manager, tell me what language**
10 **you're referring to.**

11 A. "Responsible for identifying and
12 managing projects related to cost reduction
13 opportunities." So he was managing that as a
14 startup piece.

15 Again, not specifically startup. But as
16 we said, that's only a portion of that "managing
17 projects."

18 So you have different leadership,
19 whether it's meetings or training or startup. We
20 don't separate -- we don't put all the specific in
21 each line item.

22 **Q. Anything else on that document that**
23 **you're referring to?**

24 A. "Work directly with the plant locations
25 to specify primary and secondary packaging

1 Q. Sure. But you never talked to him --

2 A. No, I --

3 Q. -- before you made the assignment, about
4 that?

5 A. Sure. Yeah, as far as I know, that's
6 correct.

7 Q. And as far as you know, no one else did
8 either, right?

9 A. I -- I don't know.

10 Q. And you, based upon your earlier
11 testimony, believe that that assignment occurred in
12 June of 2016?

13 A. I believe that was the formal time we
14 asked him to do that, yes. Because there wasn't a
15 need for it. It was a part-time assignment, it was
16 a few hours a week, to start.

17 It's usually -- that project -- that
18 assignment usually --

19 That project, I think, ultimately lasted
20 four months, maybe. So it's short-term.

21 And I do remember sitting down with Erik
22 at length, talking about this and how, you know,
23 we -- we would help him, we've got a great team,
24 we're very interdependent.

25 It wasn't -- it wasn't like he was doing

[27]

1 A. I don't know. I would assume it's HR
2 because that was who -- that was who was having
3 discussion with him, but I don't know.

4 **Q. How do you know someone told him, then?**

5 A. Because that's what his job came
6 through, and we told him when he came in.

7 **Q. Okay. So tell me about that.**

8 **When you say, "We told him when he came**
9 **in," what do you mean?**

10 A. When we discussed it as a -- our
11 interview for a formal process, we say, what's all
12 of our input?

13 And the discussion was, as I recall, we
14 can't hire him at a 5. But if he's willing to come
15 in at a 4, we would accept him of that, and we'll
16 grow him. Because he didn't have experience.

17 And that's what we gave HR to send away,
18 to communicate to him.

19 **Q. Okay. So your management panel --**

20 A. Uh-huh.

21 **Q. -- told Laura Nessen --**

22 A. Uh-huh.

23 **Q. -- to relay that to Erik?**

24 A. Correct.

25 **Q. Okay. Look back at Exhibit 6.**

1 Is that the offer letter to Erik?

2 A. Look -- looks like it.

3 Q. And it does say on there "Engineer 4" at
4 the top, right?

5 A. Yes.

6 Q. Okay. And it's your belief that that
7 was explained to Erik before this offer letter was
8 sent out, why it was an Engineer 4?

9 A. Yes.

10 Q. Okay. And then you see it's effective
11 November 23rd, 2015?

12 A. Yes.

13 Q. Is that consistent with your
14 recollection of when he started?

15 A. Yes.

16 Q. And it says, "Reporting to
17 Craig Lamberton," but that's not correct, right?

18 A. No, that was correct for the 16 days he
19 was left. He -- roughly.

20 Q. Okay.

21 A. So he was here two weeks longer before
22 he went back to Australia. Then there was a
23 posting that said who he reported to and why.

24 Q. Okay. And if you look back to
25 Exhibit 8 --

1 A. Uh-huh.

2 Q. -- is that the announcement that Erik's
3 no longer going to be reporting to Lamberton?

4 A. Yes.

5 Q. And he's then going to be reporting to
6 Kent Anderson?

7 A. Correct.

8 Q. And along with Michael Whiting.

9 A. Correct.

10 Q. Is that correct?

11 A. Yep.

12 Q. What was Michael Whiting's position at
13 the time?

14 A. He was a junior packaging engineer. I
15 think he's a level 3.

16 Q. Who was responsible for covering the
17 huge technical gap left as a result of
18 Craig Lamberton's departure?

19 A. Well, there -- there wasn't a huge
20 technical gap because Craig was over here for --
21 mostly for the Idaho startup plant.

22 So when I put him in the director role,
23 he was --

24 I promoted him a few months earlier than
25 this, I can't remember when that was, it was to

1 A. Not that I recall.

2 **Q. Okay. So help me understand if this was**
3 **just a --**

4 **If Exhibit 10 was a suggestion of who**
5 **might fill roles at this project --**

6 A. That's --

7 **Q. -- how did Erik's name end up on that**
8 **list?**

9 A. Because --

10 I don't know how it ended up on the
11 list. But several of these names didn't play roles
12 that they're saying they played. So they were --
13 and that could be why they're blue, I don't know.

14 But what was happening was somebody was
15 trying to fill spots we knew we would ultimately
16 need on this project, and this is who we'll believe
17 they'll be.

18 So I don't know who put it in, and nor
19 did we ever decide formally. Because there would
20 have been no need for a startup manager on
21 November 30th, 2015.

22 **Q. Why not?**

23 A. Because the startup manager doesn't get
24 involved until way after the project's approved and
25 we start working with the plant. And training --

[47]

1 It's all about transferring the project
2 to the plant. That's why it's not full-time.
3 Because startup is a specific window of taking a
4 project from installing it to transform --
5 transitioning it to the plant.

6 So a startup manager works in a small
7 window. That's why we don't have a role for it, we
8 never have.

9 We have an opportunity every -- on big
10 projects. But there's a small window where they
11 make sure the training is done, they work with the
12 plant, they make sure raw materials are in for
13 the -- for the -- as the equipment comes up.
14 That's what a startup manager does.

15 Because there's a gap between installing
16 and a plant knowing exactly what they've got to
17 have to run that equipment. And that's what a
18 startup manager does. They play that role between
19 the project team and the operations.

20 **Q. Okay. So was the --**

21 **Let me back up a little bit.**

22 **My understanding is that the Grand Forks**
23 **packaging upgrade was two lines of packaging.**

24 **Is that correct?**

25 **A. That's correct. Yeah, uh-huh.**

1 Q. And you already told us it was a
2 \$22 million job.

3 A. Uh-huh.

4 Q. So a big job, right?

5 A. Uh-huh, uh-huh.

6 Q. So if I understand what you just told
7 us, the lines were already installed when Erik was
8 assigned the role of startup manager in
9 June of 2016?

10 A. No.

11 Q. Then explain to me what you were just
12 saying about startup manager filling in the gap.

13 A. The startup --

14 The lines were installed the fall
15 of '16. And that fall, when they were installed,
16 when they're --

17 Between construction and running
18 production, there is a startup window, you're
19 starting up your new equipment. You need a startup
20 manager on big projects because there are so many
21 things going on that a project manager, who's
22 managing the installation, can't handle.

23 Typically, a startup manager is the
24 project manager, unless it's on big projects. This
25 was a big project, so it required an additional

1 role. And that role was, as we get the equipment
2 in in the fall -- that's why it's only about three
3 to four months -- we do -- we make sure training is
4 done, vendor training is done, knowledge transfer
5 is done, materials are there for how much we're
6 going to test, what we're going to do with -- you
7 know, how much testing materials.

8 And they work with the plant to assign
9 all that while it's getting finished being
10 installed.

11 Then they help the plant start it up,
12 and then we go away once the plant owns it.

13 **Q. Okay.**

14 **A.** So even if his name was here, my point
15 is, is there's no reason for him to do anything in
16 startup for months and months down the road from
17 this.

18 So this shows me, never seen this before
19 that I can recall, that a bunch of these people
20 didn't even -- weren't even on the project.
21 Mark Monday wasn't on the project, Laura wasn't on
22 the project. John -- John Byrnes -- wasn't on the
23 project.

24 It was people at the time we had who
25 they believe might play these -- might be -- play

1 these roles.

2 **Q. So Mark Monday was not the project**
3 **manager for this project?**

4 A. No.

5 **Q. Who was?**

6 A. Byron Smith.

7 **Q. Okay. And he's a Simplot employee,**
8 **right?**

9 A. Correct. And I will say Mark started it
10 for a month or two, which is why his name was
11 probably there. But we -- but we turned it over
12 quickly when we -- to Byron Smith.

13 **Q. Okay. So in November of 2015,**
14 **Mark Monday was the project manager?**

15 A. He started --

16 That's who we had targeted to be it.
17 Right.

18 **Q. Okay. So when did he actually perform**
19 **that role?**

20 A. He was performing the role to get all
21 the information for us together to go to approval.
22 I told you it takes a lot of scope work and a lot
23 of --

24 And he did that role.

25 Once it got approved -- I believe, once

1 Erik had not been a resource for them since his
2 hire?

3 A. No.

4 Q. Do you remember telling the other
5 packaging engineers, Lalley and Schwark, that they
6 didn't need to worry, that you could find a
7 replacement startup manager for the Grand Forks
8 project?

9 A. I don't recall that discussion either.
10 I do --

11 The only one -- the only discussion I --
12 if you want me to explain what I remember with all
13 those folks --

14 Q. Sure.

15 A. -- is that this position hadn't been
16 filled for over a year. So they had been filling
17 the needs for our business.

18 So Craig Jarvis had left, which is a
19 role Erik filled more than a year earlier. So we
20 had gone a year without any complaints, they had
21 been filling all the --

22 So I do remember the discussion of,
23 okay, he's going to work some on operations, which
24 is why he reports to Kent, he needs to understand
25 our plants, and he's going to work some in

1 packaging materials. And the packaging materials
2 takes priority.

3 So if he needs to work there
4 100 percent, he -- that's where we would send him.

5 But as long as we've got space, which we
6 did, he would work partly operations to learn that
7 quickly so he could talk intelligently to marketing
8 and sales about what our operations could do.

9 That was the reason for -- for getting
10 him operations experience.

11 **Q. When was that discussion?**

12 A. It was --

13 I don't know the timing. It was shortly
14 after he came in, to discuss how he helps -- how he
15 helped share that role, so to speak, operationally
16 and material-wise.

17 I don't recall the time. It would have
18 been spring of --

19 It would have been right after he came
20 in. It would have been early 2016.

21 **Q. Okay. At the point of that discussion,**
22 **was he already in the startup manager role?**

23 A. No.

24 **Q. Where was he getting that operational**
25 **experience at that time that you just mentioned?**

1 A. Through any minor meetings, if he went
2 with us to plants to review part of his training
3 plan to go in and get operations experience; to
4 watch, to deal with some of the vendor issues they
5 were having on equipment. Things like that.

6 That's -- that's the operations piece,
7 I'm talking --

8 That was part of his development plan
9 that I -- that I saw right through quickly.

10 **Q. Okay.**

11 A. Again, the whole goal for me boils down
12 to try and get him quickly up to speed in our
13 operational side so he could have taken over
14 leadership of the whole group -- was my whole goal
15 in hiring Erik.

16 **Q. And you -- even though you say you**
17 **wanted to get him up to speed quickly --**

18 A. Uh-huh.

19 **Q. -- earlier you mentioned you also wanted**
20 **to be careful not to drop him --**

21 A. Right.

22 **Q. -- in the deep end too soon?**

23 A. Well, yes, because we had people that
24 would support him and go with him. That's why we
25 wouldn't give him a job on his own.

1 alliance, alliance boards. They weren't boards per
2 se, they were alliance meetings where we would meet
3 with --

4 When I was with Kellogg's, we had
5 alliance with Jacobs Engineering. We met with
6 Eli Lilly leaders, engineering leaders, we would go
7 to different conferences and meet with different
8 industries: so pharmaceutical, beer industry.

9 Different -- different -- other
10 industries like that throughout my career.

11 **Q. So --**

12 A. We would -- we would discuss --
13 Sorry.

14 **Q. That's all right.**

15 A. We would discuss how to become more
16 efficient because you're dealing with other
17 industries and they're not competitors.

18 So you share across industries
19 as opposed to within the same industry.

20 **Q. I guess I need more details about those**
21 **specific discussions that led you to believe that**
22 **if you're a startup manager in one industry, you**
23 **can be a startup manager in another.**

24 **So tell me about that.**

25 A. Okay. So when you have capital projects

1 and you have -- you have --

2 In any kind of manufacturing, you put in
3 capital projects or equipment to produce your
4 product, correct?

5 So you have a manufacturing line, Erik's
6 in HP might have been cardboard packaging around:
7 How do I package computers efficiently so they
8 don't break?

9 Those have to go through machinery to
10 form them, then there's installation or some kind
11 of assembly, and then there's testing, et cetera.
12 And then your facility will run those once that all
13 has been installed.

14 That's no different than putting a
15 packaging line in for us. Bags of french fries,
16 how do we package them just to -- to send them off
17 to our customers, and then make sure those lines
18 run efficiently.

19 So the startup of putting in new
20 equipment into a manufacturing facility has to do
21 with an organization who's responsible for that
22 capital installation project, going to a
23 manufacturing facility, installing it, working with
24 them to own it when they walk away.

25 And they require some of the same

1 things. Vendor management, so vendors put in
2 equipment. Materials: How do I train them on
3 materials I need? How to order the materials I
4 need. Which materials do I need?

5 How do I -- how do I get my operators to
6 understand the new equipment? What type of
7 materials do I need to test to make sure the
8 machinery runs at the rate that was required or
9 accept -- accepted on the contract?

10 And then how do I transition that over
11 to that -- it's called technical transfer knowledge
12 to a facility.

13 And Erik described to me several
14 different projects, that he had done that on
15 several teams he had led that on.

16 So there was an assumption with that
17 leadership, that even though he hadn't done a
18 \$22 million project, you know, as a leader working
19 with a manufacturing plant, the pieces to make a
20 startup successful.

21 **Q. Okay.**

22 A. That's why -- that's why the role can be
23 done by a process engineer, an electronic engineer,
24 a packaging engineer.

25 That's why it's an assignment as opposed

1 to a role. It only becomes a role if you have so
2 many startups in a year, it's full-time.

3 And at Simplot, we do not have those.
4 The packaging project was the only one we had that
5 year. So it was one short, temporary assignment.

6 And Erik knew that, he clearly knew
7 that. There was discussion between Erik and I
8 several times, it's only going to be these three or
9 four months.

10 **Q. And that was beginning June of 2016?**

11 A. Correct. That's the timing I recall
12 because that's when the -- the project was starting
13 to have everything ordered, we were starting
14 getting ready for meetings, training sessions,
15 things like that that's needed to help you be
16 successful in start --

17 Then it's not full-time at that time.
18 It only becomes full-time when you go to the field
19 and install.

20 So I think -- I think our estimate that
21 time, and I think Erik was told maybe ten hours a
22 week, was all he'd need -- required for several
23 months to help get things set up.

24 And then in the field, he would need to
25 go however long our startup was, eight weeks or

1 four weeks, full-time. We would need him then.

2 **Q. And that would be at the plant?**

3 A. Correct.

4 **Q. So let's back up a smidgen.**

5 A. All right.

6 **Q. Because you went through a list of**
7 **things for me that you said were similarities**
8 **between being a startup manager in tech and a**
9 **startup manager in food.**

10 A. Food, right.

11 **Q. What are the differences?**

12 A. There's some differences in the GMPs,
13 general manufacturing practices.

14 So in food, you have to be -- you have
15 people help you from a food safety standpoint to
16 make sure that you're --

17 But typically that is already designed
18 into the equipment. So it's not something a
19 startup manager has to worry about because you have
20 a quality person that's part of that team.

21 The startup manager is really
22 coordinating different people: maintenance,
23 training, quality, safety.

24 So they are not doing the work. They
25 have people under them in the plants that make sure

1 **Q. So --**

2 A. The startup manager then helps
3 coordinate all that and makes sure the training and
4 the vendors and that gets transferred.

5 So it's not an individual role. That's
6 why I said it's -- it's --

7 Nobody can walk in with Erik's
8 experience and say, I don't know what I'm doing in
9 startup. And the reason I say that is because he
10 explained roles he played at HP as the leader in --
11 in projects.

12 **Q. Isn't it different, though, being a**
13 **leader in projects in a tech engineering role as**
14 **opposed to being a startup manager for a**
15 **\$22 million plant improvement project?**

16 A. It is, but --

17 **Q. Is that different?**

18 A. Yes. That's not what I'm talking about.
19 I'm talking about when he led when he was in a
20 program manager role, not his -- not his packaging
21 engineering role.

22 **Q. Okay. But --**

23 A. Erik -- Erik explained he did both
24 technical and then he did leadership in program
25 management for HP where he led teams.

1 A. I don't know, I don't know.

2 Q. Do you know if he reached out to
3 Kent Anderson for help?

4 A. I don't know.

5 Q. What did you do proactively after this
6 one-on-one to help him?

7 A. Make sure I had discussions with my
8 direct-reports stating that he's struggling in it,
9 that he needs help, and so they need to be
10 proactive to get with him, not wait for him to get
11 with them, like I was asking him to do.

12 To help determine what his -- what
13 they're missing or what he's -- what they're
14 needing from him. So it was -- my role was
15 coaching on the efficiencies of the organization
16 and the roles.

17 Q. So if I understand that testimony, sir,
18 after your meeting with Erik June 7th, or
19 thereabouts, 2016, you had discussions with your
20 direct-reports to encourage them to give Erik the
21 help he needed?

22 A. Correct. As long as --

23 And that may be even the time I talked
24 with Tim, because I was reaching out. I don't know
25 if the Tim discussion was after the one-on-one with

1 Erik or before, but that was a reason I would have
2 talked with Tim in trying to help mentor and manage
3 him.

4 **Q. What did you ask Tim to do for Erik?**

5 A. To help -- to help guide him in what his
6 role is, that it's not the exact same as his.

7 Because I thought there was some
8 confusion. Erik only wanting to do what Tim and
9 Jason did was causing some of the issue, even
10 though it was clear when he came in, it wasn't a
11 full-time role of what they did.

12 That's what -- and even this reads
13 that's what he wanted to do. He wanted to be
14 independent, go down to corporate whenever he
15 wanted, meet with sales and marketing whenever he
16 wanted, and that's how he acted.

17 He didn't -- he didn't integrate with
18 the team. He didn't -- he didn't sit down with
19 people and say, hey, how can I help? What do you
20 need?

21 So he didn't want to play the role that
22 we wanted him to learn so that he could play the
23 role of sales and marketing.

24 So my discussion with Tim is, make sure
25 he does not confuse that he has the same job as

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1 you. That was part of the role. I said, he may be
2 trying to make you guys a threesome, that you're
3 all the same and he's not, and I need you and Jason
4 to help him.

5 I remember that distinctly because Tim
6 agreed he was struggling with -- with his role, and
7 he's --

8 **Q. His role as startup manager or --**

9 A. No, no.

10 **Q. -- his role as packaging manager --**

11 A. Just his role. He said "his role." Not
12 as startup manager, not of packaging, he just said,
13 he's struggling with "his role."

14 **Q. Do you know what that meant?**

15 A. Yes.

16 **Q. What'd it mean?**

17 A. It meant that he didn't know exactly or
18 feel comfortable with what he was doing. So that's
19 why I was having my group help him, this is where
20 we need to hear --

21 It was to help guide him to make him
22 successful.

23 **Q. Wasn't that because he was hired as a**
24 **packaging engineer and suddenly he was performing**
25 **the position and job duties of a startup manager?**

1 A. No.

2 **Q. So if I understand your testimony, you**
3 **didn't want Erik being independent as to the**
4 **marketing side of things?**

5 A. Correct.

6 **Q. Did you tell Erik that?**

7 A. Yes.

8 **Q. When did you tell him that?**

9 A. I don't recall.

10 **Q. Was it in this June 7th, 2016, meeting?**

11 A. No, it was before that.

12 **Q. So --**

13 A. It had to do with him coming in and what
14 his role was. His role was different, he reported
15 to somebody different. And maybe in his mind, he
16 didn't understand that, maybe he didn't see that.

17 But it was clear in the organization
18 that that was that way.

19 **Q. Well, he --**

20 A. Because his title was different, his
21 experience was different.

22 I explained to him he's not going to be
23 alone in sales and marketing until we know, he
24 knows that he can answer to sales and marketing on
25 what products we can do because he didn't know any

1 of our facilities.

2 So that was clear to everybody but Erik,
3 in Erik's mind. I'm not sure how Erik thought he
4 would be successful not knowing -- working with
5 sales and marketing, what type of products we can
6 and can't do in our facilities without knowing, but
7 it was clear he couldn't.

8 **Q. Did you tell Erik that?**

9 A. I believe I did, because that was part
10 of the on-boarding in the discussions we had with
11 everybody: Here's where we expect, it's going to
12 take you awhile to learn this.

13 **Q. And you -- so you told him, we don't**
14 **want you working on the sales and marketing side,**
15 **we want you focusing on --**

16 A. No.

17 **Q. -- the operation side?**

18 A. No, no, you didn't hear me very clearly
19 or I -- or I misstated.

20 **Q. I didn't hear you very well, so explain**
21 **that to me.**

22 **Did you tell him you have to learn the**
23 **operations side before you have any independence on**
24 **the sales and marketing side?**

25 A. Before you have the independence like

1 Jason and Tim on the sales side, yes.

2 Q. Okay.

3 A. Being able to tell them what we can and
4 can't do in our facilities.

5 Q. When --

6 Did you have problems with what he was
7 doing on the sales and marketing side?

8 A. No, he helped and supported Tim and
9 Jason. He was like a junior to them where he could
10 help them. But he didn't play the lead role to
11 them on much of anything.

12 Q. And how did he do in that role?

13 A. I believe he was doing okay.

14 Q. Okay.

15 A. Yeah.

16 Q. So where he says in this e-mail,
17 Exhibit 18, "The transition hasn't been" --

18 A. Uh-huh.

19 Q. -- "difficult" ---

20 A. Right.

21 Q. -- he was, in fact, correct and was
22 adding value on that side of the job?

23 A. I would agree.

24 Q. Okay.

25 A. But not -- again, clarity, not in the

1 A. That he -- impact his ability wanting to
2 do it.

3 **Q. Okay.**

4 A. He didn't want to do it. He didn't want
5 to do the startup role, I could tell. He was not
6 engaging.

7 **Q. Didn't he tell you that he wasn't hired
8 as a startup manager?**

9 A. No.

10 **Q. All right.**

11 A. Because it wasn't -- it was just an
12 assignment -- it was a short assignment to learn.

13 **Q. When was that project done?**

14 A. February of '17.

15 **Q. Okay. So --**

16 A. Uh-huh. Installed in December, started
17 up January, and we were done by February '17.

18 **Q. So it took a year?**

19 A. For the whole project, uh-huh, yep.

20 **Q. And that doesn't include the planning
21 and budgetary process that you commented on before?**

22 A. Right. Uh-huh. That's correct.

23 **Q. And it doesn't include the training
24 component that you acknowledge Erik was working on
25 before --**

1 startup.

2 Q. All right. But the other thing I don't
3 get, though --

4 A. Okay.

5 Q. -- you talk about this plan to get these
6 employees up to speed about how Simplot does
7 things --

8 A. Uh-huh.

9 Q. -- but you put Erik in charge of the
10 biggest project that you've had during your tenure
11 at Simplot, and he didn't know anything.

12 A. I didn't put him in charge. The PM's in
13 charge. He plays a role during startup that
14 anybody can do.

15 Michael, as a 3, did it successfully, so
16 it's not -- you're --

17 You've got your view of a startup role,
18 somehow, wrong.

19 Q. Okay.

20 A. It's just a leadership piece during a
21 specific time to take project management and plant
22 and say, how do we get that knowledge transferred
23 to the plant?

24 It's a leadership piece there that you
25 coordinate with your team. The project manager is

1 characteristics or you have the right desires,
2 yeah. Yeah.

3 **Q. Why didn't you just put someone else in**
4 **it?**

5 A. Because I wanted him to learn
6 operations, which is what he was -- he was supposed
7 to do to help us.

8 **Q. But --**

9 A. It wasn't --

10 **Q. Why didn't you just put someone else in**
11 **the role and find a different way to teach Erik**
12 **operations?**

13 A. Because it was the perfect role for him
14 to lead it because we had -- the whole group was on
15 it.

16 It was the only project and to give it
17 to somebody else, would have been, a normal person
18 or normal position, slap in the face to him.
19 Because he --

20 **Q. What do you mean?**

21 A. He had the perfect setting. We had one
22 project, we were all involved so he wasn't going to
23 fail. We asked him to do this assignment so that
24 he could learn it quickly and learn his role
25 quickly, would have helped him be promoted quicker.

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1 And he didn't do it, didn't want to do it.

2 **Q. What did you help him do? Or how did**
3 **you help him not fail at this?**

4 A. I sat down with him, couple different
5 times, and explained it was a short-term
6 assignment, it's not all on you. There is no
7 pressure. We're learning our formal startup, just
8 as you are.

9 So you don't have to take any of the
10 responsibility, just help us coordinate. And I
11 worked with all of direct-reports to help him
12 understand it wasn't all on him and to help coach
13 him, and to help him where -- where he needed.

14 **Q. Why didn't you just say, Erik, this**
15 **obviously isn't working, you being in the startup**
16 **manager role. Let's just put you in as a packaging**
17 **engineer?**

18 A. Because it wasn't full-time.

19 **Q. Did you offer him half-time as a**
20 **packaging engineer?**

21 A. No.

22 **Q. Why not?**

23 A. Because the role was for both when you
24 come in, and he knew that. He needed -- he knew he
25 was operations and he knew it was materials, both.

1 A. No, because I didn't have that
2 opportunity in the organization.

3 **Q. Why not?**

4 A. Because I needed to be efficient and
5 have positions that I need filled. And he needed
6 to understand operations, anyways, like I said from
7 the beginning.

8 **Q. Couldn't he have just --**

9 A. He needed to learn our equipment to play
10 the role.

11 **Q. Sure. Couldn't you just have made**
12 **Whiting do that role and then Erik could do -- take**
13 **over what Whiting was doing?**

14 A. And I'll tell you what I said before,
15 again. That should have been a slap in Erik's face
16 because he could have learned operations quickly
17 from that role. I would have never considered
18 that.

19 That was an opportunity, not -- it's an
20 opportunity to be a startup manager and get that on
21 your resume, not a bad -- not how dare you give it
22 to me.

23 Michael was more than willing to take it
24 on because his resume now can state startup
25 management in a major fast-track food operations

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1 facility.

2 Q. So did Erik say, how dare -- how dare
3 you give this job to me?

4 A. No.

5 Q. Okay. So that was just your manner of
6 phrasing, that wasn't quoting Erik?

7 A. That is correct, yes.

8 Q. Okay. So --

9 A. You're asking me why I didn't give it to
10 him. Because he needed to learn it for the other
11 half of his role or he would never be successful.

12 So it wasn't like I would ever take it
13 away just because you don't want to do something
14 I'm asking you to do in your job. You need to know
15 that that's part of your job.

16 Q. That's why he was fired?

17 A. I don't know he was fired.

18 Q. What do you mean you don't know he was
19 fired?

20 A. I don't know that he was fired. Nobody
21 ever told me he was fired. I just know he didn't
22 come back.

23 Q. Wasn't that your decision?

24 A. No, no.

25 Q. So -- so did he abandon his job?

1 **Simplot?**

2 A. I told him if he kept going down the
3 road he was going, it would not turn out well.

4 **Q. What does that mean?**

5 A. That means if he wasn't engaging in the
6 role we needed him, it wouldn't be a fit, and more
7 than likely, we would have had to part ways.

8 **Q. He'd be fired, right?**

9 A. Potentially. If he couldn't do the
10 role, yes.

11 **Q. Okay.**

12 A. Yes.

13 **Q. So as you sit here today --**

14 A. I didn't threaten to fire him, if that's
15 what you're asking, no. I said, he's got to learn
16 and engage, or it's not going to work for any of
17 us. Just like I would anybody.

18 **Q. So between June 7th and June 23rd, you
19 didn't see that happening?**

20 A. No.

21 **Q. Okay. Did you have any involvement with
22 him between -- in those two weeks?**

23 A. Well, again, part of this was based on
24 what he had done the night before and my support of
25 that.

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1 So I -- yeah, we had gone --

2 I don't know the two days of meetings,
3 but there were several times I was in meetings
4 where I had suggested him speak up and he still
5 didn't.

6 **Q. Do you know before --**

7 A. So just so we're clear, I want to be
8 clear about this.

9 **Q. Yeah, let's be clear.**

10 A. This -- this -- yeah, this information
11 wasn't from the 7th to the 23rd.

12 This was all the things that had
13 happened since he'd come in, not engaging, not
14 understanding his role, making sure my people
15 weren't adding to that confusion, what we needed
16 him to do, why it wasn't a full-time role, why he
17 needed to be successful at this, and that would
18 help him improve and become the leader of that
19 group potentially.

20 I laid out where I had hoped when I
21 hired him -- because he had no experience, I've
22 never done that in my 35 years, hired somebody
23 without experience in my industry except the way he
24 sold himself as a leader.

25 Which was shame on me because it looked

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1 like he didn't want to be leader. It was stressful
2 in his life, it was stressful in his personality.
3 So he sold himself as something he wasn't or didn't
4 want to do or didn't want to be.

5 And that became clear because I would
6 sit in meetings and he wouldn't say a word, and I
7 would say, Erik, you know, all you've got to do is
8 ask questions and go meet with them and find out.

9 **Q. Isn't it true that he didn't want to be**
10 **a startup manager?**

11 A. More than likely, that's probably true.

12 **Q. Isn't it true that he wasn't hired to be**
13 **a startup manager?**

14 A. That's true.

15 **Q. Okay. So let me ask you this.**

16 **On the timeline of things --**

17 A. Because we didn't have a startup manager
18 role. He was hired to train and do what his job is
19 supposed to be and that included training to do a
20 startup. It just so happened there was an
21 opportunity to do a startup for him to learn his
22 role.

23 **Q. Anything else you want to add to that?**

24 A. No.

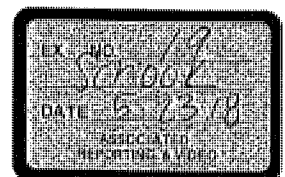
25 **Q. The --**

From: Schook, Lyle
Sent: Thursday, June 23, 2016 9:59 AM
To: Nessen, Laura <laura.nessen@simplot.com>
Cc: Anderson, Kent <Kent.Anderson@simplot.com>
Subject: Eric Knudsen

Laura,

Just dropping you a note to let you know I am supporting Kent in his reaching out to you to determine how we go forward with Eric. Below are some of my concerns that have increased the sensitivity around Eric's current performance.

- When Eric came into the group, he has latched on to both Tim and Jason (nobody else, no learning others, the department, etc.)
- In one on one discussion with both Tim and Jason, I voiced my displeasure with how Eric has started within the group. I specifically asked Tim if he had seen some concerns which he answered that he did see Eric was struggling
- In a recent conversation with Jason, I ramped up my concern of his lack of engagement and almost disdain for what we were asking him to do to learn the Operations equipment and plants
- From that conversation, Jason talked with Eric. Eric then set up a one on one meeting with me.
- In that meeting, I expressed my displeasure of my perception in his performance and linkage with the group.
 - o Never offering his opinion
 - o Never speaking up in several meetings I have been in with him
 - o Disengagement
 - o Taking the low road of "poor me, I don't understand"
 - o He agreed he was lost and disengaged and didn't understand why
- In that meeting I was also very positive



- o Expressed we want to make him successful
 - o I thought how he sold his leadership, I was looking to train him quickly to potentially lead the packaging group in the future
 - o Told him the advantage he had in taking on the Start-Up role to learn quickly our equipment and materials (which he has no experience)
 - o Told him we didn't expect perfection in that role because we ourselves were just getting the process vetted, documented and aligned within the group. However, I was looking for him to help determine our value in that role
- I expressed my concern that as a leader he has two roads to take when getting into a new environment. First, he could get excited and learn all he can and ask and create the future or second, disengage, sit back and take the low road of playing the victim.
 - I clearly let him know, which he agreed that he has taken the low road. I let him know I understood that the SU manager role was not his desire, but that it was there to help him understand and be in better position to talk with Marketing and Sales around our plant capabilities and learn our materials and with minimal resources I needed him to learn from this half time role.
 - I clearly got the impression he is waiting us out. That we would put someone else in the start-up roll and he can go be independent with Marketing and Sales around the packing material role.
 - After a very clear discussion of my perception, we took him with us to Grand Forks for plant meetings around the packaging project where he didn't say one word in 2 days of meetings.
 - After my disappointment from this, I have put more pressure on Kent to improve the performance and expectations from Eric or we need to put him on a plan or let him know he's not a fit in our organization and is not meeting our expectation.

From Kent's meeting with him last night, it's a good thing it was with him, not me. The clear insubordination will not work with me going forward. Having said that, Eric works for Kent and I will defer to him and your plan for improvement.

Thanks for your help!
Lyle.

EXHIBIT F



J.R. SIMPLOT COMPANY
999 Main Street
Boise, ID 83702
877-878-7404

Personal & Confidential

October 30, 2015

Erik Knudsen
946 N. Yarmouth Place
Eagle, ID 83616

Dear Erik,

The J.R. Simplot Company is pleased to offer you the position of **Engineer 4**, effective **November 23, 2015** and reporting to **Craig Lamberton**. Should you accept this offer, you will be eligible to receive the following *Total Rewards** package as well as other benefits which will be explained to you in detail during the orientation process:

- **Salary:** Annual gross salary of \$105,000.00, paid every two weeks (26 pay periods/year).
- **Short-Term Incentive:** Up to 11% of your annual fiscal year end salary, prorated for changes throughout the year, and subject to the Company performance and your personal performance for the fiscal year.
- **Simplot Retirement**
 - 401(k) savings plan with company matching up to 3.5% of qualified earnings
 - In addition to the 401(k), Simplot will contribute 4.5% of your eligible salary into your Retirement Savings Plan account. (Requiring 3 year vesting)

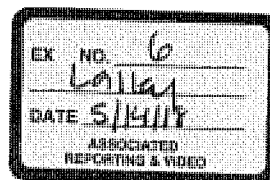
You will be automatically enrolled in the 401(k) plan with a 6% deferral unless you make a different election within approximately 30 days of hire.

- **Other Benefits and Programs** include the following:
 - Paid Time Off – Bi-weekly accrual at a rate of 6.15 hours (accrual to begin on date of first paycheck).
 - 10 paid holidays per calendar year
 - Education assistance
 - Health and Wellness programs
 - Medical, dental, vision, prescription, EAP
 - Health Savings Account (HSA)
 - Dependent Care Reimbursement Account
 - Term life insurance – 2x annual salary
 - Short and long term disability insurance

**The elements and/or terms of your Total Rewards package may evolve or change with or without notice as we strive to maintain a competitive rewards package and a Sustainable Simplot. You will receive additional information by mail outlining any additional eligibility and enrollment requirements.*

I am sure you are anxious to contribute to Simplot's success. Please partner with your supervisor to learn more about our performance appraisal process and link your goals to business results.

Your offer is contingent upon completion of the *Simplot* Employment Application; successfully passing a drug and alcohol test; successful completion of a routine background and reference check (includes driving record check if you are to drive on company business – please bring your driver's license with



SIMPLOT 000040

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you on your first day of work); and signing the Employee Secrecy and Confidentiality Agreement during your orientation.

You also must establish your identity and authorization to work as required by the Immigration Reform and Control Act of 1986 (IRCA). A current list of acceptable identification documents for the Employment Verification Form (I-9) can be reviewed at www.uscis.gov/files/form/i-9.pdf. Please click on this link in advance and bring the appropriate original identification documentation (including photo ID) on your first day of work (either one item from List A or a combination of one item from List B and one item from List C).

Employment is at the will of either the employee or the Company. Further, no contract or guarantee of continued employment is implied by this offer. Employment can be terminated by either party at any time with or without cause. No oral statement may change the at-will nature of the employment relationship.

More than 10,000 employees around the world constantly explore innovative ways to grow, process and deliver food, help farmers and ranchers optimize profit, and make everyone's life a little better. We look forward to you accepting our offer and becoming part of the Simplot team.

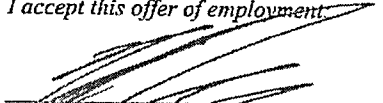
Please sign this letter as verification of your acceptance of the Engineer 4 position and scan it back to me by the end of business day on November 2, 2015. If you have any questions regarding the information included herein, please contact me.

Sincerely,



Rebecca Nichols
Recruiter
01 208-780-7241

I accept this offer of employment.

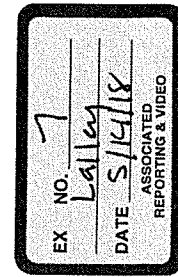

Signature - Erik Knudsen

10-30-2015
Date

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Development Area		Development Plan	Expected Outcomes	Support Person
Development Area	Duration	Date	Expected Outcomes	Support Person
Idaho Plant	Morning	Nov 23rd	First day introduction, parking pass, badge, IT, safety orientation	Laura
Idaho Plant	Afternoon	Nov 23rd	Tour of the Idaho plant	Tim/Michael
Idaho Plant	1 day	Nov 24th	8:00a.m. cutting, department review (case crush), systems	Tim
Engineering Bldg.	1 day	Nov 25th	Regular meetings on calendar, Webspec, Employee space, MMS	Team
Idaho Plant	6-8 weeks	Nov 23rd	Gain understanding of entire process, spend time with black belts, pack area manager, packing supervisors and operators. Involved in change overs, gain understanding of Schubert, identify packaging issues. Assist with packaging trials.	Craig
Corp HQ	1/2 day	TBD	New employee orientation	Laura
Tech Center	a.m.	Dec 4th	Marketing cutting	Tim
Schubert training		TBD	Schubert	Tim
Zoroco tour	1/2 day	TBD	Zoroco tour	Michael
Irapuato?	4 days	Dec 14th	Sabra Veg Fusion trial, alternate 2oz cup lidding trial	Tim
GF Plant	2 days	Jan-16	Gain Understanding Of the GF operation - Build relationships	Tim
Othello	2days	Jan-16	Gain Understanding Of the GF operation - Build relationships	Jason
Moses Lake	2days	Jan-16	Gain Understanding Of the GF operation - Build relationships	Jason
West Memphis	2 days	Feb-16	Gain Understanding Of the GF operation - Build relationships	Jason
Irapuato / Avacado	2 days	Feb-16	Gain Understanding Of the GF operation - Build relationships	Tim
Boise Paper	1/2 day	Feb-16	Complete Vendor Training	Tim
Poly Supplier Training	5 days	Feb-16	Complete Vendor Training	Jason
Vegetable plants	2 days	Jan TBD	Tour NFF	Jason
Company Orientation	1 day	Dec-15		Laura
Lunch * Learning Sessions	1 per Month	Dec-15		Craig
Packaging Team Meetings	Weekly	Nov 24th		Jason
Department work assignments	1/2 day	Dec 15th	Break down of how work is divided	Team
Potato University	1 day	TBD	Attend the next potato U seminar	Laura
On-line food safety training	1/2 day	TBD		Laura



SIMPLOT 000208

CONFIDENTIAL

Simplot

Inter•Office Communication

November 30, 2015

EMPLOYEE AND ORGANIZATIONAL ANNOUNCEMENT

I am pleased to announce that **Eric Knudsen** accepted the position of **Packaging Engineer** in the NA Food Group Engineering Department effective November 23rd, 2015.

Erik comes to us from the Laser Jet Division of Hewlett-Packard Co. in Boise, ID. Erik has held multiple positions from Packaging Engineer to NPI Manufacturing Program Manager. His International, Operations and leadership experience will be a great asset to our organization.

Moving forward we will have some minor organizational changes. With the departure of **Craig Lamberton** back to Australia, Erik will report directly to **Kent Anderson**. Also reporting to Kent will be **Michael Whiting**.

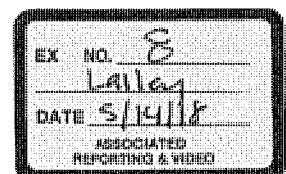
The reason for this change is to get cross functional experience and resources supporting not only the packing materials for the NAFG Sales and Marketing team but, deliver support to the technical need for Packaging Operations as well. This will allow us to cover the huge technical gap left through Craig's departure. Craig's last day will be December 16th.

Tim Lalley and **Jason Schwark** will continue to focus on the front end of the business and report directly to me starting December 14th.

Please join me in congratulating Erik on his new role.

I also want to personally thank Craig for his time here in the NAFG Engineering department. He has been a valued asset and one we will miss dearly. Please join me in wishing him success as he returns back to Simplot Australia.

Lyle Schook
Senior Director – FG Engineering



SIMPLOT 000081

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EXHIBIT G

From: Nichols, Becca
Sent: Friday, October 30, 2015 11:18 AM
To: Nessen, Laura <laura.nessen@simplot.com>; Lamberton, Craig <craig.lamberton@simplot.com>
Subject: FW: Offer of Employment - JR Simplot

Hello –

Please see Erik's concerns below in regards to salary and start date and get back to me as soon as possible. I can answer the STI question.

Thanks,
Becca

From: Erik Knudsen [mailto:erik.knudsen12@gmail.com]
Sent: Friday, October 30, 2015 11:13 AM
To: Nichols, Becca <rebecca.nichols@simplot.com>
Subject: Re: Offer of Employment - JR Simplot

Hi Becca,

Thank you for Simplot's offer of employment as well as the summary of benefits. I have reviewed it all and have a few items for discussion and questions:

For discussion

-The commute to Caldwell is quite a bit longer than my current commute. The increased cost in fuel will be about \$4,000/year (I drive a truck). Considering this and my current compensation (\$105,000), the pay cut is more than I feel comfortable with. Would Simplot be willing to reconsider the offer's \$102,000 annual base salary?

Questions

-For what time period would this short term incentive be considered? Would it be based on my start date until the end of the year (about 1 month)?
-A lower priority item: I have currently accrued 1 week of vacation at HP. HP requires you to take that vacation while employed. Therefore, if I give 2 weeks notice and use my vacation, I wouldn't be able to start until November 23 (the Monday of Thanksgiving week). If I start on that week, does Simplot give a paid holiday for the Friday after Thanksgiving?

Thanks and I'm looking forward to hearing back.
Erik

On Fri, Oct 30, 2015 at 9:12 AM, Nichols, Becca <rebecca.nichols@simplot.com> wrote:

Hello Erik,

As per our conversation, attached is the offer of employment as well as a benefits summary. Please review and if the letter meets your expectations sign and scan back. We are excited to have you as part of our team.

Erika Birch (Bar No.7831)
T. Guy Hallam, Jr. (Bar No. 6101)
STRINDBERG & SCHOLNICK, LLC
1516 W HAYS ST
BOISE, ID 83702
(t) 208.336.1788
(f) 208.287-3708
erika@idahojobjustice.com
guy@idahojobjustice.com

Attorneys for Plaintiff

**IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA**

ERIK KNUDSEN,

Plaintiff,

vs.

**J.R. SIMPLOT COMPANY, a Nevada
Corporation**

Defendant.

***UNOPPOSED REQUEST FOR STATUS
CONFERENCE***

Case No: CV01-17-13956

Judge: Deborah A. Bail

Plaintiff Erik Knudsen, by and through his attorneys, hereby submits a Request for a Status Conference to discuss the *Notice of Trial Setting and Order Governing Further Proceedings* as described below.

1. There are currently two motions pending before the Court: Defendant's Motion for Summary Judgment, and Defendant's Motion for an Order in Limine Striking Plaintiff's Expert or Motion for an Extension of Time to Prepare Expert Witness.
2. The hearing regarding Defendant's Motion for Summary Judgment is set for September 5, 2018.

3. Defendant's Motion for an Order/Extension of Time has not yet been set for hearing.
4. The case is scheduled for a four-day trial commencing on September 18, 2018.
5. Other deadlines associated with this matter are as follows:
 - a. Parties are to have a pretrial conference on or before August 17, 2018
 - b. Motions in Limine must be filed on or before August 17, 2018
 - c. Jury Instructions are due to the Court on September 4, 2018
 - d. Exhibit and Witness Lists are due to the Court on September 11, 2018

Plaintiff requests a telephonic status conference with the Court so that the parties and the Court can discuss the most efficient way to deal with the overlap of the pending motions and the pretrial deadlines, and in an effort to preserve the trial dates. Plaintiff's counsel has concurred with defense counsel who has no objection to this request.

DATED this 27th day of July, 2018.

STRINDBERG & SCHOLNICK, LLC

/s/Erika Birch
Erika Birch
T. Guy Hallam
Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that on July 27, 2018 a true and correct copy of the foregoing pleading was served on the following via electronic filing system:

Brian K. Julian
Andrea Fontaine
ANDERSON, JULIAN & HULL LLP
C. W. Moore Plaza
250 South Fifth Street, Suite 700
PO Box 7426
Boise, ID 83707-7426
bjulian@ajhlaw.com
ajfontaine@ajhlaw.com

/s/ Dunja Subasic
Dunja Subasic

Erika Birch (Bar No. 7831)
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Guy@idahojobjustice.com
Grant@idahojobjustice.com

Attorneys for Plaintiff

**IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA**

ERIK KNUDSEN,

Plaintiff,

vs.

J.R. SIMPLOT COMPANY, a Nevada
corporation,

Defendant.

**MEMORANDUM IN OPPOSITION TO
DEFENDANT'S MOTION FOR
SUMMARY JUDGMENT**

Case No. CV01-17-13956

Judge: Deborah A. Bail

COMES NOW, Plaintiff, ERIK KNUDSEN, by and through his counsel of record, the law firm of Strindberg & Scholnick, LLC, and hereby submits his *Memorandum in Opposition to Defendant's Motion for Summary Judgment*. This *Memorandum* is supported by the contemporaneously submitted *Affidavit of T. Guy Hallam in Opposition to Defendant's Motion for Summary Judgment*, and the *Statement of Disputed Facts*, along with the record herein.

SUMMARY OF THE FACTS

This is a case of a “bait and switch” job offer made by Simplot to Erik Knudsen. Simplot solicited Knudsen from his existing long-time employment at HP as a packaging engineer for a position at Simplot which was identified as a Senior Packaging Engineer. After multiple interviews Simplot offered Knudsen a job as a Packaging Engineer, which he accepted. However, on his first day of work at Simplot, Knudsen was informed that he was only going to be working part-time as a Packaging Engineer. As Simplot told him, he would spend the rest of his time in a position as a “Startup Manager” for a plant in Grand Forks, North Dakota. Simplot employees have acknowledged that Simplot intended to assign Knudsen into the Startup Manager position *before* he was hired and began his employment. Further, although Simplot now disputes that Knudsen was forced into the Startup Manager position immediately upon beginning his employment, the testimony of Simplot’s employees and Simplot’s contemporaneous documents reflect that Knudsen was in fact assigned the Startup Manager position immediately upon his hiring. When Knudsen complained about the “bait and switch” to both Simplot’s Human Resources department and its complaint hotline, he was placed on a “performance improvement plan,” followed by forced administrative leave, and ultimately terminated retroactively.

SUMMARY JUDGMENT STANDARD

Summary judgment may be granted to the moving party only if the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. I.R.C.P. 56(c).

At all times, the moving party has the burden of establishing the lack of a genuine issue

of material fact. *Wright v. Ada County*, 160 Idaho 491, 495 (2016) (citing *Finholt v. Cresto*, 143 Idaho 894, 896 (2007)); *Orthman v. Idaho Power Co.*, 130 Idaho 597, 600 (1997). To meet this burden, the moving party must challenge in its motion and establish through evidence that no issue of material facts exists for an element of the nonmoving party's case. *Smith v. Meridian Joint Sch. Dist. No. 2*, 128 Idaho 714, 719 (1996). The nonmoving party may not rest upon its mere allegations or denials of the moving party's pleadings. I.R.C.P. 56(e). Once the moving party challenges an element of the nonmoving party's case on the basis that no genuine issue of material fact exists, the burden then shifts to the nonmoving party to present evidence that is sufficient to establish a genuine issue of material fact. *Smith*, 128 Idaho at 719. However, this Court must liberally construe the record in the light most favorable to the party opposing the motion, drawing all reasonable inferences in that party's favor. *Wright, supra*; *Brooks v. Logan*, 130 Idaho 574, 576 (1997). "If reasonable people could reach different conclusions or inferences from the evidence, the motion must be denied." *Id.*¹

In the instant matter, reasonable jurors could reach different conclusions on the ultimate issues in this matter. As a result, Simplot's summary judgment motion must be denied.²

ARGUMENT

Defendant Simplot premises its *Motion for Summary Judgment* on the following arguments: 1) Simplot did not intentionally misrepresent the position to Knudsen during the

¹A reasonable jury can find that a supervisor's claimed reasons for action are not honest, or are a subterfuge. *See Reeves v. Sanderson Plumbing*, 530 U.S. 133, 150-51 (2000) ("Credibility determinations, the weighing of the evidence, and the drawing of legitimate inferences from the facts are jury functions, not those of a judge." *Liberty Lobby, supra*, at 255. Thus, although the court should review the record as a whole, it must disregard all evidence favorable to the moving party that the jury is not required to believe. *See Wright & Miller* 299. That is, the court should give credence to the evidence favoring the nonmovant as well as that 'evidence supporting the moving party that is uncontradicted and unimpeached, at least to the extent that that evidence comes from disinterested witnesses.' *Id.* at 300.")

² As an initial matter, Simplot failed to request oral argument in its *Motion for Summary Judgment*. As such, this Court may deny the *Motion* without further notice if it determines that the *Motion* does not have merit. I.R.C.P. 7(b)(3)(e).

hiring process so there is no fraud; 2) any damages due to fraud are precluded by employment-at-will doctrine; 3) there is no definite employment upon which to base either a promissory estoppel or a breach of the covenant of good faith and fair dealing claim; and 4) Simplot owed Knudsen no duty upon which to base a claim of negligent infliction of emotional distress. For the reasons and upon the bases identified herein, Simplot's *Motion to Summary Judgment* should be DENIED.

I. Simplot's Summary Judgment Motion as to the Fraud Claim Should be Denied.

A. A Reasonable Jury Could Find that Simplot Had a Duty to Disclose the Fact that it was Hiring for a Startup Manager.

Throughout its fraud argument, Simplot repeatedly contends Knudsen's fraud claim fails because Simplot did not mention the Startup Manager position during Knudsen's interview. Specifically, Simplot claims that Knudsen cannot demonstrate reliance or materiality because Simplot did not make a specific representation during the hiring process about the Startup Manager position.³ However, Simplot misapprehends Knudsen's claims and the law.

In Idaho, claims for intentional misrepresentation may be based on a material misrepresentation or a "nondisclosure of material information." *G & M Farms v. Funk Irrigation Co.*, 119 Idaho 514, 517 (1991); *see also Tusch Enters. v. Coffin*, 113 Idaho 37, 42-3 (1987) (reversing summary judgment in favor of defendant on fraud claim, where defendant claimed buildings were of "good quality construction" and failed to disclose the buildings were constructed on fill dirt: "Genuine issues of material fact exist whether the nondisclosure of the

³See Mem. Supp. at 10, 12, 13 ("Knudsen admits that there was absolutely no statement regarding the 'startup manager' assignment during his interview. Without a representation ..., Knudsen's prima facie case fails as a matter of law."); ("Knudsen admits that no affirmative statement concerning the startup assignment had been made, thus, there could be no promise or statement about an existing fact upon which Knudsen relied ..."); ("Knudsen admits there was no representation concerning the startup assignment, thus, the ... required element of materiality is missing ...").

soil problems, coupled with the assurance that the duplexes were quality constructed, amounted to a misrepresentation.”). A party has a duty to disclose (1) in order to prevent a partial statement of the facts from being misleading; or (2) if a fact known by one party and not the other is so vital that if the mistake were mutual the contract would be voidable, and the party knowing the fact also knows that the other does not know it. *Sowards v. Rathbun*, 134 Idaho 702, 707 (2000).

Here, Knudsen was told that he was applying for, and would be filling, the position of Senior Packaging Engineer. The job announcement stated that his job would be developing and designing packaging, and his duties would include things like “packaging design and specification, testing packaging materials, establishing written packaging specifications, and project management related to packaging equipment operations and capabilities.” During the hiring process, Simplot representatives informed Knudsen that the “project management” aspect of the job was a discrete part of his job that involved questions like whether the length, width and style of a bag was possible given the equipment producing it. (SOF ¶¶ 9-10, 19-20, 23, 28, 30.)

Despite the job announcement, Simplot and the interview panel were really looking for someone to fulfill a Startup Manager position. One interview panel member, Laura Nessen, admitted that the panel was “looking for someone who could fulfill a startup manager role,” and another panel member, Craig Lamberton, acknowledged that the job description did not adequately describe the position that Knudsen was applying for. Indeed, the job duties of a Startup Manager vary significantly from that of a Senior Packaging Engineer. Startup Managers do *not* design or develop packaging. To the contrary, Startup Managers plan, create, and startup the *equipment line* that creates the packaging, and their duties include training employees who will be using the equipment; verifying materials such as schematics and software; developing “start-up sequence plans” and SOPs for the equipment; working with safety reps to make sure

the equipment is safe; verifying wirings, calibrations, and installations of the equipment; and testing the equipment to determine operational or process problems. (SOF ¶¶ 11-18, 21-23.)

In other words, the Startup Manager position is a completely different position from that of a Senior Packaging Engineer, with completely divergent duties and responsibilities. Knudsen testified that Startup Manager and Packaging Engineer had “completely separate, distinct, different job responsibilities,” and the other two Senior Packaging Engineers at Simplot told Knudsen that they could not believe he was doing the Startup Manager job, because the Startup Manager duties were not part of a Packaging Engineer’s job scope. (SOF ¶¶ 18, 33, 40, 52.) Despite this, during Knudsen’s interview for the Senior Packaging Engineer position, no one mentioned anything about a Startup Manager role – no one gave “even a hint” that he would be expected to perform Startup Manager functions. Instead, panel members described the position as basically designing packaging for new products. (SOF ¶¶ 23-24.) Had Simplot disclosed its intent to have Knudsen fill the Startup Manager role and only perform the Packaging Engineer position part-time, he would not have accepted the position, and would have remained employed at HP, Inc. (SOF ¶ 31.)

As stated above, claims for intentional misrepresentation may be “based on nondisclosure of material information,” *G & M Farms*, 119 Idaho at 520, and a party has a duty to disclose: (1) in order to prevent a partial statement of the facts from being misleading; and/or (2) if a material fact is known by one party, but not the other. *Sowards*, 134 Idaho at 707. Here, the interview panel members were looking to fill the Startup Manager position – a position with job duties entirely different from those of a Senior Packaging Engineer. Yet, the panel members advertised and touted the position as a fulltime Packaging Engineer. As such, a reasonable jury could determine that Simplot made material misrepresentations when it issued the job announcement

and when panel members indicated that they were looking for someone to fill a fulltime position of Senior Packaging Engineer. In the alternative, a reasonable jury could determine that Simplot had a duty to disclose the fact that they were looking for a Startup Manager (instead of or in addition to a Packaging Engineer). Their failure to do so constitutes intentional misrepresentation.

B. A Reasonable Jury Could Find that the Representations Simplot Made to Knudsen About the Job Position were False.

Simplot claims that Knudsen’s fraud claim fails because the “[e]very representation made in the job announcement and interview process [about the job position] was true.”⁴ In support of this argument, Simplot has two primary claims. First, Simplot argues that the job description for the Senior Packaging Engineer included “project management related to packaging equipment operation and capabilities” and stated that the position would be responsible for “identifying and managing projects related to cost reduction opportunities.”⁵ Simplot also contends that “a job announcement does not include each individual task that could possibly be performed in the future.”⁶ As such, Simplot argues that the Startup Manager position fits into the Senior Packaging Engineer job description.

A jury could find that the job description materially misrepresented the position and that Startup Manager is not the same as a Senior Packaging Engineer. Simplot told Knudsen – both in writing in the job description and orally during the interview/hiring process – that he was applying for and would be filling the position of Senior Packaging Engineer, and that his primary duties would be developing and designing packaging. Despite this, Simplot and the interview panel members were really looking for a Startup Manager, who would be responsible for

⁴ Mem. Supp. at 10.

⁵ Mem. Supp. at 10-11.

⁶ Mem. Supp. at 11.

implementing the installation of two new lines of equipment in Simplot's Grand Forks plant. The two positions are entirely different at their core, and the duties involved in the two positions are also totally divergent. Indeed, Lamberton admitted that the job description did not accurately describe the position that Knudsen applied for, and the other Senior Packaging Engineers stated that the duties of a Startup Manager are not within the job scope of a Senior Packaging Engineer. (SOF ¶¶ 11, 22-24, 33, 40, 52.) A reasonable jury could determine that Simplot, through the job announcement and hiring process, materially misrepresented the job to which Knudsen applied and accepted.

Second, Simplot claims that it "could not have knowingly made any misrepresentations about the startup manager assignment . . . because the Grand Forks project was not approved until four months after Knudsen was interviewed."⁷ However, Simplot ignores a multitude of facts that indicate that the panel was specifically seeking a Startup Manager when it interviewed and hired Knudsen. For example, Nessen testified that the interview panel was "looking for someone who could fulfill a startup manager role," and she knew that the engineer hired would be designing equipment (which, she acknowledged, is different from designing packages). (SOF ¶ 11.) On his first day of employment at Simplot, Simplot told Knudsen that Knudsen's position would be "50 percent packaging engineering and 50 percent startup manager," and a few months later, Schook told Knudsen: "I never intended to put you [Knudsen] to be a full-time packaging engineer from the day I hired you." (SOF ¶¶ 32, 58.)

Additionally, in Knudsen's second week of employment, Simplot flew Knudsen to Grand Forks, where he was introduced as the Startup Manager. Contemporaneous documents show that

⁷ Mem. Supp. at 11. Simplot's argument also ignores the undisputed fact that Simplot knew it was going to assign Knudsen to be Startup Manager, regardless of when the project was approved.

Knudsen was listed as the “Startup Manager” on inter-office communications as early as November 30, 2015. On that same date, another internal memo indicated that Knudsen would report directly to Anderson, Director of Technical Engineering, instead of Lamberton, who was moving back to Australia. The memo also indicated that this would help fulfill a need for “Packaging Operations,” (*i.e.*, distinctly different from packaging materials) and help “cover the huge technical gap left through [Lamberton’s] departure.” (SOF ¶¶ 41-43.) Further, Tim Lalley, Senior Packaging Engineer, testified that he was informed, prior to Knudsen’s hire, that Knudsen was being hired for a part-time Engineer position and part-time Startup Manager position. (SOF ¶ 25.) A jury could find that Simplot was looking for a Startup Manager when it hired Knudsen and only intended to fill the Packaging Engineer position part-time; the fact that the Grand Forks project was not officially approved by the Board until February 2016 is largely irrelevant.⁸

C. A Reasonable Jury Could Find that Simplot Intended to only Hire a Part-time Packaging Engineer and to Make Knudsen a Startup Manager when it Hired and Interviewed Him, and by Misrepresenting its Intention, Simplot Misrepresented an Existing Fact.

Simplot claims that it is entitled to summary judgment because “[g]eneralized statements about Knudsen’s future job duties were not misrepresentations of existing fact and therefore cannot form the basis of a fraud claim.” In support of this argument, Simplot claims that there is no position entitled “Startup Manager,” and that the Grand Forks assignment was temporary and discrete.⁹ Simplot implies that at the time it hired Knudsen, it meant to make him a Packaging Engineer, and it later made the decision to place Knudsen into a Startup Manager “assignment.”

Under Idaho law, a promise to do something in the future, which is subsequently broken, may constitute a misrepresentation of existing fact if “at the time of making the promise the

⁸ Or not believable.

⁹ Mem. Supp. at 12.

promisor had no intention of performing the promise.” *Weatherhead v. Griffin*, 123 Idaho 697, 702 (Ct. App. 1992); *see also W.O. Kepler v. WHW Mgmt., Inc.*, 121 Idaho 466, 478 (Ct. App. 1992) (“If ... at the time of contracting, [defendant] had no intention of performing the contract, [defendant] has misrepresented a material fact; his present intention.”) Additionally, fraudulent intent may be inferred from circumstantial evidence. *See Weatherhead*, 123 Idaho at 702.

A reasonable jury could find that Simplot never intended to have Knudsen to fill the role of Senior Packaging Engineer full-time, and instead, it intended him to be a Startup Manager (in addition to, or instead of, the engineer position) from the time it interviewed and hired him. Indeed, Nessen testified that the interview panel was “looking for someone who could fulfill a startup manager role,” and Schook told Knudsen that he never intended to put Knudsen in a packaging engineer position “from the day [Schook] hired [him].” A jury could question whether Simplot had, or created, a Startup Manager position as Schook himself used the term Startup Manager and Knudsen was listed as the Startup Manager on internal documents and announced to the Grand Forks team as the Startup Manager. (SOF ¶¶ 11, 41-42, 58.) Additionally, there was nothing to indicate that Knudsen’s duties as a Startup Manager were a temporary and/or training opportunity. Indeed, Lambertson stated that after the Grand Forks Startup Manager job (a \$22 million job) was completed, there was another startup job worth about \$120 or \$140 million “in the wings.” (SOF ¶¶ 35-36.) As such, a reasonable jury could find that Knudsen’s startup duties were intended to be a permanent part of his job from the time Simplot interviewed and hired him.

D. A Reasonable Jury Could Find that Simplot’s Misrepresentations were Material.

“Materiality refers to the importance of the misrepresentation in determining the plaintiff’s course of action.” *Watts v. Krebs*, 131 Idaho 616, 619, 962 P.2d 387, 390 (1998). Here, according to Anderson, Knudsen told him that he was not going to do the Startup Manager

job because of the stress, impact on his family, and the fact that he did not want to go through those stresses again. (SOF ¶60.) As Knudsen told Anderson, he would not have accepted a job at Simplot and left his secure long-term employment at HP, had he been told he would be performing in the Startup Manager role and only doing Packaging Engineering part-time. (SOF ¶31.) A reasonable jury could find that he has proven that Simplot’s misrepresentations about the job were “material.” *See Harvey v. Maximus Inc.*, 2014 WL 6474051, *3 (D. Idaho Nov. 19, 2014) (“Because Plaintiffs would not have changed their position by giving up long-term employment had they known they were only being offered temporary employment, the representations were material.”)

Despite this, Simplot argues that Knudsen’s fraud claim fails because he supposedly cannot show “objective” or “subjective” materiality. The test for materiality can be either objective or subjective. A representation is objectively “material” if “a reasonable man would attach importance to its existence or nonexistence in determining his choice of action in the transaction in question.” *Watts v. Krebs*, 131 Idaho at 620 (quoting *Edmark Motors, Inc. v. Twin Cities Toyota*, 111 Idaho 846, 848 (Ct. App. 1986)).

Simplot argues that Knudsen cannot meet the objective test for materiality, claiming that “a reasonable person in Knudsen’s position, who had sixteen years of engineering experience and significant project management and leadership experience would not consider a short, temporary assignment to be critical to his decision to choose a job at Simplot.”¹⁰ However, as stated above, whether this was really just a “short, temporary assignment” is certainly a, if not *the*, disputed fact. Whether a reasonable person would find this assignment a material fact is a question of fact for a jury to determine. The two jobs were inherently different – Knudsen

¹⁰ Mem. Supp. at 13.

applied for and thought he was taking a job designing and developing *packaging* for food products, whereas he was given a job developing the startup process and implementing that process as part of the new equipment lines being installed in Simplot's Grand Forks plant. As part of the Startup Manager job, Knudsen was asked to train employees, verify equipment schematics, develop equipment SOPs, work with safety reps, verify wirings and calibrations, and test the equipment – all duties that he would not have been asked to do as a Packaging Engineer. The evidence demonstrates that Knudsen spent about fifty percent of his time working on these extra duties. Additionally, there is no evidence that this startup work was a “short, temporary assignment.” (SOF ¶¶ 13-18, 33, 35-36.) Based on the foregoing, a jury could find that a “reasonable man” would “attach importance” to the fact that Simplot would require Knudsen to perform the Startup Manager position and only work as a Packaging Engineer part-time when determining whether to take the position at Simplot.

E. A Reasonable Jury Could Find that Knudsen was Justified when he Relied Upon Simplot's Job Description.

Simplot contends that Knudsen was not justified in relying on Simplot's job announcement and other representations it made about the Senior Packaging Engineer job, because (according to Simplot) “the parties discussed in general terms what Simplot anticipated Knudsen's job responsibilities would entail,” and “[a]bsent a formal agreement, discussions pertaining to potential employment terms do not establish justifiable reliance.”¹¹

Simplot's argument is specious. Under Idaho law, employees are entitled to rely on job announcements and pre-hiring representations made by employers when determining whether to apply for and accept jobs. *See Verway v. Blincoe Packing Company, Inc.*, 108 Idaho 315, 317

¹¹ Mem. Supp. at 15.

(Ct. App. 1985); *Harvey v. Maximus Inc.*, 2014 WL 6474051, *supra* at *4. In the *Verway* case, several employees (the “respondents” in the appeal) were hired by Blincoe shortly after its union employees went on strike on November 1, 1981. The Idaho Court of Appeals explained that Blincoe’s job announcement and pre-hire representations were sufficient to support a fraud claim:

Blincoe advertised for permanent employees and . . . respondents applied for work in response to that ad. Each respondent testified that he was told the strike had nothing to do with his employment, that he would not be terminated in the event it was settled and that he was seeking permanent employment and would not have accepted work with Blincoe absent such assurances. This testimony was uncontradicted. The strike was ultimately settled some time on November 12 or 13. Respondents were laid off on November 12.

Verway, 698 P.2d at 379. The Court of Appeals upheld the jury’s verdict for the employees on their fraud claim, stating as follows:

Under the facts of the present case, . . . [t]he jury could have concluded that Blincoe fraudulently misrepresented to respondents that they would have permanent positions, thereby inducing some of them to quit their jobs, intending all along to use them only as strike breakers and to terminate their positions when the strike was settled.

Similarly, in the *Maximus* case, Maximus opened a new call center and hired new employees to meet its demand. Maximus employed both “regular capacity” employees (permanent, at-will employees) and “limited service” employees (temporary employees). Plaintiffs were hired as “regular capacity” employees, yet they were let go as part of a reduction in force that they believed was planned before they were hired. *Maximus*, 2014 WL 6474051, at *1. Plaintiffs brought a claim for fraud against Maximus, and Maximus moved to dismiss the Complaint, claiming that the employees had no right to rely on any representations regarding the length of their employment because they were “at-will” employees. The Federal District Court for the District of Idaho disagreed, stating as follows:

Plaintiffs argue that they were relying on the representation from Maximus that they were accepting career type employment. No at-will job is guaranteed, but there is a significant difference between a career-type at-will position, and a seasonal or temporary at-will position. This representation is reinforced by the offer letter outlining yearly raises. Plaintiffs right to rely is clearly laid out in the circumstances of interviews and subsequent offer letter.

Id., at *4. In short, it is the law in Idaho that employees may rely on employers' job announcements and pre-hiring representations when determining whether to accept jobs.¹²

Here, as stated above, Knudsen was told that he was applying for, and would be filling, the position of Senior Packaging Engineer. The job announcement stated that his job would be developing and designing packaging, and during the interview, this representation was reinforced. (SOF ¶¶ 7-10.) In fact, the formal offer letter was for the position of "Engineer 4" reporting to Lamberton, the Director of Packaging Engineering. (SOF ¶ 30.) Knudsen – like the plaintiffs in *Verway* and *Maximus* – was entitled to rely on that job announcement and those representations. As such, Simplot's Motion for Summary Judgment should be DENIED.¹³

F. Knudsen's "At-Will" Employment Does Not Negate his Fraud Claim.

Simplot argues that Knudsen cannot demonstrate damages because, "as an at-will employee, [he] could be terminated at any time and for any reason. He cannot therefore

¹² Simplot cites to *Gray v. Tri-Way Construction Services, Inc.*, 147 Idaho 378 (2009), to support its proposition that a fraud claim may not be based on job announcements and pre-hiring representations, absent a "formal agreement." However, the *Tri-Way* case is inapposite. In that case, the employee (Gray) and the employer were negotiating an employment contract when Gray started employment. Gray and Tri-Way spent months negotiating an agreement, and sent draft agreements back and forth with comments and suggestions in them. When the parties were unable to reach an agreement, Gray sued for fraud. The Court dismissed the fraud claim because Gray could not establish "justifiable reliance." Indeed, the parties never reached an agreement as to the terms of the employment contract, and as such, Gray had "no reason to believe that Tri-Way would carry out the terms of the employment agreement." *Id.* at 71-72. *Gray* would be germane if Knudsen and Simplot had been negotiating Knudsen's job duties when he started work. However, that is not the case. To the contrary, Knudsen was told that he would be filling the position of Packaging Engineer, and would be doing packaging engineering duties. Despite this, the day he started, he was told that he would be fulfilling a different role entirely – that of a Startup Manager.

¹³ Simplot also claims that "[a]bsent knowledge that Knudsen had a subjective disdain for this type of assignment, Simplot could have no intent to mislead Knudsen one way or the other about a startup assignment for the purpose of inducing Knudsen to accept the job offer." Mem. Supp. at 16. Knudsen has already addressed this argument in Section I.D (addressing the subjective test for materiality), and it will not re-state that argument here.

substantiate any compensable injury as a result of leaving his employment at Simplot under a hiring fraud theory when he was guaranteed no expectation of continued employment.”¹⁴ Citing cases from Iowa, Georgia and the Sixth Circuit (interpreting Michigan law), Simplot contends that “Courts considering a post-termination tort action for damages resulting from hiring fraud consider the claim a straightforward attempt to circumvent the employment-at-will doctrine.”¹⁵

Simplot misapprehends Knudsen’s damages and Idaho law. First, Simplot implies that in Knudsen’s fraud claim, he is seeking lost backpay “as a result of leaving his employment at Simplot.”¹⁶ However, the Complaint makes it clear that Knudsen’s fraud damages arise from the fact that he left his employment at Hewlett Packard.¹⁷ Additionally, Knudsen’s expert report on damages, which he provided to Simplot in March, 2018, also makes it clear that a portion of Knudsen’s damages (*i.e.*, his fraud damages) are “based on Mr. Knudsen’s projected earnings at Hewlett Packard compared to his actual earnings at Simplot.”¹⁸

Second, Simplot misconstrues Idaho law. Indeed, although Simplot cites to Iowa, Georgia and Michigan cases for the proposition that at-will employees cannot have fraudulent inducement hiring cases, there is clear Idaho and Ninth Circuit law that directly contradicts that proposition. *See Meade v. Cedarapids, Inc.*, 164 F.3d 1218, 1223 (9th Cir. 1999); *Harvey v. Maximus Inc.*, *supra*. In *Meade*, employees sued their former employer for fraudulent misrepresentation under Oregon law,¹⁹ arising from the closure of the employer’s plant in

¹⁴ Mem. Supp. at 17.

¹⁵ Mem. Supp. at 17.

¹⁶ *Id.*

¹⁷ Complaint, ¶46 (“But for these misrepresentations of the position, Mr. Knudsen would not have left his previous career and would not have accepted the Senior Packaging Engineer 4 position at Simplot.”)

¹⁸ *See* Couillard Report, Ex. *, at 12.

¹⁹ The elements of fraudulent misrepresentation under Oregon law are substantially similar to fraudulent misrepresentation in Idaho. In Oregon, “[p]laintiffs must establish 1) that Defendants made a false representation of material fact; 2) with the knowledge or belief that it was false, or with an insufficient basis for

Oregon, known as El-Jay. The *Meade* plaintiffs asserted that during the hiring process, the employer misrepresented that the plant was growing to induce them to accept employment there, and each plaintiff either quit his current job or passed up other employment to take the job at El-Jay. *Id.* at 1220-21. The *Meade* plaintiffs contended that they never would have interviewed with the plant had they known that the employer planned to close the plant, and that they left their former jobs in reliance on the plant's misrepresentations. *Id.*

The district court held that employees were not justified in relying on the employer's representations and omissions during their pre-employment negotiations because the employees each signed an at-will employment agreement. The Ninth Circuit disagreed, stating as follows:

That Plaintiffs' employment with Defendants was at-will does not defeat their justified reliance on Defendants' representations about El-Jay. Even in the presence of language stating "no promises about employment have been made," an action for fraud in the inducement of a contract is possible.

Id. at 1223. The Court further explained that plaintiffs were not challenging the at-will nature of their employment (*i.e.*, they accepted they could be fired at any time). Rather, notwithstanding the "at-will" nature of their employment, the plaintiffs had a viable claim for fraud because they were induced to accept employment (and leave other jobs) based on the employer's pre-hiring misrepresentations:

Plaintiffs were not relying on representations as to the duration of their employment. Plaintiffs accepted at-will employment, but they accepted at-will employment with a company that represented its [Oregon] facility as growing while failing to disclose and/or concealing that it was closing. Furthermore, Plaintiffs contend that their injuries were suffered as a result of the fraudulent inducement to enter employment, not the premature termination of that employment.

asserting that it was true; 3) with the intent that Plaintiffs rely on it; 4) that Plaintiffs justifiably relied; and 5) that Plaintiffs suffered consequent damages." *Meade*, 164 F.3d at 1221.

Id. at 1223 (citations omitted).²⁰

Although the *Meade* case relies upon Oregon law, it has been adopted by Idaho courts. In *Harvey v. Maximus* (the facts of which are explained above), the employer contended that employees' fraudulent inducement claims failed because the employees were "at-will." The Federal District Court for the District of Idaho disagreed:

Plaintiffs are not arguing a breach of contract for early termination. They are arguing that they were misled from the beginning about the type of employment they were entering into. No at-will job is guaranteed, but there is a significant difference between career type at-will positions, and seasonal or temporary at-will positions. Plaintiffs correctly rely upon *Meade* to show that at-will employment does not shield an employer from claims arising from misrepresentations about the nature of the employment.

Harvey v. Maximus Inc., 2014 WL 6474051, at *3 (D. Idaho Nov. 19, 2014). Knudsen, like the plaintiffs in *Meade* and *Maximus*, is not challenging the at-will nature of his employment. To the contrary, he has a claim for fraud in the inducement, because he was induced to accept employment (and leave another job) based on Simplot's misrepresentations. Under Ninth Circuit and Idaho law, the at-will nature of his employment does not defeat or negate this fraudulent inducement claim.²¹

II. A Reasonable Jury Could Find A Specific Agreement Upon Which To Base Claims Of Both Promissory Estoppel And Breach Of The Covenant Of Good Faith And Fair Dealing.

Simplot uses a similar argument in an effort to defeat both Knudsen's claims of promissory estoppel ("estoppel claim") and breach of the covenant of good faith and fair dealing ("covenant claim"). Specifically, Simplot suggests that it did not enter into a sufficiently definite

²⁰ See also *Arboireau v. Adidas-Salomon AG*, 347 F.3d 1158, 1168 (9th Cir. 2003) (comparing the facts to *Meade*, and stating "A jury could find that [the employer] made implied representations about the future location of the [job] and that the representations were misleading without disclosure of the pressure to move the [job] to Germany, notwithstanding that [employee] had 'no reasonable expectation for employment of any particular duration'").

²¹ Simplot also claims that Knudsen "left his job at Simplot based on his personal job dissatisfaction," and that he "abandon[ed] his job." Mem. Supp. at 19. This claim is contrary to Simplot's documents; at a minimum these are clearly disputed questions of fact. (SOF ¶¶ 68-73.)

agreement with Knudsen concerning his employment.²² In the context of the estoppel claim, that means that Knudsen could not reasonably rely on any promise about the terms of his Simplot employment that would have induced him to leave his HP job.²³ Further, even if he had relied on a specific promise, Simplot claims Knudsen suffered no loss because Simplot paid him the same salary as HP and provided him a greater opportunity to “take on an assignment that could have catapulted his career.”²⁴ As the argument pertains to the covenant claim, Simplot suggests that the job description Knudsen relied on permitted assignment to the Startup Manager position so the change in his role is not a violation of the covenant.²⁵ However, Simplot misinterprets law and draws factual conclusions on summary judgment that a jury may or may not draw in its favor at trial.

A. A Reasonable Jury Could Determine Simplot made Sufficiently Definite Promises about Knudsen’s Position.

Simplot argues that because it never promised Knudsen that he would only perform certain assignments or would never be provided a startup assignment, it did not make a promise upon which he could reasonably rely to his detriment.²⁶ However, based upon the disputed facts, a reasonable jury could determine that Simplot did, indeed, promise Knudsen that Simplot hired him as a full-time Package Engineer and not as a part-time engineer *and* Startup Manager.

Simplot cites the correct standard for promissory estoppel; in order to put forth a valid claim, an employee must demonstrate that he suffered substantial economic loss acting in

²² Mem. Supp. at 2, 21, 22.

²³ Mem. Supp. at 21-22.

²⁴ Mem. Supp. at 22.

²⁵ Mem. Supp. at 24.

²⁶ Mem. Supp. at 20-21.

reasonable reliance²⁷ on a promise made by the employer and that such the employer could foresee such reliance.²⁸ *Nicholson v. Coeur d'Alene Placer Mining Corp.*, 161 Idaho 877 (2017); *Raedlin v. Boise Cascade Corp.*, 129 Idaho 627 (1996). However, it misinterprets the relevant decision on promissory estoppel in hiring, *Harvey v. Maximus Inc.*, *supra*.²⁹ In *Harvey*, the employer used both “regular capacity” and “limited service” employees in its call center operations. *Id.* at *1. While “limited service” employees were hired for a short, defined period, “regular capacity” employees were hired at-will but in ongoing positions. *Id.* The employer hired plaintiffs as “regular capacity” employees but then laid them off shortly thereafter. *Id.* Employees alleged employer planned the layoff before they were hired, and despite the promise of an ongoing position, the employer really hired them into “limited capacity” positions without disclosing as much. *Id.* In denying employer’s motion to dismiss the promissory estoppel claim, the court held that promissory estoppel is actionable “when one party has characterized an offer as one thing, but actually offers something different.” *Id.* at *5. Further, the court held that the employees can show substantial harm “by their termination from [employer] and from leaving . . . other secure employment.” *Id.*

Here, as in *Harvey*, Simplot made a promise to Knudsen about the job he was being hired to perform during the hiring process. As discussed more completely in Section I, above, Simplot provided a fairly specific job description for Senior Packaging Engineer. Simplot’s hiring panel told him that the “project management” element of the job description was similar to project management required of Packaging Engineers at HP, and included making sure a packaging design worked with the equipment. Simplot’s offer letter to Knudsen indicated it was hiring him

²⁷ Whether a party’s reliance was reasonable is a question of fact for the jury. *Shoup v. Union Sec. Life Ins. Co.*, 142 Idaho 152, 155 (2005); *Perkins v. Thorpe*, 106 Idaho 138, 142 (1984).

²⁸ Mem. Supp. at 20.

²⁹ Mem. Supp. at 20-21.

for an Engineer 4 position, reporting to Lamberton. (SOF ¶¶ 7-10, 19-28, 30.) Taking all of this information together, a reasonable jury could determine that Simplot made Knudsen a promise about the position he would hold – working as a full-time Packaging Engineer.

Simplot alternatively argues that Knudsen did not rely on any Simplot promise to his detriment because he did not “forego a higher paying job at HP,” Simplot provided him every opportunity to succeed, and then he abandoned his job because he did not like the assignment.³⁰ Much as in *Harvey*, when the plaintiff-employees left secure employment based upon promises made by their new employer, Knudsen gave up his 14-year career at HP in a job he enjoyed where his managers were favorably impressed by him, for a position at Simplot that he thought, based on the employer’s representations, he could successfully perform. He never would have left HP for Simplot if he had been told about the Startup Manager position/role. (SOF ¶¶ 1-5, 31.) When Simplot switched the job from full-time packaging engineering to part-time packaging engineering and Startup Manager, he was not able to successfully perform the dual roles. Both Knudsen’s termination³¹ and his departure from his prior employer are adequate economic detriments to support his promissory estoppel claim.

B. A Reasonable Jury Could Determine Simplot Impaired Knudsen’s Employment Contract in Breach of the Covenant of Good Faith.

Simplot challenges Knudsen’s claim of breach of the covenant again claiming that there is no contract that prevented Simplot from assigning him to the Startup Manager position so

³⁰ Mem. Supp. at 22.

³¹ Mem. Supp. at 24. Simplot represents that Knudsen voluntarily severed his employment. However, Simplot sent Knudsen a memo dated September 7, 2016 indicating that he had been terminated retroactive to September 1st. While, the reasons for Simplot’s termination may be disputed, a jury must sort those issues out. *See SOF* at ¶¶ 68-73.

there is no breach of the covenant.³² However, Simplot defines the employment agreement to which the covenant attaches too narrowly and does not utilize the most analogous caselaw from the Idaho Supreme Court, as many of the cited cases address whether the covenant can alter the at-will relationship in termination cases. (it cannot.) Idaho caselaw is clear (and Simplot agrees) that an employee may assert a claim for breach of the covenant when an employer “significantly impairs any benefit or right which [the employee] has in the employment contract, whether expressed or implied” *Ferguson v. City of Orofino*, 131 Idaho 190, 194 (1998) (internal citations omitted).

Here, a reasonable jury could find, based up the disputed facts, that Simplot promised Knudsen a fulltime engineering position – a position for which he applied and was qualified to perform. Simplot expressed that promise, or at worst certainly implied that promise by the job description, job announcement, statements by hiring committee members, and statements by other Simplot engineers Knudsen spoke to while considering the position. And, importantly, Simplot’s formal offer letter to Knudsen indicated it was for an Engineer 4 position. (SOF ¶¶ 7-10, 19-20, 23, 28-31.) Thus, by changing the position on Knudsen’s first day of work to be only 50 percent engineering and 50 percent Startup Manager, Simplot impaired Knudsen’s right to successfully perform as a fulltime Packaging Engineer.

In addition, Simplot had an anti-retaliation policy prohibiting retaliation against any employee for filing a complaint or participating in the investigative process, and Knudsen was specifically told that Simplot would follow that policy in investigating his complaints to HR and

³² Simplot also argues, as it did in responding to Knudsen’s promissory estoppel claim, that even if there was a breach of the covenant, Knudsen’s voluntary termination does not support any damages under the breach. Mem. Supp. at 24. As explained above, Knudsen was retroactively terminated, and there are disputed questions of fact as to the reasons why. See note 31 above and *SOF* at ¶¶70-73.

the hotline alleging misrepresentations regarding Startup Manager position. However, Knudsen was almost immediately put on a Performance Improvement Plan (PIP), forced out of work on administrative leave, told he had to choose between releasing all his claims against Simplot in return for a small severance, or return to work under the PIP, with the expectation of successfully performing the Startup Manager position. Then, while his attorneys and Simplot's attorneys were attempting to negotiate a possible resolution, Knudsen was informed that he had been retroactively terminated by Simplot as of September 1, 2016. (SOF ¶¶ 61-73.)

In arguing against Knudsen's breach of covenant claim, Simplot cites many cases in which plaintiff employees attempt to use the covenant claim to circumvent at-will employment when they are terminated without a good reason,³³ but it fails to cite to *Sorensen v. Comm Tek, Inc.*, 118 Idaho 664 (1990), which is closer to the facts here. In *Sorensen*, the employer, a Boise-based magazine publisher, began shifting part of its operations to the D.C.-area and wanted to move plaintiff employee to the new location. *Id.* at 665. Reluctantly, the employee agreed to move as long as he could move back if he was not satisfied. *Id.* Further, his boss assured the employee if he took the position he would get a raise and a cost-of-living adjustment with details to be worked out later. *Id.* The employee accepted the position and attempted to meet with his manager to work out the details in the two months before he moved. *Id.* Instead, his manager told him to put a proposal in writing, which he did and delivered before he left to look for housing in D.C. *Id.* Upon arriving at his D.C. hotel, the employee had a message to call the Boise office. When the employee called, the employer fired him because after reading his proposal, his manager lost his temper and determined to "make an example" of the employee. *Id.* In ruling on the employee's claim for breach of covenant on the employer's summary judgment motion, the

³³ Mem. Supp. at 23-24.

trial court determined it would have permitted the claim to go to the jury based on “what appears to be the unfairness of the procedure used in this case” but Idaho had not yet recognized the cause of action. *Id.* at 666. However, because the appeal of the dismissal came after *Metcalf v. Intermountain Gas Co.*, 116 Idaho 622 (1989), which first recognized the claim, summary judgment was reversed, and the claim was remanded to the trial court even though dismissal of employee’s other contract claims were upheld. *Id.* at 669-70.³⁴ Thus, after *Metcalf*, the unfairness of the retaliation in *Sorenson* (after the employee followed the manager’s direction to put a proposal on the table) could form the basis of a breach of the covenant.

Here, a jury could find fundamental unfairness both in the “bait and switch” leading to Knudsen’s alleged poor performance, and also in the retaliation Knudsen suffered after he contacted human resources and the hotline to report his good faith concerns about being placed in the Startup Manager position. Like in *Sorensen*, Knudsen was stymied by his manager who would not address his concerns. Knudsen then looked for a valid and encouraged avenue of redress by reporting his concerns to human resources and the Simplot hotline. As part of his reports, Knudsen was told that Simplot had a policy that forbid Simplot from retaliating against him for having made his reports. Despite that promise and policy, management retaliated against him in short order, placing him on a PIP, then forced leave and ultimately retroactively firing him. This type of procedural unfairness and actions contrary to Simplot’s non-retaliation policy is a valid basis for Knudsen’s claim of breach of the covenant.

III. Simplot Had A Legal Duty To Knudsen As The Injury To Knudsen Was Foreseeable.

³⁴ In *Metcalf*, the employee had been fired after utilizing her promised sick leave benefits. The court found this violated the covenant of good faith and fair dealing regardless of her at-will employee status.

Simplot asserts that it owed no legal duty³⁵ to Knudsen because it could not have foreseen that he would have been injured when it forced him to do a job that was fundamentally different from the one he accepted.³⁶ Of course, Simplot does not characterize it this way. Instead, it claims that it could not possibly foresee that Knudsen “would refuse to accept a job assignment encompassing knowledge and skills previously displayed by [him] at HP and included in (sic) an engineer’s professional realm of expertise.”³⁷

However, as illustrated by the different characterization of legal question, above, the disputed facts could be interpreted by the factfinder to support either conclusion. Specifically, a jury could determine that Simplot, by not being honest at the hiring stage, enticed Knudsen to take a position as a Packaging Engineer while fully intending to have him manage the installation of a manufacturing operation at a remote location. A jury could believe that Simplot only revealed this plan to him after Knudsen had resigned his employment at HP and accepted the position at Simplot. Thus, if a jury finds this was Simplot’s plan, it would also find a foreseeable injury to Knudsen.

But Simplot protests - it could not have foreseen the harm: Knudsen was asked only to do a task that “fell directly within his skillset and experience” and “kept hidden his secret disdain for the leadership duties associated with the temporary assignment until seven months after his date of hire.”³⁸ Again, the facts undermine this conclusion. Simplot cannot use the fact that Knudsen did not advertise that he was not interested or qualified to do the Startup Manager

³⁵ In addition to the foreseeability of injury, if Knudsen succeeds on his other claims against Simplot he will have proven a requisite breach of a legal duty from which the jury could also find lead to his sever emotional distress. *See, e.g., Wright v. Ada County*, 160 Idaho 491, 376 P.2d 58, 68 (2016)(holding retaliation against whistleblower breaches a duty sufficient to recover under the NIED claim).

³⁶ Mem. Supp. at 24.

³⁷ Mem. Supp. at 24. *But see* SOF ¶ 52, where the other Simplot Senior Packaging Engineers noted that Startup Manager was not within Knudsen’s job scope.

³⁸ Mem. Supp. at 25.

duties when it is clear that Simplot never even hinted that Knudsen would be asked to the same. In other words, Simplot cannot evade liability for its non-disclosure/misrepresentations by pointing the other finger at Knudsen for somehow failing to address something he had no idea needed to be addressed in the first place.

Even if Knudsen did not say that he was not interested or qualified to take on Startup Manager duties, it is undisputed that on June 7, 2016, Knudsen reported to Schook that he did not have the background to successfully perform the Startup Manager role. (SOF ¶ 57.)³⁹ But Simplot never productively addressed Knudsen's concern that he escalated by both reporting that concern to HR and then, when his report went unanswered, calling the employee hotline. (SOF ¶¶ 58-63.) Certainly, Simplot cannot deny it knew of Knudsen's dissatisfaction at that point. Thus, at that point it became clear that if Simplot did nothing to rectify its earlier misrepresentations and the skills mismatch it created, and instead simply insisted that Knudsen perform the Startup Manager role, it likely would lead to Knudsen's emotional distress. He told his boss as much. But what Simplot did was much worse. Simplot retaliated against him, contrary to its policy and promise to Knudsen, by: 1) putting him on a PIP; 2) questioning and harassing him by scrutinizing his performance, monitoring his whereabouts, and screaming at him; and 3) placing him on forced administrative leave; and 4) terminating him retroactively. (SOF ¶¶ 57-73.) A reasonable jury could conclude that Simplot could have foreseen that such treatment would harm Knudsen. Thus, Simplot had a duty to "exercise ordinary care to prevent" this foreseeable risk of harm to Knudsen. *See Nation v. Idaho Dep't of Correction*, 144 Idaho 177, 191-92 (2007).

³⁹ A reasonable jury could find that Knudsen expressed his concerns about the Startup Manager job long before June, 2016. *See* (SOF ¶50-53.)

CONCLUSION

For all of the reasons stated herein, this Court should DENY Defendant Simplot's *Motion for Summary Judgment*. The jury must decide the issues of material fact in this case while weighing all the evidence and judging credibility of the witnesses.

/// /// ///

DATED this 22nd day of August, 2018.

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CERTIFICATE OF SERVICE

I hereby certify that on August 22, 2018 a true and correct copy of the foregoing pleading was served on the following via electronic mail and electronic filing system:

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**IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA**

ERIK KNUDSEN,

Plaintiff,

vs.

J.R. SIMPLOT COMPANY, a Nevada
corporation,

Defendant.

STATEMENT OF DISPUTED FACTS

Case No. CV01-17-13956

Judge: Deborah A. Bail

COMES NOW, Plaintiff, Erik Knudsen, by and through his counsel of record, the law firm of Strindberg & Scholnick, LLC, and hereby submits his *Statement of Disputed Facts*.¹

Knudsen's Career at Hewlett Packard

1. Knudsen has a Bachelor of Science degree in textile material science (1997) and a Masters of Science degree in packaging science (2000). *Knudsen Dep. 7:22-8:7, Hallam Aff.*

¹ Depositions and documentary evidence cited herein will be attached to the *Affidavit of T. Guy Hallam* ("Hallam Aff."), filed herewith. Depositions will be cited by the deponent's last name with page:line references. Other documents will be cited using the numeric designation as indicated in the index contained in the Hallam Aff.

Exh. B. During his Master’s program, Knudsen interned with Hewlett-Packard (HP) in Greeley, Colorado which “kick-started” his career. *Id.* at 8:14-17. After working in California, Knudsen moved to Boise to start work at HP in 2002 and remained an HP employee until he gave notice of his resignation in late 2015 after being offered a Packaging Engineer position at Simplot. *Id.* at 8:12-9:1.

2. Knudsen had a long, successful and fulfilling career with HP. He had a “great relationship” with the whole management team and had a “great experience.” *Knudsen Dep.* 20:6-8; 13:13-25, *Hallam Aff. Exh. B.*²

3. Knudsen had been a Packaging Engineer for HP for seven years, and had returned to that role after serving for eight years in operation program management. *Dep. Exh. 54; Knudsen Dep.* 24:1-17; 44:23-45:5; 52:8-52:17, *Hallam Aff. Exh. B.*

4. Knudsen chose to go back into package engineering because that is where his interests lie. *Knudsen Dep.* 19:20-21:01; 43:5-10; 44:23-25, *Hallam Aff. Exh. B.* For example, packaging engineering would allow him to express more creativity, which he enjoyed. *Id.* at 30:14-21. He also knew that HP needed help in packaging engineering and his position there would be secure. *Id.* at 21:18-21:25

5. After moving back into packaging engineering, Knudsen was satisfied with his decision: “I had a great manager . . . it was fun to get back on the team. It was something that I knew.” *Knudsen Dep.* 44:23-45:10, *Hallam Aff. Exh. B.* He received a satisfactory review upon his return to his role as Packaging Engineer. *Id.* at 195:18-196:7; 45:19-22; *Dep. Exh. 68.* In

² Knudsen had one negative experience at HP with a particular manager which he testified was an “outlier.” He and this manager had disagreed on whether to stop production on a project and when his manager’s boss sided with Knudsen instead of his manager it did not sit well with his manager. In response, this manager reassigned Knudsen to a less demanding/interesting role and gave him an unjustified unfavorable review. Despite this, Knudsen was clear that this situation had nothing to do with him leaving employment at HP. Moreover, at the time of his separation with HP, he had laterally moved back to his Packaging Engineering position after he had been offered three different positions at HP. *Knudsen Dep.* 14:12-21:25; 33:6-23, *Hallam Aff. Exh. B.*

fact, his manager noted that after Knudsen joined their team, he “immediately started contributing to the team’s success.” *Dep. Exh. 68*. His supervisors feedback included that Knudsen:

has a ‘get’er done’ approach that enables him to press through a large workload while coming up to speed . . . I often hear him contributing to project team meetings. He has a way of drawing team members into a common solution path and keeping everyone calm . . . Erik is engaged . . . He had a great attitude, is knowledgeable, and willing to participate.

6. There was nothing about Knudsen’s employment at HP that inspired him to look for employment elsewhere, and he was not actively looking for other jobs outside HP. *Knudsen Dep. 14:12-16; 45:16-22, Hallam Aff. Exh. B*. However, “[I]f you’re smart about your career, you – you kind of keep your eyes open.” *Id. at 45:19-22*.

Simplot Recruits Knudsen

7. Knudsen was contacted by a Simplot recruiter, Becca Nichols, regarding a Senior Packaging Engineer position. *Nichols Dep. 9:19-10:4; 20:21-21:23, Hallam Aff. Exh. G; Dep. Exh. 20*. Nichols provided Knudsen access to the job description for this job. *Id.* Knudsen read the job description and thought it looked interesting. *Knudsen Dep. 46:17-47:1, Hallam Aff. Exh. B*. “I had been working in the printer industry for a long time, and I thought it might be good – just something different. I had respected Simplot quite a bit just from living here . . . and I thought food might be kind of an interesting change for me.” *Id. at 15:5-11*.

8. Simplot had previously sought to fill the Senior Packaging Engineer position, but without success. *Nessen Dep. 28:20-29:23, Hallam Aff. Exh. F*. The position had been advertised along the lines of a “Project Engineer 5” and then changed to “Senior Packaging Engineer.” *Nessen Dep. 30:10-22, Hallam Aff. Exh. F*. Part of the problem in filling the position had been

the high level of leadership capabilities Simplot wanted. *Nessen Dep. 31:16-32:6; 49:7-11, Hallam Aff. Exh. F.*

9. When Knudsen was contacted by Nichols, he was working as a Packaging Engineer at HP. When he sent Simplot his resume, it stated that he was seeking “Senior Packaging Engineering Position with Simplot.” *Dep. Exh. 54; Knudsen Dep. 51:11-20, Hallam Aff. Exh. B.*

10. When scheduling interviews, Nichols sent Knudsen a copy of the job description for the Senior Packaging Engineer position. *Nichols Dep. 25:21-26:23, Hallam Aff. Exh. G; Dep. Exh. 21.* The job description summary said:

This position is responsible for The J.R. Simplot Food Group packaging development efforts to include packaging design and specification, testing packaging materials, establishing written packaging specifications, and project management related to packaging equipment operations and capabilities. . . .

Nichols Dep. 10:9-21, Hallam Aff. Exh.G; Dep. Exh. 33.

11. Unbeknownst to Knudsen (and notwithstanding the job title), the Simplot engineering management and human resources team evaluating candidates for the Senior Packaging Engineer position were really looking for someone to be a Startup Manager. *Nessen Dep. 50:6-20, 74:4-10, Hallam Aff. Exh. F; Dep. Exh. 24; Lamberton Dep. 29:17-30:6; 58:2-20; 66:8-67:5, Hallam Aff. Exh. D.* Indeed, the focus of the position from Simplot’s perspective was on startup management and equipment redesign. *Nessen Dep. 65:11- 66:22, Hallam Aff. Exh. F.*

12. Prior to recruiting Knudsen, Simplot built its new potato processing facility in Caldwell, Idaho (the “Idaho project”), and Craig Lamberton (the Director of Packaging Engineering) managed the startup work. *Lamberton Dep. 12:2-10, Hallam Aff. Exh. D.*

13. As part of the startup work on the Idaho project, the engineering management team, including Lamberton, developed internal startup capabilities that Simplot had previously lacked. *Lamberton Dep. 12:4-10, 14:6-22, 27:21 – 28:11, Hallam Aff. Exh. D.*

14. Also prior to recruiting Knudsen, Simplot had decided to significantly revamp operations at several of its food processing plants, including one in Grand Forks, North Dakota. Simplot knew it would need additional help to manage the startup work for these multiple projects. *Nessen Dep. 46:1-47:9; 50:1-20, Hallam Aff. Exh. F.* For example, the Grand Forks project involved installing two new packaging lines, which included “eight baggers, four case packers, a palletizer....” *Lalley Dep. 97:25-98:5, Hallam Aff. Exh. C.* The packaging lines at the Grand Forks plant are

The actual lines that will package the food product [French fries]. So it comes through the processing side of the [plant], through the freezer, and gets put into bags, and those bags into a case, a corrugated shipping case.

It goes through a piece of equipment that closes that case, glues it all shut, and then it goes to a piece of equipment that automatically palletizes everything.

Lalley Dep. 98:13-99:2, Hallam Aff. Exh. C. The Grand Forks plant is a large plant, with two packaging lines, both of which have eight pieces of equipment which form the bags and fill the product, four pieces of equipment which put the bags into the case, and two pieces of equipment which close the case. *Lalley Dep. 99:17-100:7, Hallam Aff. Exh. C.* In short, managing the startup for the Grand Forks packaging lines was a pretty big project, which cost Simplot about twenty-two million dollars. *Lalley Dep. 101:5-8; 110:24-111:4, Hallam Aff. Exh. C; Schook Dep. 10:23-11:5, Hallam Aff. Exh. H.*

15. Startup management involves leading food processing plant production workers in the installation and testing of packaging equipment, seeing to the training of these workers, and determining if the equipment meets Simplot’s requirements and is ready to be turned over to

plant personnel for packaging operations. *Lamberton Dep. 21:13-23:18, Hallam Aff. Exh. D.*

Lamberton testified that that a Startup Manager is responsible for:

a. testing the equipment: “you start to test equipment... [and] you’re organizing to make sure all of the relevant testing gets done by the different groups.... [In the testing,] you’re starting to try and address the higher-risk parts of the project,” (*Lamberton Dep. 21:23-22:6, Hallam Aff. Exh. D*);

b. “coordinating training” of the employees who will be using the equipment in the future, (*Lamberton Dep. 22:11, Hallam Aff. Exh. D*);

c. “making sure you’ve got all the documentation for everything for the relevant groups . . . like the maintenance manuals, the operation manuals,” (*Lamberton Dep. 22:12-17, Hallam Aff. Exh. D*);

d. determining whether the equipment “meets the requirements that were set out . . . [at] the start of the project. . . . So you’ll set up a test run and you’ll say, ‘Okay, Can the machine make 500 bags a minute?’ ‘Yes.’ But it might not pass the quality side of things, so then you have to organize retesting,” (*Lamberton Dep. 22:23-23:8, Hallam Aff. Exh. D*); and

e. “trying to work to a point where you can sign off to make final payments on equipment,” (*Lamberton Dep. 22:19-20, Hallam Aff. Exh. D*).

16. In short, a Startup Manager was responsible for getting new packaging equipment or plants up and running. Some of the specific duties of a Startup Manager include:

a. creating a Startup checklist, identifying the Start-Up team, developing an initial Start-up strategy, and developing an initial Start-up Plan with costs and schedule – identifying risks, back-up plan, training, key assumptions and costs estimates;

- b. creating a training plan for plant employees who would be using the equipment;
- c. creating and verifying a “start-up sequence plan” for the utilities and equipment;
- d. identifying and ordering spare parts to be provided to the plant maintenance group;
- e. creating and verifying a plant sanitation/clean-up plan for the equipment;
- f. verifying that vendor supplied materials, such as schematics, software and passwords, are ordered and received;
- g. developing and/or verifying operational procedures (such as SOPs and Process Safety Management regulations);
- h. walking through plant with corporate safety reps and participating in other safety communications;
- i. verifying that power, network and all other required utilities are functional (including verifying network addresses and servers):
- j. verifying all wirings, calibrations, installations and settings; and
- k. performing non-product testing, and thereafter, product testing to determine operational, control and/or programming issues. (*Depo. Ex. 9.*)

17. Startup Manager and Project Manager are different roles for a big project like the Grand Forks plant project. *Schook Dep. 54:12-14, Hallam Aff. Exh. H.*

18. At Simplot, the packaging engineer group works more with the business/marketing and materials side of processing food. The Simplot capital engineering group

does work on equipment installation and line layout design. *Lalley Dep. 144:25-145:10, Hallam Aff. Exh. C.*

Knudsen's Interviews with Simplot

19. Knudsen had four panel interviews for the Senior Packaging Engineer position with Simplot. *Knudsen Dep. 54:15-55:11, Hallam Aff. Exh. B.* Among those involved in the interviews were: Lyle Schook, the Senior Director of Engineering; Craig Lamberton, the Director of Packaging Engineering; Kent Anderson, the Director of Technical Engineering; Laura Nessen, the Human Resources (“HR”) Manager, along with Jason Schwark and Tim Lalley, Senior Packaging Engineers. *Schook Dep. 8:6-13, Hallam Aff. Exh. H; Lamberton Dep. 8:20-24, 10:8-15, 60:19-21, Hallam Aff. Exh. D; Nessen Dep. 6:15-7:4, 22:5-23:1, 39:2-8, Hallam Aff. Exh. F; Anderson Dep. 176:12-13, Hallam Aff. Exh. A.*

20. The job description summary for the Senior Packaging Engineer position stated as follows:

This position is responsible for The J.R. Simplot Food Group packaging development efforts to include packaging design and specification, testing packaging materials, establishing written packaging specifications, and project management related to packaging equipment operations and capabilities. . . .

Nichols Dep. 10:9-21, Hallam Aff. Exh. G; Dep. Exh. 33.

21. Despite the job description, Nessen testified that “the interview panelists were looking for someone who could fulfill a startup manager role.” *Nessen Dep. 49:12-50:13, Hallam Aff. Exh. F.* Nessen also knew that the engineer hired would be designing equipment “to some degree” and she acknowledges a difference between equipment engineering and packaging engineering. *Nessen Dep. 52:3-5; 53:11-14, Hallam Aff. Exh. F.*

22. Lamberton acknowledges that the job description provided to Knudsen was deficient in describing the startup management responsibilities that Simplot now claims were

simply part of a Senior Packaging Engineer position. *Lamberton Dep. 47:1-2; 49:13-51:8, Hallam Aff. Exh. D.*

23. Despite this, in Knudsen’s interviews for the Senior Packaging Engineer position, nothing was ever mentioned about a Startup Manager position or role. *Knudsen Dep. 57:8-10, Hallam Aff. Exh. B; Nessen Dep. 65:5-10; 120:13-123:13, Hallam Aff. Exh. F.* No one ever gave “even a hint” that he would be expected to perform Startup Manager functions. *Knudsen Dep. 202:4-14, Hallam Aff. Exh. B.* Instead, Simplot described what he would be doing as basically designing packaging for new products. *Id. at 57:11-17.* He was told he would be reporting to Lamberton, who as Director of Packaging Engineering was the manager of the other two Senior Packaging Engineers. *Id. at 57:18-21; 68:1-5; Lamberton Dep. 35:3-10, Hallam Aff. Exh. D.*

24. Anderson does not recall anyone telling Knudsen during the interview panels that the work Knudsen would be doing if he was hired would depend on the projects which were “coming in.” *Anderson Dep. 97:5-12, Hallam Aff. Exh. A.* Anderson does agree, however, that someone should have told Knudsen that the work he would be doing, if hired, would depend on whatever various project might be pending. *Anderson Dep. 97:13-15, Hallam Aff. Exh. A.*

25. One of the Simplot Senior Packaging Engineers who was on an interview panel for Knudsen, Tim Lalley, was informed, prior to Knudsen starting his employment, that the position Knudsen was being interviewed for was a part-time Packaging Engineer position and part-time Startup Manager position. *Lalley Dep. 32:20-33:3, Hallam Aff. Exh. C.*

26. During the interview for the Senior Packaging Engineer position, Knudsen was asked about his leadership skills. *Knudsen Dep. 138:9-11, Hallam Aff. Exh. B.* Recognizing that a “senior-level engineer is going to have a leadership component or element,” Knudsen was “happy to talk about my leadership ability because I didn’t have that food [experience].”

Knudsen Dep. 28:20-29:6, Hallam Aff. Exh. B. At HP, Knudsen had a number of different assignments, so he emphasized that even though he lacked technical experience with food products, he could figure out the role of a Senior Packaging Engineer at Simplot. *Id.* at 29:7-15. Thus, he emphasized the leadership experience he had at HP in program management. *Id.* at 138:9-11.

27. Knudsen did not tell Simplot that he did not want to be a “program manager” at Simplot, because he was interviewing for a Senior Packaging Engineer position, and he had no reason to believe he would be performing “program management” or Startup Manager functions. Thus, it would not have made sense to volunteer that information any more than it would have made sense for him to volunteer that he did not want to perform various other jobs at Simplot. *Knudsen Dep. 202:22-204:2, Hallam Aff. Exh. B.*

28. Knudsen did ask for clarification about the job description’s list of “project” not “program” management. Lalley told Knudsen that the “project management” element in the job description was similar to the project management required of Packaging Engineers at HP, which was not surprising as any engineering role has a certain element of project management. *Knudsen Dep. 47:19-48:4; 215:19-216:1, Hallam Aff. Exh. B.* As represented to Knudsen during the interview/offer process, this “project management” element included ensuring that your packaging design works with the equipment – i.e. is the length/width and style of the bag and size of box possible given the equipment. *Id.* at 197:1-198:16.

29. After his last interview, Knudsen was told by Nessen that he might get an offer but it would be for an Engineer 4 instead of a Senior Packaging Engineer position because he lacked food experience. Knudsen understood the main difference in the positions, other than

“maybe salary” and scope, was that a senior level engineer would have higher expectations and take on more important projects. *Knudsen Dep. 59:12-60:14, Hallam Aff. Exh. B.*

Knudsen’s Employment at Simplot

30. On October 30, 2015, Simplot made a formal offer of “the position of **Engineer 4**, effective **November 23, 2015** and reporting to **Craig Lamberton**” to Knudsen. *Dep. Exh. 6* (emphasis in original).

31. Knudsen accepted this offer, and gave notice to HP. *Dep. Exh. 6*. Had Simplot told him he would be assigned the Startup Manager position and only be performing as a Packaging Engineer part-time, he “never would have left HP.” *Knudsen Dep. 209:9-210:8, Hallam Aff. Exh. B; Dep. Exh. 14.*

32. On his first day of employment at Simplot, Knudsen believes that his boss, Kent Anderson, informed him “that his role was not going to be packaging engineer full time; that it would be, instead, 50 percent packaging engineering and 50 percent startup manager.” *Knudsen Dep. 61:23-62:2; 70:18-23, Hallam Aff. Exh. B; Dep Exh. 55* (December 8, 2015 email).

33. However, startup manager and operational packaging are two different things. *Anderson Dep. 96:1-8, Hallam Aff. Exh. A.*

34. Simplot did not tell Knudsen *prior to* his first day that he was going to be the Startup Manager at the Simplot Grand Forks plant. *Anderson Dep. 8:14-17, Hallam Aff. Exh. A.*

35. The Startup Manager position was not simply a training opportunity. It is an “actual role that would be expected of someone who has some kind of familiarity with the industry,” which Knudsen, being brand new to the food industry, obviously did not have. *Knudsen Dep. 61:10-13, Hallam Aff. Exh. B; Lamberton Dep. 25:3-10, Hallam Aff. Exh. D* (“we have startup managers”).

36. The Startup Manager position was not a temporary assignment. Simplot did not inform Knudsen it was a temporary assignment, and there was no indication that it was a short-term position. Indeed, even though there was an end to the Grand Forks project (a \$22 million packaging upgrade project in North Dakota), there was another project right behind it. Knudsen testified that, “There was nothing to indicate that it [the Startup Manager position] would be temporary.” *Knudsen Dep. 61:18-62:5; 62:14-63:3, Hallam Aff. Exh. B; see also Lambertson Dep. 26:21-27:19, Hallam Aff. Exh. D* (“[T]he Idaho project . . . was probably about \$120, \$140 million... The Grand Forks project was . . . around \$22 million... [A]nd the thing was we were trying to prepare ourselves because . . . in the wings was another project the size of Idaho, and we wanted to make sure we had in-house skills developed to do it better than what we had to go through with the Idaho project.”).

37. Simplot had trouble with the prior start up for its plant in Idaho. *Anderson Dep. 17: 7-12, Hallam Aff. Exh. A*. Because of the trouble with the startup at the Idaho plant, Simplot knew that it “needed to improve” the startup process. *Anderson Dep. 17:22 – 18:20, Hallam Aff. Exh. A*.

38. Because of the experience with the troubled startup at the Idaho Plant, Simplot wanted a “more successful startup” at the Grand Forks plant. *Anderson Dep. 17:13-17, Hallam Aff. Exh. A*. However, Simplot had not formalized or defined the engineering startup process before Knudsen was put in the role of Startup Manager. *Anderson Dep. 19:2-9, Hallam Aff. Exh. A*.

39. Anderson asked Knudsen “to help” define the engineering process as part of the Startup Manager position. *Anderson Dep. 19:10-13, Hallam Aff. Exh. A*. However, Simplot “didn’t know what [it] was doing and it was hard to have Erik do it [because] . . . he was new. He

was new to our [engineering] group. He was still trying to fit into our group.” *Anderson Dep. 19:16-20, Hallam Aff. Exh. A.*

40. The Startup Manager functions that Simplot expected Knudsen to perform had nothing to do with his role as a Packaging Engineer; they were “completely separate, distinct, different job responsibilities.” *Knudsen Dep. 217:13-18, Hallam Aff. Exh. B.*

41. In his second week of employment, Simplot flew Knudsen on its corporate jet to Grand Forks where he was introduced to the Grand Forks team as the Startup Manager. *Knudsen Dep. 69:12-19; 70:3-8, Hallam Aff. Exh. B.*

42. Simplot circulated a Communications Plan on November 30, 2015, related to the “Grand Forks Packaging Upgrade Project” which listed the “design team Point of Contact (POC) resources and areas of responsibility.” *Dep. Exh. 10.* Knudsen is listed on the Communications Plan as the “Startup Manager.” *Id.* Anderson, however, has “no idea” why Erik’s name is on that communication plan. *Anderson Dep. 32:16-18, 33:23-34:3, Hallam Aff. Exh. A.*

43. Another Inter-Office Communication dated November 30, 2015, indicated that Knudsen had “accepted the position of **Packaging Engineer** in the NA Food Group Engineering Department effective November 23rd, 2015,” (emphasis in original), but that there would be “some minor organization changes.” *Dep Exh. 8.* The Communication indicated that Lamberton, Director of Packaging, was moving back to Australia, and as such, Knudsen would report directly to Kent Anderson, Director of Technical Engineering. *Id.* The Communication indicated the reason for this change was to have “resources supporting not only the packing materials for the . . . Sales and Marketing team,” but also to “deliver support to the technical need for Packaging Operations as well. This will allow us to cover the huge technical gap left through Craig’s departure.” *Id.*

44. Simplot told Knudsen more than once after his hire that Simplot did not intend to have him work as a fulltime Packaging Engineer. *Knudsen Dep. 86:14-24, Hallam Aff. Exh. B.*

45. Knudsen spent, on average, about fifty percent (50%) of his time working as the Startup Manager. *Knudsen Dep. 71:22-73:19, Hallam Aff. Exh. B.*

46. Anderson, Knudsen's supervisor, disputes that Knudsen was in the role of startup manager in November or December 2015, shortly after his hire. *Anderson Dep. 25:15-17, Hallam Aff. Exh. A.* However, Anderson does not specifically recall when Knudsen was told that he was going to be the Startup Manager at Grand Forks. *Anderson Dep. 26:15-18, Hallam Aff. Exh. A.* Anderson claims that Knudsen was working solely as a Packaging Engineer between his hire on November 23, 2015 and February 23, 2016, when the Grand Forks plant upgrade project was approved. *Anderson Dep. 30:5-9, Hallam Aff. Exh. A.*³

47. Anderson testified that he assigned Knudsen to the Startup Manager job in February, 2016. *Anderson Dep. 19:10-15, Hallam Aff. Exh. A.*

48. However, Schook says that Knudsen was "formally asked" to be the Startup Manager at the Grand Forks plant in June, 2016. *Schook Dep. 4:18-5:4, Hallam Aff. Exh. H.*

49. Knudsen tried to be successful as the Startup Manager despite his complete lack of experience/background in the industry. He was "doing everything" he could. *Knudsen Dep. 105:16-21, Hallam Aff. Exh. B.* But he lacked even a basic background in food processing and engineering having spent his career working at HP. Thus, he lacked the background and made that clear on multiple occasions to his managers. *Id. at 172:19-20.* It was "really embarrassing when you're sitting there in a meeting and you're being expected to participate and add value, and you can't. It's embarrassing. I was really struggling with that." *Id. at 205:9-20.*

³ Anderson, Knudsen's supervisor as of December 16, 2015, claims that, to his knowledge, Knudsen "did nothing as part of the Grand Forks startup role" between the dates of November 30, 2015 and February 23, 2016. *Anderson Depo., 34:10-19, Hallam Aff. Exh. B.*

50. Anderson recalls Knudsen telling him that “he did not feel like he was adding any value, he was over his head, and he didn’t know what to do.” *Anderson Dep. 24:22–25:3, Hallam Aff. Exh. A.* Knudsen also told Anderson that he “didn’t feel comfortable” doing the Startup Manager job because he “didn’t know anything about the food operational side.” *Anderson Dep. 104:1-6, Hallam Aff. Exh. A.*

51. Importantly, the Startup Manager job was not “what we agreed to in the interview.” *Knudsen Dep. 172:21-173:2, Hallam Aff. Exh. B.*

52. The two Senior Packaging Engineers told Knudsen that they couldn’t believe he was doing the Startup Manager job – “this is not part of your job scope. This is not part of our job scope. I have never done this before. Can’t believe you’re doing it.” *Knudsen Dep. 165:8-12, Hallam Aff. Exh. B.*

53. Schwark, one of Simplot’s Senior Packaging Engineers, further recalls Knudsen telling them that he “wasn’t hired as a [S]tartup Manager” shortly after Simplot hired him. *Schwark Dep. at 44:6-22, Hallam Aff. Exh. I.* Lalley also remembers Knudsen telling him that Startup Manager was not the position he was hired to do. *Lalley Dep. 94:22-95:9, Hallam Aff. Exh. C.*

54. Anderson says that in February, 2016 Simplot “pulled [the Startup Manager job] back” from Knudsen because Simplot “needed to work on our process some more.” *Anderson Dep. 25:2-3, Hallam Aff. Exh. A. See also Anderson Dep. 20:5-20, Hallam Aff. Exh. A.*

55. Anderson believes that Knudsen was spending most of his time as a Packaging Engineer, as opposed to a Startup Manager, between February 2016 and July 2016. *Anderson Dep. 44:8-25, Hallam Aff. Exh. A.*

56. On June 1, 2016, Anderson says that Simplot moved Knudsen back into the Startup Manager position. However, due to a “slip in communication,” Anderson acknowledged that Knudsen was not informed that he was again the Startup Manager for the Grand Forks plant project until June 20, 2016. *Anderson Dep. 94:3-19, Hallam Aff. Exh. A.*

57. On June 7, 2016, Knudsen met with Lyle Schook at Knudsen’s request. Knudsen wanted Schook to understand that his Packaging Engineer position was “going really well . . . I was able to contribute and make a good impact.” Knudsen also wanted Schook to understand that he did not have the background to contribute at the appropriate level as the Startup Manager. *Knudsen Dep. 107:24-109:3, Hallam Aff. Exh. B.*

58. Schook did *not* tell Knudsen that he thought being a Startup Manager would make him a more productive packaging engineer. Schook also did *not* say that he thought it was a good idea for Knudsen to be the Startup Manager so he could gain some institutional knowledge of how Simplot worked. *Knudsen Dep. 114:9-115:4, Hallam Aff. Exh. B.* Instead, Schook told Knudsen during this meeting that he “never intended to put you [Knudsen] to be a full-time packaging engineer from the day I hired you.” *Knudsen Dep. 107:23-109:3, Hallam Aff. Exh. B.*

59. On June 20, 2016, Anderson informed Knudsen that Simplot wanted Knudsen to move back into the Startup Manager position. *Anderson Dep. 93:4-14, Hallam Aff. Exh. A.*

60. After Anderson reassigned the Startup Manager duties to Knudsen, Anderson and Knudsen met about the position. Knudsen told Anderson that he was not going to do the job of Startup Manager because working on a job like that stressed him out, had a very large impact on his family, and Knudsen did not want to go through with that again. *Anderson Dep. 87:23-89:13, Hallam Aff. Exh. A.*

Knudsen's Reports to HR and the Employee Hotline

61. After Schook admitted that Simplot had never intended to have Knudsen be a full-time engineer, Knudsen decided he had to escalate his concern to HR. He sent an email to Kayce McEwan, Vice President of Human Resources, on June 21, 2016. *Dep. Exh. 14; Knudsen Dep. 110:15-111:19, Hallam Aff. Exh. B; McEwan Dep. 21:8-17, Hallam Aff. Exh. E.* In his email to McEwan, Knudsen told her that he had:

Applied/interviewed/accepted an offer for a packaging engineering role in Caldwell. . . HP had been a great employer for 14 years, but I thought a change would be good for me. Simplot sold me on the packaging engineering role, and that's why I chose to leave my former employer. I was so excited to start a new career in the food industry, working for a local company that I highly respected.

On my first day, I was informed that my role had changed. I would not be doing 50% packaging engineering and 50% "Start-up Manager". I was very surprised about the start-up manager role as there was absolutely no mention of this before I took the job . . .

After 7 months (today), the new packaging engineering job is going well . . . I can foresee a terrific career with Simplot either in packaging or on a business team. Product management has always been an interest area.

The new startup manager job has been nothing short of a disaster . . . I'm expected to provide leadership for the new packaging equipment upgrade in Grand Forks, but have zero experience with this type of work AND I'm trying to learn another job at the same time.

. . . As I fear getting fired, I learned that this all depends on my performance as startup manager and not the job I interviewed for.

In the same heading discussion yesterday, I told my manager that I never would have left HP had Simplot been honest with me from the beginning. It's the truth – I have not interest, background or aspirations in the startup manager role. . . .

. . . I'm supporting a family and we have rooted ourselves firmly in Boise. My career is so specialized that if Simplot doesn't work out, we will most likely have to move. This all could have been avoided had Simplot been honest with me from the start.

QUESTIONS

Simplot misrepresented a job opening, enticed me to leave a career with a company for which I had 14 years of service, and I'm now at risk of losing my job completely. Simplot must have standards of business conduct, and surely this situation doesn't align . . . I fear that going to you with this issue will be the beginning of the end for me, and I don't want that to happen.

Are there any checks and balances to assure this type of thing doesn't happen to others?

Is it normal to ask a new hire to learn two completely separate jobs? Obviously every job has variations with lot so different projects/tasks/etc. This is different. I have two completely separate jobs with no overlap.

Thanks for your time. I want to have a successful career here, and am running out of options. I hope you can help.

Dep. Exh. 14.

62. After sending McEwan his email on June 21st, Knudsen heard nothing in response for three weeks and his job just got worse and worse. *Dep. Exh. 14; Knudsen Dep. 110:15-111:19, Hallam Aff. Exh. B; McEwan Dep. 22:13-19, Hallam Aff. Exh. E.* Knudsen finally called Simplot's hotline asking for help. It was after Knudsen's call to the hotline that McEwan finally responded to him. Knudsen told McEwan that he believed he was going to be fired by Anderson on Monday, July 11th. *Knudsen Dep. 112:6-18, Hallam Aff. Exh. B.*

63. The following Monday, Knudsen received a performance improvement plan ("PIP") "for a job I never wanted, that [Schook] had just admitted that he never had – that he lied to me about." *Id. at 113:6-11; Depo Exh. 16.*

64. Simplot has an anti-retaliation policy, which prohibits taking an adverse employment action against a person for filing a complaint with Simplot's employee complaint department or participating in the investigative process as a witness. Knudsen was promised that he would not be retaliated against for having made his complaint. *Knudsen Dep. 211:02-18,*

Hallam Aff. Exh. B; Dep. Exh. 11; McEwan Dep. 69:9-15, 114:7-10, Hallam Aff. Exh. E; Dep. Exh. 29 (Simplot Control No. 719, Section 4 “Rights of Employee).

65. The PIP was not appropriate. Knudsen had already been performing as requested in the PIP all along, and the PIP did not give specific measurables. As such, Knudsen believes the PIP was retribution for filing his complaint with HR and/or the employee complaint department, wherein he alleged that Simplot had misrepresented a job position in hiring him. *Knudsen Dep. 96:4-7; 97:1-12, Hallam Aff. Exh. B.* Regardless, Knudsen attempted to comply with the PIP. *Knudsen Dep. 158:3-162:1, Hallam Aff. Exh. B*

66. In addition to the PIP, management started questioning and harassing Knudsen. For example, Anderson questioned whether Knudsen was actually where his calendar indicated he would be. *Knudsen Dep. 146:15-147:3, Hallam Aff. Exh. B.* Additionally, Anderson started asking for more and more documentation and detail of what he was doing. For example, Anderson asked Knudsen to text him (Anderson) anytime Knudsen did anything outside his direct office, and Anderson started questioning things that used to be just normal. *Id.* at 148:3-22. Anderson was “chewing [Knudsen] out all the time.” *Id.* at 111:20-23. Knudsen felt like Anderson was “treating me differently than I had been treated in the past.” *Id.* at 149:24-150:1.

67. One week after Knudsen’s email to McEwan, Simplot posted a job opening for an Engineer 5 position. *Dep. Exh. 24.* Notably, according to the job description, this position “supports production efforts of the company/group by providing technical support to plant operating and maintenance department to work or manage projects to develop new or existing equipment, processes, instrumentation, and raw materials.” *Id.* The job description also notes that “providing technical oversight to construction & start-up activities” is one of the position’s

responsibilities. Nessen testified that the newer job description is more complete as to startup activities. *Nessen Dep. 73:22-74:10, Hallam Aff. Exh. F.*

68. On Friday August 5, 2016 at 11:09 am, Knudsen emailed a group of individuals, including Anderson, the startup workbook template (work in progress). *Dep. Exh. 27.* Later that day, Knudsen was placed on immediate, involuntary administrative leave to consider two options – sign a release of liability and receive 10-weeks’ severance or go back to work under the PIP and fulfill the Startup Manager role. *Knudsen Dep. 95:6-13, Hallam Aff. Exh. B.* He was also advised to seek counsel, which he did. *Id. at 165:22-166:3.*

69. Anderson, at the time Knudsen’s boss, was not informed that Knudsen was going to be put on administrative leave until after it happened. *Anderson Dep. 162:12-23, Hallam Aff. Exh. A.* Anderson’s impression was that Knudsen was put on administrative leave so that Simplot could look into Knudsen’s complaint. *Anderson Dep. 163:23-164:8, Hallam Aff. Exh. A.*

70. The lawyers for Simplot and Knudsen then communicated back and forth in an attempt to bring these issues to an amicable resolution. One of the counteroffers from Knudsen was for Simplot to “give me the role I interviewed for and I’ll come back and we can nip this in the bud and move on.” *Knudsen Dep. 166:17-18, 167:18-168:22, Hallam Aff. Exh. B.*

71. Knudsen was still hoping that Simplot would respond to the offer for him to return to Simplot as a packaging engineer when he was surprised to learn through T. Rowe Price, a retirement provider, that there had been a change in his employment status. *Knudsen Dep. 173:7-11, 212:11-213:20, Hallam Aff. Exh. B; Dep. Exh. 30.*

72. Knudsen later received a memo from Simplot dated September 7, 2016 indicating that he had been terminated retroactive to September 1st. *Knudsen Dep. 212:11-213:20, Hallam Aff. Exh. B; Dep. Exh. 61.*

73. Interestingly, it would surprise Anderson to find out that Knudsen was terminated, because Anderson, “as his boss, didn’t say that he needed to be terminated...” *Anderson Dep. 174:15-21, Hallam Aff. Exh. A*. No one talked to Anderson about terminating Knudsen. *Anderson Dep. 174:22-24, Hallam Aff. Exh. A*.

DATED this 22nd day of August, 2018

STRINDBERG & SCHOLNICK, LLC

/s/ T. Guy Hallam
Erika Birch
T. Guy Hallam
Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that on August 22, 2018 a true and correct copy of the foregoing pleading was served on the following via electronic mail and electronic filing system:

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Attorneys for Plaintiff

**IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA**

ERIK KNUDSEN,

Plaintiff,

vs.

J.R. SIMPLOT COMPANY, a Nevada
corporation,

Defendant.

**AFFIDAVIT OF T. GUY HALLAM IN
OPPOSITION TO DEFENDANT'S
MOTION FOR SUMMARY JUDGMENT**

Case No. CV01-17-13956

Judge: Deborah A. Bail

I, T. Guy Hallam, Jr., hereby being first duly sworn upon oath, declare and state the following based on my personal knowledge:

1. I am an attorney at Strindberg & Scholnick, LLC, attorneys of record for Plaintiff Erik Knudsen in the above litigation.
2. As outlined in the index below, attached hereto are true and correct copies of deposition transcripts, exhibits, and other documents and evidence cited to by Plaintiff in his

1 | **AFFIDAVIT OF T. GUY HALLAM IN OPPOSITION TO DEFENDANT'S
MOTION FOR SUMMARY JUDGMENT**

000251

Statement of Facts Opposing Defendants' Motion for Summary Judgment filed with the Court.

Exhibit A	Kent Anderson Deposition Testimony Excerpts
Exhibit B	Erik Knudsen Deposition Testimony Excerpts
Exhibit C	Tim Lalley Deposition Testimony Excerpts
Exhibit D	Craig Lamberton Deposition Testimony Excerpts
Exhibit E	Kacey McEwan Deposition Testimony Excerpts
Exhibit F	Laura Nessen Deposition Testimony Excerpts
Exhibit G	Rebecca Nichols Deposition Testimony Excerpts
Exhibit H	Lyle Schook Deposition Testimony Excerpts
Exhibit I	Jason Schwark Deposition Testimony Excerpts
Depo Exh. 6	10/30/15 Offer Letter to Erik Knudsen
Depo Exh. 8	11/30/15 Employee and Organizational Announcement
Depo Exh. 9	NAFG Start up Process Visual Levels 1 - 3
Depo Exh. 10	11/30/15 Memo Simplot to Grand Forks Packaging Upgrade Project Team Members Re: Communication Plan
Depo Exh. 11	07/07/16 Email Shaw to Knudsen Acknowledgment of receipt of complaint
Depo Exh. 14	07/08/16 Email McEwan to Knudsen, Shaw Re: help request
Depo Exh. 16	07/11/16 Erik Knudsen Performance Improvement Plan
Depo Exh. 20	06/05/15 Email Nichols to Knudsen Re: LinkedIn – Senior Packaging Engineer Position (#2664)
Depo Exh. 21	10/13/15 Email Nichols to Knudsen Re: JR Simplot Company - Interview
Depo Exh. 24	09/01/16 Engineer 5 (Food Group – Boise, ID)(Job ID 3388) Job Description
Depo Exh. 27	08/05/16 Email Knudsen to group Re: Startup Workbook NAFG –Template 05-5-16 (attached to email)
Depo Exh. 29	12/01/11 Complaint Process Policy Corporate Complaint Department
Depo Exh. 30	09/07/16 Email T. Rowe Price to Knudsen Re: Important Information about your Retirement Account Options

Depo Exh. 33	Senior Packaging Engineer (Food Group – Caldwell, ID)
Depo Exh. 54	Erik Knudsen CV submitted to Simplot
Depo Exh. 55	12/08/15 Email Knudsen to Teele Re: hey man!
Depo Exh. 61	09/07/16 Memo Pegram to Knudsen Re: Your Employment with the J.R. Simplot Company
Depo Exh. 68	FY15 Accelerated Performance Review HP – Erik Knudsen

3. I swear under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

FURTHER your Affiant sayeth naught.

DATED this 22nd day of August, 2018.

STRINDBERG & SCHOLNICK, LLC

T. Guy Hallam, Jr.
Attorneys for Plaintiff

SUBSCRIBED AND SWORN TO before me this 22 day of August, 2018.

Dunya Subasi
Notary Public in and for the State of Idaho

Residing at: BOISE

My Commission Expires: 1/29/24

CERTIFICATE OF SERVICE

I hereby certify that on August 22, 2018 a true and correct copy of the foregoing pleading was served on the following via electronic filing system:

Brian K. Julian
Andrea LaFontaine
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250 S. 5th Street, Ste. 700
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Boise, ID 83707-7426


Dunja Subasic

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

ERIK KNUDSEN,)
)
 Plaintiff,)
)
 vs.) Case No. CV01-17-13956
)
 J.R. SIMPLOT COMPANY, a)
 Nevada corporation,)
)
 Defendant.)
 _____)

DEPOSITION OF KENT ANDERSON

June 4, 2018

Boise, Idaho

Reported by:

Andrea J. Couch, CSR #716, RDR, CRR, CRC

1 PROCEEDINGS
 2
 3 KENT ANDERSON,
 4 a witness having been first duly sworn to tell the
 5 truth, the whole truth and nothing but the truth,
 6 was examined and testified as follows:
 7
 8 EXAMINATION
 9 BY MR. HALLAM:
 10 Q. Good morning, sir. We met right before
 11 this deposition. My name is Guy Hallam, and I'm
 12 one of the attorneys for the plaintiff in this
 13 matter.
 14 Will you state your full name and spell
 15 your last name for the record for us.
 16 A. Yep. Leonard Kent Anderson,
 17 A-n-d-e-r-s-o-n.
 18 Q. Okay. Mr. Anderson, I know your counsel
 19 has had a chance to go over the rules with you
 20 beforehand, but let me do that as well to make sure
 21 we're on the same page before we get started.
 22 First of all, do you understand that the
 23 oath that you've been placed under today has the
 24 same force and effect as if you were in a court of
 25 law?

[Page 5]

1 A. Yes.
 2 Q. Have you had your depo taken before
 3 today?
 4 A. Yes.
 5 Q. How many times?
 6 A. Just once.
 7 Q. What kind of case was it?
 8 A. It was a case between a supplier of ours
 9 and a supplier of theirs. You know, it was really
 10 on our supplier's behalf I was giving testimony.
 11 They -- they had supplied some conveyers
 12 to us. They had bought some head and tail rolls
 13 from a company that were breaking, and so anyway --
 14 Q. Okay. So Simplot was not a party in
 15 that case?
 16 A. No.
 17 MR. JULIAN: No.
 18 Q. (BY MR. HALLAM) Okay. Well, you
 19 probably, having been through the process, know
 20 some of the things we're about to talk about.
 21 But, again, just to make sure we're on
 22 the same page, even though the court reporter is
 23 taking down your testimony verbatim, it will be
 24 natural when I ask a "yes" or "no" question to
 25 shake your head or say "huh-uh" or "uh-huh." To

[Page 6]

1 the extent you can, I'd ask you to try and answer
 2 audibly with a "yes" or "no."
 3 Will you try that for me?
 4 A. Sure.
 5 Q. Thank you.
 6 If you don't, I'll correct you just to
 7 make sure the record is accurate, but I mean no
 8 disrespect in doing so. I just want to make sure
 9 that we get an accurate record.
 10 We take a break about every -- every
 11 hour or so because I drink a lot of water and that
 12 seems like a good time to take a break, about every
 13 hour or so. So if you need one beforehand, let me
 14 or your lawyer know, and that's fine. We can take
 15 one anytime. I would just ask that you answer any
 16 question that's been posed before we take a break,
 17 okay?
 18 A. Uh-huh.
 19 Q. Is that a "yes"?
 20 A. Yes.
 21 Q. Thank you.
 22 I have been known to ask an occasional
 23 question that doesn't make any sense, and so I need
 24 you to let me know if I ask you something that you
 25 don't understand or doesn't make sense to you.

[Page 7]

1 Will you do that?
 2 A. Yes.
 3 Q. That's important because if you answer
 4 my question, I'm going to assume that you
 5 understood it. So feel free, if you want me to
 6 state something in a different way, if you don't
 7 understand it, just let me know and I'll make sure
 8 that we're on the same page, okay?
 9 A. Yes.
 10 Q. Good.
 11 Do you agree that Erik Knudsen was hired
 12 by Simplot as a packaging engineer?
 13 A. Yes.
 14 Q. Do you agree that Erik was not told
 15 before his first day that he was going to be a
 16 startup manager at the Grand Forks plant?
 17 A. Yes.
 18 Q. Did you know that Erik was going to be
 19 the startup manager at the Grand Forks plant before
 20 he was interviewed?
 21 A. No.
 22 Q. Did you know that before he was hired?
 23 A. No.
 24 Q. When did you find out?
 25 A. It was probably around February 2016.

[Page 8]

1 project was approved we had a third party, but it
 2 ended up being Byron Smith, who is an internal
 3 person.
 4 Q. Okay. And when was Mr. Smith assigned
 5 that role of project manager?
 6 A. I don't recall.
 7 Q. Were you at Simplot when the Idaho plant
 8 was started up?
 9 A. Yes.
 10 Q. And would you agree that that startup
 11 didn't go well?
 12 A. Yes.
 13 Q. And because of that experience with the
 14 startup of the Idaho plant, Simplot did not want
 15 that to happen again, right?
 16 A. We for sure wanted a more successful
 17 startup than in Idaho, yes.
 18 Q. Sure. Okay.
 19 How big was the Idaho plant project?
 20 A. All -- all in when we were done,
 21 \$417 million.
 22 Q. All right. And the -- as a result of
 23 the Idaho plant startup, Simplot decided that it
 24 needed a process defined for the role of startup
 25 manager.

[Page 17]

1 Is that accurate?
 2 A. No, not necessarily. I mean, we -- we
 3 knew we needed to improve --
 4 Part -- part of the changes that were
 5 coming in is -- is when my boss, Lyle Schook, came
 6 in, he realized that we didn't have processes in
 7 place. I mean, Idaho maybe was a contribute --
 8 contributing factor, but I wouldn't say it was just
 9 Idaho. We just needed to grow and develop as an
 10 engineering team.
 11 And when Lyle came in, he had come from
 12 a background that -- working for Conagra
 13 particularly, and even at Kellogg's, they had a lot
 14 more formalized engineering processes. He had
 15 learned from the Procter & Gamble model, which
 16 included a startup process.
 17 So Lyle brought that with him and said,
 18 "Hey, I've seen this. I've seen it work. You
 19 know, we need to develop that and -- and do
 20 something here at Simplot."
 21 Q. When did Mr. Schook start at Simplot, if
 22 you remember?
 23 A. Roughly speaking --
 24 I mean, I just heard him say this
 25 morning four years ago. I -- I think it was

[Page 18]

1 January 2014.
 2 Q. So was the engineering startup process
 3 formalized before Erik Knudsen started?
 4 A. No.
 5 Q. So that wasn't just --
 6 Was the engineering startup process
 7 defined before Erik was put in the role of startup
 8 manager at Grand Forks?
 9 A. No.
 10 Q. Was Erik told that part of his job
 11 duties as the startup manager at Grand Forks was to
 12 define that engineering process for a startup?
 13 A. We asked him to help. As I recall,
 14 about the time that we made the assignment in
 15 February 2016, we asked that he be part of it.
 16 But we pretty quickly found out that,
 17 you know, we didn't know what we were doing and it
 18 was hard to have Erik do it. You know, he was new.
 19 He was new to our group. He was still trying to
 20 fit into our group.
 21 And so not soon after we asked him to do
 22 that, we -- we said, "Hey, let us work on this a
 23 little bit longer, see if we can develop this
 24 process a little bit more before you do it."
 25 So soon after we had assigned it to him,

[Page 19]

1 we -- we kind of took it back and -- and decided we
 2 needed to work on our process some more.
 3 Q. When did that happen?
 4 A. When did what happen?
 5 Q. When did you or someone take that
 6 assignment away from Erik and take back determining
 7 the process?
 8 A. As I recall, it was around the
 9 February time frame. It was not long after we had
 10 made the request that he help us out. It was only
 11 a meeting or two after that we realized we didn't
 12 have a -- a good process in place and it was going
 13 to take some work for us to develop the process
 14 and -- and put some forms and templates together.
 15 Q. And just so that we're clear, when you
 16 say that you made the request that Erik help you
 17 out, you're referring to the startup manager
 18 position at Grand Forks?
 19 A. Startup manager position along with
 20 helping us to develop the process.
 21 Q. Okay. Was it a request or was he told
 22 that that's what he was going to do?
 23 A. You know, when -- when we -- when we're
 24 given assignments, you know, I --
 25 I don't -- I'm not an authoritative

[Page 20]

1 person and say, "Hey, you -- you will do this."
 2 You know, we're working in a team environment.
 3 We're all part of a team and we're all part of, you
 4 know, working together to -- to accomplish
 5 something.
 6 So we asked him to do it.
 7 Q. Did he have an option to turn that down?
 8 A. He -- he did not turn it down. You
 9 know, I looked at this as being a training
 10 opportunity to help him learn packaging. So if he
 11 would have said, "I don't want to do that," that --
 12 that would have been --
 13 I don't know. He -- he didn't say,
 14 "I don't -- I don't want to do that," so I can't
 15 say that we would have had an option or not, that
 16 there was nothing ever brought up.
 17 Q. Did you tell him that he had the option
 18 to turn down the startup manager position at the
 19 Grand Forks plant?
 20 A. No.
 21 Q. So it was pretty clear to him, based
 22 upon your interaction with him, that this was
 23 something that he had to do, be the startup manager
 24 at Grand Forks?
 25 MR. JULIAN: I need to object. I'm not sure

[Page 21]

1 he can talk to Erik's state of mind.
 2 Q. (BY MR. HALLAM) I was asking: Based
 3 upon your interaction and what you said to him, was
 4 it clear to Erik that he needed to do this startup
 5 manager position?
 6 MR. JULIAN: Same objection.
 7 THE WITNESS: No.
 8 Q. (BY MR. HALLAM) So you think he could
 9 have said, based upon what you told him about the
 10 startup manager position, "No, I don't want to do
 11 that, Mr. Anderson"?
 12 That was -- that was an option for him?
 13 A. Can you state that again, please?
 14 Q. Sure.
 15 I'm just trying to understand because I
 16 don't understand it. I'm trying to understand
 17 whether, based upon how you presented this to Erik,
 18 if he had the option to say, "No, I don't want to
 19 be the startup manager."
 20 A. We would have talked about it. If he
 21 would have said, "I don't want to be the startup
 22 manager," it would have ensued a conversation.
 23 I -- I can't say, you know, because
 24 those conversations didn't take place, whether we
 25 would have or not.

[Page 22]

1 Q. Didn't he tell you after he was assigned
 2 the startup manager position that he didn't have
 3 any knowledge about how to start up a food
 4 packaging line?
 5 A. He may have, but even if he did, you
 6 know, we weren't going to let him fail.
 7 This was a training opportunity. This
 8 is a chance for him to learn. We wouldn't have
 9 said, "Hey, you're -- you're in this all by
 10 yourself. Hey, Erik, you're on an island. You're
 11 the startup guy. If you screw up, it's on you."
 12 That -- that would have never happened ever.
 13 In fact, the guy we ended up assigning
 14 the startup manager after he left was a junior guy.
 15 Extremely junior. Made half the salary as Erik.
 16 No leadership skills. He did phenomenal. He was a
 17 phenomenal startup manager. He did great.
 18 Q. I appreciate all of that, sir, but I
 19 don't think you answered my question.
 20 My question was: Did Erik tell you
 21 after he was assigned the startup manager position
 22 that he didn't have any knowledge about how to
 23 start up a food packaging line?
 24 A. I don't recall. He may have.
 25 Q. Didn't he express concerns to you that

[Page 23]

1 he was in over his head with the startup manager
 2 position because of his lack of experience?
 3 A. Not necessarily the position, that I
 4 recall. I -- I recall the conversation about him
 5 struggling with developing a process. That's why
 6 we pulled it back.
 7 Now, let's talk about timing here a
 8 little bit, too. When -- when -- I mean, because
 9 timing is important here. You know, was it in
 10 February or was it in June or, you know, is it in
 11 July?
 12 Do you have a time frame?
 13 Q. Well, why is timing important to you?
 14 A. Because it's in context for how we
 15 were -- how we were evolving here.
 16 So if it was in February, if Erik came
 17 and said, "Hey, I'm uncomfortable doing this. I'm
 18 over my head. I don't know what to do," you know
 19 what? We took care of it. Said, "Fine. We're not
 20 going to have you do that right now. We're going
 21 to work on the process."
 22 Q. Okay. And you specifically remember
 23 those conversations?
 24 A. I specifically remember that he did not
 25 feel like he was adding any value, he was over his

[Page 24]

1 head, and he didn't know what to do. That's why we
 2 pulled it back. We needed to work on our process
 3 some more.
 4 Q. Are you sure that you didn't have those
 5 conversations with him in November of 2015?
 6 A. Positive.
 7 Q. Wasn't he in that role as the project
 8 manager in November of 2015, December of 2015?
 9 A. He was never a project manager.
 10 Q. I'm sorry. I said project manager
 11 instead of startup manager.
 12 A. I'm listening.
 13 Q. I appreciate that. So let me ask that
 14 question again the right way.
 15 Wasn't he in the role as startup manager
 16 in November or December of 2015?
 17 A. No, he was not.
 18 Q. And Erik had no prior startup manager
 19 experience.
 20 Is that right?
 21 A. I don't know. I don't know that we
 22 asked him, but he had been a program manager for
 23 HP. That was part of his selling point in his
 24 interview, that he had this leadership experience
 25 running a -- running a large project that would

[Page 25]

1 involve startup.
 2 Q. But you -- you already told me that
 3 project manager and startup manager are not the
 4 same thing, right?
 5 A. They're not the same role, per se, but a
 6 project manager would be involved in startup.
 7 Q. Sure. But it's different job duties?
 8 A. Conceivably. I mean, they are differ --
 9 they are some different functions. A project
 10 manager has some additional duties, but it
 11 encompasses a -- a startup manager.
 12 A start -- a project manager is
 13 responsible for the whole project, including
 14 startup.
 15 Q. Is it your testimony that the first time
 16 Erik was told he was going to be the startup
 17 manager at Grand Forks was February 2016?
 18 A. I don't recall. I -- I really don't
 19 recall exactly when the conversation happened.
 20 This much I do know. The project was
 21 approved February 23rd, 2016. We may have talked
 22 about, you know, what roles some people might play,
 23 but the project wasn't officially approved yet
 24 until February 23rd.
 25 And we wouldn't likely officially move

[Page 26]

1 forward with a number of those assignments until we
 2 knew that that was going to occur. Startup is on
 3 the tail end of the project, so they're not
 4 typically the first assignments or roles that we're
 5 filling out either.
 6 But that's not to say that we hadn't
 7 maybe potentially had some conversations about who
 8 could potentially fill the role.
 9 Q. And, again, when you say "we," you're
 10 not talking about conversations that you would have
 11 had with Erik, right?
 12 A. No.
 13 Q. You're talking about conversations that
 14 you and the leadership team about -- had about who
 15 you were going to assign?
 16 A. Correct. Who were possibilities.
 17 Again, we're not deciding for sure, especially
 18 before a project is approved. We're not going to
 19 say, "This person is going to be the startup
 20 manager." We don't even have an approved project
 21 yet.
 22 Ahead of that date, it would have been
 23 just, "What are some possibilities? Just throw out
 24 some ideas. What -- what could we do here?"
 25 Q. Didn't you have a pretty good sense,

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1 though, before February of 2016 that the project
 2 was going to be approved?
 3 A. You can never guess with our board of
 4 directors and our executives. I mean, yeah. It
 5 was a good project. To -- to us, it appeared to
 6 have a good payback, some good justification, but
 7 we don't understand cash flow and, you know, where
 8 they want to put their money, what else is going on
 9 in the company. We don't know.
 10 I've seen us get to the end of
 11 engineering projects and things that I think are
 12 going to go and they don't.
 13 Q. You were Erik's supervisor, right?
 14 A. After --
 15 Not right when he hired. I was not his
 16 hiring manager.
 17 Q. Okay.
 18 A. But I did become his supervisor
 19 somewhere in the middle of December.
 20 Q. Okay. Do you want to look at Exhibit 8
 21 in that binder in front of you, sir?
 22 A. Uh-huh.
 23 Q. Do you have in front of you a document
 24 that's entitled "Interoffice Communication" date --
 25 dated November 30, 2015?

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1 A. Yes.
 2 Q. And do you see that announces Erik's
 3 hiring the week before?
 4 A. Yes.
 5 Q. And a couple paragraphs down, it notes
 6 that he will report directly to you.
 7 Do you see that?
 8 A. Yes.
 9 Q. Okay. So that occurred -- the
 10 assignment -- or he was in your chain of command,
 11 was it officially November 30 or was it when Craig
 12 Lamberton left December 16?
 13 A. According to this letter, it says
 14 December 16th. And when -- when Craig left is when
 15 we made the shift in our organization.
 16 Q. Okay. Did you know as of November 30
 17 that Erik was going to be the project manager at
 18 Grand Forks?
 19 A. He was never the project manager at
 20 Grand Forks.
 21 Q. I keep saying that. I'm sorry.
 22 Did you know as of November 30 that Erik
 23 was going to be the startup manager at Grand Forks?
 24 A. No.
 25 Q. And so as part of your supervisory role

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1 with Erik, you were responsible for seeing what he
 2 did on a day-to-day basis.
 3 Is that correct?
 4 A. That's correct.
 5 Q. And so in between November 23rd, 2015,
 6 and February 23rd, 2016, he was solely working as a
 7 packaging engineer?
 8 A. That's --
 9 To -- to my recollection, that's true.
 10 Q. Okay. So if you look at a couple of
 11 documents back, Exhibit 10, do you see a
 12 communication related to the Grand Forks packaging
 13 upgrade project dated November 30, 2015?
 14 A. Well, I don't know if I would call it a
 15 communication. It is a communication plan.
 16 Q. Okay.
 17 A. Something that somebody was filling out,
 18 an engineering work flow template with some
 19 potential names.
 20 Q. Who created that document?
 21 A. I have no idea.
 22 Q. Do you see your name at the top?
 23 A. Yes.
 24 Q. And you were the director of technical
 25 engineering as far as the Grand Forks packaging

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1 upgrade?
 2 A. That's my functional title.
 3 Q. Did you perform that role at Grand
 4 Forks?
 5 A. That's my functional title. I work that
 6 every day. That's my -- that's my -- that's my
 7 official job title.
 8 Q. Okay. What were your responsibilities
 9 with regards to the Grand Forks plant upgrade?
 10 A. Before or after December 16th?
 11 Q. Let's start with before.
 12 A. Nothing.
 13 Q. Okay. Let's start with -- then let's go
 14 to after.
 15 A. I was Erik's boss. I had Michael
 16 Whiting working for me. I helped provide technical
 17 insight and I led --
 18 We had a technical engineer on our
 19 project, a guy named Tim Veerkamp. He was our
 20 technical engineer. I relied on him to -- to work
 21 on the technical details of -- of the project.
 22 Q. What technical insight did you provide?
 23 A. Just working on, you know, how are we
 24 going to select equipment to how are we going to
 25 specify equipment, how are we -- you know, what --

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1 what -- what the layout's going to be. Just how
 2 are we going to interact with management, how are
 3 we going to -- how are we going to put this project
 4 together.
 5 Keep in mind, we hadn't -- we hadn't
 6 even submitted the project for approval on
 7 December 16th, so we're putting together all of our
 8 project documentation to submit a project.
 9 Q. Was this communication plan part of that
 10 documentation?
 11 A. No.
 12 Q. What role, if any, did the communication
 13 plan play in the project?
 14 A. Well, it --
 15 At this point in the project, nothing.
 16 Q. So why is Erik's name on here as the
 17 startup manager on November 30, 2015?
 18 A. I have no idea.
 19 Q. Who was considering him as of
 20 November 30, 2015, as the startup manager?
 21 A. I can't answer that. I didn't write the
 22 document, nor was I part of writing the document.
 23 Q. But somebody put him in here as startup
 24 manager, right?
 25 A. Somebody wrote his name on a template

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1 that is called a communication plan. It -- it --
 2 it's not a job project organization chart. It's a
 3 communication plan. Somebody was filling it out.
 4 But, yeah, somebody wrote his name down.
 5 I have no idea how or why or who.
 6 Q. Did you have any conversations as part
 7 of the leadership team who was assigning roles to
 8 the Grand Forks project prior to November 30, 2015?
 9 A. No.
 10 Q. So that -- that's confusing to me, and I
 11 need you to help me because I don't understand
 12 if --
 13 Well, let me ask you this: Did the
 14 leadership team have, to your knowledge,
 15 conversations about who was going to be assigned a
 16 role at Grand Forks without you before November 30,
 17 2015?
 18 A. I was part of the leadership team, so,
 19 no, we did not communicate.
 20 If they -- if they communicate -- if
 21 they were talking amongst themselves about putting
 22 something together, it -- I was not a part of it.
 23 Q. Okay. So how does Erik's name end up as
 24 startup manager on November 30, 2015 --
 25 A. I have no idea.

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1 Q. -- if the leadership team hadn't had
 2 those discussions yet?
 3 A. Good question. I have no idea.
 4 Q. Who could answer that question for me?
 5 A. I have no idea. You -- if you find out
 6 who wrote this document, we can ask them.
 7 Q. And you have no idea who wrote this
 8 document?
 9 A. I have no idea.
 10 Q. So between November 30, 2015, and
 11 February 23rd, 2016, was Erik doing anything as a
 12 startup manager at Grand Forks?
 13 A. I don't -- I don't know if February 23rd
 14 is when we had the conversation about --
 15 I -- I don't know that exact date. But
 16 to my knowledge, from November 30th to that
 17 February time frame that we asked him to take on
 18 that role, he, to my knowledge, did nothing as part
 19 of the Grand Forks startup role.
 20 Q. And you said that the project wasn't
 21 approved until February 23rd of 2016, right?
 22 A. That's correct.
 23 Q. So based upon your earlier testimony, no
 24 work could actually go on with regards to that
 25 project until it was approved, right?

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1 A. Well, I didn't say that no work could go
 2 on. We're working on the project.
 3 But I said that it would -- it is
 4 unlikely that we would have moved forward in making
 5 plans around startup before the project was
 6 approved.
 7 Q. So as soon as --
 8 It's -- it's your general practice at
 9 Simplot that you would not move forward in making
 10 plans around the startup until it's approved?
 11 A. I wouldn't categorize it as general
 12 process. I -- it -- it just doesn't make sense.
 13 Q. I said "general practice."
 14 A. I don't know that we have a general
 15 practice of when certain assignments are made.
 16 Q. So with regards to the Idaho plant, when
 17 that project was going on, did Simplot move forward
 18 in making plans around the startup before or after
 19 the approval of the project?
 20 A. Probably after we started it up, but it
 21 was well after.
 22 Q. Okay. And in the current \$390 million
 23 project that you're the project manager on, did you
 24 make assignments or start moving forward with
 25 assignments before or after that project was

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1 approved?
 2 A. What kind of assignments?
 3 Q. Who was going to be the startup manager,
 4 for example?
 5 A. No. I still don't have a startup
 6 manager.
 7 Q. Okay. Did you do a performance
 8 evaluation for Erik for the two months that he
 9 worked in 2015?
 10 A. I don't recall.
 11 (Deposition Exhibit No. 32 was marked.)
 12 Q. (BY MR. HALLAM) Sir, you've been handed
 13 what's been marked Exhibit 32. Do you see at the
 14 top it's an Appraisal Expanded Version for Erik
 15 Knudsen?
 16 A. Uh-huh. Yes.
 17 Q. Is that a --
 18 Would you consider that a performance
 19 evaluation?
 20 A. Yes.
 21 Q. Is that your name at the first page of
 22 that document as the manager?
 23 A. Appears to be.
 24 Q. Did you complete that document for Erik
 25 Knudsen?

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1 a purchase of a bag sealer to taking the lead as
 2 the startup manager for the Grand Forks packaging
 3 project."
 4 A. Yes.
 5 Q. Did I read that correctly?
 6 A. Yes.
 7 Q. So when did those things occur?
 8 A. I -- I don't know for sure, but, like I
 9 pointed out, if -- if that date -- if that date is
 10 the stamp of when it got put in the system, this
 11 could have -- this conversation could have taken
 12 place in March.
 13 Q. Okay. Had you already --
 14 But in March, you'd already taken away
 15 the work as startup manager on the process, right,
 16 from him?
 17 A. We had asked -- we had asked him that --
 18 We told him that we would work on
 19 developing the process. It was still on our intent
 20 to have him be the startup manager, but he wasn't
 21 working on the work flow portion of the startup.
 22 We had to develop, you know, what it
 23 meant to be a startup manager, what tools were
 24 going to be developed, what process flow we were
 25 going to do. We had taken that piece away from

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1 Erik.
 2 As you pointed out earlier, we had asked
 3 him to help with that. He felt overwhelmed, that
 4 portion of it, that startup piece. We -- we said,
 5 "Erik, we'll -- we'll work on the startup process,
 6 the templates and the forms, the tools."
 7 Q. So when you took that back from Erik's
 8 list of things he was supposed to be working on,
 9 did you leave him working on anything related to
 10 Grand Forks?
 11 A. You know, my memory is a little fuzzy
 12 about when exactly some things occurred. I do know
 13 that the one aspect of startup is training, and we
 14 may have left that with him. I don't recall.
 15 I do know -- I do know for a fact
 16 because we've seen some documents that in April, he
 17 was working on some training exercises associated
 18 with the project. I don't recall if in February,
 19 you know, we had said, you know, "Cease and desist
 20 on everything," and when -- when we gave him the
 21 training piece back.
 22 But somewhere between that February time
 23 frame and April, we must have talked to him about
 24 doing some coordination of training activities as
 25 part of the project.

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1 Q. But you don't know when that occurred?
 2 A. No.
 3 Q. Do you have any notes that you could
 4 look at to help refresh your recollection?
 5 A. No.
 6 Q. Are there any documents that you could
 7 look at to help refresh your recollection?
 8 A. No.
 9 Q. Is there anyone you could talk to about
 10 that issue to help you refresh -- refresh your
 11 recollection?
 12 A. I could ask people, yeah.
 13 Q. Who would you ask?
 14 A. Maybe Byron Smith, the project manager;
 15 other -- other people in the engineering leadership
 16 team.
 17 Q. Could you ask Erik?
 18 A. Possibly.
 19 Q. Okay. So as of March 2016, are you
 20 saying that he was the startup manager for the
 21 Grand Forks project?
 22 A. Yeah.
 23 Q. And that was his title --
 24 A. Start --
 25 Q. -- beginning February of 2016?

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1 A. What -- what do you mean by "title"?
 2 Q. Startup manager.
 3 A. On the project? Sure. His job title
 4 was not startup manager. His job title, he's a
 5 packaging engineer.
 6 Q. Right.
 7 A. But on the project, yeah.
 8 Q. Okay. How much of his time in
 9 February was he spending as a packaging engineer as
 10 opposed to as a startup manager?
 11 A. Mostly packaging engineer.
 12 Q. Okay. What about March?
 13 A. Mostly packaging engineer.
 14 Q. April?
 15 A. Same.
 16 Q. May?
 17 A. Same.
 18 Q. June?
 19 A. Same.
 20 Q. July?
 21 A. Same.
 22 Q. So it's your testimony that between
 23 February 2016 and July 2016, most of his time
 24 should have been spent as a packaging engineer?
 25 A. Correct.

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1 might have been a little longer.
 2 Q. What about numerous meetings regarding
 3 the design of startup manager engineering work
 4 flow? How many meetings were those?
 5 Do you know?
 6 A. I don't.
 7 Q. Okay. As you sit here, do you know how
 8 much time Erik spent on the Grand Forks packaging
 9 upgrade in June of 2016?
 10 A. I don't.
 11 Q. Do you know how much of the time was
 12 split between Grand Forks and packaging engineering
 13 work in June of 2016?
 14 A. I don't know necessarily, which was part
 15 of further communication that happened in July is
 16 we realized that this was a good start, as Erik
 17 pointed out in the e-mail, "Just taking a first
 18 shot at better documentation -- documenting my work
 19 for you."
 20 This was the first shot when we rolled
 21 around to July and realized, "You know what? We
 22 need a little bit more information here, like what
 23 are -- what are some timelines or schedules or
 24 those type of things."
 25 So, you know, based on this

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1 communication, I -- I don't know how much time.
 2 Q. Okay. So you'd rely on Erik's
 3 documentation or recollection as to how much he was
 4 working on the Grand Forks versus packaging?
 5 A. Yeah.
 6 Q. Okay.
 7 A. That was one of them. You know, I would
 8 also talk to Jason and Tim, and I would also talk
 9 to Byron. So between the -- the three, try to come
 10 together on an understanding of what the level of
 11 effort was.
 12 Q. Okay. And as you sit here today, do you
 13 know what his split was in June of 2016?
 14 A. I don't. I don't.
 15 Q. Did you view this document that --
 16 spreadsheet that Erik prepared as a good way to
 17 document his work?
 18 A. It was a start. Like I say, there were
 19 some holes and gaps that still didn't, you know,
 20 produce enough for me that we talked later on about
 21 providing timelines and schedules and what was the
 22 deliverable --
 23 Q. Sure.
 24 A. -- that he was producing.
 25 Q. Sure. I didn't ask my question very

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1 well, though.
 2 And as of June 20, 2016, he was trying
 3 to do what you'd asked him to do, right --
 4 A. Yeah.
 5 Q. -- provide you with some insight as to
 6 what he was working on?
 7 A. Absolutely.
 8 Q. Okay. So this was a good first shot?
 9 A. Sure.
 10 Q. Okay.
 11 (Deposition Exhibit No. 36 was marked.)
 12 Q. (BY MR. HALLAM) Sir, you've been handed
 13 what's been marked Exhibit 36.
 14 Do you see at the top it's an e-mail
 15 from you to Laura Nessen and Lyle Schook dated
 16 June 23rd, 2016?
 17 A. Yes.
 18 Q. You wrote that?
 19 A. I did.
 20 Q. Do you remember writing that?
 21 A. Absolutely.
 22 Q. Why did you write it?
 23 A. Because we had a meeting on June 22nd
 24 that -- probably a meeting I'll never forget.
 25 Q. Why do you say that?

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1 A. Because the interaction was something I
 2 never would have expected from -- from someone.
 3 Q. What do you mean?
 4 A. Well, you know, as the -- as the
 5 document states, you know, it was around that time
 6 frame that our startup process was developed, so we
 7 gave him the startup process and -- and templates.
 8 And then what really prompted the
 9 meeting on the 22nd, as this states, is that I had
 10 gotten word from Jason and Tim that Erik said that
 11 he would not be able to help out with any packaging
 12 material projects because he was going to spend too
 13 much time on -- on the Grand Forks startup
 14 activities.
 15 And so I went in to have a discussion
 16 about that because that wasn't my understanding.
 17 And so, you know, I went in to understand that.
 18 And at the beginning of the -- near the
 19 beginning of the meeting as we were talking, you
 20 know, Erik got heated and said, "I am not going to
 21 do that fucking job," and, "I am not going to be
 22 the startup manager, and I totally understand the
 23 ramifications of that," and -- and handed me the
 24 startup work flow and the processes and, you know,
 25 basically told me he was not going to do the job in

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1 very strong terms.
 2 Q. Okay. Did he tell you why?
 3 A. Yeah. He --
 4 In fact, I document it right here.
 5 He said that working on a job like that
 6 stressed him out. He admitted that that particular
 7 job he told us about in -- in China for HP, that
 8 that job, he hated it, hated every minute of it.
 9 It stressed him out; that it, you know, had a very
 10 large impact on his family, and he didn't want to
 11 go through that again and --
 12 Yeah. Just said he didn't want to do
 13 it.
 14 Q. Okay. What did you tell him?
 15 A. You know, I really tried to, you know,
 16 calm the situation down; understand, you know,
 17 where he was coming from. You know, it -- to me,
 18 it was -- it was a heated discussion that we
 19 weren't going to get too many places with at that
 20 time.
 21 I don't recall, you know, all the
 22 things. I know there was some back-and-forth
 23 questions to understand why, but I -- but I even
 24 believe I mention in here that -- that I said,
 25 "Hey, let's cool off and reconvene on -- on Friday

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1 to talk about this." You know, just make sure it's
 2 not a heat-of-the-moment discussion.
 3 Q. You were heated also in that
 4 conversation, weren't you?
 5 A. I was not heated during most of the
 6 conversation. I did get a little perturbed at the
 7 end of the conversation.
 8 Q. Did you tell him he needed to grow a
 9 sack?
 10 A. No. I said he needed to grow a pair.
 11 Q. Oh, okay.
 12 A. Yeah.
 13 Q. That's a similar -- similar --
 14 A. Similar but misquoted, yeah.
 15 Q. Okay. I'm sorry. I didn't mean to
 16 misquote you there.
 17 A. And that was -- that --
 18 Q. What did you mean when you said he
 19 needed to grow a pair?
 20 A. Well, the reason I was perturbed is, you
 21 know, mind you, I just listened to one of my
 22 employees tell me that he wasn't going to do the
 23 fucking job, and I didn't react.
 24 And when I got up to leave, he asked,
 25 "Why are you always picking on me?" And that's

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1 when I said, "If you think I'm picking on you, you
 2 need to grow a pair." Because I wasn't picking on
 3 him.
 4 Q. Well, what did you mean by that?
 5 A. To grow a pair?
 6 Q. Yeah.
 7 A. Yeah, put on your big boy breeches. You
 8 know, I am not picking on you. I am trying to help
 9 you, and if you think I'm picking on you, after --
 10 after that reaction that you gave me, that I didn't
 11 fire you on the spot, that I said, "Hey, let's just
 12 cool down, let's come back and talk about it and
 13 make sure you understand, you know, what we're
 14 talking about here and the ramifications," you
 15 know, I -- I felt like I was being more than fair.
 16 And for me, when I'm walking out for him
 17 to say, "Why are you always picking on me?" I
 18 didn't feel like I was picking on him.
 19 So you know what? "Just buck up and get
 20 some tough skin, dude. Grow a pair."
 21 Q. So it looks like that Erik was not told
 22 officially, based upon Exhibit 36, that he was
 23 taking the role of startup manager again, right --
 24 A. No. He --
 25 Q. -- until shortly before --

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1 A. Exhibit 36 being what?
 2 Q. -- your meeting with him.
 3 A. Sorry.
 4 Q. That's all right.
 5 So if you look at the bottom, the bottom
 6 paragraph on the first page, you say, "In
 7 discussions with Byron, there was no official
 8 communication about Erik taking the role of startup
 9 manager again more than just training."
 10 A. Sorry. What -- what paragraph are you
 11 on?
 12 Q. The last one.
 13 MR. JULIAN: At the very bottom.
 14 THE WITNESS: Okay.
 15 Q. (BY MR. HALLAM) The first sentence of
 16 the last paragraph.
 17 A. So, yeah, it's in context here. So Erik
 18 continued to attend team meetings; however, he
 19 continued to admit that he felt bad because he felt
 20 like he added no value. The startup plan was
 21 presented to the engineering leadership team on
 22 June 1st. At that time -- at that time, much more
 23 of the activities around startup were defined and
 24 we felt that we could transfer it back to Erik.
 25 Somewhere between June 1st, which is

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1 when the startup plan was presented, and our
 2 meeting on June 22nd, we asked him to do it and we
 3 had given him the startup plan.
 4 Q. If you look at the second page, you say
 5 in the second paragraph, "I had a meeting with Erik
 6 on Monday, June 20th" --
 7 A. Yes.
 8 Q. -- "where I shared with him that we
 9 wanted him to be the startup manager."
 10 A. Correct.
 11 Q. Okay. So on June 20th, you told him
 12 that you wanted him to do the startup manager
 13 position again?
 14 A. That's correct.
 15 Q. Okay. And that's what led to the
 16 conversation with him on the 21st.
 17 Is that fair to say?
 18 A. The 20 -- 22nd.
 19 Q. The 22nd. That was the heated
 20 conversation on the 22nd?
 21 A. Correct.
 22 Q. Okay. Sorry. I got the wrong date
 23 there.
 24 Did Erik tell you on the 22nd or the
 25 20th that he didn't believe he was being put back

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1 into that startup manager position?
 2 A. I don't recall that.
 3 Q. But apparently, on June 1st, he was
 4 officially put back in the startup manager
 5 position, but no one told him until the 20th?
 6 A. Well, I don't know about officially.
 7 Must not have been officially if no one told him.
 8 June 1st, there was a meeting where the
 9 startup plan was -- was presented to the team, but
 10 we probably had a slip in communication and did
 11 not -- likely didn't tell him.
 12 And that's why I did it on June 20th.
 13 Q. Okay.
 14 A. "Officially, our plan is in place now.
 15 We would like you to do it."
 16 Q. Whose slip in communication was that?
 17 A. It could have been mine or Byron's.
 18 Q. Or both?
 19 A. Or both.
 20 Q. So if you go back to the first page, you
 21 say on the second paragraph, "When Erik was hired
 22 to fill an open position in November/December of
 23 2015, it was meant to be a dual role, both
 24 packaging materials and operational packaging."
 25 A. Correct.

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1 Q. Do you see that?
 2 A. Yep, which is --
 3 Q. When was Eric told that?
 4 A. Well, it was in the job announcement as
 5 well, the previous exhibit you showed us. The job
 6 announcement, November 30th.
 7 Q. I thought you said he wasn't hired for
 8 that one.
 9 A. He was hired as an operate -- it wasn't
 10 startup. It was operational.
 11 So Craig Lamberton, when he was with
 12 the -- when he was with the company --
 13 When we say "materials," you know, we're
 14 talking about film, corrugated. "Operational"
 15 means a little bit more of the equipment, like the
 16 baggers and the case packers. When Craig was with
 17 the company, Craig knew both operational and
 18 packaging materials. When we --
 19 We knew we were going to lose Craig and
 20 we knew we didn't have a 100 percent workload for
 21 somebody to -- a new employee to come in and work
 22 on packaging materials and we had a need for the
 23 equipment side of things. And that's what the
 24 intent was all along for this person, to work on
 25 both the equipment and the materials.

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1 Q. Okay. But based upon your earlier
 2 testimony, Erik wasn't told that that was the
 3 intent until February of 2016.
 4 A. Well, I believe that if you go back and
 5 look at my testimony, it wasn't about the
 6 operational part. It was about the startup
 7 manager. Startup manager and operational could be
 8 two different things.
 9 Q. Okay. Okay. I didn't understand that.
 10 So when you refer to it being a dual
 11 role of packaging materials and operational
 12 packaging, you're saying that he was told before
 13 February of 2016 that it was going to be a dual
 14 role?
 15 A. Correct.
 16 Q. Who told him that?
 17 A. It was --
 18 I -- I don't recall. I -- I wasn't the
 19 hiring manager. I wasn't involved until
 20 December 16th. But it was part of the job
 21 announcement. I don't know who -- who explained
 22 that to him. I don't.
 23 Q. Okay. Who explained to him that he was
 24 going to be spending half time packaging materials?
 25 A. I don't know that we ever said it was

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1 going to be half time packaging materials. It's
 2 a -- it's an ever-evolving --
 3 Depends on the projects that are coming
 4 in.
 5 Q. When you were part of the interview
 6 panel with Erik, did you tell him that the work he
 7 was going to be doing if he was hired would depend
 8 on the projects coming in?
 9 A. I don't recall. I wouldn't have said it
 10 myself anyway in the interview.
 11 Q. Did anyone say that?
 12 A. I don't recall.
 13 Q. Do you think that's something someone
 14 should have told him?
 15 A. Sure.
 16 Q. So back to Exhibit 36, when you say, "We
 17 have not developed a detailed job description for a
 18 startup manager or even a process to follow when
 19 putting together a startup plan," was that true in
 20 June of 2016?
 21 A. We had a process in place in June.
 22 According to this e-mail, June 1st it was
 23 presented.
 24 Q. Okay. Was there a detailed job
 25 description for a startup manager as of June 1?

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1 A. I don't -- I don't know. "Detailed job
 2 description" is probably not the best of words
 3 there. It's not --
 4 Startup manager is not a job, but
 5 understanding what your roles and responsibilities
 6 might be --
 7 And I do believe we had a document that
 8 stated roles and responsibilities, including the
 9 one exhibit you showed me earlier with the startup
 10 work flow.
 11 Q. Is there a job description for startup
 12 manager at Simplot?
 13 A. No. There -- it's not a job. Startup
 14 manager is not a job within Simplot.
 15 Q. Then why did your e-mail say, "We have
 16 not developed a detailed job description for a
 17 startup manager"?
 18 A. I would have -- my intent of that would
 19 have been around, you know, "What -- what is it
 20 that a person should do as part of that role?"
 21 It's a poor choice of words in the
 22 strict sense of an HR job description.
 23 Q. So was Erik upset when you met with him
 24 to find out that apparently he'd been put back in
 25 the role of startup manager June 1, 2016, and no

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1 one had told him until 20 days later?
 2 A. I don't know that he was --
 3 Well, according to this, we didn't tell
 4 him June 1st that he was back in as the full
 5 startup manager.
 6 Q. I didn't ask my question very well.
 7 Was he upset in the conversation with
 8 you to find out that he'd been put in the position
 9 of startup manager again June 1 and no one told him
 10 until 20 days later?
 11 A. No.
 12 Q. He wasn't?
 13 A. I -- I don't understand your question,
 14 frankly.
 15 Q. Was that part of why you had a heated
 16 discussion, that he'd been put back in this
 17 position 20 days earlier and no one told him he was
 18 put back in the position?
 19 A. I can't -- I can't answer why he was
 20 heated.
 21 Q. He didn't tell you that?
 22 A. Other than what he said, that he didn't
 23 want to do the job and that that job stressed him
 24 out and he didn't -- he just didn't want to do it.
 25 Q. Okay. And when you met after the heated

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1 conversation, you told him he had to do that job,
 2 right?
 3 A. In that heated discussion, I said,
 4 "We'll discuss it again on Friday."
 5 I don't recall making any final
 6 decisions in that heated discussion. Once he blew
 7 up, I was trying to understand why he was so upset.
 8 Q. When you met with him after the heated
 9 conversation, you told him that he had to do the
 10 job of startup manager, right?
 11 A. Yeah.
 12 Q. Okay. And that was despite his
 13 concerns?
 14 A. Yeah. I mean, I felt that he, frankly,
 15 under -- misunderstood what a startup manager was,
 16 what we were asking him to do, how much time it
 17 would take, how much stress there really would be.
 18 You know, that we were going to be right there with
 19 him and not allow him to fail.
 20 And, you know, he -- quite frankly, he
 21 needed to understand more about our processes and
 22 equipment and -- and materials, and he wasn't
 23 getting it just sitting in a -- in an office. He
 24 needed to be out, understand packaging.
 25 So if he was going to succeed in his --

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1 in his role in packaging, both operational and
 2 materials, we felt he needed this training
 3 opportunity with -- to be part of the Grand Forks
 4 packaging team and be part of a startup.
 5 Q. So this was a training opportunity for
 6 him?
 7 A. That's the way I viewed it.
 8 Q. Okay. Did you tell him that when he was
 9 assigned the role?
 10 A. Yeah. Multiple times.
 11 Q. The end of your e-mail, you say, "You
 12 have performance concerns."
 13 A. Uh-huh. Yes.
 14 Q. Do you know if before June 23rd, Erik
 15 had already raised his concerns with HR?
 16 A. I did not know that.
 17 Q. Did they tell you that?
 18 A. When? I -- I know when they told me, if
 19 that's what your question is.
 20 Q. Sure. When did they tell you?
 21 A. August 3rd.
 22 Q. Okay. On August 3rd, someone from HR
 23 told you that Erik had previously communicated his
 24 concerns?
 25 A. Yes.

[Page 101]

1 Q. Who told you that?
 2 A. Kayce McEwan.
 3 Q. What did she tell you?
 4 A. She told me that he had called the
 5 complaint line and complained about what we were
 6 asking him to do.
 7 Q. What else did she tell you?
 8 A. She said that they were looking into it
 9 and would get back to me. It was a pretty short
 10 conversation.
 11 Q. Did anyone tell you that before he
 12 called the complaint line, he e-mailed HR?
 13 A. No.
 14 Q. Do you know when he contacted HR first?
 15 A. No.
 16 Q. So back to Exhibit 36, you say that,
 17 "Erik -- one of Erik's performance concerns is he
 18 struggles with engagement. He has felt very
 19 insecure about not knowing how to engage in
 20 something that he knows nothing about."
 21 Did I read that correctly?
 22 A. That's what it says in the document,
 23 yes.
 24 Q. Why is that a performance concern?
 25 A. The performance concern was he struggles

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1 with engagement.
 2 Q. So it's not a concern to you that he
 3 felt insecure about not knowing how to engage in
 4 something he knows nothing about?
 5 A. Well, I might be concerned about that,
 6 but it's not a performance.
 7 Q. Did you understand why that might be an
 8 issue for Erik?
 9 A. I did after that meeting.
 10 Q. Okay. What did he tell you?
 11 A. He told me that that kind of work
 12 stressed him out.
 13 Q. What about the insecurity comment that
 14 you made here?
 15 A. That --
 16 You know, those were comments along the
 17 way that he felt like he wasn't adding to the
 18 process, he wasn't adding value, which I know was
 19 kind of surprising to us. He sold himself as a
 20 leader, that he had been a pro -- program manager
 21 and he had led big efforts at HP.
 22 And, quite frankly, the startup manager
 23 role that we were asking him to do was not, in our
 24 minds, ver -- you know, not stressful at all.
 25 And -- and so it was -- it was a surprise to us.

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1 But, yeah, in this meeting, he described
 2 that he was -- he just didn't feel comfortable
 3 doing that.
 4 Q. Because he didn't know anything about
 5 the food packaging operational side?
 6 A. Sure, yeah.
 7 Q. Okay.
 8 A. And this was a chance to learn. We
 9 weren't going to let him fail. We were going to
 10 work with him. This wasn't, "Hey, Erik, just go do
 11 this. Let us know when you're done." Part of a
 12 team.
 13 Q. Okay. But we're not talking about that
 14 part. We're talking about his insecurity in how to
 15 engage in something that he knows nothing about,
 16 right? And it sounds like from your testimony, he
 17 had expressed that to you a number of times before
 18 June 22nd or 23rd, 2016.
 19 A. I wouldn't say a number of times. I
 20 knew about it in February when he -- you know, when
 21 we were developing the startup process. I knew
 22 about it then.
 23 Q. Did he tell you that in November?
 24 A. I don't recall any conversations with
 25 him in November about that, no.

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1 Q. When you reviewed the plan, did it look
 2 appropriate?
 3 A. I don't recall.
 4 Q. Did you hear from anyone on the startup
 5 team that it was lacking in any way, shape, or
 6 form?
 7 A. I don't recall.
 8 Q. Did you meet with Erik on August 5th,
 9 2016?
 10 A. You know, after reading these e-mails,
 11 I -- I am sensing that I did not, but I -- I don't
 12 recall for sure.
 13 Q. Why do you sense that you did not?
 14 A. Because it was around that time that he
 15 was placed on admin leave, and I'm guessing --
 16 because I don't know exactly what his meeting was
 17 at 1 o'clock, that he would be back around 2:30.
 18 Maybe that's when he was meeting with HR.
 19 Q. It sounded like those e-mails -- from
 20 those e-mails, he was meeting with you.
 21 A. Later that afternoon, he was supposed
 22 to. After 2:30, right? Exhibit 49, "I'll be back
 23 in Caldwell after going down to Boise. I should be
 24 back about 2:30ish."
 25 Q. Do you know when he was put on admin

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1 leave?
 2 A. I don't, off the top of my head.
 3 Was it August 5th?
 4 Q. It was August 5th.
 5 A. Okay.
 6 Q. Did you --
 7 Were you in any meetings putting him on
 8 admin leave?
 9 A. I was not.
 10 Q. Were you involved in the decision?
 11 A. I was not.
 12 Q. Did HR talk to you about that decision?
 13 A. After the fact.
 14 Q. Well, they told you on August 3rd that
 15 he had complained --
 16 A. That he'd filed a complaint.
 17 Q. Right.
 18 A. But at that time, they -- there was no
 19 discussion about putting him on admin leave.
 20 Q. They didn't tell you that they were
 21 going to do that?
 22 A. No. Not on -- not on August 3rd. I got
 23 a phone call after it was done.
 24 Q. Did you find out before you went on your
 25 trip?

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1 A. Yeah, I believe I did. I think it was
 2 on that afternoon.
 3 Q. Who told you?
 4 A. Kayce McEwan.
 5 Q. What did she tell you?
 6 A. She told me that they were going to
 7 place him on paid administrative leave.
 8 Q. Why did they do that?
 9 A. I don't know for sure. I -- I --
 10 My recollection is that they wanted
 11 to -- you know, he had filed a complaint and they
 12 wanted to investigate, you know, did I -- did we as
 13 a company do something wrong or, you know --
 14 But I don't know for sure. I wasn't
 15 told.
 16 Q. What did she tell you as to why they put
 17 him on admin leave? That?
 18 A. No.
 19 Q. Okay.
 20 A. When -- when she called, she just said
 21 they were going to place Erik on administrative
 22 leave.
 23 Q. Okay. So when you said that they were
 24 going to do an investigation, that was related to
 25 your August 3rd phone call or that was your

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1 impression of why he was --
 2 A. That's my impression based on the
 3 discussion on August 3rd where they said he had
 4 filed a complaint and they were going to look into
 5 it.
 6 Q. Okay. So your impression was that he
 7 was on admin leave while they looked into it?
 8 A. Yeah.
 9 Q. Was it your expectation that he was
 10 going to come back?
 11 A. Yeah.
 12 Q. Do you know why he didn't come back?
 13 A. I don't.
 14 Q. Were you told that he was fired?
 15 A. No.
 16 Q. You have no idea why he didn't come back
 17 to work?
 18 A. No.
 19 Q. Did you ever ask anybody?
 20 A. You know, at that point, a complaint had
 21 been filed. I was being looked at, did I handle
 22 things properly. I -- I wasn't going to rock the
 23 boat.
 24 Q. What do you mean by that?
 25 A. I wasn't going to ask if -- they --

[Page 164]

1 A. No.
 2 Q. Did you work with Cobbs?
 3 A. Very -- very limited.
 4 Q. Do you know --
 5 A. He worked in the same building.
 6 Q. Do you know why he left Simplot?
 7 A. No.
 8 Q. Are you aware of any engineers who have
 9 been terminated during your tenure at Simplot?
 10 A. Yes.
 11 Q. How many?
 12 A. One.
 13 Q. Why was that person terminated?
 14 A. Lack of ownership and engagement.
 15 Q. What does that mean?
 16 A. Just disengaged, wasn't -- wasn't fully
 17 invested. You know, distracted at work, not
 18 getting tasks done, not -- you know, just not
 19 getting the job done.
 20 Q. What was that person's name?
 21 A. Kirk Johnson.
 22 Q. Did you have any role in firing
 23 Mr. Johnson?
 24 A. Yes.
 25 Q. What role did you have?

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1 A. I was his manager. I fired him.
 2 Q. Did you put him on a performance
 3 improvement plan?
 4 A. No.
 5 Q. Why not?
 6 A. We had already been meeting a lot and
 7 really, frankly, his performance --
 8 You know, the difference between Kirk
 9 and Erik is I thought we could continue working
 10 with Erik and make an improvement and make changes.
 11 With Kirk, he was pretty much done, so it wasn't
 12 necessary to go through the work to --
 13 It didn't feel like he was going to make
 14 a change.
 15 Q. Would it surprise you to find out that
 16 Erik was terminated?
 17 A. Yeah.
 18 Q. Why?
 19 A. Why would he be terminated? I, as his
 20 boss, didn't say that he needed to be terminated,
 21 so it would surprise me if he was terminated.
 22 Q. Okay. You already testified no one
 23 talked to you about that, right?
 24 A. Right.
 25 Q. Give me a little bit, quickly, of your

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1 background, and we'll get you out of here.
 2 What is your -- what's your date of
 3 birth?
 4 A. [REDACTED]
 5 Q. What's your current address?
 6 A. 2019 South Preakness, Nampa, Idaho.
 7 Q. What's the zip there?
 8 A. 83686.
 9 Q. Did you serve in the military?
 10 A. No.
 11 Q. Where did you go to college?
 12 A. Utah State University.
 13 Q. When did you graduate from Utah State?
 14 A. 1994.
 15 Q. Did you do any post-graduate work?
 16 A. Yeah.
 17 Q. Where did you get --
 18 A. That was at Utah State. I finished in
 19 '94. I finished my bachelor's in '93 and finished
 20 my master's degree in '94.
 21 Q. What's your master's in?
 22 A. Mechanical engineering.
 23 Q. And your bachelor's?
 24 A. Mechanical engineering.
 25 Q. What date did you start working at

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1 Simplot?
 2 A. August 22nd or 23rd, 1995.
 3 Q. What position did you start in?
 4 A. Plant engineer in Heyburn, Idaho.
 5 Q. Okay. How long were you a plant
 6 engineer?
 7 A. Roughly three years.
 8 Q. Who is your direct report currently?
 9 A. Lyle Schook.
 10 Q. What is his title again?
 11 A. Senior director of engineering.
 12 Q. What's your title?
 13 A. Director of technical engineering.
 14 Q. Is the role of a startup manager at
 15 Grand Forks an important role?
 16 A. It was important for us to get a
 17 successful startup, yeah. And it was important for
 18 someone to help us coordinate all of the activities
 19 associated with startup.
 20 Q. After your heated discussion with Erik,
 21 you met with -- with Schook before you talked to
 22 Erik, right?
 23 A. No. Well --
 24 Q. Let me phrase that better because that
 25 wasn't a very good question.

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IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

ERIK KNUDSEN,)
)
 Plaintiff,)
)
 vs.) Case No. CV01-17-13956
)
 J.R. SIMPLOT COMPANY, a)
 Nevada corporation,)
)
 Defendant.)
 _____)

DEPOSITION OF ERIK KNUDSEN

June 7, 2018

Boise, Idaho

CONTAINS CONFIDENTIAL TESTIMONY

Reported by:

Andrea J. Couch, CSR #716, RDR, CRR, CRC

1 PROCEEDINGS
 2
 3 ERIK KNUDSEN,
 4 a witness having been first duly sworn to tell the
 5 truth, the whole truth and nothing but the truth,
 6 was examined and testified as follows:
 7
 8 EXAMINATION
 9 BY MR. JULIAN:
 10 Q. Good morning. Please state your name
 11 for the record.
 12 A. Erik Carl Knudsen.
 13 Q. And, Erik, we've met several times in
 14 this. I represent Simplot, and I'll be asking you
 15 a series of questions today.
 16 I know you've sat through a number of
 17 depositions --
 18 A. Yeah.
 19 Q. -- and I fully expect that you know the
 20 drill --
 21 A. Right.
 22 Q. -- as well as anybody at this point,
 23 but, you know, the same rules that we've all talked
 24 about apply equally to you, and that is if you need
 25 a break, just let me know. It's not an endurance

[Page 5]

1 contest. I'll try to plug through this as
 2 efficiently as possible, but to tell you the truth,
 3 I'm not sure how long it's going to take.
 4 A. Okay.
 5 Q. Sometimes it's hard to judge.
 6 A. Okay.
 7 Q. But I will do my best to get through
 8 this as quickly as possible.
 9 Same things that your attorneys have
 10 said before. If I ask you a question, you don't
 11 understand it, make me rephrase it. I certainly
 12 have an obligation to ask you a fair question, one
 13 that you understand.
 14 I'm going to go through a number of
 15 exhibits. I'm just going to tell you, sometimes
 16 it's just a way of me keeping track of paper. So
 17 if I hand you an exhibit, don't think it
 18 necessarily means a critical document. It may mean
 19 it's just something historical --
 20 A. Okay.
 21 Q. -- and the court reporter can keep track
 22 of the exhibits and they're all together.
 23 A. Okay.
 24 Q. Just so you're not --
 25 I've seen some witnesses go, "Why are we

[Page 6]

1 talking about that one?" It may not mean anything?
 2 A. Okay.
 3 Q. So --
 4 A. Okay.
 5 Q. -- with that being said, we will begin.
 6 Where do you reside?
 7 A. I live in [REDACTED]
 8 Q. Okay. What is your address?
 9 A. [REDACTED]
 10 Q. Are you married?
 11 A. I am married.
 12 Q. To whom?
 13 A. Elisha, E-l-i-s-h-a. Same last name.
 14 Q. Okay. Any children?
 15 A. Two.
 16 Q. What are their names and ages?
 17 A. [REDACTED] and [REDACTED]
 18 Q. What are their ages?
 19 A. [REDACTED]
 20 Q. And this is just to really get some
 21 general background.
 22 Tell me about your educational
 23 background, if you would.
 24 A. Sure. I have a bachelor of science in
 25 textile material science from NC State, and a

[Page 7]

1 master of science in packaging science from
 2 Michigan State.
 3 Q. What year did you get your master's?
 4 A. That was 2000.
 5 Q. And what year did you get your
 6 bachelor's?
 7 A. '97.
 8 Q. Did you work in between or just -- was
 9 that just work on your master's between your --
 10 A. I have an internship in the middle of my
 11 master's, yep. About nine months.
 12 Q. Tell me about your employment history,
 13 if you would.
 14 A. Well, I -- that internship was actually
 15 with HP in Greeley, Colorado, and that kind of
 16 kick-started my -- my career. So after that, I
 17 started --
 18 After nine months with HP in Colorado, I
 19 went, finished up my master's, and then I went to
 20 Agilent Technologies in Santa Rosa.
 21 At the time, they had just transitioned
 22 from HP. The company split, so I was with Agilent
 23 for two and a half years, and then I moved to Boise
 24 to start work at HP in 2002. October 2002.
 25 And then I worked there until I started

[Page 8]

1 at Simplot. So 2002 to 2000 --
 2 Q. '15?
 3 A. I should know the year. 2015.
 4 Q. At Greeley, when you worked for HP, what
 5 was your assignment?
 6 A. I was designing packaging materials for
 7 storage systems. It was for, like, these huge
 8 storage systems.
 9 Q. And then you transferred to Agilent?
 10 A. Right.
 11 Q. Was that around the time the company
 12 split?
 13 A. Yeah, it was. The company split, I
 14 think, right after I left my internship, and then I
 15 came back to Agilent, strangely, with the same
 16 employee number that I had left HP with.
 17 But, yeah, it was during that period of
 18 time.
 19 Q. Same job, effectively?
 20 A. Generally, yes. Different product, but
 21 same -- same role. Only not internship, obviously.
 22 (Deposition Exhibit No. 51 was marked.)
 23 Q. (BY MR. JULIAN) Handing you what has
 24 been marked 51 -- and, again, these are more just
 25 historical documents than anything.

[Page 9]

1 Do you recognize that document?
 2 A. I haven't seen this in a long time, but,
 3 yes, I do recognize it.
 4 Q. And this is an offer, it appears, for
 5 SEED Level 4, correct?
 6 A. Yeah. So SEED refers to the internship
 7 program --
 8 Q. Okay.
 9 A. -- that they had at the time.
 10 Q. And at the time that you interviewed for
 11 this job, HP was just one entity, correct?
 12 A. Yeah. That's what it looks like.
 13 Q. Okay. And after you accepted the job,
 14 structural changes happened at HP, correct?
 15 A. Yeah. I'm sure that some -- there were
 16 some changes because the company was splitting.
 17 Q. When you interviewed, did you understand
 18 that you may be assigned to HP or Agilent?
 19 A. So I knew I was going to go to Agilent.
 20 I was part of the -- the new company.
 21 Oh, wait. I'm sorry. I think I
 22 misunderstood your question.
 23 So when I started as a SEED student, I
 24 knew that that was Hewlett-Packard.
 25 Q. In fact, the letter indicates that you

[Page 10]

1 may be an employee of either company.
 2 A. Yeah. It's been a while -- it's been a
 3 long time since I've read this. I'd have to --
 4 MS. BIRCH: You can go ahead and read it.
 5 THE WITNESS: Okay. So this is, yeah, my
 6 offer for my internship.
 7 Q. (BY MR. JULIAN) And when you --
 8 You interviewed for this position, I
 9 take it?
 10 A. Uh-huh.
 11 Q. And that's a "yes"?
 12 A. Yes. Sorry.
 13 Q. Was it explained to you that the company
 14 was splitting at that time?
 15 A. I don't believe so.
 16 Q. So the communication that there was
 17 going to be a different job, perhaps, or a
 18 different location was really communicated after
 19 you interviewed but per this letter?
 20 A. Correct.
 21 Q. Do you agree in general that
 22 organizational changes in your employment can
 23 modify the terms of your employment?
 24 A. Yes.
 25 Q. Did you feel that HP had misrepresented

[Page 11]

1 anything when it told you, "You may be assigned to
 2 Greeley or Santa Rosa"?
 3 A. Oh, no. They didn't misrepresent
 4 anything.
 5 Q. Okay.
 6 A. They told me that the job would be
 7 located in Greeley, and that's where I relocated.
 8 Q. And how was it then that you ended up in
 9 California?
 10 A. So that was after --
 11 So I went back to school to finish my
 12 master's, and then I interviewed in California for
 13 that job at Agilent, I believe.
 14 Q. Okay.
 15 A. And then I relocated to Santa Rosa.
 16 Q. And I'm just --
 17 That helps me.
 18 How was it that we then end up in Boise?
 19 A. After working at Agilent for two and a
 20 half years, I had gotten married. My wife was from
 21 Boise. We actually got married in Boise, and we
 22 just wanted to relocate to be closer to our family.
 23 So I happened to know the hiring manager
 24 of packaging engineering at HP because we had gone
 25 to grad school together, and I learned through the

[Page 12]

1 grapevine that he was looking for an engineer.
 2 So I interviewed with him, and we were
 3 thrilled to move here.
 4 Q. And you ultimately moved here in about
 5 2002, correct?
 6 A. Yeah. I believe it was around
 7 October 2002.
 8 Q. And how would you --
 9 I mean, it's a very general question,
 10 but you were there for a substantial period of
 11 time, obviously.
 12 A. Uh-huh.
 13 Q. How would you describe your tenure
 14 during those years at HP?
 15 MS. BIRCH: Object to the form. Vague.
 16 THE WITNESS: My tenure at HP or Agilent?
 17 Sorry.
 18 Q. (BY MR. JULIAN) I thought HP was in
 19 Boise.
 20 A. Yes.
 21 Q. Yeah.
 22 A. Oh. Just general, the whole --
 23 Q. Yeah. Any problems, notable?
 24 A. As a whole for my -- the time that I was
 25 there, I had -- I had a great experience.

[Page 13]

1 Q. Okay. And I'm just going to jump to
 2 this. It's probably out of place in my outline,
 3 but why was it that you decided to apply for the
 4 Simplot job out of HP?
 5 A. I thought -- I had been working in the
 6 printer industry for a long time, and I thought it
 7 might be a good -- just something different.
 8 I had respected Simplot quite a bit just
 9 from living here -- kind of knew about them -- and
 10 I thought food might be kind of an interesting
 11 change for me.
 12 Q. Did you have any disputes with anyone at
 13 HP in 2014 that inspired you to apply for other
 14 work?
 15 A. I certainly had a dispute with someone.
 16 It didn't inspire me to look elsewhere.
 17 Q. What dispute are you talking about?
 18 A. A director.
 19 Q. Who was that?
 20 A. Her name was Laura Reardon.
 21 Q. What was the dispute?
 22 A. So I had been -- I had worked my way up
 23 to have responsibility for one of the most
 24 important programs in LaserJet for that year, and I
 25 had been doing a really, really good job for -- at

[Page 14]

1 the --
 2 The project lasted two years. I was
 3 managing a team that was responsible for getting
 4 this new -- brand-new printer into production. And
 5 the big challenge of this was that it was not just
 6 cross-functional. It was actually
 7 cross-divisional.
 8 So the technology in this printer
 9 included LaserJet technology and actually inkjet
 10 technology. So not just cross-functional
 11 leadership, but cross-divisional leadership.
 12 And right towards the end of this
 13 project, at the very -- the most important part of
 14 the project, we were -- we were actually starting
 15 production for this printer. We had done lots of
 16 prototype builds, and we were ready.
 17 When we started production for this
 18 printer, my management changed. My direct manager
 19 got a promotion into R&D, and then her manager who
 20 was a director also moved on. So my whole
 21 management chain changed, and I got this new team.
 22 And while I was managing this ramp, I
 23 hadn't gotten a chance to learn, to kind of -- to
 24 teach -- to show my -- this new management chain
 25 kind of what all we had been working on for two

[Page 15]

1 years.
 2 And as soon as we started production, a
 3 firmware problem was found. So we had a good
 4 contingency plan for if a firmware change -- or if
 5 a firmware issue had been found, and that was to
 6 continue production and move those units to the
 7 side for a rework. And that was kind of our plan
 8 all along.
 9 Well, this director came in and didn't
 10 like that contingency plan and said, "Stop
 11 production." So I had a team -- I want to say
 12 eight, maybe, engineers from Boise and a lot of
 13 Chinese workers, and we were just stopped until we
 14 could figure out what this firmware problem was.
 15 And I was sending daily updates to the
 16 leadership team in Boise and -- that -- that
 17 production had stopped because of this firmware
 18 issue, and the general manager of the division
 19 wanted to know what was going on because under his
 20 understanding, production wouldn't stop if we
 21 still -- if we found minor issues.
 22 And so he contacted me while I was in
 23 China and asked, "What's the problem?" And I said,
 24 "Well, Laura Reardon asked me to stop production."
 25 I think -- and he asked, "What do you think we

[Page 16]

1 should do?" And I said, "I think we should
 2 continue with our contingency plan and continue
 3 production. We can put the units to the side and
 4 we have a rework plan all set. But it's really
 5 important that we continue production to find any
 6 other issues that might happen." And so he said,
 7 "Okay. Got it. I understand. I'll get back to
 8 you tomorrow."
 9 So that next day, I got word from my
 10 director, Laura Reardon, that I could continue
 11 production, so I turned everything back on.
 12 What I found out later is that that
 13 general manager escalated to Laura Reardon's boss,
 14 Maria Tindall, who was the vice president of
 15 operations, and said, "Get production running. I
 16 don't like what's going on," and then she told this
 17 new director, Laura, to start.
 18 So it was kind of like a -- I was stuck
 19 between a rock and a hard place because I have a
 20 general manager asking me what my opinion was and
 21 my direct boss telling me what I should do.
 22 And so indirectly, I kind of escalated
 23 on her, and that got me -- she didn't like it.
 24 When I got back, she didn't -- she was -- she made
 25 it very aware that she didn't appreciate that --

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1 how everything kind of happened. So unfortunately,
 2 I got demoted from that thing.
 3 There were lots of other things going on
 4 in the group. She was butting heads with a lot of
 5 other people.
 6 My director manager actually lost his
 7 job. Someone even more -- in more seniority than I
 8 was got put on a performance improvement plan
 9 because he was butting heads with her as well.
 10 He ended up having to be forced to leave
 11 the company. HR came in because they had heard
 12 that the group -- there was some problems within
 13 the group, and each of us was asked to talk to HR
 14 directly to kind of describe what our beef was with
 15 Laura.
 16 All of that information got sent right
 17 to Laura, and it was a tough time. It was, I would
 18 say, about a year, six months -- six months of
 19 really difficult and a year total of that.
 20 Somehow she was protected. She -- her
 21 husband was also a director at HP in our R&D, very
 22 well respected, and she was protected.
 23 So like I mentioned, I had gotten
 24 demoted after working on this huge project, and
 25 obviously it wasn't -- I wasn't thrilled about

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1 that. I don't think anyone would be.
 2 Q. Let me just interrupt you there.
 3 A. Sure.
 4 Q. What was the demotion?
 5 A. I was -- it was RoHS. I was going to be
 6 an RoHS program manager, and that's kind of an
 7 environmental program manager. It was kind of
 8 considered --
 9 Up until that point, it was -- it was
 10 part of a process engineer's part-time work, and so
 11 it was pretty obvious that it was kind of a
 12 demotional-type thing.
 13 Q. Did it affect your salary?
 14 A. No.
 15 Q. Just responsibility then?
 16 A. Yeah.
 17 Q. Okay.
 18 A. Yeah. My responsibility was really high
 19 and then it went really low, so --
 20 Q. And is it your testimony that that
 21 situation of having your responsibilities reduced
 22 and being demoted didn't play a factor in you
 23 seeking other employment?
 24 A. No, not at all. I had -- this was just
 25 one person that I had a -- that there was an issue

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1 with at HP. But during the entire duration of my
 2 time at HP, I didn't have an issue with anyone.
 3 I had gotten I don't know how many
 4 reviews, one to two reviews a year over 16 years.
 5 This was just --
 6 In my view, this was an outlier. I had
 7 a -- I had a great relationship with the whole
 8 management team at HP.
 9 In fact, towards the end of that, I
 10 actually had -- I reached out to some -- some
 11 managers saying, "I'm in this ROSS environmental
 12 program manager, I'm looking to do something else,"
 13 and I actually had three job offers within HP.
 14 One was for packaging engineering, one
 15 was for a cost program manager, which was -- seemed
 16 kind of interesting under a guy named Jeff Stong.
 17 And then another one was doing very similar work to
 18 what I had been doing, manufacturing program
 19 management, only with the inkjet division.
 20 So I had done so well with this two-year
 21 project where it was cross-divisional that someone
 22 from the ink division in Vancouver reached out to
 23 me and said, "Hey, do you want to do this same
 24 thing but relocate to Vancouver?" So --
 25 And ultimately, I chose packaging just

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1 because that was where I was interested.
 2 Q. And I'm just trying to explore if there
 3 were any other reasons that may have inspired you
 4 to seek other employment.
 5 Were you ever in jeopardy of a layoff,
 6 from your perspective?
 7 A. I would say that was always kind of at
 8 the back of my mind. It's --
 9 You're in HP. It's --
 10 Q. I think HP yesterday announced 5,000
 11 people they're laying off.
 12 A. Did they really? Not in Boise.
 13 Q. No, no.
 14 A. Okay.
 15 Q. Companywide.
 16 A. Okay. And that's pretty typical of --
 17 That happens.
 18 Q. And you've been there long enough. How
 19 secure was your job in Boise?
 20 A. I felt like going into packaging, it was
 21 pretty good.
 22 Q. Okay.
 23 A. That was one of the reasons I really --
 24 I was attracted to go back into that role is
 25 because I knew -- I knew they needed help.

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1 Q. (BY MR. JULIAN) Okay. Handing you
 2 what's been marked as 52.
 3 (Deposition Exhibit No. 52 was marked.)
 4 MS. BIRCH: Thanks.
 5 Q. (BY MR. JULIAN) Do you recognize that
 6 document?
 7 MS. BIRCH: Take your time to look through
 8 it if you need to, Erik.
 9 THE WITNESS: Autobahn is the two-year
 10 project, just for your reference, that I was
 11 referring to. It says, "Autobahn/Moto."
 12 I do recognize it. I haven't read
 13 through the entire thing.
 14 Q. (BY MR. JULIAN) And honestly, I don't
 15 think I'm going to ask you any real detailed
 16 questions about it because I think you explained
 17 it.
 18 This was the project you were talking
 19 about that you had an issue with that you were in
 20 charge of, basically?
 21 A. Right.
 22 Q. Okay. In Singapore?
 23 A. It was actually China.
 24 Q. China? Okay.
 25 A. There was --

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1 Part of the team was in Singapore, so
 2 when we say Singapore, China, it's --
 3 Q. It's --
 4 A. Yeah.
 5 Q. And were you considered the project
 6 manager?
 7 A. I was considered the program manager for
 8 the operations portion.
 9 Q. Okay. And is that --
 10 We've heard terms --
 11 A. Yeah.
 12 Q. -- and I'm sure every company has its
 13 own lexicon.
 14 A. Yeah, definitely. Definitely.
 15 Q. Tell me what your understanding of your
 16 job was as compared to --
 17 You've heard the term "project manager"
 18 at Simplot.
 19 A. Right.
 20 Q. How did those two terms differ --
 21 A. So --
 22 Q. -- if they did?
 23 A. Yeah. I think at HP, you can't really
 24 make -- I don't -- we can't make a --
 25 I'd rather stay away from the Simplot.

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1 So my role at HP for those eight years
 2 is you had basically a group of people doing the
 3 design work for a printer. So this included
 4 writing all the code, doing all of the hardware
 5 design, doing the R&D portion.
 6 And then I was a program manager. I was
 7 an operations or manufacturing program manager
 8 leading up a team that was responsible for getting
 9 this printer into full-scale production.
 10 And so there was a lot of details around
 11 that. I was responsible for figuring out what the
 12 supply chain would be, who the contract
 13 manufacturer would be, making sure that we were
 14 meeting our cost targets, our efficiency targets,
 15 quality, and that we would -- we had a schedule and
 16 a good plan for making sure that we had proper
 17 worldwide availability at launch date.
 18 Q. And you were on location in China for
 19 this event?
 20 A. Yeah. So most of my time was spent in
 21 Boise doing lots of planning, lots of nightly calls
 22 with the China team.
 23 But when there was an actual build of
 24 any kind of significance, like a prototype build or
 25 starting of production, I would -- I would attend

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1 myself, if I could.
 2 These were -- these printers are put
 3 together by hand by lots of Chinese workers.
 4 Obviously, the labor costs in China is -- is less,
 5 so --
 6 I wasn't working directly with the --
 7 the Chinese workers themselves. More of a
 8 management team -- a China management team that was
 9 responsible for the work being done.
 10 But I would usually go there with a --
 11 with an engineering team, mechanical, a firmware,
 12 software engineers, test engineers. So if there
 13 were problems during the assembly process of one of
 14 these printers, they were on call.
 15 Q. When you interviewed at Simplot, did you
 16 discuss this project?
 17 A. Yeah. Uh-huh.
 18 Q. In what type of detail? Pretty much
 19 what we just went over or --
 20 A. I can't recall the exact detail.
 21 Q. Okay.
 22 A. I can't remember the exact questions
 23 they asked --
 24 Q. Okay.
 25 A. -- so --

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1 I was reminded while I was there very
 2 many times that I had talked about my leadership
 3 skills during the interview, so I know that much.
 4 Q. I'm not sure I followed you.
 5 A. Sure.
 6 Q. Can you explain what you meant?
 7 A. Yeah. So I don't remember the exact
 8 questions that were asked.
 9 Q. Okay.
 10 A. But in general, I definitely talked
 11 about this project, which involved leadership.
 12 Q. Okay. And when we talk about leadership
 13 skills versus, perhaps, technical skills, how do
 14 you differentiate those items?
 15 A. Well, technical skills --
 16 Leadership -- so leadership skills --
 17 So in my definition of a leader, a
 18 leader has followers. Someone --
 19 So you don't have to be a manager or a
 20 director. Or you could be an intern. If you're a
 21 leader, you're -- people follow you. So --
 22 (Telephonic interruption).
 23 THE WITNESS: Sorry. My phone is making
 24 some kind of noise. It's telling me where your
 25 office is.

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1 (Discussion held off the record.)
 2 THE WITNESS: Would you please repeat the
 3 question so I can get back on track.
 4 Q. (BY MR. JULIAN) Absolutely. We got
 5 interrupted.
 6 You were just explaining, really, the
 7 difference between technical skills versus
 8 leadership skills, and you started into that, you
 9 know, I think -- and I'm not putting words in your
 10 mouth, but leaders kind -- is the person that has
 11 followers. Doesn't really --
 12 A. Right.
 13 Q. -- matter what the title is --
 14 A. Right.
 15 Q. -- but they're a leader.
 16 A. Right.
 17 And technical skills would be can you --
 18 can you do a math equation, can you -- can you
 19 figure out what the -- you know, the area of a box
 20 needs to be, for example. Or can you -- can you
 21 write a program, can you write a piece of -- a code
 22 that does -- or performs a certain function.
 23 That's an example of a technical skill.
 24 Q. Would you agree with me that when you
 25 were asked at Simplot about this project, it was a

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1 way of examining and considering your leadership
 2 skills?
 3 MS. BIRCH: I'll object to the form. Vague.
 4 What project are you talking about,
 5 Brian?
 6 MR. JULIAN: The one we're talking about,
 7 this Chinese project.
 8 MS. BIRCH: You said --
 9 MR. JULIAN: This project.
 10 MS. BIRCH: -- Simplot.
 11 MR. JULIAN: What? What's your objection?
 12 MS. BIRCH: Well, your question was the
 13 project at Simplot.
 14 MR. JULIAN: No. The interview at Simplot.
 15 Q. (BY MR. JULIAN) When you were
 16 interviewed at Simplot --
 17 A. Yes.
 18 Q. And if I mixed that up, I apologize.
 19 A. That's okay.
 20 Q. Did you consider that when they inquired
 21 about your handling of the project, which is in
 22 front of you now, it was a method of determining
 23 your level of leadership skills?
 24 A. Yeah. I was interviewing for a senior
 25 packaging engineering role, and I didn't have food

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1 experience, so that was definitely a concern of
 2 mine.
 3 So a senior-level engineer is going to
 4 have a leadership component or element. So I was
 5 definitely happy to talk about my leadership
 6 ability because I didn't have that food part.
 7 Q. Because you lacked on the technical side
 8 for food products, did you emphasize that you felt
 9 you had significant leadership abilities?
 10 A. Of course. I emphasized that I could
 11 figure it out for sure because I obviously --
 12 As an engineer at HP, I had lots of
 13 different kinds of assignments, and I emphasized
 14 that I could figure out the role and the job
 15 description.
 16 Q. But did you ever tell Simplot when
 17 discussing the Chinese project for HP that you
 18 hated that job and wouldn't want to do that type of
 19 work again?
 20 A. I've never said anything like that.
 21 Q. You don't recall --
 22 A. No.
 23 Q. -- ever telling Kent that, that you --
 24 A. I don't.
 25 Q. -- hated the stress of that job?

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1 A. No.
 2 Q. Okay. So you always welcomed the
 3 ability to show leadership then?
 4 A. Yes.
 5 Q. Okay. There's just a few comments here
 6 I was curious about.
 7 If you look at 153.
 8 A. Okay.
 9 Q. What did you mean when you said you
 10 wanted to, "Orient my work plan to better align
 11 with career goals, strengths, and interest"?
 12 A. Oh, yeah. I have -- I really -- I
 13 tend --
 14 I have a creative part of me that I
 15 really like to -- I really like to work in, and --
 16 and I wanted to work -- I wanted to kind of bring
 17 that out and be -- work in a role where I felt like
 18 I could have a little more creativity.
 19 This is one of the reasons why I chose
 20 to go back into packaging, because that enabled
 21 that.
 22 Q. Okay. And I believe it's on 155, if you
 23 want to go to that. There's just another quote I'm
 24 going to ask you about. I believe it says --
 25 What did you mean when you said you

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1 wanted to pursue "the revenue side of business"?
 2 A. I was definitely interested in the
 3 business side of things, kind of more on the front
 4 end of --
 5 So I was -- I sat in lots of meetings
 6 where you had manufacturing and you had R&D and
 7 then you had the business and marketing. The
 8 business and marketing side of the business was
 9 definitely an interest area. It was an area that I
 10 really wasn't very familiar with and thought it
 11 would be interesting.
 12 Q. And is that a goal that you carried on
 13 forward after you accepted the job at Simplot?
 14 A. Sure. Yeah. It was -- it was very
 15 interesting. I -- and I think the packaging
 16 materials engineering role really played a great --
 17 it was, like, a great opportunity to be exposed to
 18 that type of stuff.
 19 In the interview, how they presented it,
 20 50 percent of my time was to be spent working with
 21 marketing and the business, and then 50 percent of
 22 my time was to be spent with operations and
 23 manufacturing.
 24 So definitely with half of that time
 25 being spent on that -- that revenue portion, I

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1 thought that was -- that was definitely awesome.
 2 And it's packaging. It's something --
 3 it's -- packaging materials, design something kind
 4 of different from what I'd done in the past, so I
 5 thought it was a really new -- kind of a new -- new
 6 industry but transferrable skills, so --
 7 Q. I'm just going through some of the lists
 8 on 155 and 156. If we go to 156, there's one
 9 called Managing. "Managing others by setting a
 10 clear example and encouraging them to follow."
 11 Were these your aspirations, that you
 12 wanted to move into some type of management role?
 13 A. I'm sorry. Which -- where are you
 14 talking? Managing and what --
 15 Is this my strengths? Strategizing.
 16 This actually --
 17 This was taken out of one of -- like, a
 18 career-assessment-type profile or some type of a
 19 strengths profile, and I copied it. So these are
 20 not my exact words. But I think these -- I thought
 21 they were accurate, and so I put these in here.
 22 Q. And these are meant to portray your
 23 strengths then --
 24 A. Uh-huh.
 25 Q. -- correct?

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1 A. Yeah. Not my exact words, but I thought
 2 they -- I thought they were pretty good. This
 3 focus, maximizer, competition, individualization,
 4 and relator comes out of another similar type of
 5 questionnaire that I thought applied to me.
 6 (Deposition Exhibit No. 53 was marked.)
 7 Q. (BY MR. JULIAN) Handing you what's been
 8 marked as Exhibit 53. See if you recognize that
 9 document.
 10 A. I recognize this.
 11 Q. And what is this?
 12 A. This looks like an evaluation by James
 13 Eidam who was working for Laura Reardon, and Laura
 14 Reardon is this director that we had discussed
 15 earlier.
 16 Q. In this evaluation, it gives you a
 17 rating of "partially achieves expectations."
 18 Do you agree with that rating?
 19 A. I don't. This is the first time I had
 20 ever received a "partially achieves expectations"
 21 at HP, and I strongly believe that this was in
 22 retaliation for what I said about how Laura treated
 23 me.
 24 Q. And some of this, the evaluator
 25 indicated you began to transition to the

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1 environmental PGM position in June of 2014.
 2 Was that the demotion that you --
 3 A. Yes.
 4 Q. -- talked about? Okay.
 5 In here, it says that you struggled with
 6 follow-throughs on the "asks" and you had a failure
 7 to accept responsibilities in your new role as
 8 environmental program manager.
 9 Do you agree or disagree with that
 10 statement?
 11 A. I absolutely disagree with that.
 12 Q. Do you agree that in this evaluation,
 13 the evaluator found that you disengaged and "was
 14 not active in participating"?
 15 A. I disagree. I think the job was
 16 actually fairly easy for me, and I didn't miss a
 17 single deliverable during this time.
 18 Q. Let's just look at the second page where
 19 it says, "In summary."
 20 A. Okay.
 21 Q. It states, I believe, "In summary, there
 22 is a consistent trend of loose engagement and lack
 23 of enthusiasm for the job."
 24 "Additionally, when pressure is applied
 25 to follow up on subsequent business needs, there is

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1 disengagement and resentment leaving the direct
 2 managers having to either reassign or do the work."
 3 Did I read that correctly?
 4 A. That's what it says. I definitely
 5 disagree with it. I don't understand what
 6 "reassign the work" means.
 7 Q. It continues, "As a very experienced
 8 expert program manager, Erik is expected to be a
 9 self-directed leader in the roles in which he
 10 engages. The environmental PM is no exception. We
 11 need clear leadership and end-to-end business
 12 influence so as to meet business need."
 13 Did I read that correctly?
 14 A. Yes.
 15 Q. Do you agree or disagree with that?
 16 A. I absolutely disagree with that. And,
 17 like I said, I think when I read this review, I
 18 felt like it was a direct -- it was retaliation for
 19 escalating to -- when HR asked me what was going on
 20 with Laura, it was in retaliation for when that
 21 general manager asked me if I should start
 22 production up or not. She got in trouble.
 23 And additionally, most of my other
 24 coworkers got similar feedback. In fact, some of
 25 it was worse. One person got put on a performance

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1 improvement plan, and he had been an expert program
 2 manager much longer than I had, so he was -- he was
 3 ranked worse than I was.
 4 My manager -- my direct manager, Terry
 5 Mahoney, got removed from his position of manager,
 6 and he had been managing people for years and years
 7 and years.
 8 So this wasn't just me receiving
 9 something, some negative feedback like this. This
 10 was the whole team, and the common denominator was
 11 Laura Reardon.
 12 Q. And as I read through here, though, they
 13 note lack of engagement and enthusiasm in multiple
 14 instances.
 15 And feel free to look over the document,
 16 if you want.
 17 MS. BIRCH: I'll object to the form of the
 18 question. The document speaks for itself. I'm not
 19 sure you asked a question, Brian.
 20 Q. (BY MR. JULIAN) Do you agree that you
 21 had a notation in this evaluation for multiple
 22 instances of lack of engagement and enthusiasm?
 23 MS. BIRCH: Same objection.
 24 THE WITNESS: I don't think anyone would be
 25 very enthusiastic about receiving a demotion, so --

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1 Q. Next one was, "He was visibly disturbed
 2 and asked for a WFR."
 3 First question is: What is a WFR?
 4 A. Workforce reduction.
 5 Q. Do you recall discussing that?
 6 A. I remember specifically reading this,
 7 and I remember them twisting my words.
 8 Q. Okay.
 9 A. So I do remember WFR. I think it was --
 10 I think in my mind I was -- I was thinking, "If I'm
 11 going to be put in this role for a long term, I
 12 risk being WFR'd." I remember that being a fear.
 13 I don't remember asking for one myself.
 14 Q. Okay.
 15 A. Because it was so clerical in nature.
 16 It felt like this isn't a really good spot to be
 17 in.
 18 Q. Okay. Then it says, "James expressed
 19 that the role was critical and was not going away."
 20 Do you recall that part of the
 21 conversation?
 22 A. Yes. So this whole -- this role was
 23 James' idea in the first place. He thought it was
 24 really important that I be in Boise. When I told
 25 him that I thought that perhaps someone in

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1 Singapore or China do it, he didn't agree.
 2 Q. Going further, "James also explained it
 3 was up to him," meaning you. "Either he sees
 4 himself in this or another role."
 5 Do you recall discussing that?
 6 A. I don't remember offhand, but sounds
 7 good.
 8 Q. And the way I interpret that, I mean, I
 9 might be wrong, but it's, "This job has to be done.
 10 The choice is yours. You either do it or you don't
 11 work here." That's the way I interpreted that.
 12 Is that --
 13 A. No. I would say, "Either you do this or
 14 you find another role within HP," and that's what I
 15 did.
 16 Q. Okay. And is that what you did?
 17 A. Yeah.
 18 Q. And, again, the term "outburst," at
 19 least in my mind, means something that was maybe
 20 loud or profane or something.
 21 How would you describe the outburst that
 22 is described in this paragraph?
 23 A. I'd describe it as more of a
 24 disagreement. I remember the -- the location where
 25 we met was very public, so it definitely wasn't

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1 loud.
 2 Q. Okay.
 3 A. And that wasn't really part of the HP
 4 culture, to raise your voice, so --
 5 Q. And so after this, you applied for a
 6 different position within HP, correct?
 7 A. I actually had offers. I don't know
 8 that specifically I applied. I actually had
 9 offers. I had people that saw the situation for
 10 what it was.
 11 The group -- it wasn't --
 12 There was no secret as to what was going
 13 on outside our team. People could see what was
 14 going on, and people saw the role I was in. I
 15 had -- I had lots of friends and lots of other
 16 managers that I was -- I was talking to, and I
 17 actually got offers.
 18 I actually don't remember applying for
 19 those that I actually got. So I had managers that
 20 were actually trying to help me out.
 21 Q. Okay.
 22 A. Now --
 23 Q. I'm trying to figure out, when --
 24 Did you then change jobs? I'm trying to
 25 put some time on this. This is --

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1 A. Yeah. I --
 2 Yeah. So I had three offers. Like I
 3 mentioned earlier, program -- cost program manager;
 4 packaging engineer; or, like, an operations program
 5 manager. And I took packaging engineer because I
 6 thought that would be a -- I thought that would be
 7 a --
 8 Q. When did you start the position as
 9 packaging engineer?
 10 A. That was -- I remember -- I would say
 11 January, maybe. January --
 12 It's on my resume. I'm not good with
 13 years.
 14 Q. Okay.
 15 MS. BIRCH: That's okay.
 16 Q. (BY MR. JULIAN) If you don't recall,
 17 that's fine.
 18 But this was in October 2014, so I'm
 19 assuming --
 20 A. Probably '15.
 21 Q. -- January of 2015 then?
 22 A. Yeah.
 23 Q. And is that the first time you served as
 24 a packaging engineer at HP?
 25 A. It's not.

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1 Q. Okay.
 2 A. No.
 3 Q. Was it a promotion or a demotion or a
 4 lateral --
 5 A. It was a lateral move.
 6 Q. Okay. And you were satisfied with that
 7 position?
 8 A. Yeah. Yeah. I had a great manager.
 9 I -- it was fun to get back on the team. It was
 10 something that I knew.
 11 Q. Okay.
 12 A. I liked the -- the work that I was
 13 doing. I had gone on a trip to Japan to work on
 14 kind of a joint R&D-type thing. That was fun.
 15 So --
 16 Q. But despite that seemingly good
 17 relationship and acceptance of that job, you sought
 18 outside employment?
 19 A. I wouldn't say I was actively looking.
 20 I think at any point in a career, if you're smart
 21 about your career, you -- you kind of keep your
 22 eyes open.
 23 Q. When did you first hear there may be an
 24 opening at Simplot?
 25 A. It was from Becca Nichols, and I don't

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1 remember the date. But it was sometime in that
 2 summer of 2015. And it was a LinkedIn message.
 3 Q. Okay. Did you respond to that message
 4 or just --
 5 A. I don't think I did.
 6 Q. Okay.
 7 A. I wasn't actively looking. In
 8 hindsight, I would definitely say, "Hey, thanks,"
 9 kind of thing, you know? But I didn't respond at
 10 the time.
 11 Q. And as I recall --
 12 And I'm not trying to put words -- I'm
 13 just trying to summarize it.
 14 It looks like you actually applied
 15 several months later.
 16 A. Right.
 17 Q. And how did you apply?
 18 A. I think I applied online. I think I saw
 19 it still available on LinkedIn, and I knew --
 20 So I knew that Becca had contacted me
 21 earlier that June. I don't want to say -- I don't
 22 know the month offhand. But I knew they were
 23 looking, and somehow I noticed that they were still
 24 looking in that fall 2015.
 25 And so when I read the job description,

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1 it sounded interesting and I applied.
 2 Q. Did you look at the job description when
 3 Becca contacted you by an e-mail?
 4 A. I don't recall.
 5 Q. Okay. Do you even know if it was the
 6 same job number?
 7 A. I don't.
 8 Q. Okay. Why don't we look at No. 33.
 9 It's already been admitted in the packet here.
 10 A. In this one?
 11 Q. Yes.
 12 Mr. Knudsen, do you recognize No. 33?
 13 A. Yes.
 14 Q. And would this have been the job that
 15 you were applying with?
 16 A. Yes. This looks similar to what Becca
 17 sent me. I don't know if it's the same job number,
 18 but yeah.
 19 Q. When you reviewed this job announcement,
 20 did you observe that project management is
 21 emphasized?
 22 MS. BIRCH: Object to the form of the
 23 question.
 24 THE WITNESS: I saw the -- the job
 25 description as a packaging materials -- senior

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1 packaging position, so I was more -- way more
 2 focussed on the packaging side of that.
 3 Definitely any engineering role has a
 4 certain element of project management, so --
 5 Q. (BY MR. JULIAN) Well, if we just look at
 6 "Summary," it states, "This position is
 7 responsible," and it goes through a number of
 8 things, the last being, "And project management
 9 related to packaging equipment, operation, and
 10 capabilities," correct?
 11 A. Where is that?
 12 Q. In "Summary."
 13 A. Oh.
 14 Yes.
 15 Q. And if we look at "Responsibilities" on
 16 the last bullet -- or second-to-last bullet point,
 17 a person would be responsible for, "Identifying and
 18 managing projects related to cost reduction
 19 opportunities," correct?
 20 A. Yes.
 21 Q. How many projects are involved with cost
 22 increases?
 23 A. Very few.
 24 Q. I mean, really --
 25 A. Yeah.

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1 Q. -- most projects are --
 2 The goal is to reduce costs --
 3 A. Right.
 4 Q. -- isn't it?
 5 A. Right.
 6 Q. I always thought that was an interesting
 7 modifier.
 8 A. Yeah.
 9 MS. BIRCH: When you get to a good spot --
 10 MR. JULIAN: I've just about wrapped up and
 11 we'll move on to another exhibit.
 12 Q. (BY MR. JULIAN) If we go to the second
 13 page, the job announcement indicated that your time
 14 would be up to 40 percent to support plant test
 15 runs for new products, material trials, vendor
 16 visits, packaging audits, and packaging material
 17 complaint resolution.
 18 Do you see that?
 19 A. I saw that. I thought it was probably
 20 excessive and they were --
 21 I remember asking about this in the
 22 interview, and they said it wasn't quite
 23 40 percent.
 24 But, yes, I see that.
 25 Q. Okay. And that's actually exactly what

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1 I was going to ask you about.
 2 When you asked them about that, how was
 3 it explained, and if you recall, who explained it?
 4 A. I would say --
 5 So I asked about the 40 percent travel.
 6 I want to say Jason was the person who answered the
 7 question. And that was to support mostly these
 8 trial runs for -- for new material, new -- new bag
 9 designs and going to whatever plant was running
 10 that particular new product.
 11 Q. And it sounds like it really depends on
 12 what's going on at the various plants. If there's
 13 a new production method or new line, you may have
 14 more travel as opposed to simply monitoring what's
 15 already running?
 16 MS. BIRCH: Object to the form of the
 17 question.
 18 Are you asking what was told to him in
 19 the interview?
 20 MR. JULIAN: That's a fair point.
 21 Q. (BY MR. JULIAN) What is your
 22 understanding? Would you be traveling more for new
 23 designs, new products, as opposed to simply
 24 monitoring existing products?
 25 A. So for new -- new products and if there

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1 were problems with existing products.
 2 So a perfect example is if there's a
 3 bag-sealing issue at a particular location, there
 4 would be travel expected to figure out what was
 5 going on with that.
 6 MR. JULIAN: Okay. Let's take a little
 7 break.
 8 MS. BIRCH: Thanks.
 9 MR. JULIAN: You're welcome.
 10 (Break taken from 10:32 a.m. to 10:40 a.m.)
 11 (Deposition Exhibit No. 54 was marked.)
 12 Q. (BY MR. JULIAN) Handing you what has
 13 been marked as Exhibit 54.
 14 Do you recognize that document?
 15 A. Yes.
 16 Q. And as far as I can tell, this was the
 17 resume you sent to Simplot.
 18 Is that correct?
 19 A. I don't recall the exact version, but I
 20 will believe you.
 21 Q. And this will probably test your memory
 22 a little bit.
 23 Do you know whether you updated your
 24 resume before sending it to Simplot, perhaps giving
 25 emphasis to different roles you had or anything of

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1 that nature?
 2 A. I don't remember.
 3 Q. Okay. Do you have any type of word
 4 processing program that could tell me if you
 5 updated it before sending it to Simplot?
 6 A. No. I don't -- I don't remember that --
 7 It's been so long.
 8 Q. If we look at the top of the resume, it
 9 has three areas: packaging engineering, team
 10 building and leadership, and program management,
 11 correct?
 12 A. Correct.
 13 Q. When you used the term "program
 14 management," what did you mean?
 15 A. I was referencing the eight years of
 16 manufacturing program management that I had been
 17 doing with Hewlett-Packard.
 18 Q. I think some of this we may have already
 19 talked about a little bit.
 20 What were you referring to when you said
 21 you led a 20-plus-member cross-functional team?
 22 A. That was the Autobahn project.
 23 Q. Okay. And we've discussed that,
 24 correct?
 25 A. Yes.

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1 Q. Okay. And you have a provision called
 2 "Selected Achievements."
 3 Is it fair to say that at least the
 4 first two items under "Selected Achievements" refer
 5 to leadership and program management?
 6 A. Program management, yes.
 7 Q. Okay.
 8 A. Leadership, sure.
 9 Q. Okay. In one of these paragraphs, you
 10 say you applied significant leadership toward NPI
 11 teams.
 12 What is that a reference to?
 13 A. NPI --
 14 MS. BIRCH: I'm sorry. Where are you,
 15 Brian?
 16 MR. JULIAN: I'm not reading directly. I'm
 17 just reading from my notes. I can pull it out, if
 18 you want.
 19 THE WITNESS: Yeah, that would probably be a
 20 good idea.
 21 MR. JULIAN: Okay.
 22 Q. (BY MR. JULIAN) It is the bottom of the
 23 page. I think I read it correctly, too, "Applied
 24 significant leadership expertise toward directing,
 25 motivating, and coordinating NPI teams."

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1 A. Okay.
 2 Q. Do you see that?
 3 A. Yes.
 4 Q. Okay.
 5 A. And that bullet point is under "NPI,"
 6 manufacturing program manager. NPI stands for "new
 7 product introduction."
 8 Q. Okay.
 9 A. So this is a common term in the tech
 10 industry. I can't remember if Simplot used that
 11 term or not, but it's referring to new products.
 12 Q. Appreciate that. Thank you.
 13 I'm going to kind of move this along as
 14 much as I can.
 15 Let's kind of jump to the interviews on
 16 October 22nd, 2015. I don't have any exhibits on
 17 this right now, so I'll just ask you: Do you
 18 recall who were on the panel?
 19 A. So we're --
 20 There was four interviews. Each
 21 interview had a panel.
 22 The first interview was on the phone,
 23 and I don't know who exactly was in the room
 24 because it was, like, a conference call. I know --
 25 I know Jason was there. I later learned Tim was

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1 there. Craig -- I know Craig was there. And I
 2 believe Laura Nessen was kind of leading the -- the
 3 meeting up. But I don't --
 4 Yeah. It was on the phone, so it's hard
 5 to know who was there.
 6 The second interview was a panel
 7 interview in person, and in that interview, Jason
 8 Schwark, Tim Lalley, Craig Lamberton for sure,
 9 Laura Nessen. And I'm trying to think -- Sue
 10 Cooper, and there might have been one or two
 11 others.
 12 Q. Okay.
 13 A. Those are the keys.
 14 The second panel interview after that
 15 was more of the management team. It was directly
 16 after. So one meeting room, panel interview, they
 17 all left, management team came in.
 18 And I think Laura Nessen was still
 19 there, Craig Lamberton was still there because he
 20 was the manager who I was going to be reporting to.
 21 Kent Anderson, James Turner, Lyle Schook. I could
 22 be missing another one, but -- I'm not positive.
 23 And then the fourth interview after that
 24 was a follow-on panel interview, and it was the
 25 same leadership team, from what I remember.

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1 Q. Okay. Did you take notes during the
 2 interviews?
 3 A. I -- I probably did. I've actually
 4 looked for notes, but I can't find them.
 5 Q. Okay. Obviously, a number of questions
 6 were asked of you.
 7 A. Yes.
 8 Q. How well do you remember the questions?
 9 A. Not very well. Not the exact questions.
 10 Q. And that doesn't surprise me.
 11 Did you ask any questions?
 12 A. Definitely asked some questions.
 13 Q. Do you recall --
 14 That might be easier to recall.
 15 Do you recall what you may have asked
 16 about?
 17 A. I don't specifically remember the exact
 18 type of questions I asked.
 19 Q. And I think we did discuss this earlier
 20 in your deposition, but your project management
 21 experience was explored in the interview, correct?
 22 A. Yes.
 23 Q. As I recall, the interview was somewhat
 24 divided between a technical side versus a
 25 leadership side, correct?

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1 A. Yeah. I think --
 2 There was definitely the technical part
 3 and then the leadership where I was interviewing
 4 with the leadership team. I don't know if you want
 5 to call it leadership, but it seemed like they were
 6 more wanting to find out how I might fit into
 7 the -- to the team. So would I be a good fit.
 8 Q. Was anything ever mentioned about a
 9 startup manager role?
 10 A. No.
 11 Q. Do you recall anything specifically
 12 stated in the interview process that defined what
 13 you would be doing at Simplot?
 14 A. Definitely.
 15 So we talked in the technical interview
 16 about what I would be doing, and I was designing
 17 packaging for new products.
 18 Q. Okay. At the time of the interview, was
 19 it represented who you would be reporting to?
 20 A. Yes. I believe that was Craig
 21 Lamberton.
 22 Q. And did Craig Lamberton indicate that
 23 that might be for a short period of time because he
 24 was scheduled to go back to Australia?
 25 A. No, not at all. Actually, that was news

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1 to me on my first day, that he was leaving.
 2 Q. And you sat through his deposition.
 3 A. Uh-huh.
 4 Q. Do you recall him saying, "Yeah, I'm
 5 sure we talked about it"?
 6 A. No.
 7 In the interview?
 8 Q. Yes.
 9 A. No.
 10 Q. Is your memory very clear about that?
 11 A. In the -- so the deposition --
 12 Oh, is my memory clear on what he said
 13 in his deposition? It's -- I would --
 14 No.
 15 Q. Okay. Let me just ask it this way: If
 16 Craig Lamberton said, "I am sure I discussed I'd be
 17 going back to Australia with him in the interview,"
 18 do you have a specific memory to say, "No, he never
 19 brought that up"?
 20 A. I don't ever remember that in the
 21 interview even coming up. I remember -- I remember
 22 being very surprised when I first started at
 23 Simplot hearing that he was going back to Australia
 24 because I had never heard of anything like that
 25 before.

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1 Q. When were you informed that your lack of
 2 technical knowledge on the food side didn't support
 3 giving you an Engineer 5 job?
 4 A. It wasn't worded as "lack of technical
 5 ability."
 6 Q. Yeah. And please don't read into that
 7 anything derogatory.
 8 A. Yeah. Yeah.
 9 Q. I'm just trying to set a foundation, why
 10 it happened.
 11 A. No. Laura --
 12 When I left the last panel interview, I
 13 felt like I had done pretty well in the interview.
 14 I had answered the questions well. And when we
 15 were walking out, she said, "There's a chance that
 16 you might get an offer, and if it -- if you did get
 17 an offer, it would be for an Engineer 4 rather than
 18 senior because you lack the food experience."
 19 And she said, "Would you -- is this
 20 something that you would be okay with?" and I said,
 21 "Yes, I understand."
 22 Q. In your mind, what was the difference
 23 between the jobs?
 24 A. Between what jobs?
 25 Q. The senior packaging engineer and

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1 Engineer 4.
 2 A. Oh, just my experience --
 3 There wasn't really a large difference.
 4 Maybe salary or scope. So maybe a more important
 5 project would be important -- would be assigned to
 6 a senior level, or maybe a Level 4 wouldn't -- the
 7 same expectations wouldn't be --
 8 So -- so senior level may be higher
 9 expectations than the 4 level.
 10 Q. And were you told you simply just didn't
 11 have enough experience? It wasn't because of lack
 12 of education or anything like that. You hadn't
 13 worked in the food industry.
 14 A. Right.
 15 Q. And so did you expect to have some work
 16 assignments on the operational side in the food
 17 industry?
 18 A. Some work assignments in the food
 19 industry? I'm sorry. Can you ask that question
 20 again?
 21 Q. Sure. I'll ask this one: Would working
 22 as a startup manager give you experience on the
 23 operational side for the food industry?
 24 A. No.
 25 Q. Why not?

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1 A. Well, we're talking about --
 2 You're referring to a training, but this
 3 is -- startup manager is not training. This is an
 4 actual role that would be expected of someone
 5 with --
 6 Q. You don't think you would learn
 7 something --
 8 Okay. I'm sorry to interrupt. You're
 9 right.
 10 A. A startup manager is not a training
 11 opportunity. A startup manager is an actual role
 12 that would be expected of someone who has some kind
 13 of familiarity with the industry.
 14 Q. So was it just too challenging to take
 15 on that role for you?
 16 A. No. I didn't have the --
 17 It wasn't something I interviewed for.
 18 Q. Well, it was a temporary assignment.
 19 Do you agree with that?
 20 A. No. It was never presented that way, as
 21 a temporary assignment.
 22 Q. Okay.
 23 A. It was presented on my first day. I was
 24 informed that my role was not going to be packaging
 25 engineer full time; that it would be, instead,

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1 50 percent packaging engineering and 50 percent
 2 startup manager.
 3 Q. Okay. And that would last forever?
 4 A. Yes. There was no indication that
 5 anything was going to change.
 6 Q. And this is going to sound like a dumb
 7 question --
 8 A. Sure.
 9 Q. -- but the term "startup engineer" kind
 10 of implies to me that once the business starts up,
 11 you're done, aren't you?
 12 A. So startup manager --
 13 Q. Manager.
 14 A. Startup manager was for a big project in
 15 Grand Forks, this packaging upgrade. And it was
 16 responsible for all of the equipment, the
 17 electrical, the controls, the -- it was a \$22
 18 million project.
 19 This engineering team worked solely --
 20 with the exception of the packaging engineers, this
 21 engineering team worked on projects.
 22 So all of these projects had a starting
 23 date and an end date. So certainly, this Grand
 24 Forks startup manager role that I was working on
 25 had an end date, but there was another project

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1 right behind it.
 2 So there was nothing to indicate that it
 3 would be temporary.
 4 Q. Okay. Let's look at Exhibit 6, which
 5 has previously been marked.
 6 Do you recognize this document?
 7 A. Yes.
 8 Q. And on the second page, is that your
 9 signature?
 10 A. Yes.
 11 Q. And did you read this document before
 12 signing it?
 13 A. Yes.
 14 Q. And when it states, "Employment is at
 15 the will of either the employee or the company,"
 16 what did you understand that to mean?
 17 A. So at-will -- this at-will thing isn't
 18 something that normally you pay a whole lot of
 19 attention to. It's more in the fine print.
 20 But I understand "at-will" means a
 21 company can fire an employee for no reason at all;
 22 however, I have never seen this actually occur. I
 23 actually only know of one person that has been
 24 fired, and that wasn't for no reason. This person
 25 had been caught stealing money.

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1 Q. At Simplot?
 2 A. This was HP.
 3 So -- so at-will, yes, I know -- I
 4 understand that -- that companies have the -- can
 5 fire people. In practice, I've never seen it
 6 happen.
 7 I also know that it means that companies
 8 can't misrepresent a job in a job description or
 9 interview.
 10 Q. When it states, "No oral statement may
 11 change the at-will nature of the employment
 12 relationship," what did that mean to you?
 13 A. I don't know the law. I'm sorry.
 14 Q. Did it mean anything to you?
 15 A. "No oral statement may change the
 16 at-will nature of the employment."
 17 MS. BIRCH: You're asking at the time he
 18 signed it?
 19 MR. JULIAN: Yes.
 20 THE WITNESS: That doesn't mean anything to
 21 me.
 22 Q. (BY MR. JULIAN) Did you ask anyone what
 23 that means?
 24 A. No. Why would I?
 25 No. Like I said, this is kind of the --

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1 this wasn't really something that you look at the
 2 fine print on.
 3 Q. But you did ask some details about your
 4 job such as, "Do you care if I don't start until
 5 November because I want to use up my two weeks' HP
 6 vacation?"
 7 A. Sure.
 8 Q. And you ask, "Well, that will be on
 9 Thanksgiving week. Do I get that one as a paid
 10 holiday?"
 11 Do you remember asking that?
 12 A. Yeah. I was trying to figure out how to
 13 make -- pay the bills --
 14 Q. Right.
 15 A. -- and switch jobs, sure.
 16 Q. And you found there was a way to
 17 communicate those questions and get responses,
 18 correct?
 19 A. Yes.
 20 Q. Do you recall during the interview
 21 process that you were told that you would likely be
 22 receiving cross-functional experience?
 23 A. I don't remember that in particular.
 24 Q. Okay.
 25 A. But I definitely -- part of the role

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1 would be cross-functional. You're working with
 2 business teams, I'm sure.
 3 Q. Let's look at Exhibit 23 in your book.
 4 A. Okay.
 5 Q. And this is an announcement dated
 6 November 30th, 2015, correct?
 7 A. I don't think I have the right document.
 8 MS. BIRCH: Exhibit 23?
 9 MR. JULIAN: Yes.
 10 MS. BIRCH: Is the folder for the --
 11 It's Erik's folder, senior packaging
 12 engineer folder.
 13 THE WITNESS: So which --
 14 MR. JULIAN: It's going to be in here.
 15 THE WITNESS: Which page?
 16 MR. JULIAN: I'll find it.
 17 I believe it's Simplot 95.
 18 THE WITNESS: 95.
 19 MR. JULIAN: Yeah. I apologize. I didn't
 20 realize where that came from.
 21 THE WITNESS: That's fine.
 22 Okay. Got it there.
 23 Q. (BY MR. JULIAN) That's the one. Thank
 24 you.
 25 Do you recognize this document?

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1 A. I do.
 2 Q. And it indicates that, "With the
 3 departure of Craig back to Australia, Erik will
 4 report directly to Kent" --
 5 A. Yes, I see that.
 6 Q. -- "Anderson," correct?
 7 A. Yep.
 8 Q. And Michael Whiting would also be
 9 reporting to Kent, correct?
 10 A. Yes.
 11 Q. And, "The reason for this change is to
 12 get cross-functional experience and resources
 13 supporting not only the packaging materials for the
 14 North American Food Group sales and marketing team
 15 but deliver support to the technical need for
 16 packaging operations as well."
 17 Did I read that correctly?
 18 A. I see that, and I also remember being
 19 very surprised because I thought I was going to be
 20 working for the same manager on the same team as
 21 Tim and Craig. Or, I'm sorry, Tim and Jason.
 22 Q. And they report to Lyle --
 23 A. Right.
 24 Q. -- Schook?
 25 A. Correct.

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1 In the interview, they reported to Craig
 2 Lamberton. So from my impression from what I
 3 understood in the interview, Tim, Jason, Michael,
 4 and then potentially me, if I got the job, would be
 5 reporting to Craig.
 6 Q. And is it your position that the company
 7 cannot make personnel changes such as who will be
 8 your supervisor if it's inconsistent with what you
 9 heard at the interview?
 10 A. No. I think that's within reason.
 11 Q. Okay. Let's jump back to Exhibit 7 in
 12 that book.
 13 A. Okay.
 14 Q. Do you recognize this document?
 15 A. Yes. This is my training plan.
 16 Q. And when was this developed? Do you
 17 know?
 18 A. I don't know when it was developed, but
 19 I was handed this on my first day to help get me up
 20 to speed.
 21 Q. Were you able to generally follow this
 22 outline?
 23 A. Yeah. I was able to read it, kind of
 24 understand where different manufacturing facilities
 25 were and kind of what they wanted me to do.

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1 Q. Were you able to travel to those
 2 facilities?
 3 I think part of this is at least
 4 contemplated that you would be touring various
 5 places?
 6 A. Yes.
 7 Q. And you were able to do that?
 8 A. Yes. I didn't get to all the -- all the
 9 locations, but yes.
 10 Q. And I had seen, perhaps, different
 11 dates, and I'm unsure.
 12 When was the first time you went to
 13 Grand Forks, if you recall?
 14 A. That was on my fourth day of employment.
 15 The Monday after Thanksgiving.
 16 Q. Okay. And what was the purpose of that
 17 visit, if you recall?
 18 A. To introduce me to the Grand Forks team
 19 as the startup manager.
 20 Q. And who did you go with?
 21 A. I went with the leadership engineering
 22 team on the corporate jet. So that was --
 23 Kent Anderson was definitely there,
 24 James Turner was definitely there, Craig was there.
 25 I think there was a Mark Monday. He was there. He

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1 was from Jacobs Engineering. And I don't know
 2 if -- I don't know if Lyle was there or not.
 3 But I went there for the purpose of
 4 introducing me to the Grand Forks team and to
 5 discuss this project of this packaging upgrade and
 6 to be introduced as the new startup manager.
 7 And for that, obviously, I needed to
 8 understand what the project was all about --
 9 Q. And who told you --
 10 A. -- and about the team.
 11 Q. I'm sorry to interrupt.
 12 Who informed you that you would have the
 13 assignment of startup manager?
 14 A. So Laura Nessen on my very first morning
 15 during the HR orientation-type stuff, getting me
 16 all set up, making sure I knew the 401(k) plan, all
 17 that kind of stuff, she hinted at it.
 18 And then after that, I don't -- I think
 19 it was Kent that told me that I was going to be the
 20 startup manager.
 21 But as I'm trying to -- I'm replaying
 22 this in my mind and the history, I can't remember
 23 the exact person. But I definitely knew on that
 24 Monday morning, I needed to be at the airport at
 25 the Simplot building. They had a corporate jet,

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1 which was pretty cool, to fly there to do the -- to
 2 be introduced to the startup manager role and the
 3 project.
 4 Q. Do you know when the project was
 5 actually approved for funding?
 6 A. No. An approval date wasn't something
 7 that was discussed. It was, "This was the
 8 project." There was a planning portion. There was
 9 a whole schedule on kind of when we -- when
 10 everything was going to take place.
 11 As far as the approval thing, that
 12 seemed to be something that was going on behind the
 13 scenes with the upper management, so I wasn't aware
 14 of an approval.
 15 Q. And my understanding is there wouldn't
 16 be nearly as much work on the front end of the
 17 project as there would be on the rear end.
 18 Is that a fair statement?
 19 A. For -- for what?
 20 Q. Well, let's say --
 21 A. In particular or for what role?
 22 Q. Let's say January 1st, you worked 40
 23 hours a week.
 24 A. Right.
 25 Q. How many hours did you put in as startup

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1 manager?
 2 A. I would say half that time.
 3 Q. What were you doing?
 4 A. I was sitting in lots of meetings. I
 5 was -- I remember going to --
 6 I don't know if I was there in -- in
 7 January, but I remember walking the line and trying
 8 to understand what the schematics were of what
 9 exactly -- what equipment they were taking out and
 10 what they were installing.
 11 I remember talking to the Idaho plant to
 12 try to gain understanding of what all of this
 13 equipment was because I was completely unfamiliar.
 14 I think there was about 30 pieces of new equipment.
 15 I remember helping to lead a -- just a
 16 really small part of the project on recommending
 17 the type of bagger that we should purchase. I
 18 can't remember anything else at the moment.
 19 I remember -- I'm sorry. I do remember
 20 in -- in the January time frame, one of the really
 21 challenging parts of this project, of the startup
 22 manager role, was that it was brand new to Simplot.
 23 So I remember coming in and thinking,
 24 "Okay. So I'm -- now I'm going to be a startup
 25 manager." I didn't -- that wasn't part of the

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1 agreement, but okay.
 2 "So is there a startup team?"
 3 "No, there's no startup team."
 4 "Okay. So where -- how -- what's the
 5 process for going about doing this startup manager
 6 thing?"
 7 There was no documentation or there was
 8 no procedures for doing a startup manager role of
 9 any sort.
 10 So I remember them assigning me to a --
 11 another team to help define exactly what in the
 12 world this role would be.
 13 And so I think in -- I want to say in
 14 the January or February time frame, those meetings
 15 started.
 16 Q. Did you continue, let's say from
 17 January until June, working at about 50 percent of
 18 your time as a startup manager?
 19 A. Yes.
 20 Q. Were any of the responsibilities, as far
 21 as defining processes, taken back from you at any
 22 point?
 23 A. They were eventually. I don't know the
 24 exact time frame, but as we -- as we got really
 25 into -- as we got really deep into defining what

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1 this role would be, it became really apparent that
 2 I didn't have the background to do this type of
 3 work and that it was a little -- it was very, very
 4 time-consuming.
 5 So kind of at the same time, Jason and
 6 Tim were definitely disturbed that I had been taken
 7 away from that packaging engineering role and put
 8 on the startup manager role.
 9 In fact, they thought the whole thing
 10 was really extremely unfortunate. I think -- I
 11 remember reading somewhere that they thought the
 12 whole thing was BS.
 13 And so they were -- part of their --
 14 their -- how they fit into this whole equation is
 15 they were trying to help me to get me back into the
 16 role that I had originally interviewed for.
 17 And so once we finally had this document
 18 that kind of outlined all of the things that a
 19 startup manager would do, they met on my behalf
 20 with Kent Anderson and Byron Smith to say, "Hey,
 21 look, this is -- he's been working on this
 22 throughout this winter on this process document.
 23 This is all of the things that's expected of him.
 24 This is not -- we need him for this. He's having
 25 to do this."

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1 Q. Were you in attendance at that meeting?
 2 A. I wasn't.
 3 Q. So how do you know what was said?
 4 A. They told me.
 5 Q. Okay.
 6 A. And so after that meeting, Kent Anderson
 7 and Byron Smith met with me, so it was just the
 8 three of us, and said, "We understand that this is
 9 probably a little too much. We will give you
 10 back -- we will put you back in this packaging
 11 engineering role, but we still need help with the
 12 training portion. Would you be willing" --
 13 And this is the first -- this is -- and
 14 I remember specifically, this is the first time
 15 they actually asked me if I would be willing to do
 16 something.
 17 They asked me if I would be willing to
 18 take on this role of training, so kind of leading
 19 up the training portion of it.
 20 And at that time, I was, "Yes,
 21 absolutely. That's kind of a smaller scope. Yes,
 22 that's not packaging engineering, but I will do it.
 23 I kind of -- I get it. I will do that, and then I
 24 can move on to the role that I had interviewed for
 25 originally and we can -- and this whole kind of

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1 mess with the startup manager thing is over."
 2 Q. When was this meeting?
 3 A. I don't recall. It's probably
 4 documented somewhere. I don't have all of the
 5 dates in my head.
 6 Q. Please refer to Exhibit 32.
 7 Do you recognize this document?
 8 A. Give me a second.
 9 Yes. This looks like a performance
 10 appraisal for the time period from when I started
 11 in November through the end of December.
 12 Q. Do you recall when this evaluation was
 13 done?
 14 A. I remember first being surprised that it
 15 was being done in the first place because I hadn't
 16 met with Kent very many times, but I don't remember
 17 the exact date.
 18 Q. Had you been working there about three
 19 months or so?
 20 A. Let's see. December, January, February.
 21 Max -- at very maximum, three months.
 22 Q. If you go to page 1114 --
 23 A. 1114. Got it.
 24 Q. Will you look at the top there. It
 25 says, "This year represents a significant career

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1 Q. You indicate in a bullet point there,
 2 "Kent doesn't seem to understand or respect role."
 3 What does that mean?
 4 A. So this falls -- this star is under --
 5 so I distinctly --
 6 So in these notes, this looks like notes
 7 either -- to myself in preparation for some type of
 8 meeting.
 9 So that star, "Kent doesn't seem to
 10 understand or respect role," falls under the
 11 packaging aspect of my job.
 12 And it's true that Kent didn't seem to
 13 understand what the packaging materials role was
 14 all about, and that is referring to the role that I
 15 had interviewed for and the role that Tim Lalley
 16 and Jason Schwark were performing.
 17 Q. So Kent, your supervisor, who has been
 18 there 20 years as an engineer --
 19 A. Correct.
 20 Q. -- knew less about your role as a
 21 packaging engineer than you did?
 22 A. Yes.
 23 Q. Okay.
 24 A. He was brand new to -- he had been
 25 working as a project manager on the equipment side

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1 for the majority of his career and hadn't been
 2 exposed to the packaging materials engineering side
 3 before.
 4 And so how I understood it was that this
 5 was a new thing for him, and this was -- so part
 6 of --
 7 Not only am I having to take on two
 8 new -- two jobs at the same time in a different
 9 industry, but another challenging part of this was
 10 having to -- I felt like I was in a position where
 11 I was having to train Kent on what I was doing for
 12 packaging materials.
 13 I couldn't ask him questions directly.
 14 Q. And after we talked about, "Kent doesn't
 15 seem to understand," you say, I think, "Sad that
 16 packaging doesn't need me full time."
 17 A. Kent did say that, and I was definitely
 18 bothered by that because in the interview --
 19 I didn't leave HP to do anything else.
 20 In the interview, they said they needed a packaging
 21 engineer.
 22 So at six months in, Kent's telling me
 23 that they don't need a full-time packaging
 24 engineer, so that definitely bothers me.
 25 Q. Please go to Exhibit 9.

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1 A. Got it.
 2 Q. You mention that you were working on the
 3 processes for the startup process, basically.
 4 Is this part and parcel --
 5 A. Right.
 6 Q. -- of what you were working on?
 7 A. This is exactly what I was referring to.
 8 Q. Okay.
 9 A. It's upside-down, but --
 10 Q. Okay.
 11 A. I'll take it out if we need to look at
 12 something.
 13 Q. And this is a template, and then someone
 14 has to add data to fill in dates and times and
 15 people, correct?
 16 A. This was actually --
 17 I'm sorry. I just need to turn this
 18 right-side up so that I can --
 19 Just want to make sure we're talking
 20 about what I think we're talking about.
 21 Yeah. So this was -- this started off
 22 with no verbiage. This was actually blank.
 23 MS. BIRCH: You're on page Simplot 196,
 24 right?
 25 THE WITNESS: Uh-huh.

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1 Q. (BY MR. JULIAN) Okay.
 2 A. Yes.
 3 Q. And I'm looking at 194. Is that just
 4 before?
 5 That's fine.
 6 A. Oh, 194.
 7 Q. That's just the start of it, isn't it?
 8 A. 194. Yeah. Some of this information
 9 may have been taken from another document that had
 10 a similar kind of look and feel called the NAFG
 11 engineering process.
 12 And then what they wanted was a
 13 similar-looking document with the same look and
 14 feel that would be similar but be focussed on
 15 startup.
 16 Q. And were you the sole person that worked
 17 on this?
 18 A. No. No. I couldn't possibly.
 19 Q. Who else worked on it?
 20 A. James Turner, Byron Smith. Those were
 21 the -- those were the two key people. There was
 22 another gal -- I can't remember her name -- with
 23 Jacobs Engineering.
 24 And then lots of -- there were many,
 25 many meetings. So lots of different people brought

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1 that.
 2 Integrity is really important for me, so
 3 I -- that definitely hurt.
 4 Q. Okay. And I think I've got -- I can
 5 read the first page. Let's just run to the second
 6 one, if that's okay.
 7 Rock climbing. Does this have anything
 8 to do with your job?
 9 A. No.
 10 Q. Okay. Good.
 11 "Cycling," probably not.
 12 What is "watches"?
 13 A. Watches, yeah. I was trying to
 14 figure --
 15 I was so desperate at the time, I was
 16 scared I was going to get fired. So I was jotting
 17 down notes of what in the world am I going to do
 18 and how can I stay in Boise.
 19 So one of the things that I was thinking
 20 about is maybe is this -- do I start up a new
 21 business? And it looks like this is --
 22 I was in a -- I was desperate. I was
 23 very worried that I was going to be fired at any
 24 time.
 25 Q. Did you apply for any other outside work

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1 during this period?
 2 A. Towards the end, absolutely.
 3 Q. Sure.
 4 Who did you apply to?
 5 A. I remember --
 6 Towards the end, I was thinking that
 7 maybe medical device packaging could be an interest
 8 area. Boston Scientific, if I remember correctly.
 9 But I don't recall exactly. I actually
 10 have a list of where I was applying. But I don't
 11 think it really started in earnest while I was
 12 working. I didn't have a whole lot of time to be
 13 applying for outside work.
 14 Q. So primarily after?
 15 A. Primarily, yeah.
 16 Q. Okay.
 17 A. I think there were a couple -- couple
 18 things that had gone on towards the end.
 19 Q. Did it ever occur to you that you could
 20 return to work under a performance improvement plan
 21 and continue to seek outside employment?
 22 A. Continue to work -- continue -- that I
 23 could --
 24 I'm sorry. Will you re --
 25 Q. Let's go back.

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1 A. Like, maybe to time frame, a little
 2 context. I'm not really clear.
 3 Q. Yeah. And we're going to jump into this
 4 a little later, just that this occurred to me.
 5 A. Yeah.
 6 Q. Do you agree that at some point you were
 7 given a choice: Either take a severance package of
 8 approximately \$20,000 for which a release of
 9 liability would be made or --
 10 A. That's pretty --
 11 Q. -- come back to work under a performance
 12 improvement plan?
 13 A. I had those two very poor options.
 14 Q. You had two options?
 15 A. Very poor, yes.
 16 Q. Okay. Why didn't you choose come back
 17 to work and at the same time look for other work?
 18 A. I could come --
 19 Well, let's -- let's look at that then.
 20 I could come back to work for a job that
 21 I hadn't applied for, hadn't interviewed for,
 22 hadn't agreed to. I could -- that was one option.
 23 I could -- under that same thing where
 24 I'm coming under -- I'm having to be -- I'm
 25 expected to return to a job that I never wanted in

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1 the first place, never left HP for, never -- never
 2 wanted. Sort of feel betrayed for -- when they
 3 switched it on my first day.
 4 I would be coming back working under
 5 this umbrella of a performance improvement plan,
 6 which I felt like was -- was kind of a retribution
 7 for escalating what Lyle and Kent had done to me.
 8 And then also under this, Kent had -- I
 9 don't know how many times he -- you know, I was
 10 kind of under this, "You could be fired if you do
 11 this. You could be fired if you say that again."
 12 So I was looking at coming back to a job
 13 where it seemed pretty inevitable to me that firing
 14 would -- was a very likely -- likely thing, and I
 15 didn't want to be fired. I didn't want to have
 16 that on my -- on my record.
 17 Q. Okay. Why did they do a performance
 18 improvement plan and meet you all these times if
 19 they could have just fired you?
 20 MS. BIRCH: Object to the form of the
 21 question. Calls for speculation.
 22 Q. (BY MR. JULIAN) From your perspective.
 23 A. That's a great question.
 24 I don't know.
 25 Q. Okay.

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1 A. In my opinion, I had escalated my
 2 management to Kayce McEwan, vice president of human
 3 resources, three weeks before this. And it is my
 4 opinion that this was a retaliation for escalating
 5 that. I had said some pretty serious stuff and
 6 made some serious allegations against my management
 7 for misrepresenting a job.
 8 Q. Okay.
 9 A. And it was my impression that this was
 10 retaliation because there was nothing that I could
 11 figure out that made any sense for giving me a
 12 performance improvement plan.
 13 Q. Okay. Let's go -- I think I can read
 14 the second --
 15 Which page are we on?
 16 Let's go to page 4 where it says, "Dave
 17 Gottberg," or something.
 18 A. Gottberg.
 19 Q. What --
 20 MS. BIRCH: I think it's page 5, just so the
 21 record is clean.
 22 MR. JULIAN: Correct. It is. Thank you. I
 23 appreciate that.
 24 Q. (BY MR. JULIAN) This is just kind of a
 25 hard one for me to interpret.

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1 What does this mean?
 2 A. I don't remember who Dave Gottberg is.
 3 Let me read this.
 4 Oh, this is in -- this is in relation to
 5 my packaging engineering job. So we're talking
 6 about -- we've been talking about startup manager.
 7 I was having to kind of switch my brain to going to
 8 this packaging engineering job.
 9 This was some test results from a -- a
 10 trip to Memphis where we were having sealing
 11 issues, and we were trying different things with
 12 temperature, and I think -- I think those -- the
 13 330, 320 might be temperature because we were
 14 messing around with different temperatures for the
 15 heating bar to seal up the film.
 16 Fascinating, I know.
 17 Q. At least it's an explanation.
 18 A. Yeah.
 19 Q. And I appreciate that.
 20 Do you know when this was probably
 21 drafted?
 22 A. I don't. I -- I know it was during my
 23 trip. This looks like technical notes to myself
 24 when I went with -- with Jason to Memphis.
 25 Q. Then there's part of this, the very last

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1 paragraph, that I need just a little explanation.
 2 "Packaging: Jason, Tim" --
 3 A. "Jason and Tim" --
 4 Q. -- "held the cards," maybe?
 5 A. -- "held the cards on what I work on."
 6 Yeah. So it was kind of --
 7 And then the next sentence, "Working
 8 very hard to earn trust. Also start working to" --
 9 Q. Could you just read that out loud?
 10 "Also working to" --
 11 A. "Working very hard to earn trust. Also
 12 working to get on distribution lists."
 13 Q. "Include -- included" --
 14 A. Oh, the next one?
 15 "Including" -- probably I meant
 16 "including" -- "asking to work on things."
 17 I don't know what that means.
 18 Q. And if you can read that last sentence,
 19 that would be greatly appreciated.
 20 A. "Scared to give things up. Not sure how
 21 to manage Michael."
 22 Q. Who is Michael? Is that Michael
 23 Whiting?
 24 A. Michael Whiting.
 25 Q. And you were his manager?

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1 A. No. I think this is referring to --
 2 Michael had a tendency to say -- to get
 3 the packaging team a little -- in a little bit too
 4 much trouble with working with the business teams,
 5 so we were always working like, "How do we manage
 6 Michael in these meetings."
 7 Q. In business, known as a loose canon?
 8 A. Yes.
 9 MS. BIRCH: That's the technical term.
 10 MR. JULIAN: Yeah, very technical term. I
 11 understand that.
 12 THE WITNESS: So the three of us were like,
 13 "How do we manage this guy," because he -- you
 14 know, he has potential.
 15 Q. (BY MR. JULIAN) Okay.
 16 A. Yeah.
 17 Q. Did you know, Michael Whiting is
 18 actually the guy that ended up taking over the
 19 startup manager management role.
 20 Did you know that?
 21 A. I heard that in the depositions.
 22 Q. Okay. And what status of engineer was
 23 he? Do you recall --
 24 A. I don't.
 25 Q. -- at all?

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1 Q. Just kind of a rhetorical question,
 2 maybe?
 3 A. These are actually notes to myself.
 4 Q. Okay.
 5 A. So I was preparing to lead some sort of
 6 a meeting, and in my experience with HP, one of the
 7 things that I really learned to influence people
 8 that I wasn't in charge of is to help them
 9 understand why we're doing whatever we're doing.
 10 And I haven't even read these bullet
 11 points yet, but this was -- I found this really
 12 helped me and helped to -- as a leader, help to
 13 engage people on my team is helping them first
 14 understand the why of why we were doing what we
 15 were doing.
 16 Q. And at least from that last entry, it
 17 looks like you were working toward trying to be
 18 successful as the startup manager.
 19 A. Yeah. I -- I tried. I was trying.
 20 Q. Right.
 21 A. I was doing everything I can.
 22 Q. We don't know the date of that, though,
 23 do we?
 24 A. No.
 25 Q. Okay.

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1 A. I wish we did.
 2 Q. That's okay.
 3 MS. BIRCH: We're about noon. I don't know
 4 if you want to get through another topic and then
 5 break for lunch or --
 6 MR. JULIAN: Yeah. Let's go off the record.
 7 (Lunch break taken from 12:00 p.m. to 12:43 p.m.)
 8 Q. (BY MR. JULIAN) We will go back on the
 9 record after taking a short lunch break.
 10 A. Okay.
 11 Q. And we will try to go through this.
 12 There's just so many documents, it's a little bit
 13 cumbersome. If, again, I lose track of time and if
 14 you need a break at any time, just yell and --
 15 A. Okay.
 16 Q. -- I'll accommodate you any way I can.
 17 A. Okay.
 18 Q. Let's go to Exhibit 18.
 19 A. Okay.
 20 Q. And that's kind of printed horizontally,
 21 and it's a little bit small print, I understand.
 22 A. Okay.
 23 Q. Let me just ask you: Do you recognize
 24 that?
 25 A. Yes.

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1 Q. What is that, Erik?
 2 A. This is a meeting that I scheduled with
 3 Lyle to discuss my concerns and some rumors that I
 4 had heard.
 5 Q. And I'm having a hard time seeing the
 6 rumors.
 7 What was that?
 8 A. So Lyle --
 9 The rumors was that Lyle was talking to
 10 Tim and Jason about my performance and was
 11 concerned about my performance and Tim and Jason
 12 told me that, and so I wanted to set the record
 13 straight with him directly.
 14 And so that -- this is the meeting that
 15 I scheduled with him to talk about kind of overall
 16 how things were going.
 17 Q. Okay. And I'm sure I'll get to this in
 18 another document -- just have it on my list of
 19 things -- but you did have a meeting with Lyle?
 20 A. Yes.
 21 Q. And maybe I can just jump to that.
 22 If you recall, when was that?
 23 A. June 7th, 2016.
 24 Q. And why don't you tell me what happened
 25 in that meeting.

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1 A. This was actually a meeting that really
 2 changed the game for me with my employment at
 3 Simplot.
 4 So my intention was -- going into the
 5 meeting was to describe kind of how things were
 6 going with me with the packaging portion of my role
 7 and then the startup manager position.
 8 And so I wanted to tell him that the
 9 role that I had interviewed for, the packaging
 10 engineering role, was actually going really well.
 11 It was kind of exactly what I had hoped it would
 12 be. I was learning and it was -- it was kind of a
 13 good deal for me. I was able to contribute and
 14 make a good impact.
 15 But I really wanted to talk to him
 16 about -- I wanted him to -- to let him know that
 17 half of this was going well and the other half
 18 wasn't.
 19 So the startup manager role wasn't going
 20 as well. I didn't feel like I had the background
 21 to really contribute at the level that I -- that I
 22 wanted to, and it was a struggle for me.
 23 And so while we were talking about
 24 this -- and this is why I say this was kind of a
 25 key -- a key meeting for me is Lyle looked me right

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1 in the eyes and said, "You know what? I never
 2 intended to put you to be a full-time packaging
 3 engineer from the day I hired you."
 4 And when he said that, I realized that
 5 they never freaking intended for me to -- they
 6 never intended for me to be in the role that I had
 7 interviewed for and that I had left HP for.
 8 And that pissed me off because I was --
 9 I was -- I had a good role at HP. I was fine and
 10 I -- and I had a family to support. I'm the sole
 11 breadwinner. I've got two boys at home, and things
 12 were fine.
 13 And they freaking lied to me. And he
 14 admitted it in this meeting and he looked me
 15 straight in the eyes and told me.
 16 And here I am in this situation. I'm
 17 like, "Now what do I do? I've been lied to. I
 18 can't go back to HP. I already left them. There's
 19 not a role open for me there." And I didn't know
 20 what to do. I wasn't performing at the level that
 21 they wanted for the startup manager role. I told
 22 them I didn't have the background. He didn't care.
 23 And I'm like, "Well, what do I do? I
 24 don't" --
 25 He's not taking it away from me. I'm

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1 telling him I can do this packaging engineer role,
 2 the one I interviewed for, but it's like they were
 3 not backing off this startup thing, and I didn't
 4 understand why.
 5 I mean, I was -- they were hounding me,
 6 like, all the time. I'm just like, "Why is the
 7 onus on me to perform at this high level for this
 8 job I never agreed for, I never said I had the
 9 background for," and all of a sudden it's my
 10 problem that I'm having to do this thing that --
 11 It was a huge deal for me that they were
 12 dishonest because I thought I had a really good
 13 thing going and now I was in a serious, serious
 14 situation.
 15 So that's why I say this meeting was the
 16 key for me. And so what I did was I took that and
 17 I thought about it. And I don't remember the time
 18 frame, but this is when I decided to escalate to
 19 Kayce McEwan, the -- the vice president of human
 20 resources.
 21 And I thought it was so heinous that
 22 he -- that -- how he just told me that he'd lied to
 23 me that I went right -- I went as high as I could
 24 and I put together this --
 25 I spent a lot of time working on this

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1 e-mail to Kayce because I wanted to come across as
 2 professional, not complaining. I'm not complaining
 3 about, like, you know -- like I'm inflexible or
 4 something or this was, like, some part of the job I
 5 didn't like. It was clear this was a whole
 6 different role, not just a side thing.
 7 This was a whole different
 8 envision [sic] that they had for me, and I wanted
 9 to be very clear and as professional as I could be.
 10 And I wrote that e-mail to Kayce and I never heard
 11 anything, and then it was, like, three weeks --
 12 three weeks went by and things just got worse and
 13 worse and worse for me.
 14 In that message to Kayce, I told her, I
 15 said, "I want to make this work." You know, in the
 16 back of my mind I'm thinking, "I can't lose this
 17 job. I can't lose my employment." She didn't say
 18 anything to help me out. It was just like things
 19 after that actually got worse for me.
 20 The next thing I know, Kent's -- I don't
 21 know how many times Kent is, like, on my butt about
 22 just stupid stuff or just chewing me out all the
 23 time. I was so -- I was so sick of getting chewed
 24 out for not performing this role that I had never
 25 agreed to -- to getting.

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1 And, you know, the next thing I know,
 2 it's like he's telling me to grow a sack, like I
 3 didn't have thick skin or something, and then I
 4 blow up and it's just like, "My gosh, this is,
 5 like, a disaster."
 6 And then I called Kayce urgently. No, I
 7 called the hotline because I'm like, "I can't --
 8 why can't I get any freaking help around here?"
 9 And I called the hotline. I think this was, like,
 10 three weeks after I sent Kayce the note, and I'm
 11 like, "Can you please help me out? I'm, like,
 12 about to get fired and I don't know what to do.
 13 This doesn't seem right."
 14 And then finally Kayce calls me, and
 15 she's like, "I had the day off." I was like, "I
 16 have a meeting my manager called with me at 8:00.
 17 I think I'm going to get fired and I don't know
 18 what to do. Please, please, please, someone help."
 19 And she said, "There's nothing I can
 20 really do to change your job description. What do
 21 you want?" And I was like, "Well, I'm looking at
 22 getting fired on Monday. The next -- maybe the
 23 best thing to do is give me a severance at this
 24 point." That's how bad things are.
 25 And so she -- she -- she told me, "Okay.

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1 In your Monday meeting, just please don't let
 2 the -- the situation escalate any further and just
 3 take what he says. Just take it, don't argue.
 4 Just kind of accept it." And so that's exactly
 5 what I did.
 6 And I think I met with her -- I think I
 7 got a performance improvement plan that day, that
 8 Monday -- never had a performance improvement plan
 9 in my life -- for a job that I never wanted, that
 10 Lyle had just admitted that he never had -- that he
 11 lied to me about.
 12 Q. Let's -- let me interrupt you --
 13 A. Freak.
 14 Q. -- just a little bit because we're
 15 skipping over some things that happened in between
 16 and --
 17 A. Yeah.
 18 Q. The conversation with Lyle, was there
 19 anyone there?
 20 A. No.
 21 Q. Just you two?
 22 A. Yeah.
 23 Q. How long did it last?
 24 A. It looks like 30 minutes, according to
 25 this, but I don't remember exactly how long.

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1 Q. And you -- you remembered one part of
 2 it, that he said, "I never intended you to be a
 3 full-time packaging engineer."
 4 A. Yeah.
 5 Q. What else did he tell you over this
 6 30-minute period?
 7 A. I don't remember. That was the only
 8 takeaway that I took.
 9 Q. Did he mention that he thought being a
 10 startup manager would assist you in learning more
 11 about the industry --
 12 A. No.
 13 Q. -- and make you a more --
 14 A. No.
 15 Q. -- productive packaging engineer?
 16 A. No.
 17 Q. How do you know he didn't if you don't
 18 remember?
 19 A. I'm sorry. Can you --
 20 Q. Yeah.
 21 A. -- just --
 22 Q. Didn't he mention that he thought it was
 23 a good idea to put you on this so you could
 24 actually gain some institutional knowledge of how
 25 Simplot worked?

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1 A. Absolutely not. There was never any
 2 discussion on this was a -- some kind of a training
 3 activity for me. This was -- it was clear that
 4 this was a role that I was to fulfill.
 5 Q. Can you remember anything else
 6 specifically in this 30-minute conversation that
 7 was said to you?
 8 MS. BIRCH: That was said to him?
 9 MR. JULIAN: Yes.
 10 THE WITNESS: Well, we didn't talk about the
 11 packaging engineering section a ton because it was
 12 going well, so the startup manager role --
 13 And maybe I can read this out loud to
 14 myself to figure out if I remember anything else.
 15 Q. (BY MR. JULIAN) Why don't you just read
 16 it to yourself and let me know if it refreshes your
 17 memory about anything.
 18 A. He --
 19 The only thing other than that is I just
 20 remember him -- he uses the word "coaching" a lot
 21 and maybe some general coaching-type things.
 22 But specifics, I can't remember.
 23 Q. In what context, if you can recall,
 24 Erik, was the term "coaching" used?
 25 A. I don't recall.

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1 Q. Okay. Let's move on a little bit. We
 2 have just a few documents. We need to just see
 3 what role they had here.
 4 Look at Exhibit 34, if you would.
 5 MS. BIRCH: Are you doing okay or do you
 6 need a break?
 7 THE WITNESS: I'm doing all right.
 8 I see -- I see --
 9 Q. (BY MR. JULIAN) This is a
 10 three-page document.
 11 Do you recognize that?
 12 A. Yes. I wrote this.
 13 Q. Okay. And you were the sole author of
 14 this?
 15 A. Yeah. I got contributions from the
 16 team. I -- I got help from the manufacturing
 17 equipment makers of this equipment, got input from
 18 the engineering team, and I got input from the
 19 Idaho plant.
 20 Q. Did you receive any feedback on this?
 21 A. Yeah. I actually traveled to Grand
 22 Forks, and we worked on this as a team. So not
 23 just the equipment manufacturers, but the Idaho
 24 plant, the engineering team.
 25 But then really, Byron and I made a

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1 But I had worked enough in manufacturing
 2 that it just -- it wasn't -- it didn't really bring
 3 out my strengths.
 4 Q. But when you say it is a job that
 5 you would never -- you swore you would never do
 6 again, you're referring to a similar job that you
 7 did at HP, correct?
 8 A. Yes.
 9 Q. And we're talking about that job --
 10 You didn't really like the stress of
 11 being the project manager, correct?
 12 A. No. I actually like stress.
 13 Q. Okay.
 14 A. I don't -- I don't -- I don't shy away
 15 from stressful stuff.
 16 Q. What was it that you swore you would
 17 never do again then?
 18 A. So on the manufacturing side with HP,
 19 it's a lot of -- a lot of problem-solving. Like --
 20 No. That's not the right word. Take it
 21 back.
 22 You'll have issues in manufacturing
 23 where things won't work correctly. And what I
 24 like -- the term that I used to like to use was
 25 "firefighting." So it was very much a firefighting

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1 role. Like smack the mole. There's a problem
 2 here, here, here, here. And that's kind of the
 3 nature of manufacturing.
 4 So I did that at HP for eight years.
 5 That whack-a-mole kind of thing. And then I had --
 6 I had left that, and I didn't want to get into that
 7 type of role again. I wanted to get into more of a
 8 strategic-type -- type role.
 9 Q. But when you interviewed, you emphasized
 10 your project management experience at HP, correct?
 11 A. Yeah.
 12 Q. Did you ever tell the interviewers that,
 13 "That's all good and fine, but I don't want to
 14 return to assisting with problem-solving with
 15 manufacturing"?
 16 A. Why would I say that? I'm not going to
 17 volunteer that type of information.
 18 Q. Well, because it's honest, isn't it?
 19 You never wanted to go back to that. You swore you
 20 didn't want to go back to that, correct?
 21 A. That wasn't asked.
 22 Q. Why don't you volunteer that and say,
 23 "By the way, I don't want to do this kind of job"?
 24 A. Why would I volunteer -- why would I
 25 just say -- I mean, there's -- I don't -- I also

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1 wouldn't want to be a lawyer. I mean, why would
 2 I -- that -- that sounds crazy to say --
 3 Q. Don't you think --
 4 MS. BIRCH: Hold on. You guys are talking
 5 over each other.
 6 MR. JULIAN: We are. I appreciate that.
 7 THE WITNESS: Sorry.
 8 Q. (BY MR. JULIAN) And your point is: Why
 9 would you volunteer that?
 10 A. It wasn't asked.
 11 Q. Okay. And you didn't volunteer it,
 12 though?
 13 A. (Witness indicates.)
 14 Q. I mean, let me just set this forth.
 15 You agree that they were looking at you
 16 for some of your leadership skills, correct?
 17 A. In the interview, I was interviewing for
 18 a packaging engineering position. They asked about
 19 my interview -- my leadership skills, and I
 20 volunteered. And of course I talk about that.
 21 Q. And you emphasized not only in your
 22 resume but in your interview the successful project
 23 that you headed in China?
 24 A. Of course. Yeah. It's the highlight of
 25 my resume.

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1 Q. But the fact is you never wanted to go
 2 back to that kind of job again, according to what
 3 you told Laura Nessen.
 4 A. So?
 5 Q. And you never told them that?
 6 A. I'm sorry. I don't understand the
 7 question.
 8 Q. Did you ever tell anyone in your
 9 interview that, "Yeah, I did project management,
 10 but I'm not going to do that job again"?
 11 A. No.
 12 Q. Okay.
 13 (Deposition Exhibit No. 57 was marked.)
 14 Q. (BY MR. JULIAN) Again, we're just
 15 keeping track of some documents. There's one that
 16 we've marked as Exhibit 57.
 17 Do you recognize this document?
 18 A. No.
 19 Q. Maybe go to the second page.
 20 A. Oh. This looks like something --
 21 I typed this. Okay.
 22 Q. And you recall now, don't you, that you
 23 used the Simplot internal grievance process online?
 24 A. Is that the hotline?
 25 Q. Yeah.

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1 guess that's what the picture -- that's why he was
 2 so upset. I was sitting in his spot."
 3 So I was like, "Okay." Everyone
 4 laughed. Lyle was there. He laughed. Someone
 5 said, "You sat in his seat," and I was like, "Okay.
 6 I feel pretty stupid. That's kind of
 7 embarrassing." Whatever.
 8 So I don't think it's super
 9 professional, but that --
 10 It looks like I was going to the
 11 bathroom.
 12 Q. Okay. If we go to pretty much the
 13 second-to-last paragraph on 160.
 14 A. 160?
 15 Q. Yes.
 16 A. Okay. I see.
 17 Q. And that talks about a situation where
 18 Kent had texted you and wanted to know about your
 19 calendar, correct?
 20 A. Right.
 21 Q. And I think he admitted -- and correct
 22 me if I'm wrong -- that he misread the calendar.
 23 And you were there, basically, correct?
 24 A. Yes. I sent him an e-mail asking why he
 25 was questioning me, and it felt like -- I can't

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1 remember the exact word that I used. "Torment," I
 2 think, is the exact word I used in an e-mail.
 3 And then I think he responded after
 4 that, "I can see where you would think that. I
 5 didn't see your e-mail."
 6 (Deposition Exhibit No. 58 was marked.)
 7 Q. (BY MR. JULIAN) I'm handing you what has
 8 been marked as Exhibit 58.
 9 A. Yeah.
 10 Q. Is that a screenshot of your e-mail
 11 or --
 12 A. Text.
 13 Q. -- text exchange?
 14 A. Yes.
 15 Q. And is this the text that you said Kent
 16 sent to check up on you to purposefully torment
 17 you?
 18 A. Yes. This --
 19 Why I was so confused is I had
 20 been going --
 21 So "FG" -- "Are you at FG today?" --
 22 that stands for Food Group, and that's in downtown
 23 Boise. I had been going to -- I had been doing
 24 this on a regular basis, I would say, starting in
 25 January. And so here in July, after all of this --

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1 I know I already reported him to HR, and
 2 he was questioning me to a level that I had not
 3 experienced since I started at Simplot.
 4 Q. And you thought he was intentionally
 5 tormenting you by asking this question?
 6 A. I don't think it started off that way.
 7 Q. I don't understand your response.
 8 A. I think there's more -- there's some
 9 e-mails that go back and forth related to the
 10 texting. I can't remember if we --
 11 It might have started off texting and
 12 then --
 13 Q. Okay.
 14 A. We're texting and e-mailing at the same
 15 time, so this doesn't show the whole picture.
 16 Q. Look at Exhibit 40, if you would.
 17 A. Okay.
 18 Q. Is this an e-mail exchange that followed
 19 the text message?
 20 A. Yes.
 21 Q. After Kent asked you about your calendar
 22 and you answered his question, why did you need to
 23 follow up with an additional e-mail?
 24 A. I don't recall.
 25 Q. And your e-mail is at 7:00 in the

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1 morning.
 2 A. Yes.
 3 Q. And you say, "I don't understand why you
 4 continue to question me to this extent and give me
 5 such grief."
 6 What grief was he giving you?
 7 A. Well, I -- I had felt like he was
 8 starting --
 9 Something different happened in those
 10 last three weeks -- well, there was a -- there was
 11 a -- something --
 12 He was -- he was asking way more
 13 detail -- for way more documentation on, like,
 14 every little thing that I was doing. This is one
 15 part of it. My -- the list of what I was doing and
 16 asking for more and more detail in that. I was
 17 being --
 18 He asked me to text him anytime I did
 19 anything outside my direct office.
 20 And this was so unusual. Things -- I
 21 didn't understand why he was questioning things
 22 that used to be just normal.
 23 Q. And your last line in here is, "I don't
 24 know if you're purposefully trying to torment or if
 25 you just have no idea how it comes across."

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1 A. Yeah. I wanted him to know that I was
 2 picking up on something. Something was going on,
 3 and I didn't understand what it was.
 4 Q. And he responds to you, correct?
 5 A. Yeah.
 6 Q. And he says, "Sounds like more
 7 discussion is warranted." He says, "I'm sorry you
 8 feel that your boss asking where you are is giving
 9 you grief." And he apologizes for being confused
 10 about your calendar, correct?
 11 A. Right.
 12 Q. But he does apologize at least twice in
 13 here. "I do apologize if my messaging or lack of
 14 responses to some -- or not sharing the intent of
 15 my communication is lacking and caused some
 16 assumptions," correct?
 17 A. That's true. I don't remember when
 18 exactly --
 19 Let me see.
 20 True.
 21 Q. Do you believe that suggesting that your
 22 supervisor is tormenting you was a professional
 23 response to his inquiry?
 24 A. I think it was important for him to know
 25 that I felt like he was treating me differently

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1 than I had been treated in the past.
 2 Q. Could you look at Exhibit 59.
 3 A. I don't have that one.
 4 Q. You may not have it yet. Sorry.
 5 (Deposition Exhibit No. 59 was marked.)
 6 THE WITNESS: Thanks.
 7 Q. (BY MR. JULIAN) Do you recall receiving
 8 this?
 9 A. Yes.
 10 Q. And this is, again, in response to the
 11 e-mail you sent that day, correct?
 12 A. This was --
 13 Q. That you sent on July 8th. Excuse me.
 14 A. Yeah. This was after I got a
 15 performance improvement plan.
 16 MS. BIRCH: Brian, when you get to a good
 17 spot, can we take a quick break?
 18 MR. JULIAN: Absolutely. We can do it right
 19 now.
 20 (Break taken from 1:50 p.m. to 1:59 p.m.)
 21 Q. (BY MR. JULIAN) If you need a break, I
 22 lose track, just yell at me, and we'll just do it.
 23 A. All right.
 24 Q. Looking at what has been marked as
 25 Exhibit 59.

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1 A. Okay.
 2 Q. It indicates that you had a
 3 conversation, and this is where the performance
 4 improvement plan or the acronym "PIP" was discussed
 5 with you, correct?
 6 A. Correct.
 7 Q. And Kent seems to believe that your
 8 e-mail that you sent to him and talked about
 9 purposefully tormenting was unprofessional, and it
 10 indicates that you "apologized this morning for the
 11 communication."
 12 Do you recall that?
 13 A. I don't remember apologizing. It's
 14 likely that --
 15 So apologizing maybe in that Monday
 16 morning meeting?
 17 Q. That's the way I read that. I don't
 18 want to --
 19 If you need time to review this,
 20 we're -- we've got most of this behind us. We can
 21 take our time.
 22 A. Let me skim it real quick here.
 23 Q. That second paragraph is what I'm
 24 looking at.
 25 A. Yes. Kayce asked me to defuse as much

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1 of the tension as I possibly could. I had talked
 2 to her there that Friday before, so I -- I don't --
 3 though I don't remember, I don't -- I wouldn't
 4 dispute apologizing just to try to clear -- just to
 5 tone things down a little bit. I was willing to do
 6 whatever Kayce asked me to do.
 7 Q. And what I'm hearing is, "Yeah, I did it
 8 because Kayce suggested it."
 9 Does that mean you didn't do it because
 10 you felt it was unprofessional?
 11 A. I definitely had issues with how I was
 12 being treated, so I don't know --
 13 It's really hard to say what my state of
 14 mind was at that time. You know, I'd never
 15 received a performance improvement plan in my life,
 16 so it's really hard to say exactly what I was
 17 thinking at that point.
 18 Q. And maybe we have explored it enough.
 19 What I'm hearing is you did apologize,
 20 but you're not sure if you apologized because you
 21 believed what you said was unprofessional?
 22 MS. BIRCH: Object to the form. I think it
 23 misstates the testimony.
 24 Q. (BY MR. JULIAN) And I'm just asking you.
 25 A. I don't remember.

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1 Would you say it's likely it happened at
2 the time of reassignment? And I'm just using that
3 phrase because it --
4 A. No idea.
5 Q. Okay.
6 A. Yeah.
7 Q. Let's go to Exhibit 16, if you could.
8 A. Okay.
9 Q. Do you recognize this document?
10 A. Yes.
11 Q. And you were presented this on
12 July 11th, correct?
13 A. Correct.
14 Q. And was it at the meeting that we just
15 discussed where he has an e-mail summarizing part
16 of the meeting?
17 A. Correct.
18 Q. Okay. Did you go through --
19 Well, why don't we just have you
20 discuss: How was it discussed with you --
21 And what I'm looking at, did you go
22 through one, two, three or was it more of a global,
23 "This is what I'm looking for," if you can recall?
24 A. I can't recall exactly, but I definitely
25 remember reading the whole thing while he was in my

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1 office. And I remember being --
2 I just remember reading it, so --
3 Q. Did you agree to engage in this
4 performance improvement plan?
5 A. Yes. Like I said, you know, this was on
6 a Monday. The Friday before, Kayce said, "Just
7 kind of take whatever he says, defuse, defuse,
8 defuse," and that's exactly what I did, so --
9 I definitely wasn't -- I didn't argue
10 with it.
11 Q. Were there issues that you felt were
12 improper in this improvement plan?
13 A. I didn't think the improvement plan was
14 appropriate to begin with.
15 Q. Okay.
16 A. But I didn't want to -- it seemed
17 like -- it seemed like we had a much bigger issue
18 going on. When I talked to Kayce the next day or
19 maybe the day after, it seemed like to me we had a
20 much bigger issue going on where the
21 misrepresenting a job came up, and it just -- that
22 was more my focus than this performance improvement
23 plan, so --
24 Q. Well, let's just go through this.
25 The notion of "improved, more frequent

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1 communications," that's not an unreasonable
2 request, is it?
3 A. It's never an unreasonable request, no.
4 Q. And "taking a more proactive approach
5 from the employee's side, not just depending on
6 manager initiating the communication."
7 Again, basically bring issues up, speak
8 about them, correct?
9 A. Oh, yeah. That's how I've always
10 worked.
11 Q. Okay. And this is probably just a term
12 of art. "Share deliverables with the manager."
13 What did that mean to you?
14 A. Oh, that I --
15 He wanted to know what kind of
16 deliverables I was working on. So I needed to --
17 if there was a package solution needed for a new
18 vegetable mix, that I share kind of what I was
19 working on with that.
20 Q. What does "deliverable" mean --
21 A. Oh.
22 Q. -- in the industry?
23 A. Oh, sure.
24 Deliverable. Like, a result.
25 Q. Okay.

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1 A. Yeah.
2 Q. The next one, "Take the positive intent.
3 Don't assume things without communication. More
4 specifically, call or talk in person to get a
5 mutual understanding."
6 That's not an unreasonable request, is
7 it?
8 A. No, not at all. And this is how I've
9 always worked in the past, especially working with
10 Asia. I don't know if you've ever worked with the
11 Chinese before, but they can come across entirely
12 different than they intend in an e-mail. And it's
13 common practice for me, and it always has been, to
14 talk in person after -- if there's some kind of
15 misunderstanding.
16 So that's not -- it's not unreasonable.
17 It's how I've always done things.
18 Q. And I could go through the whole list,
19 but in looking at this, it appears to me to be a
20 general statement about improving communications
21 and working together.
22 Is there anything that you find
23 offensive about this plan?
24 A. No. I don't find anything offensive at
25 all. But the fact that it's here in the first

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1 place, that's the offensive part. It's not the --
 2 the contents of it.
 3 And this is kind of how I've always
 4 approached my working style in the past. It's how
 5 I -- how I've been successful. And so the fact
 6 that it's in a performance improvement plan kind of
 7 baffled me.
 8 And then -- so -- so if this is -- is
 9 his impression of me now, how in the world -- how
 10 do you measure "improved, more frequent
 11 communication" when I thought I had been doing
 12 that?
 13 I don't know how -- how -- I don't know
 14 how you meet this specifically, so --
 15 Q. But you attempted to, didn't you? I've
 16 gone through a number of your --
 17 A. Yeah.
 18 Q. -- weekly reports --
 19 A. Right.
 20 Q. -- and each one seemed to have even more
 21 detail and information and times and
 22 deliverables --
 23 A. Yes.
 24 Q. -- things of that nature.
 25 A. He kept asking for more and more and

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1 more. Yes.
 2 Q. And to a point, and I can pull them out,
 3 but Kent had even congratulated you and said,
 4 "Thank you. This is the kind of stuff I want,"
 5 right?
 6 A. If you have that e-mail.
 7 Q. I can dig it up.
 8 A. I don't remember.
 9 Q. Yeah, we can.
 10 Look at Exhibit 48.
 11 A. Okay.
 12 Q. It just seems like this is a string, but
 13 Kent responds to you on August 4th saying, "Thanks.
 14 These are good questions."
 15 My impression, and correct me if I'm
 16 wrong, is that you guys are communicating pretty
 17 well here.
 18 A. If you wouldn't mind, I haven't read
 19 this since --
 20 Q. Take your time.
 21 A. Okay. Yeah. This is Thursday,
 22 August 4th, and on Friday, I got put on
 23 administrative leave. That's correct.
 24 (Deposition Exhibit No. 60 was marked.)
 25 Q. (BY MR. JULIAN) I'm handing you what has

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1 been marked as Exhibit 60.
 2 A. Okay.
 3 Q. Do you recall meeting with Kayce?
 4 A. Oh, I will never --
 5 Yes. Yes.
 6 Q. And how was that meeting arranged?
 7 A. She asked me to come to Food Group
 8 headquarters on that Friday. I don't remember when
 9 she specifically set up the meeting, but it was on
 10 Friday.
 11 Q. Had you earlier requested that she
 12 consider some type of severance package to help you
 13 transition into another job?
 14 A. At that point, I was looking at two
 15 possibilities. The first one, I was looking at
 16 being fired. I didn't --
 17 The working conditions with Kent had
 18 gone -- had been going very poorly. I had raised
 19 his attention that I didn't feel like I had the
 20 background to fulfill this role, and I also felt --
 21 I also told him that I felt like Simplot had
 22 tricked me.
 23 And so he disagreed. We had had many,
 24 many arguments, heated arguments. And when I
 25 talked to Kayce, I felt like the chance of me being

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1 fired was -- was pretty high.
 2 And so considering that I had a family
 3 to take care of and considering that I felt like
 4 Simplot had put me in this position, I did ask for
 5 a severance because I just didn't know what else to
 6 do.
 7 Q. Do you recall in your meeting that she
 8 discussed, "The purpose of our group engineering
 9 team is to ensure all of our plants are running
 10 effectively, so it's very typical for engineers on
 11 the team to be assigned to projects temporarily in
 12 a variety of roles at any of our facilities. These
 13 assignments are intended to be temporary in nature
 14 and are critical to the success of our
 15 manufacturing facilities."
 16 Did she discuss that with you?
 17 A. I assume she did. She would have --
 18 She's pretty professional. She would
 19 have discussed all of this.
 20 It was obvious that when I saw that, and
 21 actually just hearing you read that paragraph, that
 22 she probably hadn't talked to the two other
 23 packaging engineers because they would have stated
 24 otherwise, that it was not the nature of packaging
 25 engineers to be involved to this extent of these

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1 equipment upgrade projects.
 2 Q. But those packaging engineers at this
 3 time, one had six years' experience in packaging
 4 engineering at a food company and the other had ten
 5 years' experience, correct?
 6 A. Yeah.
 7 Q. And you had seven months?
 8 A. Yeah. And they -- what they told me
 9 was, "I can't believe you're doing this job. This
 10 is not part of your job scope. This is not part of
 11 our job scope. I have never done this before.
 12 Can't believe you're doing it."
 13 Q. Okay. And you were given two choices:
 14 Take ten weeks' pay, which would be about over
 15 20 grand, or just continue in your current role,
 16 which includes involvement on engineering projects
 17 across the North American Food Group and continue
 18 to focus on the improvement plan, correct?
 19 MS. BIRCH: Object to the form of the
 20 question. Mischaracterizes the document. The
 21 document speaks for itself.
 22 Q. (BY MR. JULIAN) Let's ask you: What is
 23 your understanding of the two choices she gave you?
 24 A. She gave me two choices to consider.
 25 Right after that, she said, "We're going to put you

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1 on administrative leave. Go home right now." That
 2 was a surprise. And she also said -- recommended
 3 that I seek counsel, which I did right away.
 4 And at that point, I -- I called Erika,
 5 and she and her firm --
 6 MS. BIRCH: I'm just going to interrupt you
 7 because you're not allowed --
 8 THE WITNESS: Oh, sorry.
 9 MS. BIRCH: -- to talk about discussions
 10 that you --
 11 THE WITNESS: Oh.
 12 MS. BIRCH: -- had with me or you had with
 13 the firm.
 14 THE WITNESS: Oh, oh.
 15 Q. (BY MR. JULIAN) And I don't want to
 16 inquire about that all, so --
 17 A. From that standpoint, it went into the
 18 legal talk.
 19 Q. Okay.
 20 A. That's all I want to say about that.
 21 Then I was fired.
 22 Q. Well, let's --
 23 You were given until August 12th,
 24 according to this, to make up your mind, right?
 25 A. Correct.

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1 Q. And you were put on paid administrative
 2 leave, correct?
 3 A. Unfortunately.
 4 Q. For a week?
 5 A. I don't remember how long it was.
 6 Q. Well, August --
 7 A. Yeah.
 8 Q. When was this memo?
 9 August 5th.
 10 A. Right, right. All I know is after that,
 11 it turned into kind of a -- more of a legal thing.
 12 Q. Okay.
 13 (Deposition Exhibit No. 61 was marked.)
 14 Q. (BY MR. JULIAN) Handing you what has
 15 been marked as Exhibit 61.
 16 Do you recall receiving this document?
 17 A. Yes.
 18 Q. And in this document, it gives the two
 19 options that Kayce gave you, correct?
 20 A. Yes.
 21 Q. Then following that, it says on
 22 August 5th, you were placed on paid administrative
 23 leave while you considered your options, correct?
 24 A. Correct.
 25 Q. Then it indicates on August 9th,

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1 in-house counsel was contacted by your attorney and
 2 asked for the date to be extended to August 17th,
 3 correct?
 4 A. Correct.
 5 Q. That request was granted.
 6 On August 17th, we received another
 7 correspondence from your attorney indicating that
 8 you would not accept either option.
 9 Are you aware of that?
 10 A. Yes.
 11 Q. And Simplot apparently thought it still
 12 wasn't clear, so they were still going to pay you
 13 through August 31st at 5:00 p.m. They gave kind of
 14 a drop-dead deadline, correct?
 15 A. Yeah. I think there were some
 16 alternative counteroffers going back and forth.
 17 Q. Okay.
 18 A. I think we were waiting on Simplot to
 19 answer one of our requests. One of them was just,
 20 "Hey, give me the role I interviewed for and I'll
 21 come back and we can nip this in the bud and move
 22 on."
 23 Q. And just because we kind of have raised
 24 some of these issues, I'm going to mark some of
 25 these exhibits.

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1 63.
 2 (Deposition Exhibit No. 63 was marked.)
 3 Q. (BY MR. JULIAN) And this is, I think,
 4 the letter that you're referring to where it was a
 5 counteroffer for 18 months' severance pay, correct?
 6 A. Which paragraph are you referring to?
 7 Q. I've already gone past it.
 8 It's on page 3 of the letter. "Although
 9 Mr. Knudsen is committed to pursuing his claims, if
 10 necessary," basically, "Here are some conditions.
 11 Return his work phone," or something, "and payment
 12 of 18 months," correct?
 13 MS. BIRCH: I'm going to object to the form
 14 of the question. The document speaks for itself.
 15 THE WITNESS: What was the question?
 16 Q. (BY MR. JULIAN) Isn't that what the
 17 offer was?
 18 A. Yes.
 19 Q. Okay. And I'm just doing this mainly to
 20 keep track of documents.
 21 A. Sure, sure.
 22 (Deposition Exhibit No. 64 was marked.)
 23 Q. (BY MR. JULIAN) I'll hand you what has
 24 been marked as 64.
 25 Do you recognize this document?

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1 A. Yes.
 2 Q. And this is the response from Simplot
 3 and basically said, "Ten weeks is as much as we'll
 4 pay you for severance, but we'll continue to work
 5 with you on this assignment and work on the
 6 performance improvement plan, if you so choose,"
 7 correct?
 8 MS. BIRCH: Object --
 9 THE WITNESS: Correct.
 10 MS. BIRCH: Object to the form of the
 11 question. Mischaracterizes the document. The
 12 document speaks for itself.
 13 THE WITNESS: So that's what the document
 14 says?
 15 Q. (BY MR. JULIAN) Yes.
 16 A. Correct.
 17 (Deposition Exhibit No. 65 was marked.)
 18 Q. (BY MR. JULIAN) I'll hand you what has
 19 been marked as 65.
 20 This is, again, a response to the
 21 Simplot position, and in the second page, in
 22 response to Simplot's offer to continue to focus on
 23 the improvement plan, basically on behalf of --
 24 with your attorney, the response is, "This is
 25 simply not viable," correct?

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1 MS. BIRCH: Same objection.
 2 THE WITNESS: That's what it says.
 3 (Deposition Exhibit No. 66 was marked.)
 4 Q. (BY MR. JULIAN) This is just more for
 5 documentation.
 6 A. Okay.
 7 Q. This is a letter from your counsel that
 8 is, frankly, in response to, I think, Mr. Pegram's
 9 letter.
 10 MS. BIRCH: Can I have a copy?
 11 MR. JULIAN: Certainly.
 12 Q. (BY MR. JULIAN) Is that correct?
 13 A. Yes.
 14 (Deposition Exhibit No. 67 was marked.)
 15 Q. (BY MR. JULIAN) And we're just going to
 16 finish up with this little round of stuff.
 17 I'll hand you what has been marked as
 18 67.
 19 And this is Simplot's response --
 20 A. Yes.
 21 Q. -- to that letter, correct?
 22 A. I would assume. But obviously, I wasn't
 23 writing all of the e-mails, so --
 24 Q. Let me just go back to the offer of
 25 return to work under the PIP.

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1 Why didn't you just do that?
 2 A. My position was why is the onus on me to
 3 work under a performance improvement plan, work
 4 under a management team that knows I've already
 5 escalated them, and perform a job that they were --
 6 that they misrepresented? Why is that right?
 7 Why -- why is the onus on me to do that?
 8 The onus should be on them to fix this
 9 whole startup manager assignment, really apologize
 10 and say, "You know what? You're right. We gave
 11 you a packaging engineering position. You
 12 interviewed for it. We'll give it to you."
 13 That's --
 14 Q. Did you --
 15 A. That was my position.
 16 Q. Did you feel that you couldn't
 17 accomplish what was required in the startup
 18 manager?
 19 A. I felt like I definitely lacked the
 20 skills. I made that very clear.
 21 Q. And didn't Simplot say, "We'll work with
 22 you. We'll give you assistance and help you go
 23 through this"?
 24 A. Yeah, but, again, I have to say, why --
 25 why -- why is the onus on me to figure out how to

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1 do this when I -- this wasn't -- this wasn't what
 2 we agreed to in the interview?
 3 Q. Did you understand that Simplot couldn't
 4 continue to pay you for administrative leave unless
 5 you -- indefinitely?
 6 A. Of course.
 7 Q. And is it unreasonable for them to
 8 expect you to come back to work?
 9 A. I was hoping that Simplot would respond
 10 to our counteroffer for me to return to Simplot as
 11 a packaging engineer.
 12 Q. Now, after the employment was
 13 terminated, did you receive unemployment?
 14 A. Yes.
 15 Q. For how long?
 16 A. The maximum amount of time. I think it
 17 was six months while I looked for employment.
 18 Q. And you were hired at Micron?
 19 A. I was.
 20 Q. Are you still working there?
 21 A. Yes, I am.
 22 Q. What's your title?
 23 A. Senior materials engineer, and it's --
 24 I'm responsible for packaging.
 25 Packaging engineering is a separate

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1 discipline. It's more on the semiconductor side,
 2 packaging engineering, so they like to call it
 3 materials engineering. It's just a different
 4 designation, but it's materials engineering --
 5 package -- sorry, packaging engineering for
 6 semiconductors, solid-state drives, and modules.
 7 Q. And you were hired at --
 8 You got a raise when you went there,
 9 correct?
 10 A. I did. I was able to negotiate that.
 11 Q. Have you received any raises since then?
 12 A. No.
 13 Q. Have you received any bonuses?
 14 A. I received a bonus --
 15 When was that bonus? End of, I would
 16 say, maybe December. I could be totally wrong.
 17 But it was for the amount of time that I was there.
 18 So let me see. I started in May. So it
 19 was prorated from May until the fall. Let's just
 20 say fall to make it easy.
 21 Q. How much was it? Do you recall?
 22 A. I don't remember offhand. Sorry.
 23 Q. Do you contend you're making less at
 24 Micron than you would have at Simplot?
 25 A. Well, we had a -- a financial expert to

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1 help us with that -- with that scenario, and how I
 2 gathered it, the total compensation was actually a
 3 little less -- was definitely less at Micron.
 4 Q. Do you recall, from your perspective,
 5 what was better at Simplot financially than at
 6 Micron?
 7 A. Yeah. Simplot had a pretty nice
 8 retirement account that was separate, if I remember
 9 correctly, from a normal 401(k). I -- I can't
 10 remember the exact details of how all the --
 11 This is why we hired an expert to figure
 12 it all out, so --
 13 Q. Sure, but --
 14 A. Yeah.
 15 Q. -- I'm going to see what you know.
 16 A. Yeah, yeah.
 17 Q. Doesn't Micron have a retirement
 18 program?
 19 A. Yeah. A 401(k).
 20 Q. Do you know what the difference is
 21 between the two as you sit here?
 22 A. I'd have to look it up. I think --
 23 But I -- if I'm not mistaken, Simplot
 24 had --
 25 So they both have 401(k) plans and

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1 matching and all of that, but I -- and I could be
 2 wrong, but --
 3 We'd have to look through all the
 4 calculations, but I think Simplot had a separate
 5 retirement, an additional retirement plan of some
 6 sort that was -- I don't remember if it was
 7 contingent on working there a certain amount of
 8 time, but it kicked in at some point, so --
 9 Q. Did you ever receive a bonus at Simplot?
 10 A. No.
 11 Q. And the bonus, I think according to the
 12 job description, was a discretionary bonus up to
 13 11,000, as I recall.
 14 MS. BIRCH: Object to the form.
 15 Q. (BY MR. JULIAN) Do you remember if
 16 that's the case?
 17 MS. BIRCH: Object to the form of the
 18 question.
 19 THE WITNESS: I remember a bonus, something
 20 like that, up to 11 percent.
 21 Q. (BY MR. JULIAN) And did you have to be
 22 there a certain amount of time in order to get
 23 that?
 24 A. I --
 25 My understanding was through August,

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1 Q. So your notice of the opening was right
 2 around the same time you got hired then, correct?
 3 A. Yeah.
 4 Q. Okay.
 5 A. Yeah.
 6 MR. JULIAN: I've run out of exhibits.
 7 That's a very good thing. I've also run out of
 8 energy.
 9 Thank you, Erik, for your courtesy and
 10 your responses.
 11 THE WITNESS: Thanks.
 12 MS. BIRCH: So I'm going to have some
 13 questions, but let's take a break, and I'll try to
 14 get them organized.
 15 MR. JULIAN: Okay.
 16 (Break taken from 2:56 p.m. to 3:03 p.m.)
 17
 18 EXAMINATION
 19 BY MS. BIRCH:
 20 Q. Erik, I'm going to take you back to a
 21 couple of exhibits and a couple of different parts
 22 of your testimony. I'm going to start with
 23 Exhibit 51, which should be in this new stack.
 24 A. Okay.
 25 Q. That's your offer letter from HP for the

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1 internship back in '99.
 2 A. I probably misplaced that.
 3 Q. Here. Let me help you.
 4 A. Okay. Got it.
 5 Q. This was early in the day, so I know
 6 it's been a while.
 7 A. This is the old graphics for the --
 8 Q. Do you remember being asked questions
 9 about this document?
 10 A. Questions about it? No.
 11 Q. Earlier today, do you remember --
 12 A. Oh. Oh, yeah. I'm sorry. I'm sorry.
 13 Q. -- answering questions about it?
 14 A. Yes.
 15 Q. Okay. And one of the questions that you
 16 were asked was regarding the fact that in this
 17 letter, HP was telling you basically, "Hey, the
 18 company might be splitting, and we don't know which
 19 company you might be working for."
 20 A. Uh-huh.
 21 Q. Correct?
 22 A. Right, right.
 23 Q. Okay. When the company split, did your
 24 actual job title or job functions change in any
 25 way?

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1 A. No, not at all.
 2 Q. And this was your offer letter from HP
 3 for that position --
 4 A. Yes, yes.
 5 Q. They were disclosing to you something
 6 that might happen in the future?
 7 A. Yes.
 8 Q. So you had not yet accepted the
 9 internship at that time?
 10 A. Not yet.
 11 Q. Okay. So you were able to factor in
 12 whether or not you wanted to accept the position --
 13 A. Yes.
 14 Q. -- given that the company was
 15 potentially going to split?
 16 A. Yes.
 17 Q. While we're on HP --
 18 (Deposition Exhibit No. 68 was marked.)
 19 Q. (BY MS. BIRCH) Do you recognize
 20 Exhibit 68?
 21 A. Yes.
 22 Q. What is it?
 23 A. This is my performance review from
 24 November 1st, 2014, through July 31st, 2015.
 25 Q. Okay. And the evaluation was done by

[Page 195]

1 whom?
 2 A. Erik Troelsen.
 3 Q. Who was your manager at the time?
 4 A. Was my manager at the time.
 5 Q. Would this have been your last
 6 performance review you received before you left HP?
 7 A. Yes.
 8 Q. Okay. Look, if you would, at
 9 Exhibit 33, which you looked at and answered some
 10 questions on earlier today. It's in the book.
 11 A. Oh, okay.
 12 Q. So if I remember correctly, your
 13 testimony was this was the job description that you
 14 received during the interview process?
 15 A. Yes.
 16 Q. And you were asked a question about --
 17 In the "Summary" portion, it starts out,
 18 "This position is responsible for," and it lists a
 19 number of things.
 20 Do you see that?
 21 A. Yes.
 22 Q. Okay. And the last thing listed in that
 23 first sentence is, "Project management related to
 24 packaging equipment operation and capabilities."
 25 A. Yes.

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1 Q. Okay. What was your understanding based
 2 on the information provided to you during the
 3 interview and offer process about what that
 4 entailed?
 5 A. What that entails?
 6 So, yeah, I can --
 7 And actually maybe it helps just to give
 8 an example.
 9 So as a packaging engineer for food,
 10 you're responsible to design the packaging for a
 11 new french fry, a new cut. So let's say marketing
 12 wants to sell a whole new cut and -- with a new
 13 batter, so a different flavor, and they want to
 14 sell five pounds of it in a bag.
 15 Your responsibility as a packaging
 16 engineer is to figure out, "Okay. What film do I
 17 use? What length, width to make it and what style
 18 of bag." So there's lots of different styles.
 19 If you go into a grocery store, there's
 20 a lay-down kind, the stand-up kind. There are
 21 different kinds that can maybe fit in a box so it
 22 can be displayed. You're working with artwork. So
 23 that's kind of a lot of the work.
 24 You're responsible for figuring out if
 25 the bag -- what size box the bag needs to go into,

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1 how many fit into a box, how they fit on a pallet,
 2 and all of this stuff. So -- so that's kind of the
 3 general overall material side of it.
 4 Where equipment comes into play is you
 5 have to make sure that whatever design that you're
 6 envisioning works with the equipment. So does the
 7 length and width and the style of bag, is that --
 8 do they -- does the manufacturer have the type of
 9 equipment that's capable of running what your idea
 10 is?
 11 And so there's always equipment
 12 limitations in size of box, size of bag. And so --
 13 so that's really where the -- kind of the -- some
 14 of the manufacturing, the operations that we're
 15 discussing in here fall into play is: Does your
 16 design work in manufacturing?
 17 Q. And you said something at some point
 18 during the day about, for example, if the bag has a
 19 sealing problem, you may have to go back out to the
 20 facility --
 21 A. Right.
 22 Q. -- and figure out how to fix that?
 23 A. (Witness indicates.)
 24 Q. Is that part of project management?
 25 A. Yeah. That's the project management

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1 piece where you -- where there's some operations
 2 stuff that you have to -- have to do.
 3 So, for example, I was assigned a
 4 project where there was a vegetable project --
 5 product that was having sealing issues for -- in
 6 the field. It was actually Schwan's. And these
 7 bags were being sealed in a refrigerated
 8 environment. It was really cold.
 9 And so for whatever reason, in the
 10 field, the -- the seals on these bags was opening
 11 and product was falling all over the place, so that
 12 was -- Schwan's was complaining.
 13 And so what I did from a product
 14 management standpoint is I went to the factory, and
 15 I gathered the supervisor -- basically all of the
 16 key people that needed to be there to help fix the
 17 problem; the supervisor, a representative --
 18 technical representative of the film, and then a
 19 technical person for the -- the bag sealer to
 20 combine --
 21 So these people combined -- the
 22 supervisor, the film person, and then the equipment
 23 expert and then me, just kind of making sure we
 24 stayed focussed on the task at hand -- were able to
 25 collaborate together and figure out what needed to

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1 be done.
 2 And I think we raised the temperature of
 3 the --
 4 There's these bars that come across,
 5 that come together to fuse the film together. We
 6 decided to increase the time that those bars were
 7 fusing the film and then also increase the
 8 temperature, and we fixed the problem that way.
 9 And that was an example of the type of
 10 operations and equipment work, project management
 11 work, that the job description was talking about.
 12 Q. Okay. So that's sort of after you were
 13 hired as -- on the job.
 14 A. Right.
 15 Q. When you were a packaging engineer at
 16 HP, did you have -- I know they're going to be
 17 different --
 18 A. Yeah.
 19 Q. -- because we're talking printers versus
 20 french fries --
 21 A. Yeah.
 22 Q. -- but did you do the same type of
 23 project management work as a packaging engineer?
 24 A. Yes.
 25 Q. Okay. During the interview process --

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1 Well, let me have you go here first.
 2 Exhibit 31.
 3 You were shown Exhibit 31 and asked
 4 questions, and these -- it was represented to
 5 you -- are notes that Laura Nessen took at some
 6 point related to a meeting that she had first with
 7 Kent and then with you.
 8 Do you remember that testimony?
 9 A. Yes.
 10 Q. Okay. And you were asked a couple of
 11 questions about various paragraphs, one of which
 12 was the fifth paragraph down. It starts, "I told
 13 him."
 14 A. Right.
 15 Q. Okay. And that's Laura's notes saying
 16 that she told you certain things during this
 17 meeting, correct?
 18 A. Correct.
 19 Q. Okay. It's kind of a run-on sentence
 20 with some dashes in there, so I want to direct your
 21 attention to the information between the two
 22 dashes.
 23 A. Okay.
 24 Q. So she starts out that sentence saying,
 25 "You were told during the interview process that we

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1 wanted someone with leadership attributes."
 2 Do you see that?
 3 A. Yes.
 4 Q. And then the dash, and it says, "Because
 5 we needed someone who could help with packaging
 6 equipment on the operations side and also the
 7 materials."
 8 Was that something that she told you
 9 during the interview process?
 10 A. Not even close. No.
 11 Q. Were you told by anyone during the
 12 interview process that you would be expected to do
 13 any of the startup manager functions?
 14 A. No. Not even a hint.
 15 Q. There was a lot of back-and-forth
 16 between you and Brian about whether or not you
 17 disclosed during the interview process that you
 18 didn't want to go back into a program management
 19 role.
 20 Do you remember that testimony?
 21 A. Yes.
 22 Q. Why didn't you make that disclosure?
 23 A. It wasn't asked.
 24 Q. And why do you think it wasn't asked?
 25 MR. JULIAN: Objection. Calls for

[Page 202]

1 speculation.
 2 Q. (BY MS. BIRCH) Let me ask you this: Why
 3 didn't it dawn on you to make that disclosure?
 4 MR. JULIAN: Objection. Leading.
 5 THE WITNESS: Because that wasn't what I was
 6 interviewing for. I was interviewing for packaging
 7 engineering.
 8 Q. (BY MS. BIRCH) Did you run through a
 9 list of all the various jobs at Simplot that you
 10 weren't willing to perform --
 11 A. No.
 12 Q. -- when you were interviewing for that
 13 position as a packaging engineer?
 14 A. No.
 15 Q. Would you have thought to do that?
 16 A. No. I didn't know all of the positions
 17 that Simplot had.
 18 Q. What kind of impression do you think you
 19 would leave on an interview panel if you started
 20 rolling through all of the various different
 21 positions that you were unwilling or uninterested
 22 in performing?
 23 MR. JULIAN: Objection. Calls for
 24 speculation.
 25 THE WITNESS: Pretty poor, and I'm pretty --

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1 I am 100 percent -- I am sure I wouldn't get the
 2 job if I had done that.
 3 Q. (BY MS. BIRCH) Take a look at Exhibit 7
 4 quickly.
 5 You were asked some questions about this
 6 exhibit earlier. This is the -- it's called the
 7 development plan. I think you referred to it sort
 8 of as your training plan in your engineer role.
 9 A. Yes.
 10 Q. Was there any information provided to
 11 you in this document that alerted you to the fact
 12 that you would be performing the startup manager
 13 role?
 14 A. No.
 15 Q. Exhibit 56 is your handwritten notes
 16 that we went through portions of.
 17 A. Okay.
 18 Q. If you look at the -- I think it's the
 19 fifth page in. It's that one that starts with the
 20 "Dave Gottberg" at the top.
 21 A. Okay. I see it.
 22 Q. You were asked questions about most of
 23 the notes on this page, but there was one notation
 24 that you weren't asked about. I just wanted to ask
 25 you to tell me what you were referring to.

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1 A. Okay.
 2 Q. It's towards the bottom. There's a
 3 little bullet point. It says, "SUP meetings."
 4 A. Yes.
 5 Q. What does "SUP meetings" stand for?
 6 A. Startup --
 7 I'm not sure what "P" is, but it's
 8 startup meetings.
 9 Q. Okay. And then you wrote, "Painful.
 10 Wish I could contribute."
 11 What did you mean when you wrote that?
 12 A. Well, I really wanted to contribute. I
 13 don't enjoy not being a valued member of a team.
 14 And so it would -- it's --
 15 When I say "painful," it's really
 16 embarrassing when you're sitting there in a meeting
 17 and you're being expected to participate and add
 18 value, and you can't.
 19 It's embarrassing. I was really
 20 struggling with that.
 21 Q. I want to take you back to the testimony
 22 and the back-and-forth you had with Brian about
 23 this meeting -- one of the meetings you had with
 24 Kent towards the end of June where he told you that
 25 you were going back to being startup manager.

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1 Do you remember that?
 2 A. Yes.
 3 Q. Okay. Just so that the record is clear,
 4 that is not the first time you were assigned the
 5 startup manager position, correct?
 6 A. No.
 7 Q. I think your testimony earlier was that
 8 was an assignment that came to you the first day?
 9 A. The first day.
 10 Q. Okay. So this was a reassignment?
 11 A. This was a reassignment. Kent and Byron
 12 had taken the startup manager role off my plate.
 13 Q. Okay. And you talked about that --
 14 A. Right.
 15 Q. -- at some point today.
 16 A. Right.
 17 Q. And so this was Kent telling you it's
 18 now back on your plate?
 19 A. Yes.
 20 Q. Okay.
 21 A. And not only that, but in that meeting,
 22 Kent apologized because they had actually assigned
 23 it back to me three weeks before that but had
 24 forgotten to tell me.
 25 So in this time period, I had gone to

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1 Grand Forks for a big meeting with their -- I think
 2 this was another corporate-jet-type meeting. Lyle
 3 Schook was there, the whole -- all the directors,
 4 and we're sitting in this meeting. I'm not really
 5 sure why we're there because we're talking about
 6 the project. Not the training aspect. My portion
 7 of it.
 8 But Lyle apparently was very disturbed
 9 that I hadn't contributed in this meeting, and from
 10 what I learned later is that he understood me to be
 11 the startup manager, and I didn't know I was the
 12 startup manager.
 13 Later on, I had to clarify with Kent.
 14 And in this meeting on the 20th, he said, "Yes, you
 15 are the startup manager. I apologize I didn't tell
 16 you earlier, but we decided this three weeks ago."
 17 So I'm thinking in the back of my head,
 18 "Great. So what's happened in the last three
 19 weeks? Okay. We went to Grand Forks. We did all
 20 these things. I'm in these meetings. Everybody on
 21 the whole team thinks I'm the startup manager
 22 except for me."
 23 Q. Turn to Exhibit 14, please. This
 24 includes your June 21st, 2016, e-mail to Kayce
 25 McEwan.

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1 A. Okay.
 2 Q. Do you see in the top introduction to
 3 Kayce, that second paragraph in, you wrote to her,
 4 "I desperately want to fix the unfortunate
 5 situation I am in, and I am seeking advice on how
 6 to do it"?
 7 A. Yes. I see that.
 8 Q. Were you looking to Kayce as to how to
 9 try to help you fix the situation that you were in?
 10 A. I was so hoping that she would help me,
 11 yes. I was very serious. I wanted to be -- I
 12 wanted this to work out with Simplot very badly,
 13 and I was really hoping that she would help.
 14 Q. Turn to the second page, please.
 15 There's a second paragraph from the top. Starts
 16 with, "The feedback."
 17 A. Oh, I'm sorry. I turned to the wrong
 18 page.
 19 Q. That's okay. It's Exhibit 14, second
 20 page.
 21 A. Okay.
 22 Q. Second paragraph down, "The feedback
 23 I've been getting," that paragraph.
 24 A. I see that.
 25 Q. Towards the end of that paragraph, you

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1 wrote to her, "As I fear getting fired, I learned
 2 that this all depends on my performance as a
 3 startup manager and not the job I interviewed for."
 4 Was that true? Did you fear that you
 5 were on the crux of getting terminated at that
 6 point in time?
 7 A. I absolutely feared that, and that was
 8 part of the reason that I wrote her.
 9 Q. That next paragraph down says, "In the
 10 same heated discussion yesterday, I told my
 11 manager."
 12 Was that manager Kent Anderson?
 13 A. It was.
 14 Q. Okay. Go ahead and read that entire
 15 paragraph.
 16 A. Out loud?
 17 Q. No, just to yourself.
 18 A. Okay.
 19 Q. So in this June 21st e-mail to Kayce,
 20 you wrote to her that you had expressed to Kent
 21 Anderson that you never would have left HP had
 22 Simplot been honest with you from the beginning.
 23 A. Correct.
 24 Q. Does that help refresh your recollection
 25 as to whether or not that is something that you

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1 told Kent at the time you were meeting with him?
 2 A. I definitely told him that.
 3 Q. Okay. And when you said, "Had Simplot
 4 been honest with me from the beginning," by that,
 5 you're referring to what?
 6 A. Honest with me about what the role --
 7 what they wanted me to do. Half-time startup
 8 manager, half-time packaging engineer.
 9 Q. Under the questions for Kayce, that
 10 first paragraph, you say -- it ends with, "I fear
 11 going to you with this issue will be the beginning
 12 of the end for me, and I don't want that to
 13 happen."
 14 Did you feel that way at the time?
 15 A. Yes.
 16 Q. And then you end with, "Thanks for your
 17 time. I want to have a successful career here, and
 18 I'm running out of options. I hope you can help."
 19 Was that a true statement at the time
 20 you wrote it?
 21 A. Absolutely, yes.
 22 Q. Flip quickly to Exhibit 11. This is the
 23 e-mail from Michael Shaw to you on Thursday,
 24 July 7th, 2016, after you had initiated your
 25 hotline complaint, correct?

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1 A. Right.
 2 Q. Okay. And do you see the paragraph
 3 where he writes to you, "I do want you to know it
 4 is a violation of company policy to retaliate
 5 against any employee by taking an adverse
 6 employment action against a person for filing a
 7 complaint with Simplot's employee complaint
 8 department or participating in the investigative
 9 process as a witness"?
 10 A. (Witness indicates.)
 11 Q. Do you remember him telling you that in
 12 this e-mail?
 13 A. Yes.
 14 Q. And so it was your understanding at that
 15 time that it would violate Simplot's policy for
 16 them to retaliate against you for having made that
 17 complaint?
 18 A. Yes.
 19 Q. You were shown several exhibits.
 20 It's -- Exhibits 63 through 65 are the letters --
 21 you don't need to necessarily pull them out unless
 22 you need to -- the letters back and forth from my
 23 office and Simplot's in-house counsel.
 24 Do you remember --
 25 A. Yes.

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1 Q. -- looking at those?
 2 A. Yes.
 3 Q. Okay. Do you know whether or not there
 4 were communications between my office and Simplot
 5 that aren't captured in those letters?
 6 A. I think --
 7 I believe there are, but I don't know
 8 what they are.
 9 Q. So phone calls or e-mails?
 10 A. Yeah.
 11 Q. Did you understand at the time that you
 12 were notified of your firing by Simplot that you
 13 were waiting to hear back from them in response to
 14 this back-and-forth between the lawyers?
 15 A. That's what I was expecting. I was -- I
 16 was expecting an answer of --
 17 What I was hoping for was, "We'll take
 18 you back as a packaging engineer."
 19 Q. And was it your understanding that
 20 Simplot was going to be getting back to my firm on
 21 that issue?
 22 A. Yes.
 23 Q. Were you surprised by your termination?
 24 A. I was, yes.
 25 Q. How did you find out about your firing?

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1 A. So I got an e-mail from T. Rowe Price
 2 talking about something to do with my employment
 3 ending at Simplot and something about final
 4 documents. I don't remember the specifics of what
 5 it was. And it was in that e-mail that I said,
 6 "What -- what is this?" And I -- I had to ask --
 7 ask you what -- what this meant because I didn't
 8 know.
 9 Q. Okay. And then after that is when you
 10 received the termination memo that we looked at
 11 earlier today?
 12 A. Yes.
 13 Q. Okay. And in that memo, it disclosed to
 14 you that your termination was actually retroactive
 15 to September 1?
 16 A. Correct.
 17 Q. Okay. And it wasn't until you got the
 18 notice from T. Rowe Price and then later the memo
 19 from Simplot that you knew that that had occurred?
 20 A. Yes.
 21 Q. How many jobs did you -- approximately,
 22 did you apply for between your firing at Simplot
 23 and your hiring at Micron?
 24 A. Roughly 100.
 25 Q. And were those jobs all over the

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1 country?
 2 A. They were all over the country. I -- I
 3 worked really hard to figure out how my -- the
 4 skill set that I had, which was really specialized
 5 in technology, printers, how I could -- how I might
 6 be able to leverage that into some type of a new
 7 area.
 8 I went to a -- a conference in Phoenix
 9 where there was -- where I might be able to talk
 10 to -- I can't remember the --
 11 Q. Network?
 12 A. Network. It was a conference
 13 specifically about medical device packaging, and I
 14 thought that might be a really good -- I could use
 15 some of my technology experience in the medical
 16 device industry.
 17 And so I thought that would be a really
 18 good chance to find something in the medical device
 19 industry. So I went to this conference in Phoenix,
 20 and I really tried hard to find a job in that
 21 field. I tried to focus on that.
 22 I applied for jobs all over the country.
 23 I actually had an in-person interview outside
 24 Chicago with Baxter. Unfortunately, that didn't
 25 work out. But I tried really hard to find

[Page 214]

1 something.
 2 Q. Before you got the offer of employment
 3 at Micron, had you received any other offers of
 4 employment?
 5 A. No.
 6 MS. BIRCH: Okay. I don't have anything
 7 else.
 8
 9 FURTHER EXAMINATION
 10 BY MR. JULIAN:
 11 Q. You were asked at the start of this that
 12 based on the interview, what was your understanding
 13 as to the roles in project management that was
 14 mentioned in the job description, and I didn't hear
 15 you say anything about the interview. You gave me
 16 your -- your --
 17 A. Right.
 18 Q. -- impression.
 19 What was said specifically in the
 20 interview that you recall that gave you your
 21 impression as to what would be involved with
 22 project management, if you remember?
 23 A. I don't remember. Tim Lalley had been a
 24 friend of mine for a while, and he said, "It's kind
 25 of the similar stuff that you were working on at HP

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1 as a packaging engineer."
 2 Q. But you simply don't recall what every
 3 person said or --
 4 A. Of course not.
 5 Q. -- statement made?
 6 And, of course, you wanted to get hired?
 7 A. Sure. I wanted a -- I would like a -- I
 8 wanted an offer that I could consider.
 9 Q. Okay.
 10 A. I wasn't ready to, like, bail on HP yet.
 11 Q. And you knew that if you said, "I don't
 12 really want to be managing other projects like I
 13 did for HP," you probably wouldn't get hired?
 14 A. No.
 15 Q. You knew that?
 16 A. Of course, yeah.
 17 Q. "Yes"?
 18 A. Yes.
 19 MR. JULIAN: That's all I have.
 20 THE WITNESS: Okay.
 21 MR. JULIAN: Thanks.
 22 ///
 23 ///
 24 ///
 25 FURTHER EXAMINATION

[Page 216]

1 BY MS. BIRCH:
2 Q. Even though you may not remember the
3 exact details of what certain individuals said to
4 you during the interview process, is there anything
5 that anyone said to you or presented to you in
6 writing from the job posting through the
7 interviews -- you talked about four of them -- to
8 the job offer, et cetera, that indicated to you at
9 all that you would be doing startup management
10 role, functions, duties?
11 A. No. And I'm so confident of that. I
12 wish we had a recording of it.
13 Q. And are the startup manager roles and
14 functions that you were asked to perform at
15 Simplot, do they link to what you were doing as a
16 packaging engineer or --
17 A. Not even close. Completely separate,
18 distinct, different job responsibilities.
19 MS. BIRCH: Okay. That's it.
20 MR. JULIAN: I think we're good. Thank you.
21
22 (The deposition concluded at 3:31 p.m.)
23 * * *
24 (Signature was requested.)
25

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VERIFICATION

STATE OF _____)
) ss.
COUNTY OF _____)

I, ERIK KNUDSEN, being first duly sworn on my oath,
depose and say:
That I am the witness named in the foregoing
deposition taken the 7th day of June, 2018, consisting
of pages numbered 1 to 217, inclusive; that I have read
the said deposition and know the contents thereof; that
the questions contained therein were propounded to me;
that the answers to said questions were given by me, and
that the answers as contained therein (or as corrected
by me therein) are true and correct.

Corrections Made: Yes _____ No _____

ERIK KNUDSEN

Subscribed and sworn to before me this _____
day of _____, 2018, at _____, Idaho.

Notary Public for Idaho
Residing at _____, Idaho.
My Commission Expires: _____.

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IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

ERIK KNUDSEN,)
)
 Plaintiff,)
)
 vs.) Case No. CV01-17-13956
)
 J.R. SIMPLOT COMPANY, a)
 Nevada corporation,)
)
 Defendant.)
 _____)

DEPOSITION OF TIM LALLEY

May 14, 2018

Boise, Idaho

Reported by:
Andrea J. Couch, CSR #716, RDR, CRR, CRC

1 engineering, part-time startup managing?
 2 A. No.
 3 Q. When did you find that out?
 4 MR. JULIAN: Well, I'm going to object
 5 because there's no foundation that he knows that's
 6 true, found that out.
 7 THE WITNESS: Yeah, I --
 8 The two panels operated separately, and
 9 I -- what was being discussed in the other
 10 interview panel, I don't have knowledge to.
 11 Q. (BY MR. HALLAM) Okay. And I appreciate
 12 that. Did --
 13 Is it your understanding that
 14 Mr. Knudsen interviewed with two different panels?
 15 A. Yes.
 16 Q. Okay. And so I just want to ask you as
 17 to your panel, just so that we're clear --
 18 A. Okay.
 19 Q. -- okay?
 20 And so my question: When did you find
 21 out that the position Mr. Knudsen was being
 22 interviewed for was a part-time engineer position,
 23 a part-time startup manager position?
 24 A. I don't recall specifically. I don't
 25 recall a date.

[Page 32]

1 Q. Was it before or after he started his
 2 employment?
 3 A. Before.
 4 Q. Okay. And at any point before he
 5 started his employment, did you tell Mr. Knudsen
 6 that the position he was applying for was part-time
 7 engineer, part-time startup manager?
 8 A. No.
 9 Q. Why not?
 10 A. I wasn't communicating with him before
 11 the -- before he started.
 12 Q. Okay. That's fair.
 13 So as you're thinking back, did you know
 14 prior to the interview panel that this was not
 15 going to be a full-time engineering position that
 16 you were interviewing for?
 17 A. No. I didn't know that.
 18 Q. So at some point between October 22nd,
 19 2015, and when the interview panel occurred and
 20 November 23rd, 2015, when Mr. Knudsen started, you
 21 found out that the position was only going to be
 22 part-time engineering?
 23 A. Yes.
 24 Q. Who told you?
 25 A. Craig Lamberton.

[Page 33]

1 Q. What did you think about that?
 2 A. I -- I don't know how to answer that. I
 3 don't -- what I thought about it.
 4 Q. You don't know what you thought about
 5 that decision to make it a part-time engineering
 6 hire?
 7 A. I thought it's -- just means more work
 8 for me, probably.
 9 Q. And you had plenty of work at that time,
 10 didn't you?
 11 A. Yes.
 12 Q. And that was part of why there was
 13 another packaging engineer being hired, right?
 14 Because of the workload?
 15 A. Yes.
 16 Q. And because Mr. Jarvis --
 17 Had he already left at that point?
 18 A. Yes.
 19 Q. So at that time, was it you and
 20 Mr. Schwark who were the packaging engineers?
 21 A. Yes.
 22 Q. But you were doing the work of three,
 23 just the two of you.
 24 Is that fair to say?
 25 A. Yes.

[Page 34]

1 Q. Okay. Did you have any conversations
 2 with Mr. Lamberton --
 3 After he told you that the position that
 4 Erik was being hired into was only part-time, did
 5 you have conversations with him about your group's
 6 workload?
 7 A. No, not that I recall.
 8 Q. Did you express concerns to
 9 Mr. Lamberton about the decision to make that only
 10 a part-time engineering position?
 11 A. I don't recall.
 12 Q. Do you know if anyone told Erik before
 13 he started that that was only a part-time
 14 engineering position that they were hiring him
 15 into?
 16 A. I don't know that, but I wasn't --
 17 again, I wasn't communicating with candidates.
 18 Q. Sure.
 19 Based upon your recollection of that
 20 interview panel for Mr. Knudsen, do you remember
 21 anyone telling him that it was a part-time
 22 engineering position?
 23 A. No. I don't know that.
 24 Q. Do you remember anyone asking, on your
 25 panel, Mr. Knudsen what his experience was in

[Page 35]

1 A. I don't.
 2 Q. Did you have any role in that?
 3 A. No.
 4 Q. Do you know whose decision that was?
 5 A. No.
 6 Q. Was it Schook's?
 7 A. I don't know. He's the manager of the
 8 department.
 9 Q. Okay. So after November 30, 2015, was
 10 Whiting still in the packaging engineer group?
 11 A. Yes.
 12 Q. Was he still based out of the
 13 engineering office?
 14 A. Yes.
 15 Q. This just changed his report, direct
 16 report?
 17 A. Yes.
 18 Q. Okay. And same for Erik? He was still
 19 in the packaging engineer office?
 20 A. Yes.
 21 Q. And still part of the packaging engineer
 22 team?
 23 A. Yes.
 24 Q. With a different report to Anderson?
 25 A. Yes.

[Page 92]

1 Q. How often was he gone to Grand Forks?
 2 A. Oh, I don't recall.
 3 Q. Was it one day a week, two days a week,
 4 weeks at a time?
 5 Do you have any sense of it?
 6 A. No, I don't. I --
 7 Q. Did you have a conversation or
 8 conversations with Erik after he started about his
 9 assignment as startup manager for the Grand Forks
 10 plant?
 11 A. We may have.
 12 Q. Do you remember having conversations
 13 with him after that assignment was made?
 14 A. Not specifically.
 15 Q. Okay. Do you remember him expressing
 16 concern to you that he was being assigned a role
 17 that he didn't apply for?
 18 A. Yes.
 19 Q. Okay. When did he tell you that?
 20 A. I don't know.
 21 Q. Was it shortly after the assignment was
 22 made?
 23 A. It could have been.
 24 Q. Do you remember Erik telling you that he
 25 did not have any experience as a startup manager?

[Page 93]

1 A. Yes.
 2 Q. Do you remember when he told you that?
 3 A. I --
 4 Not specifically.
 5 Q. Was it shortly after the assignment was
 6 made?
 7 A. It could have been.
 8 Q. Okay. Do you remember Erik expressing
 9 ongoing concerns to you that he didn't have any
 10 experience as a startup manager which made that
 11 position difficult?
 12 A. Yes.
 13 Q. Do you remember when you had those
 14 conversations?
 15 A. I don't.
 16 Q. Was it multiple conversations?
 17 A. Could have been.
 18 Q. Do you think it was?
 19 A. Probably.
 20 Q. Okay. Was it more than ten?
 21 A. I don't know.
 22 Q. All right. Did your team -- you, Erik,
 23 Jason, and Whiting -- have conversations about
 24 Erik's concerns about being assigned the startup
 25 manager role?

[Page 94]

1 A. I don't recall.
 2 Q. Was he confused as to why he was
 3 assigned this role?
 4 A. I don't know.
 5 Q. Did he tell you that?
 6 A. I don't recall.
 7 Q. But he did tell you that was not the
 8 position he was hired to do?
 9 A. Yes.
 10 Q. Okay. From your group's perspective --
 11 A. Uh-huh.
 12 Q. -- it had been your expectation that you
 13 were getting another packaging engineer in Erik's
 14 hire, right?
 15 A. Yes.
 16 Q. Okay. And then what was your reaction
 17 to finding out that, in fact, he wasn't going to be
 18 a full-time packaging engineer?
 19 A. I think we've talked about this.
 20 I was probably disappointed that we
 21 didn't have all the help that we thought we needed.
 22 Q. Did you tell Lambertson that?
 23 A. No.
 24 Q. Did you tell Anderson that?
 25 A. Prob -- probably. I think so.

[Page 95]

1 Q. Do you remember when you had that
 2 conversation or conversations?
 3 A. Yeah, I don't recall.
 4 Q. Was Erik involved in that
 5 conversation --
 6 A. No.
 7 Q. -- or at least one of them?
 8 A. No.
 9 Q. Okay. Do you remember what Anderson's
 10 reaction was when you told him that?
 11 A. Yes.
 12 Q. What did he say?
 13 A. The startup manager role is a temporary
 14 assignment, shouldn't take much time, so there
 15 probably shouldn't be much of an impact on the
 16 packaging engineering support or something like
 17 that.
 18 Q. Sure.
 19 Do you know how much time that startup
 20 manager position was expected to take?
 21 A. I don't.
 22 Q. Do you know how long it was supposed to
 23 take?
 24 A. It would have ended when the Grand Forks
 25 project was completed, so January of -- was it '16?

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1 Yeah. I'm getting confused on the time.
 2 Q. That's okay. Take your time.
 3 A. Yeah. So January '16.
 4 Q. So that project was only supposed to be
 5 a couple of months in duration?
 6 A. I believe so.
 7 Q. Is that how long it actually took?
 8 A. I may be getting confused on time.
 9 Did --
 10 I can't remember if we started the Grand
 11 Forks project a year after this or if it was
 12 immediately when he started.
 13 Q. Well, if you look at the November 30,
 14 2015, letter --
 15 A. Yeah.
 16 Q. -- when he was assigned to Kent
 17 Anderson, that's Exhibit 8, that one you just had.
 18 A. Yep.
 19 Q. Does that help you recollect when the
 20 Grand Forks project started?
 21 A. Well, okay. So then I think the Grand
 22 Forks project started in, like, the fall of 2016.
 23 Q. So a year later?
 24 A. I believe so.
 25 Q. Okay. So based upon your understanding

[Page 97]

1 and involvement at Grand Forks, what was that --
 2 what was involved in that project?
 3 A. Installing two new packaging lines. So
 4 that's eight baggers, four case packers, a
 5 palletizer --
 6 Q. Okay. And so --
 7 A. -- per line.
 8 Q. -- for the ignorant lawyer --
 9 A. Uh-huh.
 10 Q. -- who doesn't know anything about
 11 packaging, let's talk about that, okay?
 12 A. Okay.
 13 Q. So when you say "installing two new
 14 packaging lines," what is that? What does that
 15 mean?
 16 A. Okay.
 17 Q. Is --
 18 Because I don't know.
 19 A. Yeah. So these are the actual lines
 20 that will package the food product. So it comes
 21 through the processing side of the house, through
 22 the freezer, and gets put into bags, and those bags
 23 into a case, a corrugated shipping case.
 24 It goes through a piece of equipment
 25 that closes that case, glues it all shut, and then

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1 it goes to a piece of equipment that automatically
 2 palletizes everything.
 3 Q. Okay. So how big, on a general scale,
 4 is that operation?
 5 So you've got the processing side, and
 6 then when it comes out of that, it's into a
 7 packaging side --
 8 A. Uh-huh.
 9 Q. -- of the plant?
 10 A. Right.
 11 Q. Is that right?
 12 A. Yeah.
 13 Q. So how big of a plant is this, the
 14 packaging side?
 15 A. Big in terms of number of pieces of
 16 equipment?
 17 Q. That wasn't a very good question by me,
 18 so thank you for clarifying.
 19 So I mean size-wise.
 20 A. Square footage?
 21 Q. Giant-warehouse-type thing? Like, how
 22 big of a plant is this?
 23 A. It's a large area.
 24 Q. Okay. How many pieces of equipment are
 25 involved on the packaging side?

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1 A. Per line, there's two lines, eight
 2 pieces of equipment that form the bags and fill the
 3 product, four pieces of equipment that put the bags
 4 into the case, and two pieces of equipment that
 5 close the case.
 6 Q. Okay.
 7 A. Eight, four, two.
 8 Q. So 14 pieces of equipment per line, give
 9 or take?
 10 A. Give or take, yeah.
 11 Q. Okay.
 12 A. I'm pretty sure there's eight.
 13 Q. Okay. And this was an existing plant at
 14 the time?
 15 A. Yes.
 16 Q. And so was Simplot gutting the packaging
 17 side and starting afresh?
 18 A. Yes.
 19 Q. Okay. And when was that decision made
 20 to, if you know, gut the packaging side of the
 21 Grand Forks plant and start afresh?
 22 A. I don't know.
 23 Q. Was it in the works prior to
 24 November 2015?
 25 A. I don't know.

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1 Q. That --
 2 Do you know what the budget was for that
 3 project?
 4 A. I don't know.
 5 Q. Because it sounds to the layman, to me,
 6 like it was a pretty big project.
 7 Is that fair to say?
 8 A. Yeah.
 9 Q. Okay. And knowing just a little bit
 10 about corporate stuff that I know --
 11 A. Uh-huh.
 12 Q. -- there were probably budget decisions
 13 and discussions made some time frame prior to that
 14 beginning, right?
 15 A. Probably.
 16 Q. Okay.
 17 A. I'm not involved in any of those
 18 discussions.
 19 Q. Sure. Okay.
 20 So tell me what your involvement was, if
 21 anything, with the decisions as to how the
 22 packaging part of that Grand Forks plant was going
 23 to be redone.
 24 A. Sorry. Can you restate that?
 25 Q. It probably wasn't a very good question.

[Page 101]

1 Did you have any involvement in the
 2 decision-making as to how the packaging side of
 3 that Grand Forks plant was going to be redone?
 4 A. No.
 5 Q. Okay. Who did?
 6 A. That would be the capital engineering
 7 part of our department. So that's Lyle, Kent --
 8 Lyle and his direct reports.
 9 Q. Okay.
 10 A. Excluding packaging engineer.
 11 Q. So they knew -- they made a
 12 determination as to what equipment was going into
 13 that side of the plant?
 14 A. Yes.
 15 Q. And so tell me how that works.
 16 When there's a decision made by the
 17 capital engineering side, "We're going to redo this
 18 giant packaging part of this plant" --
 19 A. Uh-huh.
 20 Q. -- then they come to you as the
 21 packaging engineer and say, "We've decided to redo
 22 this. Figure out how we're going to redo it," or
 23 do they make that determination?
 24 A. They make that determination.
 25 Q. Okay. How is -- or what is the

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1 packaging engineer's role after they've made that
 2 decision?
 3 A. Making the equipment run at the budget.
 4 Q. Make it run to what?
 5 A. Budget.
 6 Q. Okay. At the point that you, the
 7 packaging engineer, become involved --
 8 A. Uh-huh.
 9 Q. -- is the equipment installed?
 10 A. Yes.
 11 Q. And so what --
 12 A. Well, we had some involvement while the
 13 equipment was being made --
 14 Q. Okay.
 15 A. -- by the equipment vendors.
 16 Q. So this isn't off-the-shelf equipment.
 17 This is equipment that is made specifically for
 18 Simplot for a specific plant and purpose?
 19 A. No. It's pretty much off-the-shelf
 20 equipment with some tweaks. There's nothing
 21 proprietary or uniquely special about some of the
 22 equipment.
 23 Q. Okay. But if I understand your earlier
 24 testimony, you, as the packaging engineer, have
 25 some role in some of those little tweaks to make it

[Page 103]

1 Q. Do you know if anyone assisted him?
 2 A. I don't.
 3 Q. So if you look at the third page of that
 4 document, sir, do you see at the top it says,
 5 "Level 3 NAFG Engineering Startup Process"?
 6 A. Is this number 196?
 7 Q. Yes, sir.
 8 A. Okay. Yes.
 9 Q. Okay. And you said earlier that the
 10 list of action items you saw had basically the
 11 startup manager as the responsible person for most
 12 of the things.
 13 A. Yes.
 14 Q. Is that correct?
 15 A. Yes.
 16 Q. Does that look like this particular --
 17 at least starting here at Simplot 196, that the
 18 startup manager is responsible for most of those
 19 things?
 20 A. That's what it looks like.
 21 Q. Okay. So as a packaging engineer at
 22 Simplot, have --
 23 I think you told me this already, so I
 24 apologize.
 25 Have you ever been a startup manager?

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1 A. No.
 2 Q. Okay. So have you ever developed an
 3 initial startup plan for the packaging side of a
 4 plant while you've been at Simplot?
 5 A. No.
 6 Q. Have you ever done an engineering review
 7 as part of a startup plan for a packaging plant
 8 since you've been at Simplot?
 9 A. No.
 10 Q. Have you ever done a stakeholder review
 11 as part of a packaging plant startup since you've
 12 been at Simplot?
 13 A. No.
 14 Q. Have you ever finalized a startup plan
 15 as a packaging engineer since you've been at
 16 Simplot?
 17 A. No.
 18 Q. Have you completed the pre-commissioning
 19 activities as a startup manager since you've been
 20 at Simplot?
 21 A. Not to my knowledge.
 22 Q. Okay. And I -- I mixed my two jobs
 23 there.
 24 Have you done that -- have you completed
 25 pre-commissioning activities as a packaging

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1 engineer since you've been at Simplot?
 2 A. No.
 3 Q. Have you completed an ME, which looks
 4 like it stands for mechanical and electrical,
 5 completion as part of a startup process since
 6 you've been a packaging engineer?
 7 A. No.
 8 Q. Have you done any of these things since
 9 you've been at Simplot?
 10 A. No.
 11 Q. Do you know what ICO/ACO stands for?
 12 A. Not off the top of my head.
 13 Q. That's fine. I don't either. That's
 14 why I thought I would ask you.
 15 A. I could -- I could come up -- I could
 16 come with it, I think, if I thought about it long
 17 enough.
 18 Q. Okay. Well, let me know if you come up
 19 with it while we're still in this deposition, okay?
 20 A. Okay.
 21 Q. So from a non-packaging-engineer
 22 perspective --
 23 A. Uh-huh.
 24 Q. -- my perspective, this seems like a lot
 25 of work.

[Page 110]

1 Would you agree with that?
 2 A. Yes.
 3 Q. It's not a small project, right?
 4 A. No.
 5 Q. Okay. No, I'm not right, or, no, it's
 6 not a small project?
 7 A. No, it's not a small project.
 8 Q. Okay. Did Erik ever come to you and ask
 9 for your help with starting up that big facility at
 10 Grand Forks?
 11 A. I don't believe so. I don't recall.
 12 Q. Did you ever offer him your assistance?
 13 A. I don't recall.
 14 Q. Do you remember going to him and saying,
 15 "Erik, I know this is a big job. Do you need my
 16 help with it?"
 17 A. I don't recall.
 18 Q. What -- what did you observe while you
 19 were working with him as far as how he approached
 20 these two roles, one being a startup manager and
 21 the other being a packaging engineer?
 22 A. What did I observe of him?
 23 Q. Yes, sir.
 24 A. He didn't want to be a startup manager.
 25 Q. Okay. Did he tell you that?

[Page 111]

1 We were talking about the number of
 2 engineers at Simplot --
 3 A. Uh-huh.
 4 Q. -- and so I want to ask you just a
 5 couple of follow-ups on that.
 6 So if I understand, currently at least
 7 on the packaging side, there are three of you.
 8 Is that right?
 9 A. Correct.
 10 Q. Okay. And then you called it the
 11 capital -- did you say capital equipment side?
 12 What was your term for the other side?
 13 A. Capital engineering.
 14 Q. Capital engineering? Okay.
 15 So what's not clear in my mind is the
 16 difference between those two, and so I want to know
 17 if -- what that difference is.
 18 A. I'd say the major difference is we have
 19 more direct-line involvement with the business
 20 side --
 21 Q. Okay.
 22 A. -- of the company.
 23 Q. Okay. So -- so I didn't ask my question
 24 very well.
 25 From an engineering standpoint, is it

[Page 144]

1 fair to say that the packaging engineer group is
 2 working more with not only the -- the
 3 business/marketing side but also the materials side
 4 of things?
 5 A. Correct, yeah.
 6 Q. Okay.
 7 A. And the capital engineering group would
 8 do more things like equipment installation --
 9 Q. Okay.
 10 A. -- line layout designs.
 11 Q. Okay. Okay. That's what I thought.
 12 A. Okay.
 13 Q. I just wanted to make sure that I was
 14 right on that.
 15 A. Okay.
 16 Q. So the last thing, there were a number
 17 of questions today where you did not remember the
 18 answer to my question.
 19 A. Okay.
 20 Q. So what I'd like you to do, if you
 21 remember something after we close this deposition,
 22 will you let your lawyer know so that we can make
 23 sure that we have an accurate record?
 24 A. Yes.
 25 Q. Okay. Thank you.

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1 Similarly, if you remember something
 2 different, you get home and you think, "Well, I
 3 answered that question wrong," will you let your
 4 lawyer know again so that we can make sure that the
 5 record is accurate?
 6 A. Yes.
 7 MR. HALLAM: Okay. Thank you, sir.
 8 THE WITNESS: Okay.
 9 MR. HALLAM: Appreciate your time.
 10 THE WITNESS: You bet.
 11 MR. JULIAN: I have no questions. Thank
 12 you.
 13
 14 (The deposition concluded at 12:23 p.m.)
 15 * * *
 16 (Signature was requested.)
 17
 18
 19
 20
 21
 22
 23
 24
 25

[Page 146]

VERIFICATION

STATE OF _____
) ss.
 COUNTY OF _____

I, TIM LALLEY, being first duly sworn on my oath,
 depose and say:
 That I am the witness named in the foregoing
 deposition taken the 14th day of May, 2018, consisting
 of pages numbered 1 to 146, inclusive; that I have read
 the said deposition and know the contents thereof; that
 the questions contained therein were propounded to me;
 that the answers to said questions were given by me, and
 that the answers as contained therein (or as corrected
 by me therein) are true and correct.

Corrections Made: Yes _____ No _____

 TIM LALLEY

Subscribed and sworn to before me this _____
 day of _____, 2018, at _____, Idaho.

 Notary Public for Idaho
 Residing at _____, Idaho.
 My Commission Expires: _____.

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IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

ERIK KNUDSEN,)
)
 Plaintiff,)
)
 vs.) Case No. CV01-17-13956
)
 J.R. SIMPLOT COMPANY, a)
 Nevada corporation,)
)
 Defendant.)
 _____)

DEPOSITION OF CRAIG LAMBERTON

May 30, 2018

Boise, Idaho

Reported by:

Andrea J. Couch, CSR #716, RDR, CRR, CRC

1 was a long time ago.
 2 Q. Okay. And can you just go through
 3 chronologically from the beginning and tell me the
 4 different positions that you've held with the
 5 company and where they were.
 6 A. Okay. I started as an apprentice
 7 electrician. From there, my next role was a
 8 maintenance planner. From there, I was a -- put
 9 into a projects planner or a project engineer. I
 10 then went into a CI manager's role. I then went
 11 into an engineering manager's role.
 12 Q. I'm sorry. What kind of manager?
 13 A. Engineering manager.
 14 Q. Thank you.
 15 A. And then pretty much after that went
 16 back into project engineering, and I've been in
 17 sort of multiple different positions, I suppose, as
 18 far as in project engineering. The name changes,
 19 but the job really doesn't change all that much.
 20 Sorry. I should mention that I was in
 21 the U.S. So when I was in the U.S. as a senior
 22 project engineer, then I became the director of
 23 packaging engineering over there before returning
 24 to Australia.
 25 Q. Okay. Thank you.

[Page 8]

1 So did you start with the company in
 2 Australia?
 3 A. Yeah. That was my first real job.
 4 Q. And then when you became a senior
 5 project engineer, was that your first job in the
 6 U.S. with the company?
 7 A. Yes, it was.
 8 Q. And where was the senior project
 9 engineer job located?
 10 A. Out at Caldwell.
 11 Q. Okay. Caldwell, Idaho?
 12 A. Yeah. At the main office, engineering
 13 office there.
 14 Q. And do you recall the approximate date
 15 that you began that position?
 16 A. Oh, I think it was --
 17 When did I move?
 18 It was around the 1st of January or it
 19 might have been the end of January 2015. The past
 20 two years --
 21 Or it might have been actually earlier
 22 than that, a year earlier.
 23 Q. I'll represent to you --
 24 A. It was -- it was 2014 I was actually
 25 over there.

[Page 9]

1 Q. Okay. 2014.
 2 And when did you become director of
 3 project engineering?
 4 A. Let's see. That was --
 5 It must have been in 2016. It was the
 6 year that I -- before I come home. So I had been
 7 in the role for maybe six months at the most.
 8 Q. So you were the director of project
 9 engineering for approximately six months before you
 10 left for Australia?
 11 A. Yeah. Packaging engineering. It was
 12 not project engineering.
 13 Q. Oh, packaging engineering. Sorry.
 14 A. Yeah. So at the time, though, they
 15 actually tried to get me to stay on permanently.
 16 Q. So where were you located for the
 17 director of packaging engineering position? Still
 18 in Caldwell?
 19 A. Yeah, the engineering building in
 20 Caldwell. They hadn't moved to downtown Boise at
 21 that stage. They was getting -- getting ready to
 22 make the move, but it was still at Caldwell
 23 engineering at that stage.
 24 Q. Okay. Who was your supervisor as the
 25 director of packaging engineering?

[Page 10]

1 A. I reported to Lyle Schook.
 2 Q. Okay. When you were the senior project
 3 engineer, who was your supervisor?
 4 A. The same. I reported to Lyle Schook.
 5 Q. What was his position?
 6 A. I think it was the senior director of
 7 engineering.
 8 Q. Was that true during your entire time in
 9 Caldwell?
 10 A. Yeah, I believe so. I don't believe his
 11 position had changed.
 12 Q. Okay. Did there come a point in time --
 13 Oh, let me ask you --
 14 Before I move on, let me ask you this:
 15 What were your duties as a senior project engineer
 16 in Caldwell?
 17 A. Many -- many and varied. So when I
 18 first -- whenever --
 19 I basically was over there for the
 20 Project Idaho project, so the team -- team lead for
 21 the packaging area, development of that project.
 22 So it -- it was very varied. So it was
 23 from design of the --
 24 A lot of the design was completed by the
 25 time I got there, but there was still some design

[Page 11]

1 aspects of what I was doing when I arrived.
 2 Then I was looking after the
 3 installation of all of the equipment and then was
 4 managing changes in packaging. There was a number
 5 of packaging formats that had to be changed to --
 6 to start up correctly and then was basically
 7 managing the startup of the project, yeah, from
 8 basically taking it from an engineering position
 9 into a commercial production position. So that
 10 transition into commercial production.
 11 And then probably for -- for six months
 12 or maybe even longer, probably even closer to
 13 12 months, I was really working doing continuous
 14 improvement on that -- that plant to make sure it
 15 met its goals.
 16 So I worked a lot then with the Black
 17 Belt teams and the continuous improvement teams to
 18 actually get the plant performing the way it was
 19 supposed to in the packing area. I was only
 20 looking after the packing area, so it was really
 21 the packing area performance.
 22 Q. Okay.
 23 A. So that -- that was in that area.
 24 So after that project sort of finished,
 25 then I sort of stepped back into the more

[Page 12]

1 day-to-day role, and that's when I started to look
 2 after, say, some of the packaging engineering guys.
 3 I had them reporting to me.
 4 But before that, it was really -- most
 5 of the direct reports that I had were all external.
 6 Then when I sort of stepped back into the
 7 day-to-day role, had direct reports in the
 8 packaging engineering group. I took on a young
 9 guy, Michael, and was working on a development
 10 of -- of him into the packaging engineering group.
 11 So it was a mentoring and coaching sort
 12 of role to -- to develop Michael and --
 13 Q. Was that Michael Whiting?
 14 A. Yeah, Michael Whiting. Yeah. He was --
 15 he was coming along good when I left. I'm not
 16 sure -- I haven't kept in touch with Michael, but
 17 I'm sure he's still there doing well.
 18 And then we actually really started to
 19 work on the -- how the packaging engineering group
 20 was seen across the business because they probably
 21 didn't have a great rapport across the business.
 22 That was sort of -- it was a bit of a dumping
 23 ground, and we really started to work on turning
 24 that around as a group and becoming more proactive
 25 and actually becoming a leading group rather than,

[Page 13]

1 you know, just being --
 2 I really started to work on developing
 3 that -- that group into a -- you know, a strong
 4 functioning group, so --
 5 Q. All right.
 6 A. Yeah. So another part of what -- a big
 7 part of what we done after we went through Project
 8 Idaho was we started to develop a lot of our own
 9 internal engineering processes that we -- we were
 10 actually quite shy on and relying on, you know,
 11 outside companies to provide that process
 12 engineer or that -- yeah, that process engineering
 13 methodologies and things.
 14 So we started to develop a lot of our
 15 own, and, you know, that's where a lot of what --
 16 how those guys operate now comes from that learning
 17 of, you know, Project Idaho through to, you know, a
 18 good 12 -- it was at least 12 months of development
 19 before I left, and I know that the guys still had a
 20 lot to do to -- to, you know, iron out --
 21 Q. Okay.
 22 A. -- and complete that process, so --
 23 Q. What was your pay grade as a senior
 24 project engineer?
 25 A. Good question. I couldn't really tell

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1 you.
 2 Q. Do you know -- do you remember --
 3 A. I would --
 4 Q. I'm sorry. Go ahead.
 5 A. I would probably have to go back to the
 6 documents and stuff, but I really don't take any
 7 notes. That might --
 8 Basically when -- my pay didn't change
 9 because I was -- what's the name of it? -- like, on
 10 consignment. What I was actually paid in Australia
 11 is what I was paid when I was in the U.S. and vice
 12 versa. When I came back, it didn't change. So it
 13 was a continuity kind of thing.
 14 Q. Are you able to tell me what you were
 15 paid either in U.S. dollars or Australian dollars?
 16 A. Probably not quite that simple because I
 17 was paid -- I was paid some of my wage in -- in
 18 Australian dollars directly into my bank account
 19 because we still had our house and everything in
 20 Australia, and then I was paid an allowance in the
 21 U.S.
 22 Q. Okay. Do you --
 23 A. From -- from memory, it was just over
 24 \$5,000 a month I got in U.S. dollars paid into my
 25 account over there to operate.

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1 Q. Okay. And as the director of packaging
 2 engineering, did you make more money than the
 3 packaging engineers?
 4 A. I would have, yes.
 5 Q. Do you know how much more?
 6 A. No. I really --
 7 Q. Okay. Do you know your pay grade as
 8 a --
 9 A. No. It's just like the --
 10 The pay -- the pay grades are different
 11 between -- well, they've just aligned them now, but
 12 at that stage the pay grades themselves were
 13 different between Australia and the U.S.
 14 So we worked -- I think --
 15 Sorry.
 16 I think we worked on a 40 -- 40
 17 different grades, and I think in the U.S., they
 18 worked on ten grades.
 19 Q. Okay.
 20 A. So they've only just aligned those
 21 recently. And as I said, my title -- my CEC when I
 22 was in the U.S. was -- was based off a number of
 23 different things, not just -- it wasn't just -- it
 24 wasn't just financial-related. It was like there
 25 was housing and also some other things that I got

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1 paid some in Australian dollars and some in U.S.
 2 dollars.
 3 So, yeah, I could -- I can work it out,
 4 but I couldn't sit here and give you a -- the right
 5 number at the moment. Put it that way.
 6 Q. All right. Thank you.
 7 A. It would be --
 8 Q. You mentioned with respect to senior
 9 project engineer managing --
 10 I think I -- I tried to write this down.
 11 I may not have gotten it quite right. Correct me
 12 if I'm wrong.
 13 Managing startup of the project. Do you
 14 recall telling me that?
 15 A. Yes.
 16 Q. What is involved with that?
 17 A. So it's -- it's sort of a transition
 18 point.
 19 So once -- once there's the installation
 20 of equipment, you know, we've set it, we've wired
 21 it, we've got all of the base sort of things down
 22 there, you sort of move into that transition point
 23 where you start to test equipment. So you --
 24 you're organizing to make sure all of the relevant
 25 testing gets done by the different groups.

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1 You're then starting to organize --
 2 like, it might be a test run of packaging or it
 3 might be a test run of a product. It really sort
 4 of -- it depends on where you think the higher
 5 risks are, so you're starting to try and address
 6 the higher-risk parts of the project.
 7 It could be a new packaging format. It
 8 could be a new product that has existing packaging
 9 that you want to see how it runs through the line.
 10 So you're starting to coordinate those
 11 sort of activities. You're coordinating training.
 12 You're coordinating, making sure you've got all the
 13 documentation for everything for the relevant
 14 groups.
 15 So it might be ensuring you've got the
 16 packaging equipment, like the maintenance manuals,
 17 the operation manuals, that you've got all of that
 18 sort of thing. Because you're trying to -- you're
 19 trying to work to a point where you can sign off to
 20 make final payments on equipment and those types of
 21 things, so, you know, the -- the training is -- you
 22 know, is the --
 23 The equipment meets the requirements
 24 that were set out. So back in the start of the
 25 project, we'll list out in the specifications and

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1 say, "The machine is going to do 500 strokes a
 2 minute or -- and it's got to," yeah, "have less
 3 than 2 percent quality defect," or something like
 4 that. So you'll set up a test run and you'll say,
 5 "Okay. Can the machine make 500 bags a minute?"
 6 "Yes."
 7 But it might not pass the quality side
 8 of things, so then you have to organize retesting
 9 and those sorts of things.
 10 It's just a transition point between
 11 construction and installation sort of work to
 12 getting it to that point where you -- you know, you
 13 can hand it over. You're basically looking to hand
 14 it over to a production group or a -- the
 15 production manager and say, "Here. This meets all
 16 of the requirements and, you know, I'm happy to --
 17 it's going to -- it's going to fulfill the job that
 18 you want it to do," sort of thing.
 19 Q. Okay. In doing --
 20 A. It's a small -- it's a small window. If
 21 you break -- if you break a project up, you've
 22 got --
 23 Basically, design takes three months;
 24 installation takes, you know, six to 12 months,
 25 depending on the size; and then you've probably got

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1 a bit on the back end of it that's around three
 2 months is -- is just sort of startup management
 3 sort of thing.
 4 Q. Okay. Were you involved in the design?
 5 A. I -- I wasn't fully because I couldn't
 6 actually get --
 7 I was supposed to be released from
 8 Australia a year earlier to be part of the design,
 9 but I was actually in the middle of a very large
 10 project here and actually couldn't get released.
 11 So I sort of transitioned in at a, you
 12 know, partial design. So I had some input into
 13 some changes that needed to happen, but there was a
 14 few things I had to live with, which I wasn't
 15 happy.
 16 Q. Sure.
 17 A. I would have liked to have been there
 18 earlier.
 19 Q. Were you involved in installation?
 20 A. Yeah, yeah.
 21 So a common -- a common sort of
 22 practice -- and we'll -- I'm back to that point
 23 again sort of now with what I do. So I have to do
 24 every aspect.
 25 Now with my projects in Australia,

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1 just -- we have a different structure to what --
 2 what I suppose you have in the U.S.
 3 So I'm back to a point where I have to
 4 do the design, I have to do the construction, and I
 5 have to do the startup, me as an individual, where
 6 there was more flexibility.
 7 And you'll see it. Within the
 8 engineering process, we have -- you know, we have a
 9 project manager, we have construction managers, we
 10 have startup managers.
 11 So we're able to break the projects up a
 12 lot more in the U.S., which I found was quite --
 13 quite good, but the projects are much bigger than
 14 what we sort of do here in Australia as well,
 15 but --
 16 Besides, the scale of -- the scale of
 17 the project is quite different, so --
 18 Q. On the Idaho project, were you involved
 19 in the installation?
 20 A. Yes.
 21 Q. Okay.
 22 A. Yes.
 23 Q. And I think -- I think my question was:
 24 What did you do on the Idaho project with respect
 25 to installation?

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1 A. So I coordinated every piece of
 2 equipment to be installed post-freezer through to
 3 dispatch. So I was responsible from where the
 4 product left the freezer right through to the
 5 dispatch.
 6 So working with the project manager,
 7 coordinating, setting out, measuring. It's
 8 whatever -- whatever is required to actually
 9 execute the project.
 10 Q. Okay. And then after installation, was
 11 that where you managed the startup?
 12 A. Yes. I was basically at the plant
 13 probably -- probably close to six months on that
 14 project full time working with each one of the
 15 operators managing the startup sort of thing.
 16 Q. Okay. Do you have enough knowledge to
 17 compare the scope of the Idaho project and the
 18 Grand Forks project?
 19 A. Yeah. So the Grand Forks project was
 20 probably about a fifth, maybe, so --
 21 But the -- the Idaho project, my
 22 budgeted area was probably about 120, \$140 million.
 23 That's about the cost of everything in the -- in
 24 the Idaho packaging area.
 25 The Grand Forks project was -- I think

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1 when I left, it's like I was looking at around
 2 \$22 million. So it was quite a bit -- quite a bit
 3 smaller and, you know --
 4 I can't remember how long it took them
 5 to execute it, but it's probably -- you're probably
 6 looking at from start of design to actual
 7 commercial production, probably 12 months in total.
 8 Q. What was it for the Idaho project?
 9 A. I think it was closer to four years from
 10 start to commercial production.
 11 Q. Okay.
 12 A. It -- it was quite a -- quite a bit
 13 bigger.
 14 And -- and the thing was we were trying
 15 to prepare ourselves because there was -- you know,
 16 in the wings was another project the size of Idaho,
 17 and we wanted to make sure we had in-house skills
 18 developed to do it better than what we had to go
 19 through with the Idaho project.
 20 So that's -- that's part of that process
 21 development stuff that we spent 12 months on was to
 22 gear ourselves up and start to develop our own
 23 people to get better at doing that.
 24 And we realized -- like, I was -- I was
 25 working crazily long hours trying to do everything,

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1 and we had to break it into smaller chunks, and
 2 that's where we started to break it down to having
 3 our design teams, our construction teams, our
 4 startup teams and actually having more people to do
 5 those roles.
 6 Because we would -- the thing is -- the
 7 senior project people -- myself, Kent, James, all
 8 of those guys are the seniors. At that level, we
 9 were working, you know, crazily long hours to try
 10 and manage it all, and we had to break it into
 11 smaller chunks, so --
 12 Q. Were you still on the job when Erik
 13 Knudsen was hired as a packaging manager?
 14 MR. JULIAN: Packaging --
 15 MR. BURGOYNE: Oh, excuse me. As a
 16 packaging engineer.
 17 Thank you, Brian.
 18 Q. (BY MR. BURGOYNE) I misspoke. Let me
 19 ask that question again.
 20 Were you still on the job in Caldwell
 21 when Erik Knudsen was hired as a packaging
 22 engineer?
 23 A. I was for a week or two. I can't
 24 remember the exact, but it wasn't very long. Erik
 25 came in, and I was -- I was definitely in the mode

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1 of trying to relocate countries at that point in
 2 time, so --
 3 Q. Before you left to return to Australia,
 4 were you involved in any aspect of planning or
 5 implementing startup activities at Grand Forks?
 6 A. No. I think at that stage --
 7 Because we were -- we were still getting
 8 the project approved. We may have had the initial
 9 approval, I think, at that stage. We were more
 10 looking at the structure of -- of how --
 11 Because we were developing our
 12 processes, was -- was that the -- how big is this
 13 project? How many people will we need to fill --
 14 fill the spots to actually achieve it?
 15 We may have had -- to that sort of
 16 level.
 17 Q. Were you aware while still at Caldwell
 18 that there would be a need for someone to assume
 19 the responsibilities for the startup role at
 20 Grand Forks?
 21 A. Oh, yes, most def --
 22 Yeah. We -- we were --
 23 Yeah. We were looking --
 24 I had -- I had an external -- Tim
 25 Veerkamp. Yeah, Tim Veerkamp where I had an

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1 external guy. Tim was -- we had him in, and he was
 2 working on design/construction aspects of the
 3 project. He was going to take over those sort of
 4 aspects, and then would -- you know, we were
 5 looking at who we -- who we could use for startup
 6 management.
 7 Q. Okay. Did you have any discussions with
 8 anyone about that before leaving Idaho?
 9 A. Discussions in --
 10 Q. About the startup role, who -- who would
 11 do it or what it's -- what it would involve. Any
 12 aspect of it.
 13 Who -- who was --
 14 A. Not -- not that I can recall.
 15 Q. You didn't have any discussions with
 16 anybody about what the scope of the startup role
 17 would be or who might do it?
 18 A. Well, I'm just trying to remember where
 19 we were at in the process because -- because --
 20 because we worked through the development of the
 21 processes in a methodical sort of fashion. Startup
 22 was the last one.
 23 Just trying to --
 24 I know we started on the startup
 25 managers', you know, responsibilities and things,

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1 but I don't know if they were completed by the time
 2 I left. I know that they've sent them to me since
 3 because I -- we -- we're trying to adopt the same
 4 sort of processes here in Australia.
 5 But, you know, startup -- startup
 6 management, it's really just the main piece of
 7 project management. So, you know, it's been given
 8 a new -- a name within --
 9 It's sort of a common name that's used
 10 outside of Simplot. I definitely hadn't heard of
 11 it here in Australia. It was something that was
 12 sort of used coming from the U.S., and now I'm
 13 trying to bring that same methodology back here
 14 because it is -- it is an important part of a
 15 project, startup management.
 16 And when you've sort of been on the
 17 project from start to finish as a design or project
 18 manager, whatever you -- however you want to sort
 19 of call it as you work through it, by the time you
 20 get to the last phase where it's important -- you
 21 need some fresh bodies because you're starting
 22 to -- you start to wear down after everything else,
 23 and it's the important part that you put some
 24 fresh people in to just get that -- that last bit
 25 of a project over the line.

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1 Q. Okay. As --
 2 Do you know enough about startup
 3 management work in the U.S. --
 4 And I'm going to ask you a couple of
 5 questions, and I first want to know if you know
 6 enough from your experience to give me an answer,
 7 and then if you do, what -- what the answer is.
 8 By the way, is the gentleman that
 9 Mr. Knudsen replaced Craig Jarvis?
 10 A. That's the one.
 11 Q. Okay. Do you know, did Craig Jarvis
 12 ever participate in startup management activities?
 13 A. He did, but we -- it wasn't defined. So
 14 we only defined, like, startup management, you
 15 know, sort of roles after we had finished the --
 16 It was probably after Craig had left, so
 17 it was -- they were all activities that we were
 18 doing, but they weren't defined as a startup
 19 manager's position, if that makes sense. Like, it
 20 was --
 21 Q. What --
 22 A. It was one of those things --
 23 It was just sort of probably lumped on
 24 the title "Project Manager" to try and get people
 25 to do all of these things, and then what would

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1 happen is you would forget to cover one of them,
 2 and then it would come back to bite you.
 3 So it was sort of a -- an evolution, I
 4 suppose, if that makes sense.
 5 Q. What -- what did Mr. Jarvis do in that
 6 regard?
 7 A. Yeah. So the things that, you know, I
 8 worked directly on with him was on -- on the -- for
 9 instance, the robot packing system in the Caldwell,
 10 Idaho, plant. We -- we had to -- basically, what
 11 he had to work on was coordinating the startup
 12 of -- because it was a new packaging, so he had to
 13 develop the packaging, and then he had to manage
 14 that startup aspect of it. But unfortunately,
 15 before he finished that, he left, and then I had to
 16 take over and finish it off.
 17 So it was sort of -- that was, you know,
 18 one aspect of it.
 19 So he was, you know, looking at the
 20 purchasing of the tooling. He was looking at a
 21 number of different aspects on that, working
 22 directly with the guys in Germany to make changes
 23 to the equipment, to -- to take it from, you
 24 know -- again, just being a metal box with robots
 25 in it to something that actually packed and just

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1 a --
 2 Sorry. I just lost your video feed.
 3 Yeah.
 4 Q. Was his --
 5 A. I'm trying to think of what else.
 6 Q. Was Mr. Jarvis' focus on the packaging
 7 itself?
 8 A. Like, it was -- it was predominantly in
 9 that -- in that position. Sorry, in that -- at
 10 that point in time. But he was -- you know, he
 11 was -- was supposed to do more of the
 12 commercialization of it, but I -- as I said, he
 13 ended up leaving the business at the time, so --
 14 Q. What does "commercialization" mean?
 15 A. So from -- well, what I take it is it's
 16 taking it from being an engineering position, so
 17 it's -- it's --
 18 For a robot, for instance, you can make
 19 a robot move backwards and forwards and do nothing,
 20 so then when you introduce product and packaging
 21 and people and untrained people and all of your
 22 internal sort of processes and things, it's taking
 23 it from that point where it's basically under the
 24 control of a project manager to a point where
 25 it's -- it's operating, you know, for production.

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1 So you basically release the engineering
 2 group, and you're taking it to that operating mode.
 3 Q. Do you know Tim Lalley?
 4 A. Yeah.
 5 Q. And do you know Jason --
 6 A. Yes. Sorry.
 7 Q. Do you know Jason Schwark?
 8 A. Certainly do.
 9 Q. And --
 10 A. They both reported to me.
 11 Q. They both reported to you?
 12 A. Yeah.
 13 Q. Were they packaging engineers?
 14 A. Yes.
 15 Q. Did they participate in startup
 16 activities while you were there at -- at the Idaho
 17 plant?
 18 A. So -- so looking at the timing, they
 19 were -- they would have come in probably closer to
 20 process improvement sort of activities than
 21 startup. I think they were both -- yeah, they
 22 probably both came when the plant was actually in
 23 operation, from memory.
 24 So the activities that they were doing,
 25 I would probably call them more process improvement

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1 hire a senior packaging engineer to replace
 2 Mr. Jarvis?
 3 A. Yeah. It wasn't probably as
 4 straightforward as that because, you know, Craig
 5 had left the business for, I think, probably 12
 6 months or more. Could have even been longer.
 7 Yeah. It could have even been longer. It may have
 8 even been closer to two years. I'm not sure on the
 9 exact time frame.
 10 But we needed -- we needed another
 11 packaging engineering person, but it probably
 12 wasn't a straight direct replacement. We -- we had
 13 to justify, you know, why we needed that additional
 14 person because we had -- we had Tim and Jason.
 15 But I think when I -- when I arrived
 16 there, there was only two. So there was Craig
 17 Jarvis, and there was another young guy. I'm
 18 trying to think of his name. I -- I could look up
 19 these names. Anyway, but there was another young
 20 guy.
 21 And so, you know, when I was leaving, we
 22 had Jason, we had Tim, and we had Michael Whiting
 23 as our sort of younger junior one. And to justify
 24 putting that extra person in there from what that
 25 group was, you know, we had to, you know, basically

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1 say, you know, the -- the roles of what is required
 2 of, you know, packaging engineering people now
 3 is -- you know, it's growing.
 4 Q. Okay.
 5 A. Forever growing. And we're trying to,
 6 you know, make it easier for people to be
 7 successful, so the -- you know, starting to define
 8 some of the things that we had to do rather than
 9 just assuming that it would get done.
 10 It was --
 11 Q. Are you --
 12 A. From memory, it took us quite a while to
 13 justify that position.
 14 Q. Are you saying that Mr. Jarvis had left
 15 the position and it had been vacant for a period of
 16 time before the solicitation went out to hire a
 17 senior packaging engineer?
 18 A. Well, after Craig Jarvis left, we
 19 employed Jason and Tim. So Erik wasn't a direct
 20 replacement as such for Craig Jarvis.
 21 Q. I see. Okay.
 22 A. But those guys were there filling that
 23 role. We were adding to it because the workload
 24 was adding to that group of what was expected.
 25 And the business hadn't done packaging

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1 sort of projects for multiple years, from what I
 2 can gather. Like, all of the packing areas in most
 3 of the plants hadn't been, you know, changed or
 4 modified for multiple years. And with Idaho coming
 5 on board, they -- you know, sort of the sudden
 6 realization --
 7 That that's why they brought me in
 8 because I had -- had experience to take that on,
 9 especially in robotics. And moving forward after I
 10 left, you know, looking at, you know, Tim Veerkamp,
 11 for instance. I was trying to poach Tim from his
 12 contractor status to employing him directly with
 13 Simplot when I was there. I know that's happened
 14 since.
 15 But, you know, we were trying to bring
 16 that sort of skills and expertise into that
 17 packaging engineering group so that they could be
 18 more successful moving forward.
 19 Q. Okay. Has Exhibit No. 1 opened up yet?
 20 A. No. It's still going around in circles.
 21 I'm just wondering if I need to --
 22 Can I pause my webcam or something like
 23 that to maybe --
 24 (Discussion held off the record.)
 25 (Break taken from 5:42 p.m. to 5:55 p.m.)

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1 Q. (BY MR. BURGOYNE) Okay. Let's, if you
 2 can, look at Exhibit No. 1.
 3 A. Okay. Yep.
 4 Q. And that is a job description for a
 5 senior packaging engineer FGHQ, and it's two pages.
 6 A. Yes.
 7 Q. Do you have that?
 8 A. I certainly do, yes.
 9 Q. All right. Now, where it says
 10 "Responsibilities," there are seven bullets.
 11 A. Yes.
 12 Q. Do you see those?
 13 A. Yes.
 14 Q. First off, have you seen Exhibit No. 1
 15 before?
 16 A. I couldn't definitely, definitely say
 17 I've seen it. It's -- it's a document that --
 18 I've seen many position descriptions.
 19 Q. Do you recall that there was a job
 20 description for a senior packaging engineer when
 21 the -- when the effort to hire and ultimately hire
 22 Erik happened?
 23 A. There would have been. It's part of big
 24 company procedures. There would have definitely
 25 been one. The exact details of it, whether it's --

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1 what the exact document is, I -- I couldn't put my
 2 hand on my heart now and say that this is
 3 definitely it or it's definitely not it, but --
 4 Q. Did you have any input into stating what
 5 the responsibilities of the position were?
 6 A. I would have been across it, but I
 7 probably would have relied on the guys that were
 8 working in the roles somewhat.
 9 Q. And who would they have been?
 10 A. I believe at that time it would have
 11 been Jason and Tim.
 12 Q. Okay. How about for the requirements?
 13 Did you have any input on the requirements which
 14 begin --
 15 The word "requirements," it's at the
 16 very bottom of the first page, and then there are
 17 seven requirements listed at the top of the second
 18 page.
 19 A. I would have -- as I said, I would have
 20 been involved in it, but, again, you know, probably
 21 relying on HR as well as the -- the other packaging
 22 guys to make sure it covered broadly what we --
 23 Boy, these are always difficult things
 24 to make sure they cover broadly enough to encompass
 25 everything that you have to do.

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1 Q. Okay. Would you read --
 2 A. Okay.
 3 Q. Would you read the responsibilities and
 4 then tell me if you think it covers the things that
 5 it needed to.
 6 A. Okay. "Participate on teams for new
 7 products and provide acting materials,
 8 specifications, customs, research, new
 9 packaging" --
 10 Q. You don't need to read it out loud if
 11 you don't want to. If you just want to read it to
 12 yourself.
 13 I just want to know if the
 14 responsibilities stated cover the things you think
 15 it needs to.
 16 A. The top one is definitely a part of the
 17 role. Yep. New equipment, research, and
 18 development stuff. Yep. That's definitely --
 19 Materials, specifications, yes. "The
 20 senior packaging engineer will work directly" --
 21 That's correct, yeah. Identifying and
 22 managing projects. Yep.
 23 Probably -- probably not exactly what I
 24 would have -- would have in it.
 25 Q. How -- how would you -- how would --

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1 A. I think the --
 2 This is Tim's, is it? Okay. Yes, this
 3 is -- this one was done before -- I wasn't really
 4 involved in Tim's employment, but --
 5 So the -- the area that I -- yeah, the
 6 areas that I see that it's -- that needs more work
 7 is that it needs --
 8 The responsibility, identifying managing
 9 projects, it's not just cost reduction. It's
 10 projects in general.
 11 So that statement around
 12 responsibilities for identifying and managing
 13 projects related to cost-reduction opportunities,
 14 it's cost reduction, it's continuous improvement,
 15 it's, you know, new -- new packaging projects.
 16 There's more than just cost reduction.
 17 So that's where I would have broader in the
 18 statement of that one.
 19 Q. Okay.
 20 A. And then the specifications, that was
 21 something that we were working on was the new
 22 specifications, that we're responsible for making
 23 sure that that was all up to date and accurate.
 24 Q. Okay. Anything else about the
 25 responsibilities that you feel would need to be

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1 changed?
 2 A. I'm just trying to think back on that.
 3 There's probably --
 4 I think that broader -- broader
 5 statement around -- you know, they're just not
 6 focussing on cost-reduction project management.
 7 Q. Okay.
 8 A. That's much broader, what they do.
 9 Q. On "Requirements" --
 10 A. Yeah.
 11 Under "Requirements," sorry. Yeah.
 12 Q. On the "Requirements" section, do you --
 13 do you think any changes should be made there?
 14 A. It probably --
 15 Yeah. I was going to say, I'm --
 16 The reason I'm probably a little bit --
 17 I'm just in the middle of employing
 18 someone at the moment, and I'm probably a little
 19 bit broader in the statements that I put in -- in
 20 some of these things.
 21 So, you know, the part on "international
 22 and domestic travel is required up to 40 percent,"
 23 that would be all that I'd put in. I wouldn't
 24 put -- I wouldn't have any of the reasons why.
 25 Q. Okay.

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1 looks of this. So it's -- it's more the --
 2 Just trying to think of the name of the
 3 role.
 4 But, like, Scott Kaufman, I think, was
 5 the lead on the Grand Forks project. So Scott was
 6 getting sort of -- developing for that more of a
 7 leadership role within the -- within our
 8 engineering projects.
 9 I'd sort of say it's around that. So
 10 around a Scott -- like a Scott Kaufman sort of
 11 level.
 12 Q. Okay. What, to you, is the difference
 13 between leading and managing?
 14 A. It's probably more like --
 15 It's a coordination role. It's -- they
 16 don't actually have the direct authority, I
 17 suppose, to take, you know, action on someone maybe
 18 not performing or --
 19 So they're, you know, trying to work
 20 with their teammates to get them down to a common
 21 goal --
 22 Q. Are you describing lead --
 23 A. -- where --
 24 Q. I'm sorry, but are you describing
 25 leading or managing?

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1 A. Leading. Leading -- leading, to me,
 2 is -- like, it's more, you know, working as a
 3 leader but without, I suppose, the performance
 4 management aspects of being a manager, if that
 5 makes sense.
 6 Q. Okay.
 7 A. Probably the --
 8 There is probably a difference in
 9 terminology between what we probably use commonly
 10 in Australia and what you guys probably use in the
 11 U.S., but it's --
 12 Yeah, management usually is around
 13 performance, and leading usually takes on a
 14 different role -- level of responsibility.
 15 Q. With respect to Mr. Jarvis and the
 16 startup work he was doing with you, did you regard
 17 him as either a leader or a manager?
 18 A. Well, he was definitely a leader in what
 19 he was doing. Could be a manager.
 20 I don't know. I don't think -- I don't
 21 think Craig had some --
 22 So I'm not 100 percent sure on the
 23 structure, but I don't think Craig had a direct
 24 report. I don't think he had direct reports during
 25 the time that I was there anyway. It was like he

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1 was more a leader is what he was doing.
 2 Q. Okay. I notice that on Exhibit 24, the
 3 Engineer 5 job description, there is a specific
 4 reference under "Responsibilities" in the first
 5 bullet at the end to "startup activities."
 6 Do you see that?
 7 A. Yes, yes.
 8 Q. Okay. Does the term "startup
 9 activities" have any meaning for you?
 10 A. Yeah. So that's -- that's really that
 11 startup management sort of stuff.
 12 So that's where I said, this is -- this
 13 is a -- this is probably the project manager's
 14 description by the looks of it, and then within
 15 that project group, you usually have someone that
 16 does the design work, which probably includes
 17 equipment specifications, you know, bidding and
 18 evaluation. Although we were involved in that, we
 19 also had the procurement group step in. The
 20 capital procurement thing does most of the work
 21 around bidding and evaluation, but the PM would
 22 coordinate that. Cost estimating.
 23 Yeah, so probably through -- everything
 24 through that cost estimating side of it was
 25 probably in the design side, and, you know, the

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1 procurement management thing would be in there.
 2 The designers, the drafting, the -- the whole group
 3 of different people.
 4 Gaining alignment, that would probably
 5 be part of their role, but also it would -- that
 6 would also fall with the directors as well. And
 7 normally, if we had a meeting, it would be the
 8 directors of each of the disciplines, and we'd have
 9 our -- the PM involved because the PM is closest to
 10 some of the details than what we would be.
 11 And then the --
 12 And so providing technical oversight to
 13 the construction and startup activities, so, again,
 14 we'd have a construction manager who would be
 15 purely looking after the construction side of
 16 things, and then there would be someone assigned to
 17 doing the startup activities.
 18 The -- the whole process that we were
 19 going down the path of was to break it up into
 20 logical chunks and put those logical chunks with
 21 the logical people.
 22 So, you know, the packaging project, our
 23 process engineers would -- you know, they basically
 24 had two left hands when it comes to
 25 packaging-related projects, so we -- you know,

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1 we'd -- packaging-related stuff would go to
 2 packaging people.
 3 Just sort of a lot of -- it wasn't a lot
 4 of examples, but the main -- the main sort of
 5 projects that went through the business over there
 6 were process related. Packaging projects were not
 7 something that happened very rarely -- very
 8 regularly, and it was a -- a gap that we were
 9 trying to develop and fill.
 10 Q. Okay. Thank you.
 11 MR. BURGOYNE: I'm going to take a break and
 12 talk to Mr. Knudsen for a moment.
 13 (Break taken from 6:21 p.m. to 6:26 p.m.)
 14 Q. (BY MR. BURGOYNE) I want to shift gears
 15 a little bit now and go back to the process of
 16 ultimately hiring Erik Knudsen for the Engineer 4
 17 job. We've talked about the job description and
 18 the listing of responsibilities and requirements.
 19 Was your next involvement with it to be
 20 on one of the interview panels?
 21 A. Yeah, I was on the interview panel.
 22 Q. Okay. I'm going to ask you about the
 23 interview panel, and I'm going to ask you if you
 24 can look at Exhibit No. 2 because I want to refresh
 25 your recollection about who was on the panel. So

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1 if you can bring up Exhibit No. 2, that might help.
 2 A. The exhibit --
 3 So is that DOC002 or are we back to a
 4 different document?
 5 Q. Yeah. We're back to the --
 6 MR. JULIAN: Actual exhibits.
 7 Q. (BY MR. BURGOYNE) -- the actual exhibits
 8 and this is from the Lalley deposition.
 9 A. Okay. Yep.
 10 Q. And Exhibit No. 2 has two pages to it,
 11 but I'm only going to ask you about the first page.
 12 A. Okay. It's just loading up.
 13 Okay. Yes.
 14 Q. If you'll look at the bottom left area,
 15 you'll see it says, "Interview Panel Members," and
 16 then the names are listed.
 17 A. Yes.
 18 Q. And you'll find your name and you'll
 19 find the names of other people that I understand
 20 from Ms. Nichols' deposition were on the interview
 21 panel, and I'd like you to look all of that over
 22 and tell me if that refreshes your recollection
 23 about whether Mr. Schook was on your interview
 24 panel.
 25 A. Yeah. As I look --

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1 From my recollection, Lyle never took
 2 place in any of the interviews.
 3 Q. Okay.
 4 MR. JULIAN: I think there were two panels.
 5 MR. BURGOYNE: Right.
 6 THE WITNESS: James Turner, I'm not even
 7 sure if James Turner was actually in there. I know
 8 Kent was definitely.
 9 As I said, I couldn't remember if it was
 10 Jason and Tim or both of them. Sue, now that I see
 11 her name, I can remember she was involved. And
 12 Laura Nessen, I knew -- I can remember Laura
 13 involved.
 14 But Lyle, yeah, I --
 15 Q. (BY MR. BURGOYNE) All right.
 16 A. Memory is he just wasn't involved. And
 17 I'm not sure if James was involved either,
 18 actually.
 19 Q. Okay.
 20 A. I think he may have been away on another
 21 project at the time.
 22 Q. Okay. Were there any technical
 23 questions asked of Mr. Knudsen when your interview
 24 panel talked with him as opposed to behavioral
 25 questions?

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1 Did anybody talk to you --
 2 Let me -- let me withdraw that question
 3 and ask it this way: Before doing your interview
 4 with Mr. Knudsen in this interview panel, did
 5 anybody talk with you about asking technical
 6 questions and behavioral questions?
 7 A. Yeah. There was -- there was two
 8 different -- or there was the second one, behavior
 9 sort of questions. My memory, those were a group
 10 of, you know, several that we could all choose
 11 from.
 12 And so then collectively, we -- we'd
 13 pick our own and then we'd put them through and
 14 Laura would, you know, consolidate that into --
 15 You know, a lot of the times, we did
 16 pick the same two questions that were asked, but
 17 sometimes we had too many, so we had to cull some
 18 of them out. But they did fall into the two
 19 groups, from memory.
 20 Q. Okay. Did you ask any technical
 21 questions about the job?
 22 A. I believe so. I can't remember what
 23 they were, but I believe there was a -- there was
 24 definitely a technical side of it and there was a
 25 behavioral side of it.

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1 Q. Okay. Do you recall there being a
 2 question asked of Mr. Knudsen in your interview
 3 panel relating to the permeability of a packaging
 4 film?
 5 A. No. I can't remember that, to that
 6 level of detail.
 7 Q. Okay. Do you remember that there were
 8 those types of technical questions, even if you
 9 don't recall the specific questions?
 10 A. Look, there was technical questions,
 11 and --
 12 Like I can -- I can vaguely remember
 13 some of Erik's responses, and that's probably the
 14 reason why I -- you know, I -- I thought he was a
 15 good fit for the job.
 16 But, yeah, just the exact details of
 17 those questions, I couldn't -- couldn't tell you
 18 what -- what it -- what was asked.
 19 Q. Did you ask him any --
 20 Did you or anybody else on the panel, to
 21 your recollection, ask him any questions about
 22 startup activities?
 23 A. We probably more went for process -- it
 24 was more process. So understanding what his
 25 process or methodology that he had used rather than

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1 directly to any part of it.
 2 Q. Were there --
 3 A. And I know that he did -- I know that he
 4 did do very well with that question and that
 5 answer. He had expressed that he had done startups
 6 in Singapore and had managed a group of people to
 7 take to Singapore to do a startup on a -- on a new
 8 packaging processor that he was involved in, I
 9 think, with his previous job.
 10 The -- the method and the steps that he
 11 outlined in that corresponded with basically, you
 12 know, what we were sort of looking for.
 13 Q. Did you ask him questions about -- did
 14 you --
 15 Did you or any other member of the panel
 16 ask him any questions to determine his capabilities
 17 to be a manager versus a leader versus neither?
 18 A. In -- in that area, yes, and he did --
 19 he was working at -- had portrayed that he was
 20 working as the leader of that group and was doing
 21 those startup things in Singapore with his previous
 22 employer.
 23 Q. Okay. Do you recall who his previous
 24 employer was?
 25 A. I'm just trying to think. I think it

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1 was Hewlett-Packard or --
 2 It was one of those -- one of those
 3 bigger --
 4 I'm trying to think of who the --
 5 Yeah. I think it was Hewlett-Packard or
 6 whatever the other big company is there in Boise
 7 that does that kind of thing.
 8 Q. Okay. Was there -- at any point --
 9 After it was determined the company was
 10 going to hire another packaging engineer but before
 11 Erik was hired, was there any point at which it was
 12 determined whether or not the senior engineer
 13 position would be expected to perform startup
 14 duties?
 15 A. Sorry. Could you just --
 16 Q. Yeah.
 17 A. -- say that again?
 18 Q. I'll try to -- I'll try and ask a better
 19 question. I apologize.
 20 So during the process of recruiting and
 21 selecting this new startup engineer, the position
 22 that Erik ultimately filled, did you have any
 23 discussions with anyone about whether it would
 24 involve a startup manager responsibility?
 25 A. So I suppose just going through, you

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1 know, the -- the workload at the time, because --
 2 because of the work on the Grand Forks project, we
 3 had to fill -- we had to fill positions within that
 4 project. You know, we could have -- you know, we
 5 could have taken --
 6 So if you look at it this way, if Erik
 7 was there and doing, you know, the day-to-day
 8 things with the rest of the guys, we would have had
 9 to select between the three of them. But because
 10 he was coming in new, rather than him having to
 11 learn something new and Jason or one of -- Tim or
 12 one of the other guys to learn something new, it
 13 was just -- it was more sensible to introduce Erik
 14 to that work than it would be to introduce other
 15 people to that work and -- and -- if that makes
 16 sense.
 17 So rather than having two people
 18 learning new things, we had one person learning new
 19 things. And then after that project finished, he
 20 would be learning other new things because he
 21 was -- it was -- had a lot to learn in the
 22 packaging sort of area.
 23 It was more -- I suppose it was a
 24 timing-related thing rather than a specific, you
 25 know, "We're -- we're asking you to do this job,"

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1 A. Just trying to think of his name and
 2 his -- his position. His position was something
 3 like -- like, he looked after all of the
 4 international people like me. So he was part of
 5 the HR group.
 6 Q. Okay.
 7 A. I'm just trying to think of his name
 8 here.
 9 Q. Did you inform Mr. Schook?
 10 A. I think he was a -- he was aware of it,
 11 but all of those sort of discussions around that
 12 was always directly with HR. It wasn't a
 13 manager-type discussion.
 14 Q. Okay. Was --
 15 A. Lyle was more than aware that they were
 16 offering me a position. All the to-and-fro'ing
 17 and discussions and that would take place with HR.
 18 And I'm assuming -- I don't quite --
 19 He knew I was -- he knew when I was
 20 going. He knew I was going. I don't know when he
 21 found that out.
 22 Q. Had there ever been --
 23 A. I -- I don't know.
 24 Q. Had there ever been any discussion that
 25 you would take on the startup role for the

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1 Grand Forks facility?
 2 A. No. I would have -- I would have had
 3 someone doing that for me.
 4 Q. I see.
 5 What kind of person --
 6 A. I would have had one of the packaging
 7 guys doing that work for me.
 8 Q. Okay. Did you have anybody in mind?
 9 A. Not at that early stage when --
 10 I would say usually the last sort of
 11 thing we do is start to put people in the boxes.
 12 It's more we work out what the boxes need to be
 13 first and how many people in each of the boxes.
 14 Q. Okay.
 15 A. On a real big project, we could have two
 16 or three startup managers, maybe.
 17 Q. All right.
 18 A. You split it into different areas. But
 19 to start with, we more figure out what boxes we
 20 need and then we go, "Okay. How can we fill it?
 21 Is it an internal fill or is it an external fill?"
 22 So we use our external guys as well to fill some of
 23 those boxes from time to time.
 24 Q. Referring --
 25 A. We -- we had used packaging engineers --

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1 external packaging engineers to actually fill --
 2 Sorry. We never had a startup manager
 3 sort of role before. We've always just had, you
 4 know, that -- those people that come and do -- end
 5 up -- they end up doing everything and then not
 6 really doing anything well. So we tried to define
 7 that startup chunk as a more -- more defined --
 8 Q. Okay.
 9 A. We make sure we have covered everything.
 10 It was only ever a short period of the whole
 11 project. It was not a -- it was not a sort of
 12 full-time project. It's someone that comes in and
 13 that does the last piece.
 14 Q. In Exhibit 8, there is a statement from
 15 Mr. Schook that, "Tim Lalley and Jason Schwark will
 16 continue to focus on the front end of the business
 17 and report directly to me starting December 14."
 18 Do you know what the front end of the
 19 business is?
 20 A. Yeah. It's -- as I sort of mentioned
 21 before, like I -- and this was --
 22 So there was -- there was discussions,
 23 and the one thing that we were looking at was Tim
 24 and -- it had taken us a while to get Tim and Jason
 25 their workloads and all of those things really

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1 sorted, so they were really embedded into different
 2 parts of the business.
 3 Like, one was more sort of focussed on
 4 retail and the other one was sort of more focussed
 5 on the food-servicy-type. So they had people that
 6 they were dealing with and they had customers
 7 basically that they were sort of assigned to really
 8 work with.
 9 We didn't want to pull one of those guys
 10 out and have to throw Erik in there to learn that,
 11 and --
 12 Q. Well --
 13 A. -- put one of those guys into the Grand
 14 Forks project because it would have gave us too
 15 much disruption --
 16 Q. Yeah. Well, my question --
 17 A. -- and less --
 18 Q. My -- my question just is: I -- I don't
 19 know what "front end of the business" means.
 20 What does that mean to you?
 21 A. Yeah. So for me, that means that
 22 that -- the day-to-day. So they're just staying in
 23 that their day-to-day packaging engineering area.
 24 Q. Okay.
 25 A. It's just the day-to-day stuff.

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IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA.

ERIK KNUDSEN,)
)
Plaintiff,)
)
vs.) Case No. CV01-17-13956
)
J.R. SIMPLOT COMPANY, a)
Nevada corporation,)
)
Defendant.)
_____)

DEPOSITION OF KAYCE McEWAN

May 31, 2018

Boise, Idaho

Reported by:

Andrea J. Couch, CSR #716, RDR, CRR, CRC

1 e-mail, so I'm not seeing the original e-mail.
 2 Q. Right. Okay.
 3 A. Sorry.
 4 Q. That's all right. I have documents --
 5 A. Okay.
 6 Q. -- you can look at here that have
 7 already been marked.
 8 By the way, do you know who Michael Shaw
 9 is?
 10 A. I do.
 11 Q. Who is Michael Shaw?
 12 A. He is our company complaint
 13 investigator.
 14 Q. Okay. Was that his position during the
 15 summer -- spring/summer of 2016?
 16 A. It -- it was.
 17 Q. Okay. What unit of the company was he
 18 in?
 19 A. He works for our corporate business.
 20 Q. Is he in the general counsel's office?
 21 A. He is. He works for one of our
 22 attorneys. I don't know where he would have worked
 23 then, but he's always been in our legal department.
 24 Q. Okay. Did you and Mr. Shaw ever
 25 communicate about Mr. Knudsen?

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1 A. Via e-mail, I believe we did, but I'm
 2 not -- I don't recall whether or not we did over
 3 the phone. We would not have done it in person.
 4 We rarely meet in person.
 5 Q. All right. Now, this is the book of
 6 exhibits in front of you, and if you would turn to
 7 Exhibit 14.
 8 In Exhibit 14, you'll see at the top
 9 there's an e-mail between you and Mr. Knudsen that
 10 appears to be a reply to an e-mail from Mr. Knudsen
 11 to you.
 12 Do you see that?
 13 A. I do, yes.
 14 Q. Okay. So are you able to tell me
 15 whether or not the e-mail from Erik to you dated
 16 June 21, 2016, was what initiated the contact
 17 between you?
 18 A. Yes, a combination of this e-mail and
 19 the complaint that was filed.
 20 Q. Okay. Now, have you ever seen the
 21 complaint itself?
 22 A. I don't recall.
 23 Q. Okay.
 24 A. It's very typical for them to share --
 25 for Michael to share the complaint and the form

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1 that summarizes the complaint, but I -- I don't
 2 recall if I saw it this time.
 3 Q. Okay. And you have no recollection as
 4 to whether there was or was not a complaint intake
 5 form?
 6 A. I don't recall.
 7 MR. BURGOYNE: I'm sorry. I asked her if
 8 there -- I asked her if there was a -- essentially
 9 if there was a complaint intake form and if she'd
 10 seen it. She doesn't know.
 11 MR. JULIAN: Thank you.
 12 MR. BURGOYNE: Yeah.
 13 Q. (BY MR. BURGOYNE) Okay. So did
 14 Mr. Knudsen's e-mail here of June 21, 2016 --
 15 When did that come to your attention?
 16 A. Probably June 21st at 3:55 p.m.
 17 Q. Okay. And I see it appears your
 18 response to it was July 8, 2016.
 19 A. That's correct.
 20 Q. And that was your first response?
 21 A. That's correct.
 22 Q. Okay. And what, if anything, was going
 23 on regarding this e-mail he sent to you between
 24 June 21 and July 8?
 25 A. At most, I may have reached out to the

[Page 22]

1 HR manager out -- that supports the engineering
 2 group to learn a little bit more about what she
 3 understood is going on out there.
 4 But the other thing is nothing --
 5 nothing else in regards to this, but I know I
 6 was -- I was on vacation for some of this time, and
 7 so that was part of the delay as well.
 8 Q. Who was that HR manager?
 9 A. Laura Nessen.
 10 Q. Okay. And do you know, was Ms. Nessen
 11 immediately available to you or was there a delay
 12 in being able to reach her or her getting back to
 13 you?
 14 A. I don't recall, but I'll take full
 15 responsibility for the delay.
 16 Q. Okay. You asked in your responsive
 17 e-mail whether you -- whether he, Erik, had time to
 18 meet with you and discuss this in more detail --
 19 A. Correct.
 20 Q. -- and you offered him some -- some
 21 days.
 22 A. Correct.
 23 Q. Did that conversation take place, that
 24 meeting take place?
 25 A. A meeting did eventually take place,

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1 have sat on the interview panel.
 2 Q. And you have a specific recollection of
 3 having done all these things?
 4 A. Yes.
 5 Q. Okay.
 6 A. When, I don't -- I can't recall.
 7 Q. Okay. Is -- is Laura Nessen one of the
 8 people that's entitled to know about the complaint?
 9 A. She may have been a witness to be
 10 interviewed for the complaint.
 11 So -- so the process to -- when you have
 12 an investigation and you have to talk to --
 13 Q. Can I just stop you there?
 14 A. Sure.
 15 Q. Okay. I just want --
 16 I'm going to ask the question again.
 17 A. Okay.
 18 MR. BURGOYNE: In fact, can you read her the
 19 question again.
 20 (Record read by reporter.)
 21 Q. (BY MR. BURGOYNE) Can you just tell me
 22 whether she is or isn't?
 23 A. Yes. Based on the role she had in the
 24 investigation, yes.
 25 Q. So she was entitled to know about the

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1 complaint?
 2 A. Correct.
 3 Q. Okay. You say, "Based on the role she
 4 had in the investigation."
 5 A. Yes.
 6 Q. What was her role?
 7 A. She was a witness.
 8 Q. Okay.
 9 A. And once I conduct an investigation, I
 10 have to talk to people. Part of the process is
 11 they have to know that a complaint's been filed,
 12 that they're being asked for -- to give information
 13 to help me through this process. They're told that
 14 they can't retaliate, all of the standard processes
 15 we have with that.
 16 So was she entitled to? No. But since
 17 she'd been identified as a witness, she was made
 18 aware of the complaint. That's why I struggled
 19 with the question, so I apologize.
 20 Q. Okay.
 21 A. But the only people entitled to know
 22 about the complaint are the investigator and the
 23 complainant --
 24 Q. Did you --
 25 A. -- initially.

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1 Q. Did you speak with Laura Nessen --
 2 Do you recall when you spoke with Laura
 3 Nessen about the complaint?
 4 A. It -- it would have been --
 5 I -- I don't recall. I can't speak to
 6 it exactly. I apologize.
 7 Q. Was it before or after you spoke to
 8 Mr. Knudsen for the first time?
 9 A. I would be guessing.
 10 Q. Okay.
 11 A. It would have been somewhere around that
 12 time frame.
 13 Q. Do you know if --
 14 A. I apologize.
 15 Q. -- it was before or after the PIP?
 16 The PIP was July 11, 2016.
 17 A. Right. Right. I --
 18 You know, I don't know. I -- I can't --
 19 I can't really -- I'm trying to think of the nature
 20 of the conversation that I had with her.
 21 I believe it would have been well after.
 22 Q. Why do you believe that?
 23 A. Well, I'm -- what I'm -- what I'm --
 24 Again, I'm trying to go back to my
 25 memory banks here.

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1 Much of the conversation that I had with
 2 Erik --
 3 And it was pretty quick between the
 4 point Erik and I sat down and then we met again.
 5 And I'm actually thinking --
 6 And, again, I'm apologizing because I
 7 don't have exact dates is -- is part of the
 8 conversation I had with Laura to get more clarity
 9 around the blowup, she's the one who provided me a
 10 copy of that -- the improvement plan that was
 11 provided to him, so I'm just guessing that it would
 12 have been afterwards because if they had that in
 13 place, I wouldn't have known about it before.
 14 Q. Okay. All right.
 15 When was your second meeting with Erik?
 16 A. I don't recall.
 17 Q. Okay. Were there any other meetings?
 18 One phone call and two meetings or were there other
 19 meetings?
 20 A. I think it was -- I think it was just
 21 the two meetings. I don't believe there was
 22 another one.
 23 Q. Okay. Any other phone calls besides the
 24 one we've talked about?
 25 A. I don't believe so.

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1 A. Uh-huh.
 2 Q. And -- and the same question.
 3 A. That one, the way I would probably
 4 measure it -- the most effective way to measure it
 5 would be peer feedback, project team peer feedback.
 6 Q. Okay. "Competencies to work on," is
 7 No. 4, "with skilled definitions from FYI book."
 8 Do you know what the FYI book is?
 9 A. I do.
 10 Q. What is it?
 11 A. It's a -- it stands for "Four-Year
 12 Improvement." It's -- it's a book --
 13 All of our competencies that we use at
 14 Simplot are based on the Lominger Korn Ferry set of
 15 competencies.
 16 So for each job that someone has out
 17 there, they have competencies attached to the job
 18 that show what's required to -- to be successful,
 19 and then the skilled reference is there's different
 20 levels of proficiencies within those competencies.
 21 So this is a way to show someone, "Here's a
 22 competency that might be an area for your
 23 improvement."
 24 So you have access to the book and you
 25 also have access to these resources online through

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1 our own system that says if I'm working on
 2 planning, it will give you examples on different
 3 things you can do to develop that planning
 4 capability, whether it's on-the-job work or
 5 webinar-based training or different things.
 6 So this to me is just more reference,
 7 and we use this frequently to say, "Can you
 8 highlight a very specific competency," because it's
 9 a language that we all understand and we all have
 10 the same tools that we can access to say, "I can
 11 now understand what planning means and what
 12 planning -- good planning looks like and what are
 13 the resources to help me develop this competency."
 14 Q. So are what's listed in A and B from the
 15 book?
 16 A. They are from the book, correct.
 17 Q. Okay. And so I'm just going to go back
 18 over this one more time with you and just ask it a
 19 slightly different way.
 20 Essentially, when we talk about 1
 21 through 3, okay, did you have any discussions with
 22 Mr. Anderson or Mr. Schook about how these
 23 requirements for improvement would be measured?
 24 A. I did not.
 25 Q. Okay. Thank you.

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1 A. And remember, the -- this plan was put
 2 in place during all of this, and so there was no
 3 discussion around -- the discussion that I hoped to
 4 have with Mr. Anderson and Mr. Knudsen about, "How
 5 do we work through this?"
 6 (Deposition Exhibit No. 29 was marked.)
 7 Q. (BY MR. BURGOYNE) Have you seen
 8 Exhibit 29 before?
 9 A. Oh, yes, I have. I was around when we
 10 first wrote it back in 1998.
 11 Q. Okay. Was this complaint process policy
 12 still in effect when Mr. Knudsen telephoned the
 13 hotline and sent you the e-mail --
 14 A. Yes, it was.
 15 Q. -- in 2016?
 16 A. (Witness indicates.)
 17 Q. Okay. So I'm looking at the purpose,
 18 intent, and philosophy of the complaint process,
 19 which is the first section of it after we get out
 20 of the box up here at the top.
 21 A. Uh-huh. Yes.
 22 Q. About the middle of the paragraph, in
 23 the middle of the page, it says, "To that end, the
 24 company has created an in-house process to resolve
 25 claims of discrimination and other policy

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1 violations.
 2 "This process will supplement, not
 3 replace, any existing in-house problem resolution
 4 processes including agreements, procedures,
 5 peer-to-peer review committees, and the personnel
 6 human resources function."
 7 Okay. Now, unfortunately, I've got
 8 several questions about things in that sentence,
 9 so --
 10 A. Okay.
 11 Q. -- or those two sentences, so I just
 12 want to go through that.
 13 A. Okay.
 14 Q. Did Mr. Knudsen's complaint present a
 15 claim of discrimination?
 16 A. I don't believe so.
 17 Q. Okay. Did it present any other policy
 18 violation?
 19 A. I don't believe so.
 20 Q. Okay. So from your perspective, was
 21 there really anything to do with his complaint?
 22 A. Was there --
 23 I'm sorry. State the --
 24 Q. Yeah.
 25 From your perspective, in terms of a

[Page 115]

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

ERIK KNUDSEN,)
)
 Plaintiff,)
)
 vs.) Case No. CV01-17-13956
)
 J.R. SIMPLOT COMPANY, a)
 Nevada corporation,)
)
 Defendant.)
 _____)

DEPOSITION OF LAURA NESSEN

May 31, 2018

Boise, Idaho

Reported by:

Andrea J. Couch, CSR #716, RDR, CRR, CRC

1 PROCEEDINGS
 2
 3 LAURA NESSEN,
 4 a witness having been first duly sworn to tell the
 5 truth, the whole truth and nothing but the truth,
 6 was examined and testified as follows:
 7
 8 EXAMINATION
 9 BY MR. BURGOYNE:
 10 Q. Would you state for the record your full
 11 name, please.
 12 A. Laura Mae Nessen.
 13 Q. Would you spell Laura, please?
 14 A. L-a-u-r-a.
 15 Q. And Mae?
 16 A. M-a-e.
 17 Q. And your last name?
 18 A. Nessen, N-e-s-s-e-n.
 19 Q. Okay. And have you ever had your
 20 deposition taken before?
 21 A. I have not.
 22 Q. Okay. Well, today is your lucky day.
 23 So let me just go through a few things
 24 about taking a deposition and -- and what goes with
 25 that.

[Page 4]

1 First of all, if you need a break or
 2 anybody else needs a break, we're going to take a
 3 break. The only thing I ask is that if there's a
 4 question pending, you go ahead and answer the
 5 question and then we'll take the break.
 6 I'm bad about remembering to take breaks
 7 because I just am, and so she'll appreciate it and
 8 everybody else in the room will appreciate it if
 9 you just say you want to take a break. That will
 10 be fine.
 11 People in conversation shake their heads
 12 and say "uh-huh" and "huh-uh," but that doesn't
 13 work very well in this process where we want to
 14 have an audible answer and we want to know whether
 15 it's a "yes" or a "no" instead of an "uh-huh" or an
 16 "huh-uh."
 17 And so I may need to remind you from
 18 time to time. Everybody --
 19 A. You will need to, I'm sure.
 20 Q. Yeah. Everybody needs to be reminded.
 21 In addition to being a lawyer, I've been a witness,
 22 and I have needed to be reminded. And if I say
 23 "uh-huh" and "huh-uh" in this deposition, I doubt
 24 anybody is really going to care, but if you do, it
 25 might create an ambiguity and then we wouldn't

[Page 5]

1 really know what your testimony is.
 2 A. Sure.
 3 Q. You're the important one today.
 4 All right. Do you have any questions?
 5 A. I don't.
 6 Q. Okay. What is your date of birth?
 7 A. [REDACTED]
 8 Q. And your marital status?
 9 A. Married.
 10 Q. And your current employer?
 11 A. J.R. Simplot Company.
 12 Q. And how long has Simplot been your
 13 employer?
 14 A. 9.89 years. Almost ten years.
 15 Q. Okay. What is your current position?
 16 A. HR support and transactions manager.
 17 Q. How long have you held that job?
 18 A. From June of '16.
 19 Q. Starting June 2016?
 20 A. Uh-huh. Yes.
 21 Q. All right. And prior to that, what was
 22 your position with the company?
 23 A. HR manager.
 24 Q. And for how long were you in that
 25 position?

[Page 6]

1 A. Oh, a year and a half.
 2 Q. That would take us back to the beginning
 3 of 2015?
 4 A. That sounds right, yes.
 5 Q. Okay. And before that, were you with
 6 the company?
 7 A. Yes. So I was an HR administrator.
 8 Q. Okay. Dates of that position?
 9 A. I believe this -- I started as an HR
 10 administrator end of 2011 up to the beginning of
 11 2015.
 12 Q. To the beginning or --
 13 A. The beginning of 2015 when I became --
 14 Q. Okay.
 15 A. -- an HR manager.
 16 Q. Yeah. Okay.
 17 Previous positions to that with the
 18 company?
 19 A. I was a total rewards administrator.
 20 Q. Okay. Period of time?
 21 A. From August 2008 to the end of 2011.
 22 Q. Was that your first position with the
 23 company?
 24 A. It was.
 25 Q. Okay. All right.

[Page 7]

1 packaging engineer position that Mr. Knudsen
 2 filled?
 3 A. I don't keep those records. They're
 4 shredded as soon as the selection is made.
 5 Q. Okay. You had -- I take it from what
 6 you said, though, you had records?
 7 A. We had basically the consensus of how he
 8 did in the interview and the interview packet
 9 that's in this exhibit just filled out with the
 10 answers to the questions.
 11 Q. Can you point out from the exhibit the
 12 documents that you would have had?
 13 And you'll see in the lower right-hand
 14 corner of these documents there's what I call
 15 control numbers.
 16 A. Sure.
 17 Q. And --
 18 A. So Simplot 000015 --
 19 Q. Yeah. You can just call that 15.
 20 A. Okay.
 21 -- through 29.
 22 Q. Okay.
 23 A. I would have had the schedule on
 24 Exhibit 30.
 25 Q. Okay. So 15 through 29, 30.

[Page 20]

1 A. Uh-huh.
 2 Q. Okay. Anything else?
 3 A. Not for the interview.
 4 Q. Okay. Anything else with respect to
 5 recruitment, hiring --
 6 A. So there may have been --
 7 Q. -- selection --
 8 Excuse me. I better ask a better
 9 question.
 10 A. Okay.
 11 Q. Let me -- let me back that up.
 12 So other than 15 -- Simplot 15 to 29 and
 13 Simplot 30, there's nothing with respect to
 14 recruitment, interviewing, or selection that you
 15 would have kept as a record?
 16 A. So I wouldn't have kept any of it. I
 17 want to make sure I'm clear on that.
 18 Q. Okay. Yeah.
 19 A. But I would have had access to some
 20 notes taken during a phone screen -- or there might
 21 have been two phone screens. I can't remember
 22 exactly, but --
 23 Q. Okay. And do you see those in this
 24 exhibit?
 25 A. I do not. They would have been my own

[Page 21]

1 personal notes, but I shred those along with the
 2 selection --
 3 Q. Okay.
 4 A. -- information.
 5 Q. And this -- this phone screen, would
 6 this have been notes of a conversation you had with
 7 Erik Knudsen?
 8 A. I would have probably been on the phone
 9 call and had asked some probing questions, but
 10 either Lyle or Craig would have asked the -- the
 11 questions on the phone.
 12 Q. Craig Lamberton?
 13 A. Yes.
 14 Q. And Lyle Schook?
 15 A. Yes.
 16 Q. Okay. At what stage of the process
 17 would this phone call have occurred?
 18 A. Prior to the pers -- in-person
 19 interview, which this Simplot 15 interview guide
 20 represents.
 21 Q. Okay. And you would have been on the
 22 call and you might have asked some questions, but
 23 not the main questions?
 24 A. Right. I may have kicked it off with a
 25 few just general questions, but not specific to the

[Page 22]

1 job.
 2 Q. Okay. All right.
 3 I'm trying to figure out the easiest way
 4 to get you into this. I think maybe it's right
 5 here.
 6 Would you look at Exhibit 2.
 7 Is Exhibit 2 something you've seen
 8 before?
 9 A. No.
 10 Q. Do you know what it is?
 11 A. I don't.
 12 Q. Do you know how to read it?
 13 A. I could probably pick out what the
 14 elements are, yeah.
 15 Q. Okay. There is in Exhibit 2 kind of a
 16 range, like an off-center -- well, maybe not cross.
 17 I'm not sure how to describe it, but on the
 18 vertical part, if you come down about halfway --
 19 no. If you come down a short ways, you'll see,
 20 "Date Posted: 9/2/15."
 21 A. Uh-huh.
 22 Q. Does that mean anything to you?
 23 A. I would imagine that's when we posted
 24 the specific job that we --
 25 Q. Okay. That would be -- that would

[Page 23]

1 was an intervening winter or spring or summer or
 2 anything that might help you?
 3 A. (Witness indicates.)
 4 Q. Okay.
 5 A. No. I faintly remember who he is, but I
 6 don't know if that was my time as an HR
 7 administrator or an HR manager.
 8 Q. How about tying it to projects that the
 9 Simplot Company was working on that he might have
 10 been involved in?
 11 Do you know whether Mr. Jarvis left
 12 before -- I think it's called the Idaho plant in
 13 Caldwell.
 14 A. Uh-huh.
 15 Q. Can you tie him leaving to any
 16 particular phase of the Idaho plant?
 17 A. (Witness indicates.)
 18 Q. Construction? Startup? Completion?
 19 A. No, I can't. I have no idea.
 20 Q. Okay. Do you have any idea what kinds
 21 of things Mr. Jarvis was working on as he neared
 22 the end of his employment?
 23 A. I don't know.
 24 Q. Okay. Do you have any recollection of
 25 any things going on in your life -- personal,

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1 professional, or otherwise -- when you received
 2 information that they were -- that somebody was
 3 looking to replace Mr. Jarvis or to hire -- if not
 4 replace Mr. Jarvis, to hire a packaging engineer?
 5 A. I don't remember completely, but I feel
 6 like the position was open when I became the HR
 7 manager.
 8 Q. I see. Okay.
 9 And that was about the beginning of
 10 2015?
 11 A. Correct, yes.
 12 Q. All right. Did you ever hear or come
 13 across any information to indicate that there had
 14 been a decision not to replace Mr. Jarvis for some
 15 period of time after he left?
 16 A. I'm not aware of --
 17 Q. Okay.
 18 A. -- that, no.
 19 Q. Or did you ever come across any
 20 information to indicate that there had been a
 21 desire to replace him when he left, there had been
 22 an attempt to do so and it was not successful?
 23 A. I do know that that is true.
 24 Q. Okay. And do you know how many prior
 25 postings in an effort to fill that position had

[Page 29]

1 occurred?
 2 A. I don't. I just vaguely remember it
 3 being posted. I -- one other time, but I don't
 4 know if it was --
 5 I think that they actually did sort of
 6 a -- instead of using --
 7 Yeah. I don't remember exactly what
 8 happened.
 9 Q. Okay.
 10 A. I think they had it posted as something
 11 like Project Engineer 5 and then changed it to
 12 senior -- senior project engineer -- or packaging
 13 engineer. Sorry. Something along those lines, but
 14 I don't recall.
 15 Q. Okay. So something along the lines of
 16 Senior Packaging Engineer 5 and then something
 17 like --
 18 What did you say?
 19 A. Not the "senior" in the first. Just
 20 Packaging Engineer 5 and then changed it to senior
 21 packaging engineer. Took the "5" out and added
 22 "senior."
 23 Q. Okay. Are you able to tell me what the
 24 differences are? Is it just changing a title or
 25 did it change responsibilities and requirements?

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1 A. I don't know.
 2 Q. Okay.
 3 A. I don't recall exactly what happened to
 4 the job posting or job description.
 5 Q. Do you recall whether these changes,
 6 Senior Packaging Engineer 5, Packaging Engineer 5,
 7 or just packaging engineer or just senior packaging
 8 engineer --
 9 I can't think. That's probably what you
 10 said.
 11 A. Uh-huh.
 12 Q. Do you recall if these changes had
 13 any -- any substantive changes to them or if they
 14 were just a change of title?
 15 A. I don't recall.
 16 Q. Okay. Do you have any knowledge about
 17 what the problem in recruiting was? Like, there
 18 just aren't enough packaging engineers around
 19 either in a particular area or in the country or in
 20 the world or there's the -- the first posting, or
 21 if there were multiple postings, didn't offer
 22 enough money or --
 23 A. So I do recall that there was some
 24 specific background requirements either -- working
 25 directly with food because there's a lot of

[Page 31]

1 important things to know about processing food and
 2 what it takes to be successful with that. So the
 3 technical expertise with working with food
 4 equipment was a big piece to it.
 5 And then the leadership capabilities
 6 that need to go along with that.
 7 Q. Okay. And are you -- are you telling me
 8 that in the --
 9 And I understand you don't recall
 10 exactly how many postings there were, so if I use
 11 singular or plural, I'm not meaning to tie you to a
 12 particular number of postings.
 13 A. Okay.
 14 Q. But prior postings, posting or postings,
 15 that there was difficult [sic] in recruiting
 16 because there didn't seem to be an applicant pool
 17 having the requisite food experience?
 18 A. With both postings or with the posting
 19 that I was most involved with with the one that we
 20 hired Erik under, those were the conversations that
 21 I had had with the leadership team was the
 22 challenges around filling the position was finding
 23 somebody who could really hit the ground running.
 24 Q. I see. Okay. And the leadership issue?
 25 A. Yep.

[Page 32]

1 Q. Okay. Who did you talk about that with?
 2 A. Lyle.
 3 Q. Okay. Lyle Schook?
 4 A. Yes.
 5 Q. Okay. And what did Mr. Schook tell you
 6 about food experience?
 7 A. Can you clarify what you're asking?
 8 Q. Well, we've got a problem that has
 9 occurred because of apparently a lack of applicants
 10 at some point who had requisite food experience and
 11 leadership capabilities.
 12 Did I understand that correctly?
 13 A. Right.
 14 Q. Okay. And did you discuss both of those
 15 things with Mr. Schook?
 16 A. Yes.
 17 Q. Okay. Can you tell me what you
 18 discussed?
 19 A. So with regards to the technical side of
 20 things, having -- being an engineer in a clean
 21 environment, basically, was critical.
 22 Q. Okay. So that's -- that's something
 23 Mr. Schook wanted?
 24 A. Yes.
 25 Q. Okay. Anything else?

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1 A. So with regards to the leadership that
 2 was warranted, there's a lot of project work that
 3 their team deals with, and so somebody who can go
 4 to a location and be independent and help lead
 5 informally working with some of the managers at the
 6 facilities, that sort of thing.
 7 Q. Okay. So this conversation you were
 8 having, was it an effort on your part and
 9 Mr. Schook's part maybe to look for some
 10 transferrable skills?
 11 A. Yes.
 12 Q. Okay.
 13 A. Yep.
 14 Q. When you had this conversation --
 15 By the way, do you recall when you had
 16 this conversation with Mr. Schook?
 17 A. Not exactly, no.
 18 Q. Okay.
 19 A. It was prior to making a selection.
 20 Q. Okay. Was it prior to the posting that
 21 we're talking about in this case that may have --
 22 or appears to have been in September of 2015?
 23 A. I would say probably right around that
 24 time. It may not have been prior, but --
 25 Q. Okay.

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1 A. In preparation for reviewing candidates
 2 for sure.
 3 Q. Okay. And did Mr. Schook talk -- talk
 4 with you about any distinctions between leading or
 5 leadership and managing or being a manager?
 6 A. I don't think we had specific dialogue
 7 about it that I can recall other than I understand
 8 what leadership competencies and what that skill
 9 set looks like in comparison to managing a project.
 10 Q. Okay. And we received some testimony
 11 last night but a.m. Australia time from
 12 Mr. Lamberton regarding his views of the
 13 differences between being a lead and a manager.
 14 A. Uh-huh.
 15 Q. And I was just trying to -- to see if
 16 there was any discussions that you had with
 17 Mr. Schook that either it was specifically
 18 discussed or from which you got an impression as to
 19 whether the company -- the -- the engineering group
 20 was looking for someone to take a lead-type role
 21 versus a managing-type role.
 22 A. I think from my opinion of the position,
 23 it's both. They need to be able to manage the
 24 project and then have some leadership competencies
 25 in there to have influence and just a high level of

[Page 35]

1 interaction, collaboration --
 2 Q. Okay.
 3 A. -- type skills.
 4 Q. Do you have a view as to a distinction
 5 between a lead-type role verses a management-type
 6 role or do you see them as one in the same or --
 7 A. I -- it -- personally have a distinction
 8 between the two, yes.
 9 Q. Okay. Now, can you articulate that for
 10 me?
 11 A. Sure. So managing is more of a pushing.
 12 Leadership is more of a -- a following, more of
 13 a --
 14 So managing is very much task and
 15 transactional. Leadership is more influencing and
 16 empathetic and --
 17 They're just different.
 18 Q. Does one have to -- does -- does --
 19 Sorry. I'm stuttering.
 20 Does the distinction lie in the
 21 authority that the worker has? The authority to
 22 instruct other people to do particular things or
 23 not to do particular things?
 24 A. Not between leaders -- not between
 25 leadership and management --

[Page 36]

1 Q. Okay.
 2 A. -- in my opinion.
 3 Q. All right.
 4 A. I think authority can come with either
 5 of those.
 6 Q. Well, a packaging engineer --
 7 A. Sure.
 8 Q. -- all right? A packaging engineer goes
 9 off to a facility somewhere. There's a plant
 10 manager.
 11 A. Uh-huh.
 12 Q. There are other managers in the
 13 facility. Does the packaging engineer have any
 14 authority over those people?
 15 A. Not direct authority, no.
 16 Q. Okay.
 17 A. Over the project, yes, but not the
 18 people.
 19 Q. Explain the distinction to me.
 20 A. So a project engineer couldn't tell a
 21 manager to move one of their employees to a
 22 different part of the facility, but he can say the
 23 packaging equipment needs to be laid out a certain
 24 way.
 25 Q. Okay. Now, did you have any discussions

[Page 37]

1 before Mr. Knudsen was hired about the Grand Forks
 2 facility?
 3 A. I would not say that I had discussions.
 4 I knew that there was a project up and coming or
 5 maybe even in process, but I didn't have any
 6 specific discussions about who of Lyle's team would
 7 be working on the project, no.
 8 Q. Okay. Did you have any discussions as
 9 to whether the person being hired --
 10 Well, let me ask it this way: Did you
 11 have any communication with anyone in engineering
 12 with respect to whether the person being hired
 13 would be engaging in any startup activities at
 14 Grand Forks or anywhere else?
 15 A. You know, I don't remember specifically,
 16 but I do recall that being an option for the
 17 technical training that we thought Erik needed.
 18 Q. Can you explain that? I'm not sure I
 19 understand.
 20 I mean, I think your answer is a good
 21 answer if you work at Simplot and you understand
 22 things, but I --
 23 A. Sure.
 24 Q. -- don't and I could use --
 25 A. So --

[Page 38]

1 Q. -- some help understanding your answer.
 2 A. Okay. At the end of our interview, we
 3 were sort of going back and forth between two
 4 candidates. We felt that one candidate brought the
 5 technical skills but not the leadership skills, and
 6 we thought that Erik brought the leadership skills
 7 but not high on the technical side in the food
 8 environment.
 9 And so we thought that the Grand Forks
 10 opportunity would give him some of that exposure.
 11 We thought taking him over to the Idaho plant and
 12 letting him do some shadowing there and learning
 13 there would also be helpful for him.
 14 So there was some discussion about it,
 15 but I don't remember -- recall a distinct, "We're
 16 going to send him to Grand Forks." It was just in
 17 the discussion, there's this project coming up that
 18 would give him some of that technical exposure.
 19 Q. Okay. And this was before he was hired?
 20 A. I do believe it was before we made a
 21 selection on who we would -- between the two
 22 candidates, how could we -- I mean, what's better
 23 for the -- the group. Do we teach the technical
 24 side or do we try and grow some of this leadership
 25 side, and we decided that it was harder to go try

[Page 39]

1 How many interviews were there?
 2 A. Two. We had two candidates that we were
 3 interviewing face-to-face. We had several phone --
 4 phone screens, but we brought two in face-to-face.
 5 Q. And Mr. Knudsen, how many interviews did
 6 he have?
 7 A. So he had -- I believe --
 8 So there was one interview but two
 9 panels.
 10 Q. Okay.
 11 A. So there was a panel for the technical
 12 side and a panel for the leadership competencies.
 13 Q. And -- and so that could be looked at as
 14 one interview with two panels or two interviews, I
 15 suppose.
 16 A. Yeah. We consider it one interview --
 17 Q. Okay.
 18 A. -- with two panels.
 19 Q. Okay.
 20 A. I --
 21 Q. Okay.
 22 A. Well, I do. I guess I can't speak for
 23 other people, but --
 24 Q. And then was there a follow-up
 25 interview?

[Page 44]

1 A. I recall there might have been a phone
 2 call. I think maybe Lyle called Erik, but I don't
 3 know 100 percent for sure.
 4 Q. All right. And do you recall in one of
 5 the panels --
 6 Were -- were you present for both of
 7 those panels?
 8 A. No, just the leadership. I was the
 9 facilitator in the leadership interview.
 10 Q. Okay. Do you recall Mr. Knudsen getting
 11 a question in one of the panels regarding the
 12 permeability of a particular kind of packaging
 13 film?
 14 A. It's sort of ringing a bell, but I
 15 don't -- I can't exactly --
 16 I don't know if it was a conversation
 17 afterwards or if it was from him in the interview.
 18 I can't recall.
 19 Q. Okay. Do you recall that level of
 20 questioning with respect to --
 21 I better back up. I'm going to ask you
 22 a couple of preliminary questions --
 23 A. Okay.
 24 Q. -- before I get to that one.
 25 First of all, with respect to --

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1 Well, at or before the posting of this
 2 senior packaging job that Erik ultimately filled,
 3 were you aware generally of the idea of startup
 4 activities at plants either because the plants are
 5 being reconfigured or new equipment put into them
 6 or --
 7 A. Sure.
 8 Q. -- new packaging or --
 9 A. Yes, that happens --
 10 Q. Okay.
 11 A. Yeah.
 12 Q. Or in the case of the Idaho plant,
 13 because you've essentially created a new plant?
 14 A. Uh-huh.
 15 Q. Okay. So what's your understanding
 16 regarding startup activities?
 17 And if you can -- and I know this is
 18 very hard to do, but if you can, kind of put
 19 yourself back into the period of time we're talking
 20 about here in the September/October period of 2014.
 21 A. '14?
 22 Q. Or '15. I'm sorry. 2015.
 23 A. I was going to say, I had just had a
 24 baby, so '14 wasn't --
 25 Q. Yeah. Okay. I got that wrong.

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1 A. '15.
 2 So we were excited about the successes
 3 of the Idaho plant. We were excited that some of
 4 the projects had been approved at some of the other
 5 plants, specifically Grand Forks too.
 6 Q. Anything specific --
 7 A. And we just knew that we needed help. I
 8 remember that we were just sort of really wanting
 9 to build out the team correctly so that we could --
 10 Q. What knowledge, if any, did you have
 11 about what startup activities had looked like,
 12 either at the Idaho plant or were being thought
 13 about with respect to Grand Forks, if any?
 14 A. So none with Grand Forks. I had had a
 15 little bit of experience with the Idaho plant.
 16 I --
 17 There was some excitement. There was
 18 some high stress. I mean, just the typical --
 19 Q. Uh-huh.
 20 Do you have any -- did you have any
 21 knowledge about what startup activities are with
 22 respect to the packaging lines?
 23 A. Not specifically, no.
 24 Q. Okay. What about generally? Is there
 25 anything you can tell me about that or --

[Page 47]

1 A. Well, I can say just from the experience
 2 at the Idaho plant, I was there when they first had
 3 product going down the line through the packaging
 4 area, and I know that it had been -- you know, with
 5 the vendors there, engineers there, and the
 6 operators there just kind of all learning together,
 7 and finally when we got that box to go through and
 8 it was successful, I just -- the excitement with
 9 that and I was there witnessing all of it.
 10 That's my only experience with it
 11 really.
 12 Q. Okay. So you didn't -- you didn't see
 13 or know about all of the background kinds of things
 14 that went into making that first package come down
 15 the line?
 16 A. Short from, you know, understanding that
 17 plans are in place and vendors are involved, I --
 18 Q. Yeah.
 19 A. -- didn't have firsthand experience with
 20 it, no.
 21 Q. Okay. All right.
 22 Did you ever have any concerns that one
 23 of the problems about filling a packaging engineer
 24 position in terms of the leadership issue was just
 25 that the kind of leadership being looked for isn't

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1 what you're going to typically find with a
 2 packaging engineer?
 3 Was that ever a concern to you?
 4 MR. JULIAN: I'm going to object to the
 5 form, but go ahead and answer, if you understand
 6 the question.
 7 THE WITNESS: I -- I personally thought that
 8 there would be a challenge with an engineer having
 9 that high level of leadership skills, but clearly,
 10 they're out there because Lyle had a really good
 11 team of them, so --
 12 Q. (BY MR. BURGOYNE) Have you ever heard
 13 the term "startup manager"?
 14 A. Maybe not as a job title but as a --
 15 maybe a project lead. I -- I have not heard of it
 16 as a job title, though.
 17 Q. Okay. Irrespective of whether it is or
 18 is not a job title, have you heard the term used?
 19 A. Yes.
 20 Q. Okay. Who have you heard it used by?
 21 A. Lyle.
 22 Q. Okay. And in what context?
 23 A. Project work.
 24 Q. Did he use it with respect to Grand
 25 Forks?

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1 A. He did.
 2 Q. Did he use it with respect to filling
 3 the senior packaging engineer position in
 4 September/October 2015?
 5 A. Not that I recall specifically, no.
 6 Q. Okay. Did you have any conception in
 7 the panel that you were sitting in on that the
 8 panelists were looking for someone who could
 9 fulfill a startup manager role as Lyle used the
 10 term?
 11 A. In a project?
 12 Q. Yeah.
 13 A. Sure.
 14 Q. Okay. And did you know what a startup
 15 manager -- as -- as Lyle conceived it, did you know
 16 what a startup manager would be doing?
 17 A. No, not specifically. Just basically in
 18 my mind the way that I interpreted the term was an
 19 engineer who would be managing a project, a startup
 20 project.
 21 Q. And did you have a conception --
 22 And I'm not asking you whether that's a
 23 right or a wrong conception or whether it's highly
 24 detailed or very general. I just want to know if
 25 you had a conception as to what a startup project

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1 was?
 2 A. Not in detail, no.
 3 Q. Okay.
 4 A. Just --
 5 Q. How about just in general?
 6 A. New equipment startup.
 7 Q. New equipment?
 8 A. Yeah. I mean --
 9 Q. Did that mean --
 10 Get a little specific here and then you
 11 just tell me when I've gotten too specific and
 12 that's not what you meant, okay?
 13 A. That's fine.
 14 Q. Did -- did -- did that conception
 15 include basically turning on the machinery at some
 16 point and seeing that it's doing certain things or
 17 getting it ready to be turned on?
 18 I'm just trying to get a feel for what
 19 your conception is.
 20 A. Sure. I would imagine if I were the
 21 engineer who was helping design the equipment, that
 22 I would want to be there when the machines were
 23 turned on to make sure that my work was accurate
 24 and successful. Whether I'm the one to flip it on,
 25 I don't know.

[Page 51]

1 Q. Okay.
 2 A. But I certainly would want to be there.
 3 Q. Okay. So your conception was that the
 4 engineer would actually help design the equipment?
 5 A. To some degree.
 6 Q. Okay.
 7 A. If they're --
 8 Let me clarify.
 9 If -- if it's a vendor -- a piece of
 10 vendor equipment and it's sort of joining up with
 11 Simplot equip -- previous Simplot equipment, if
 12 there might need to be some engineering to make it
 13 all work, that --
 14 I mean, I wouldn't anticipate an
 15 engineer designing a vendor's piece of machinery.
 16 Q. Okay. Now, again, just -- just your
 17 conception --
 18 And I'm not presuming that you've got
 19 the qualifications to make these judgments.
 20 A. Sure.
 21 Q. I'm just asking for your conception is
 22 all. And you may not have any.
 23 But in helping design equipment to some
 24 degree, let me ask you this: There -- do you
 25 understand that there are different kinds of

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1 engineers?
 2 A. Absolutely.
 3 Q. And have you had any experience with the
 4 kinds of engineers who design equipment?
 5 A. Modifications to equipment, yeah. I
 6 mean --
 7 Q. And --
 8 A. Not -- probably not from scratch, but
 9 maybe even that if it's needed to make equipment
 10 work.
 11 Q. Okay. Do you know whether there is a
 12 difference between equipment engineering and
 13 packaging engineering?
 14 A. Yeah.
 15 Q. Okay.
 16 A. There's --
 17 Yeah.
 18 Q. Do you know --
 19 And what's your understanding about
 20 that?
 21 A. So package -- in my mind, package
 22 engineering is making sure that the equipment --
 23 that the packaging can go through the equipment
 24 correctly.
 25 Q. Okay.

[Page 53]

1 A. And able to make modifications where it
 2 maybe needs some tweaking.
 3 Q. All right. And at the time that there
 4 was recruitment, interviewing, and selection going
 5 on for this particular senior packaging engineer
 6 position we're talking about in this case, at that
 7 time, did you have any conception of what kind of
 8 equipment -- what kind of packaging equipment would
 9 be going into Grand Forks?
 10 A. Oh, I have no idea.
 11 Q. Okay. Do you know whether it was
 12 robotics or, you know, 20-year-old, 30-year-old
 13 stuff that's --
 14 A. No idea.
 15 Q. -- prior-generation kind of equipment?
 16 A. No.
 17 Q. Just that you --
 18 A. I never asked. I -- I mean, I would
 19 have probably guessed that it would be something
 20 along the lines of the Idaho plant, but that was my
 21 only exposure to it, so --
 22 Q. Okay.
 23 A. -- I don't know.
 24 Q. What would be something along the lines
 25 of the Idaho plant?

[Page 54]

1 A. A little more automated.
 2 Q. Okay. Can you describe what you saw
 3 when you --
 4 I think you said you saw that first
 5 package come down --
 6 A. Uh-huh.
 7 Q. -- the -- the line. I would -- I would
 8 have loved to have seen that.
 9 A. It was cool.
 10 Q. I think that would have been really neat
 11 and a big deal for Idaho.
 12 So what kind of equipment are we talking
 13 about?
 14 A. So the product comes from the deck,
 15 drops into a bag, either a paper bag or a plastic
 16 bag, and it's sealed. And then they're dropped
 17 into a -- like, a corrugated box and then sealed
 18 and then palletized and then moved to storage.
 19 Q. Okay. And -- and so that's what's
 20 happening to the -- to the product and the
 21 packaging.
 22 What kind of equipment is doing that?
 23 A. Sure. So it's -- it's all just
 24 equipment.
 25 Like squeezing the bags, sealing them,

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1 number. We phone screened a few.
 2 Q. Okay. So some got screened out and were
 3 not interviewed?
 4 A. Right. Several.
 5 Q. And these people who were not
 6 interviewed, do you recall what their deficits
 7 were, for lack of a better term?
 8 A. Sure. Level of experience was probably
 9 the number one. Lack of leadership on projects and
 10 food industry experience; those kinds of things.
 11 Q. Okay. I'm sorry. I forget. Were
 12 there --
 13 Even though you weren't on the calls, do
 14 you know whether or not there were phone interviews
 15 by Mr. Schook of the candidates who were
 16 interviewed after those interviews occurred?
 17 A. I am not 100 percent sure of that, but I
 18 do faintly remember there being a conversation with
 19 Lyle and Erik.
 20 Q. Okay. Now, was there a thing in all of
 21 this called a follow-up interview?
 22 A. That would have been the phone call, I
 23 think.
 24 Q. Okay.
 25 A. I don't recall there being a follow-up

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1 face-to-face interview, but there was a follow-up
 2 phone call.
 3 Q. Understood.
 4 A. There could have been.
 5 Q. Okay. In the -- in these pre-interview
 6 phone call -- let's see. What do we call them? --
 7 phone screens, was there anything brought up by
 8 Mr. Schook or anybody else on the call that you
 9 regarded as relating to startup activities?
 10 A. Not that I recall.
 11 Q. Okay. Now, when we talk about
 12 leadership, what was it about the packaging
 13 engineering position, as you understood it, where
 14 there was a desire of leadership? Was it with
 15 respect to a particular function or just in
 16 general?
 17 "We may have something now, we may have
 18 something later we haven't even thought about yet,
 19 and we'd just like to have somebody that's got
 20 these abilities or" --
 21 A. Specifically around leadership, it was
 22 primarily for the project work.
 23 Q. For what project work?
 24 A. All of --
 25 That's what the engineers do is

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1 basically the project work for startups or redesign
 2 of equipment, those kinds of things.
 3 So there's -- it's a heavy project work
 4 position.
 5 Q. Okay. So as you understand it,
 6 packaging engineers, the focus of their job is on
 7 this project work?
 8 A. A lot of it, yes.
 9 Q. And "project" to you means equipment,
 10 startup?
 11 A. Yep. Redesign.
 12 Q. Okay.
 13 A. Optimize -- optimization projects.
 14 Q. Redesign what? Equipment?
 15 A. Packaging -- yeah, packaging equipment
 16 or new specifications from a customer on packaging
 17 and how we make our equipment help that work.
 18 Q. Okay. So a packaging engineer then is
 19 not someone who primarily works on designing
 20 packaging. They work on designing the processes by
 21 which the packaging is processed through the line?
 22 A. My understanding is it's kind of both.
 23 Sometimes they work with the customers on packaging
 24 and then with the knowledge of the equipment to
 25 make the packaging actually work.

[Page 66]

1 So, yeah, it's kind of both.
 2 Q. Okay. Do you have any understanding as
 3 to the percentage that is devoted to one or the
 4 other?
 5 A. Oh, I don't know.
 6 Q. Okay. Do you have any understanding as
 7 to --
 8 Well, have you been involved in hiring
 9 any other packaging engineers besides Mr. Knudsen?
 10 A. Not packaging engineers, no.
 11 Q. Okay. Do you know whether the people
 12 who were packaging engineers at the time
 13 Mr. Knudsen was hired were spending significant
 14 amounts of their time on project work?
 15 A. I know all of the engineers. Not
 16 necessarily just packaging engineers, but all of --
 17 that's kind of the -- the structure of the engineer
 18 group, Lyle's group worked on projects. They were
 19 kind of centered in Caldwell, but they worked on
 20 projects for all of food group.
 21 So that was the --
 22 Q. Yeah.
 23 A. -- that's the model.
 24 Q. I just didn't --
 25 A. That's what they do.

[Page 67]

1 so --
 2 Q. Uh-huh.
 3 A. -- I mean, the startup piece of it,
 4 definitely.
 5 Q. Yeah.
 6 Do you think that that first bullet
 7 point under "Responsibilities" accurately states
 8 what Mr. Schook was looking for in hiring Erik
 9 Knudsen?
 10 A. No.
 11 MR. JULIAN: Objection. Calls for
 12 speculation.
 13 Q. (BY MR. BURGOYNE) Okay.
 14 MR. JULIAN: Go ahead. You've answered.
 15 Q. (BY MR. BURGOYNE) Did you have input
 16 into the hiring process?
 17 A. I -- yeah. I was on the interview
 18 panel.
 19 Q. Okay.
 20 A. I gave a score for his answers, yes.
 21 Q. Okay. And -- and so in evaluating --
 22 In order to do -- in order to score him,
 23 you had to know what management was looking for --
 24 A. Uh-huh.
 25 Q. -- in a packaging engineer, correct?

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1 A. Yes.
 2 Q. Okay. And do you think that the
 3 response -- the first bullet point under
 4 "Responsibilities" in Exhibit 24 accurately
 5 describes what management was looking for in hiring
 6 Erik Knudsen?
 7 A. No. And I can explain --
 8 Q. Okay.
 9 A. -- exactly why.
 10 We were hoping for somebody with a high
 11 level of technical expertise that Erik did not
 12 bring to the table, and so the startup project
 13 opportunity gave him some exposure to that
 14 training.
 15 Q. Okay.
 16 A. So I would say project work was very
 17 important for the engineering group, but
 18 specifically to the package -- packaging
 19 engineering job, I think they were looking for what
 20 was on the packaging engineering job description.
 21 Q. Uh-huh.
 22 So the packaging engineering job
 23 description that you're referring to would be
 24 Exhibit 1?
 25 A. Yep.

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1 Q. And it says nothing about startup
 2 activities, correct?
 3 A. No, but it talks about project work.
 4 Q. All right. Exhibit No. 24 is a more
 5 complete description.
 6 Would you agree --
 7 A. I didn't --
 8 Q. -- with respect to startup activities?
 9 A. It certainly outlines it for startup
 10 activities, yes.
 11 Q. Okay. So I take it from your earlier
 12 answer about Engineers 4 and 5 and -- and senior
 13 packaging engineer, that there are Engineers 1, 2,
 14 and 3.
 15 Is that correct?
 16 A. There are positions in our HR system
 17 that are 1, 2, and 3. Whether or not they actually
 18 have engineers in those positions, I don't think
 19 they currently do. I don't know.
 20 Q. Okay. Can you tell me anything about
 21 the responsibilities or requirements to be an
 22 Engineer 1, 2, or 3?
 23 A. I would just be guessing.
 24 Q. Okay.
 25 A. I don't know specifically.

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1 Q. All right. Do you recognize the
 2 handwriting on the first page of Exhibit 23?
 3 A. Not specifically.
 4 Q. Okay. Do you recognize the handwriting
 5 on the second page of Exhibit 23, which is
 6 Simplot 8?
 7 Or excuse me. I'll just ask you a
 8 little better question.
 9 Do you recognize any of the handwriting?
 10 I think there appears to be a little difference in
 11 some of that handwriting.
 12 A. Sure.
 13 MR. JULIAN: I noticed that.
 14 THE WITNESS: No.
 15 Q. (BY MR. BURGOYNE) Okay.
 16 A. I --
 17 Yeah, I -- I don't know.
 18 Q. So I take it none of the handwriting is
 19 yours?
 20 A. Well, I was thinking the word "week"
 21 looked like my handwriting, but I -- the rest of it
 22 doesn't really look like my handwriting. I
 23 don't --
 24 Q. Okay. Same question for the next
 25 page in the exhibit, Simplot 9.

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1 general release not signed.
 2 A. Okay.
 3 Q. Did you have any involvement with the
 4 preparation of that document?
 5 A. No.
 6 Q. Okay. Did you know about it?
 7 A. No.
 8 Q. Okay. The first time you saw it is
 9 today?
 10 A. Yes.
 11 Q. Okay. Okay.
 12 Going back to Exhibit 31 with your
 13 conversation with Erik, your fourth paragraph, "I
 14 told him that I remember clearly that when we were
 15 interviewing for his position, we were specifically
 16 looking for someone with strong leadership
 17 attributes and also a strong technical
 18 understanding of packaging because we needed
 19 someone who could help with packaging equipment on
 20 the operation side and also the materials. That is
 21 why we had such a hard time filling the position.
 22 So I was surprised to hear that he felt tricked."
 23 Okay. I've got a couple of questions
 24 about that.
 25 First, I'm not sure when I read the

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1 sentence I fully understand what it was you said to
 2 Erik versus what might have been what you and the
 3 others on the panel were thinking. So I want to go
 4 through that.
 5 But you told him you remembered clearly,
 6 "When we were interviewing for his position, we
 7 were specifically looking for someone with strong
 8 leadership attributes," and I want to stop there
 9 and I want to ask you: Did you or anyone else on
 10 the panel you were in tell him that they were
 11 looking for someone with strong leadership
 12 attributes in that interview?
 13 A. No.
 14 Q. Okay.
 15 A. But we did tell him that we were
 16 interviewing for the technical side and the
 17 leadership side, so --
 18 Q. Okay.
 19 A. -- I mean, I didn't specifically say
 20 "leadership attributes," but --
 21 Q. And when you said "the leadership side,"
 22 was the word "startup" used?
 23 A. Not to my knowledge, no.
 24 Q. Okay. And then did you or anyone else
 25 in the interview panel you were on tell Mr. Knudsen

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1 that you were also looking for someone with a
 2 strong technical understanding of packaging?
 3 A. I didn't specifically say those words.
 4 I don't specifically remember somebody saying those
 5 words. But, like I said, just the sheer way that
 6 the interview was structured, we were looking for
 7 those two areas of expertise.
 8 Q. Okay. And then going on with that
 9 sentence, "Because we needed someone who could help
 10 with packaging equipment on the operations side and
 11 also the materials."
 12 Did you or anyone else on the interview
 13 panel tell Mr. Knudsen that?
 14 A. I didn't, but it was a packaging --
 15 packaging engineering position that he was
 16 interviewing for.
 17 Q. Uh-huh. I understand. I'm just asking
 18 in the interview, did anybody -- did you or anybody
 19 else tell him that?
 20 Now, let me read it to you again.
 21 "Because we needed someone who could
 22 help with packaging equipment on the operations
 23 side and also the materials."
 24 Was that said to him in the interview?
 25 A. Not specifically, no.

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1 Q. Okay.
 2 MR. JULIAN: And when you're answering, are
 3 you saying you didn't specifically say it or --
 4 THE WITNESS: I didn't specifically say it.
 5 MR. JULIAN: -- or did anyone? I'm not --
 6 it's just unclear.
 7 THE WITNESS: I don't know if other people
 8 said it. I didn't say it.
 9 MR. JULIAN: Okay.
 10 THE WITNESS: I don't recall even --
 11 Q. (BY MR. BURGOYNE) You don't recall
 12 anybody else telling him that in the interview?
 13 A. No. I don't recall any specific --
 14 Q. Okay.
 15 A. I mean, it was two and a half years ago,
 16 so --
 17 Q. Okay. You told --
 18 You have a sentence here at the end of
 19 paragraph 4 in Exhibit 31. It says, "I told him
 20 there is obviously a disconnect, and in order for
 21 this to work, we need to figure out where the
 22 problem is, but I wanted him to understand that we
 23 were just as frustrated as he is."
 24 Did you do anything after meeting with
 25 him that was intended to help figure out what the

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IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

ERIK KNUDSEN,)
)
 Plaintiff,)
)
 vs.) Case No. CV01-17-13956
)
 J.R. SIMPLOT COMPANY, a)
 Nevada corporation,)
)
 Defendant.)
 _____)

DEPOSITION OF REBECCA NICHOLS

May 30, 2018

Boise, Idaho

Reported by:

Andrea J. Couch, CSR #716, RDR, CRR, CRC

1 A. Michelle Rauer.
 2 Q. Michelle --
 3 How is her last name spelled?
 4 A. R-a-u-e-r.
 5 Q. What was her position?
 6 A. She was recruiting manager.
 7 Q. Do you know who her boss was?
 8 A. Kayce McEwen, and then when Kayce went
 9 to food group, she started reporting to someone
 10 else, and I do not recall who that was.
 11 Q. Okay. What was Kayce McEwen's position
 12 at the time that you were a recruiter?
 13 A. She --
 14 Good question.
 15 Q. Okay.
 16 A. I do not recall --
 17 Q. Do you --
 18 A. -- her title.
 19 Q. Okay. Was she in charge of HR?
 20 A. For corporate, yes.
 21 Q. Okay.
 22 A. And then -- but she then was in charge
 23 of HR for food group while I was also there, and I
 24 don't remember who took her spot at corporate.
 25 Q. Okay. All right.

[Page 8]

1 Do you have any other job experience
 2 besides your work at Simplot?
 3 A. I worked for my family.
 4 Q. Okay. What's your educational
 5 background?
 6 A. I went to Parma High School and then the
 7 University of Idaho.
 8 Q. Okay. Good choice.
 9 A. Only the best.
 10 Q. How about training? Do you have any
 11 training that relates to your work at Simplot or as
 12 a recruiter?
 13 A. We oftentimes went to conferences and
 14 things like that, interview training and -- but
 15 nothing worth noting, I guess.
 16 Q. Okay.
 17 A. Normal on-the-job training.
 18 Q. Normal on-the-job training. All right.
 19 Were you involved in the recruiting of
 20 Erik Knudsen to work at Simplot?
 21 A. I was.
 22 Q. How so?
 23 A. I was the recruiter at the time, and
 24 what that meant was I did the transactional
 25 paperwork to get him hired.

[Page 9]

1 Q. Okay. Beyond doing paperwork, did you
 2 have any other involvement with his hiring?
 3 A. Yes. I reached out to him about a
 4 position within Simplot.
 5 MR. BURGOYNE: Okay. Show the witness
 6 Exhibit No. 1.
 7 THE REPORTER: It's in that binder right
 8 there in front of you.
 9 Q. (BY MR. BURGOYNE) Have you ever seen
 10 Exhibit No. 1 before?
 11 A. Yes.
 12 Q. What is it?
 13 A. It's a job description.
 14 Q. And a job description for what job?
 15 A. The senior packaging engineer.
 16 Q. Okay. Were you involved in recruiting
 17 for the senior packaging engineer position in 2015?
 18 A. I would imagine so.
 19 Q. Okay. And with respect to this job
 20 description, did you write it?
 21 A. Yeah. I formatted it.
 22 Q. Okay. What does it --
 23 What's -- what's the difference between
 24 writing and formatting?
 25 A. The --

[Page 10]

1 Within Simplot, the division and the HR
 2 manager for that division provide the recruiting
 3 department with the responsibilities, and I
 4 basically make it look pretty.
 5 Q. Okay. How much of the information
 6 that's contained in the job description --
 7 Well, let me ask it this way: Is this
 8 job description something that comes off the shelf
 9 and maybe gets some revision or updating? Because
 10 packaging engineers, we've heard testimony in this
 11 case so far from two others who were at Simplot
 12 before Mr. Knudsen was.
 13 So I'm just wondering if this is
 14 something that pre-existed the recruitment for this
 15 position or if you had to write it from scratch.
 16 A. It was not written from scratch. It's
 17 usually revisited. Every time we open a position,
 18 we revisit the job description, make sure it's
 19 still applicable, and they tell me what changes
 20 need to be made --
 21 Q. Okay.
 22 A. -- as the position evolves.
 23 Q. Who is "they"?
 24 A. The division and the HR manager on
 25 the -- on the job.

[Page 11]

1 been closed," does that mean after the hiring
 2 decision has been made or is it after the
 3 recruitment -- the party recruited has reported to
 4 the job or at what point in time?
 5 A. Usually, it's after the position is
 6 closed, so when the person is hired in the system.
 7 Q. Okay. Do you know why you shred
 8 those -- those notes? Is that because you're
 9 instructed to --
 10 A. Because they're just my pers --
 11 Q. -- or --
 12 A. They're just my personal notes, and --
 13 Yeah. They're my personal notes, and I
 14 don't want anyone to see things that might be
 15 related to a person, so I shred them.
 16 Q. Okay. And is that your decision or is
 17 that in accordance with the company's way of doing
 18 things?
 19 A. I believe it was just my decision.
 20 Q. Okay.
 21 (Deposition Exhibit No. 20 was marked.)
 22 MR. BURGOYNE: What number is that?
 23 THE REPORTER: This is No. 20.
 24 MR. BURGOYNE: Okay.
 25 Q. (BY MR. BURGOYNE) Okay. Mrs. Nichols,

[Page 20]

1 you've been handed what's been marked as Exhibit
 2 No. 20.
 3 Have you seen this document before?
 4 A. Yes.
 5 Q. Do you know what it is?
 6 A. Yes.
 7 Q. What is it?
 8 A. A message to Erik in regards to a
 9 position at the J.R. Simplot Company.
 10 Q. Okay. How did you come to know about
 11 Erik?
 12 A. I believe I ran into him on LinkedIn.
 13 Q. Okay. And is that Erik Knudsen?
 14 A. Yes.
 15 Q. The person ultimately hired for this
 16 position?
 17 A. Yes.
 18 Q. Okay. And you -- you say you "ran into
 19 him on LinkedIn."
 20 Just explain to me how that occurred.
 21 A. I can't recall this exact time, but
 22 judging from this memo, I found him on LinkedIn and
 23 reached out to him.
 24 Q. When you found him on LinkedIn, was
 25 there an indication that he was looking for a job?

[Page 21]

1 A. I don't recall.
 2 Q. Okay. And at the time that you --
 3 You sent him Exhibit No. 20, I take it?
 4 A. Yes.
 5 Q. Okay. And at that time, did you know
 6 whether or not the senior packaging engineer
 7 position in Exhibit No. 1 for which you were
 8 recruiting involved a startup manager?
 9 A. I did not.
 10 Q. Okay. Do you know when you learned of
 11 that?
 12 A. I don't know. I do not recall.
 13 Q. Okay. Did you learn of it at some
 14 point?
 15 A. I do not recall.
 16 Q. Okay. Do you know what a startup
 17 manager is?
 18 A. I can assume by the name what it is, but
 19 I do not -- I do not.
 20 Q. Okay. Do you have any recollection at
 21 any time in your involvement in this process of the
 22 issue of startup manager coming up with respect to
 23 this recruitment of Erik Knudsen to the position of
 24 either a senior packaging engineer or an
 25 Engineer 4?

[Page 22]

1 A. I do not recall.
 2 Q. Okay. And let me just follow that up so
 3 that I'm sure I understand what "I do not recall"
 4 means.
 5 Are you saying to me that it did not
 6 come up or are you saying you just don't remember
 7 whether it came up or not?
 8 A. I just don't remember whether it came up
 9 or not.
 10 Q. Okay. Have you ever seen a job
 11 description with startup manager responsibilities
 12 stated in it?
 13 A. I cannot definitely say I haven't, but I
 14 don't know if I have.
 15 Q. Okay. As we sit here today, do you have
 16 any recollection of having seen any kind of a job
 17 description with startup manager duties described
 18 in it?
 19 A. I do not.
 20 Q. Okay. Do you have any knowledge as to
 21 what a startup manager is?
 22 A. I could assume, but I do not know --
 23 Q. All right.
 24 A. -- within the J.R. Simplot Company what
 25 that entails.

[Page 23]

1 Q. Okay. Go ahead and give me your
 2 assumption.
 3 A. Startup manager, as it relates to the
 4 engineering department, I would assume helps with
 5 the startup of our new facilities, whether that be
 6 potatoes, vegetables. They would help get
 7 everything started from the ground up.
 8 Q. Okay. And "everything" being what?
 9 A. All of the engineering responsibilities.
 10 So there's a lot that's involved in a potato
 11 processing plant or a vegetable processing plant,
 12 but making sure that that all goes correctly and
 13 managing the contractors that are working in the
 14 plant and that sort of thing.
 15 Q. Okay. Is -- is your assumption that
 16 these would be new plants or new operations at
 17 existing plants?
 18 I understand this is an assumption and
 19 you're doing some speculating and that sort of
 20 thing, but I just kind of want your sense of what
 21 it is.
 22 A. Can you rephrase the question?
 23 Q. Sure.
 24 From the way you described it, I wanted
 25 to find out if your assumption was that the startup

[Page 24]

1 activities would be done at new plants or plants
 2 that were being reconfigured or having a new
 3 product line or something like that.
 4 I'll go one step further.
 5 Or are you assuming that it involves
 6 particular aspects of a plant, like packaging or
 7 processing?
 8 A. Well, I -- I think it could be both.
 9 Anything that's new that they're trying to start
 10 up, whether it be one machine or a new plant, it --
 11 I -- it could probably encompass both, but I do not
 12 know how the engineering department defines that.
 13 Q. Okay. Do you recall anyone in this
 14 process -- in engineering, HR, or anyone else --
 15 talking to you during the recruitment,
 16 interviewing, and hiring process about startup
 17 manager duties for the position that Mr. Knudsen
 18 ultimately filled?
 19 A. I don't remember.
 20 Q. Okay.
 21 (Deposition Exhibit No. 21 was marked.)
 22 THE WITNESS: Thank you.
 23 MR. BURGOYNE: Exhibit 21?
 24 THE REPORTER: Yes.
 25 MR. BURGOYNE: Okay.

[Page 25]

1 Q. (BY MR. BURGOYNE) Mrs. Nichols, you've
 2 been handed Exhibit 21.
 3 Have you ever seen this document before?
 4 And I'm just going to draw your attention to the
 5 part that begins -- appears to be an e-mail from
 6 you.
 7 Above that is an e-mail between
 8 Mr. Knudsen and our firm, and it says, "Redacted.
 9 Attorney/client privilege." But just below that
 10 and for the balance of the exhibit, it's a
 11 three-page exhibit.
 12 Is this something you've seen before?
 13 A. I have seen it on my end --
 14 Q. Okay.
 15 A. -- not on his.
 16 Q. Is this your e-mail that begins on the
 17 first page?
 18 A. I would assume so since it says it's
 19 from me.
 20 Q. Okay. Do you have any recollection of
 21 composing and sending this e-mail?
 22 A. No, but I compose and send hundreds of
 23 interview panel e-mails.
 24 Q. Okay. So this e-mail begins -- the text
 25 of this e-mail begins, "Erik, I am sending you this

[Page 26]

1 confirmation regarding the senior packaging
 2 engineer position you have applied for." And then
 3 apparently part of that process is an Idaho plant
 4 tour?
 5 A. Yep.
 6 Q. Okay. What is the Idaho plant?
 7 A. The Idaho plant is a potato processing
 8 facility in Caldwell, Idaho.
 9 Q. And do you know whether Mr. Knudsen went
 10 on this plant tour, which is shown as Thursday,
 11 October 22, 2015, at 3:00 p.m.?
 12 A. I would assume he did, but I do not
 13 know.
 14 Q. Okay. And then there is information
 15 regarding "Interview 1 Interview Panel," and some
 16 people are listed.
 17 A. (Witness indicates.)
 18 Q. And then on the next page, there is
 19 information regarding Interview 2 and an interview
 20 panel and some people are listed.
 21 A. (Witness indicates.)
 22 Q. Do you see that?
 23 A. Yes.
 24 Q. Okay. Do you have any recollection as
 25 to how these interview panels were created?

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IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

ERIK KNUDSEN,)
)
 Plaintiff,)
)
 vs.) Case No. CV01-17-13956
)
 J.R. SIMPLOT COMPANY, a Nevada)
 corporation,)
)
 Defendant.)
 _____)

VIDEOTAPED DEPOSITION OF LYLE SCHOOK

May 23, 2018

Boise, Idaho

Reported by: Abigail L. Manzano, RPR, CSR, SRL #1069

1 PROCEEDINGS
 2 (Proceedings videotaped by counsel for plaintiff.)
 3 LYLE SCHOOK,
 4 a witness having been first duly sworn to tell the
 5 truth, the whole truth and nothing but the truth, was
 6 examined and testified as follows:
 7
 8 EXAMINATION
 9 BY MR. HALLAM:
 10 Q. Good morning, sir. My name is
 11 Guy Hallam, we met just before this deposition.
 12 I'm one of the attorneys for the plaintiff in this
 13 matter.
 14 Will you state your full name and spell
 15 your last name for the record, please.
 16 A. Lyle Dean Schook, S-C-H-O-O-K.
 17 Q. Thank you, Mr. Schook.
 18 Do you know, sir, when Erik Knudsen was
 19 first told that he was going to be the startup
 20 manager at the Grand Forks plant?
 21 A. I think we had a discussion internally
 22 in the February time frame, potentially, that it
 23 might be a good opportunity for him. And I think
 24 not until --
 25 I think June. June, roughly, I think,

[Page 4]

1 was when we -- we formally asked him, that I
 2 recall.
 3 Q. June of 2016?
 4 A. '16. Yeah.
 5 Q. So Erik was hired in November of 2015.
 6 A. Correct.
 7 Q. Is that your recollection?
 8 A. Uh-huh, yep.
 9 Q. Okay.
 10 A. November 23rd, I believe. Just before
 11 Thanksgiving.
 12 Q. And it's your testimony that he was not
 13 told that he was going to be the startup manager
 14 until June of the following year?
 15 A. Uh-huh. Formally.
 16 Q. What do you mean "formally"?
 17 A. Well, we were looking at different
 18 opportunities for different people and who it might
 19 benefit.
 20 See, we have -- we have startups on all
 21 projects. Usually, it's a project manager, but
 22 this was our only big project of the year, so --
 23 It was more than 20 million, so then you
 24 have to -- you typically get a startup manager.
 25 And so we were -- we were looking for

[Page 5]

1 that temporary assignment, who might fill that, be
 2 beneficial to them.
 3 So it was kind of an opportunity role is
 4 what it is, for people who haven't had that
 5 experience.
 6 And so when Erik joined us, it made
 7 total sense that he would play that role for us,
 8 to -- to learn our equipment and our materials
 9 since he had no background in our industry.
 10 Q. Didn't Erik fly out to Grand Forks the
 11 first week of his employment at Simplot?
 12 A. I don't recall that he did. He might
 13 have, yeah, uh-huh, to look at some packaging
 14 materials, maybe.
 15 Q. Wasn't he --
 16 A. I don't recall.
 17 Q. Okay. That's fine. And wasn't he told
 18 within a week of his start, that he was going to be
 19 the startup manager on that project?
 20 A. Not that I --
 21 No, not that I'm aware of. The project
 22 wasn't even approved until December, I think, of
 23 that year.
 24 Q. When was that budget request put in for
 25 that project, if you know?

[Page 6]

1 A. I don't remember the budget rule.
 2 That's why I said it was --
 3 I think it was approved in December.
 4 The budget request is put in long before that as a
 5 holding point, so it takes --
 6 That was a large project that had to get
 7 approved by our board of directors, so I believe
 8 that was December.
 9 Q. Okay.
 10 A. I believe it was approved after,
 11 actually, Erik was hired.
 12 Now, it was going through the process,
 13 but it was not formally -- was not formally
 14 approved.
 15 Q. Okay. Tell me what the process is for
 16 that approval, to your understanding.
 17 A. We put information together, scopes of
 18 work of what the company may want to do or the
 19 opportunity. Does it have a payback? We go
 20 through a lot of different financial analysis on
 21 that scope of work.
 22 We put it into the system, and then they
 23 decide whether we can afford the down -- the down
 24 time to do the work. Does it meet the business
 25 requirements, et cetera. And then it goes up

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1 through our organization in a formal approval
 2 process.
 3 And then you have, actually, a paper
 4 process, what we call a "CIP," or an appropriation
 5 process, that you -- several people sign off on.
 6 Q. Okay. And your position at the time of
 7 that approval process for the Grand Forks project
 8 was what?
 9 A. Senior director of engineering.
 10 Q. And as senior director of engineering,
 11 what are your responsibilities?
 12 A. I lead the -- the whole entire
 13 engineering group or food group.
 14 Q. Okay.
 15 A. So I have directors reporting to me and
 16 then they have teams underneath them.
 17 Q. How long have you been in that position?
 18 A. Little over four years.
 19 Q. How many engineers and teams do you have
 20 below you?
 21 A. We -- we're broken up into technical
 22 areas. So we have --
 23 I have five right now.
 24 Right now or back then?
 25 Q. Well, let's -- either one's fine. I'm

[Page 8]

1 going to ask you both, so --
 2 A. Well, that's fine. So we had a director
 3 of technical services; we have a director of
 4 project management; director of electrical and
 5 instrumentation, and a director of packaging, at
 6 that time.
 7 Q. And do you have similar numbers right
 8 now?
 9 A. We have added one because we promoted
 10 somebody into construction management, coordination
 11 of construction management and startup
 12 responsibilities. So they coordinate all of our
 13 projects.
 14 Q. So is that currently a separate
 15 position, the director of startup responsibilities?
 16 A. Yeah -- well, no, no, no.
 17 Q. No?
 18 A. It's a combination of construction
 19 management and startup responsibilities.
 20 Q. Gotcha.
 21 A. That's because -- because both of those
 22 are temporary assignment roles. They're not
 23 permanent. We don't have enough projects that --
 24 We look for opportunities for training,
 25 we look for opportunities for external people to

[Page 9]

1 play those roles for us because we don't have
 2 that -- we don't have that full-time inhouse.
 3 Q. So in November of 2015, each of those
 4 directors that you identified reported to you?
 5 A. Correct.
 6 Q. And were they each engineers?
 7 A. Yeah.
 8 Q. And so how many -- other than the
 9 directors, how many additional engineers did you
 10 have below you on the chain of command?
 11 A. Roughly, we have anywhere from 17 to 20,
 12 depending how many positions are open.
 13 So probably 16 or 17, at that point.
 14 Q. Okay. And of those five directors who
 15 are also engineers, how many of them had been
 16 startup managers before?
 17 A. Probably all of them because you're
 18 startup manager, as I said, on small projects.
 19 I don't know because we hadn't had very
 20 many big projects since I've been there, so I don't
 21 know if any of them had been on previous roles on
 22 big projects.
 23 Q. You'd consider that Grand Forks plant
 24 project a big project?
 25 A. Oh, yeah. Yeah.

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1 Q. I think you said it was in excess of
 2 \$20 million.
 3 Is that right?
 4 A. Uh-huh, yeah. I think it was
 5 \$22 million.
 6 Q. Okay. How many of those 16 to 17
 7 engineers that you had in your direct report in
 8 November of 2015 had been startup managers?
 9 A. Well, all of our project managers
 10 because, as I said, they go through the -- they
 11 go -- they play a dual role on the smaller ones.
 12 So I'd say four to five, from
 13 projects --
 14 We don't have a whole lot of projects.
 15 In fact, that was the only big project that year,
 16 we were finishing off some projects.
 17 So in the three years I've been there, I
 18 started in '14, '15, '16 -- so I'd only been there
 19 two and a half years at that time, so I'd say
 20 three -- three or four.
 21 Q. Okay. Three or four of the 16, 17?
 22 A. Yeah.
 23 Q. And of those three or four, had any of
 24 them been a startup manager on a project the size
 25 of the Grand Forks project?

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1 it got approved, it went to Byron Smith as the
 2 project manager.
 3 Q. Okay. I appreciate your testimony. I
 4 probably didn't ask you a very good question.
 5 A. Okay.
 6 Q. What I'm looking for --
 7 You said he did that role for a couple
 8 of months and then it was transferred to Mr. Smith,
 9 right?
 10 A. Correct.
 11 Q. What months?
 12 A. I don't know. I don't know the months.
 13 Q. Would it have been November of 2015?
 14 A. I don't know.
 15 Q. Well, did --
 16 A. I -- I would assume it would have been
 17 after because his name is still in here, but I
 18 don't know.
 19 Q. Okay.
 20 A. We don't formally make -- we don't
 21 formally write down when somebody starts and when
 22 somebody stops our roles. We move into -- we move
 23 into -- in and out of them as the need arises.
 24 Q. Well, Mark Monday wasn't a Simplot
 25 employee, right?

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1 A. Correct.
 2 Q. So we could probably figure out --
 3 Because you're paying a vendor for his
 4 time, we could probably figure out when he did that
 5 role, right?
 6 A. Not necessarily because he could still
 7 be working for us on other things, which he was.
 8 So it doesn't -- it isn't a matter of
 9 that he's -- I look at when I stop paying him, that
 10 that's when he stopped his role.
 11 Q. Right. But the invoices you get from
 12 Jacobs don't identify what projects these people
 13 are working on?
 14 A. (Indicates).
 15 They -- they identify the projects, but
 16 they identify their title, there'll always be a PM.
 17 And they do identify, sometimes, the project; and
 18 sometimes it's on our department, so I can't tell
 19 you --
 20 He's worked on multiple projects for us.
 21 I'm telling you that it just -- name a time when he
 22 stopped, I can't. There's no way in determining a
 23 time when we -- when Byron picked it up. So I
 24 can't -- I can't determine that.
 25 Q. But we could ask Byron?

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1 A. Yeah.
 2 Q. Or we --
 3 A. Correct.
 4 Q. -- could ask Mark Monday?
 5 A. Uh-huh.
 6 Q. Okay. And just so that we're clear, if
 7 I understood your earlier testimony, there is a
 8 difference between being a startup manager for a
 9 project the size of the Grand Forks project and a
 10 project manager.
 11 Did I say the same thing twice?
 12 Startup manager and project manager are
 13 different roles for a big project like this one?
 14 A. Yes.
 15 Q. Okay.
 16 A. It's the amount of work and
 17 collaboration and ordering and training you have to
 18 do. There's not --
 19 There's no difference in the role
 20 itself. It's the complexity of the role, the
 21 assignment.
 22 Q. And this was a big enough project that
 23 it was fairly complex?
 24 A. Correct.
 25 Q. And that's why you needed a separate

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1 project manager and a separate startup manager?
 2 A. Correct.
 3 Q. So was Erik just working on packaging
 4 engineer projects between his hire and
 5 June of 2016, when he was given the startup manager
 6 role?
 7 A. Just --
 8 I don't understand "just engineering
 9 projects."
 10 Q. Well, you'd agree with me, wouldn't you,
 11 that there's a difference between being a startup
 12 manager and a packaging engineer?
 13 A. A start -- they're --
 14 One is an assignment and one is, yeah, a
 15 role.
 16 Q. So they're different?
 17 A. Okay. Yes. I mean, one is part of --
 18 one can be part of the job.
 19 Q. So being a packaging engineer can be
 20 part of a startup manager job?
 21 A. The other way around.
 22 Q. So being a startup manager can be part
 23 of a packaging engineer job?
 24 A. Just like it's part of a project manager
 25 job, uh-huh.

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DEPOSITION OF JASON SCHWARK

May 14, 2018

Boise, Idaho

Reported by:

Andrea J. Couch, CSR #716, RDR, CRR, CRC

1 A. I don't recall.
 2 Q. Do you know if, as of November 30, he
 3 was officially the startup manager at the Grand
 4 Forks plant?
 5 A. I don't -- I don't recall that.
 6 Q. Did he -- did he ever -- did Erik ever
 7 come to you and say, "I wasn't hired as a startup
 8 manager"?
 9 A. We did have conversations around --
 10 around that.
 11 Q. Do you remember those conversations
 12 shortly after he was hired by Simplot?
 13 A. Yes.
 14 Q. Tell me what you remember about those
 15 conversations.
 16 A. That he was being asked to work in a
 17 startup -- he was asked to --
 18 I don't re -- I don't remember the
 19 specifics other than frustrations around just
 20 startup man -- performing -- being the startup
 21 manager and balancing with the packaging
 22 development projects.
 23 Q. Were those frustrations Erik's or yours
 24 or collectively the team's?
 25 A. I think primarily Erik's, but, I mean,

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1 there's -- I -- just -- there's always some kind of
 2 frustrations at work.
 3 Specifically, I don't know how to answer
 4 that.
 5 Q. Sure.
 6 Do you remember being frustrated because
 7 you thought you were getting another senior
 8 packaging engineer for the team, but, in fact, he
 9 was spending a lot of time as a startup manager in
 10 Grand Forks?
 11 A. Can you ask that again?
 12 Q. Sure.
 13 Do you remember being frustrated because
 14 you thought you were getting another senior
 15 packaging engineer for the team, but, in fact, Erik
 16 was spending a lot of time as a startup manager in
 17 Grand Forks?
 18 A. Yeah. I think at one point, I felt that
 19 way.
 20 Q. Did you tell anyone that?
 21 A. We had meetings around that.
 22 Q. Who is "we"?
 23 A. I can't remember how it was brought up
 24 specifically, but there was a time where we thought
 25 we needed --

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1 The sit -- the situation was such where
 2 Erik was working a startup. All I remember, it
 3 was -- we thought we could use some more help with
 4 part of the business support, so kind of
 5 communicate that to -- communicated that up, and
 6 it was told you can -- Erik will support the
 7 business more as needed.
 8 Q. When you say it was communicated up, to
 9 whom was that communicated?
 10 A. I believe it would have been Lyle.
 11 Q. Okay. And was that communicated by you
 12 or you and others?
 13 A. It probably would have been as a group.
 14 Most likely me and Tim.
 15 Q. Okay. And what specifically do you
 16 remember Lyle telling you?
 17 A. It would have been around, "If you need
 18 further help or -- Erik is going to be available.
 19 The startup manager shouldn't be taking full time."
 20 Q. At the time you --
 21 Was that more than one conversation or
 22 one conversation with you and Tim and Mr. Schook?
 23 A. It probably would have been -- it would
 24 be multiconver -- I mean, the one I was thinking of
 25 was probably one conversation -- or the one I

[Page 46]

1 remember.
 2 Q. Okay. Do you remember having more than
 3 one conversation about that topic, though?
 4 A. Not really. I'm sure we brought it up
 5 or I would have brought it up. If I felt like I
 6 was dropping the ball because I needed more help, I
 7 would have brought that up.
 8 Q. I'm sorry. I don't think you answered
 9 my question, so let me ask it one more time.
 10 Do you remember having more than one
 11 conversation about that topic?
 12 A. Yes.
 13 Q. Okay. And did you have that
 14 conversation or those conversations with anyone
 15 other than Mr. Schook up the chain of command?
 16 A. I -- I don't recall if we would have
 17 talked to anybody else.
 18 Q. If I understand what you said earlier
 19 about Mr. Schook's response, you said that he told
 20 you that Erik would be available and the startup
 21 manager shouldn't be full time.
 22 Is that correct?
 23 A. Correct.
 24 Q. So was Erik involved in those
 25 conversations? Or just you and Tim and Mr. Schook?

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J.R. SIMPLOT COMPANY
999 Main Street
Boise, ID 83702
877-878-7404

Personal & Confidential

October 30, 2015

Erik Knudsen
946 N. Yarmouth Place
Eagle, ID 83616

Dear Erik,

The J.R. Simplot Company is pleased to offer you the position of **Engineer 4**, effective **November 23, 2015** and reporting to **Craig Lamberton**. Should you accept this offer, you will be eligible to receive the following *Total Rewards** package as well as other benefits which will be explained to you in detail during the orientation process:

- **Salary:** Annual gross salary of \$105,000.00, paid every two weeks (26 pay periods/year).
- **Short-Term Incentive:** Up to 11% of your annual fiscal year end salary, prorated for changes throughout the year, and subject to the Company performance and your personal performance for the fiscal year.
- **Simplot Retirement**
 - 401(k) savings plan with company matching up to 3.5% of qualified earnings
 - In addition to the 401(k), Simplot will contribute 4.5% of your eligible salary into your Retirement Savings Plan account. (Requiring 3 year vesting)

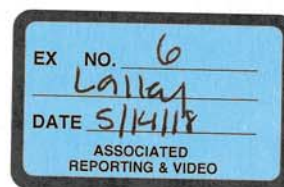
You will be automatically enrolled in the 401(k) plan with a 6% deferral unless you make a different election within approximately 30 days of hire.

- **Other Benefits and Programs** include the following:
 - Paid Time Off – Bi-weekly accrual at a rate of 6.15 hours (accrual to begin on date of first paycheck).
 - 10 paid holidays per calendar year
 - Education assistance
 - Health and Wellness programs
 - Medical, dental, vision, prescription, EAP
 - Health Savings Account (HSA)
 - Dependent Care Reimbursement Account
 - Term life insurance – 2x annual salary
 - Short and long term disability insurance

**The elements and/or terms of your Total Rewards package may evolve or change with or without notice as we strive to maintain a competitive rewards package and a Sustainable Simplot. You will receive additional information by mail outlining any additional eligibility and enrollment requirements.*

I am sure you are anxious to contribute to Simplot's success. Please partner with your supervisor to learn more about our performance appraisal process and link your goals to business results.

Your offer is contingent upon completion of the *Simplot* Employment Application; successfully passing a drug and alcohol test; successful completion of a routine background and reference check (includes driving record check if you are to drive on company business – please bring your driver's license with



SIMPLOT 000040
000355

you on your first day of work); and signing the Employee Secrecy and Confidentiality Agreement during your orientation.

You also must establish your identity and authorization to work as required by the Immigration Reform and Control Act of 1986 (IRCA). A current list of acceptable identification documents for the Employment Verification Form (I-9) can be reviewed at www.uscis.gov/files/form/i-9.pdf. Please click on this link in advance and bring the appropriate original identification documentation (including photo ID) on your first day of work (either one item from List A or a combination of one item from List B and one item from List C).

Employment is at the will of either the employee or the Company. Further, no contract or guarantee of continued employment is implied by this offer. Employment can be terminated by either party at any time with or without cause. No oral statement may change the at-will nature of the employment relationship.

More than 10,000 employees around the world constantly explore innovative ways to grow, process and deliver food, help farmers and ranchers optimize profit, and make everyone's life a little better. We look forward to you accepting our offer and becoming part of the Simplot team.

Please sign this letter as verification of your acceptance of the Engineer 4 position and scan it back to me by the end of business day on November 2, 2015. If you have any questions regarding the information included herein, please contact me.

Sincerely,



Rebecca Nichols
Recruiter
01 208-780-7241

I accept this offer of employment



Signature - Erik Knudsen

10-30-2015

Date



Inter•Office Communication

November 30, 2015

EMPLOYEE AND ORGANIZATIONAL ANNOUNCEMENT

I am pleased to announce that **Eric Knudsen** accepted the position of **Packaging Engineer** in the NA Food Group Engineering Department effective November 23rd, 2015.

Erik comes to us from the Laser Jet Division of Hewlett-Packard Co. in Boise, ID. Erik has held multiple positions from Packaging Engineer to NPI Manufacturing Program Manager. His International, Operations and leadership experience will be a great asset to our organization.

Moving forward we will have some minor organizational changes. With the departure of **Craig Lamberton** back to Australia, Erik will report directly to **Kent Anderson**. Also reporting to Kent will be **Michael Whiting**.

The reason for this change is to get cross functional experience and resources supporting not only the packing materials for the NAFG Sales and Marketing team but, deliver support to the technical need for Packaging Operations as well. This will allow us to cover the huge technical gap left through Craig's departure. Craig's last day will be December 16th.

Tim Lalley and **Jason Schwark** will continue to focus on the front end of the business and report directly to me starting December 14th.

Please join me in congratulating Erik on his new role.

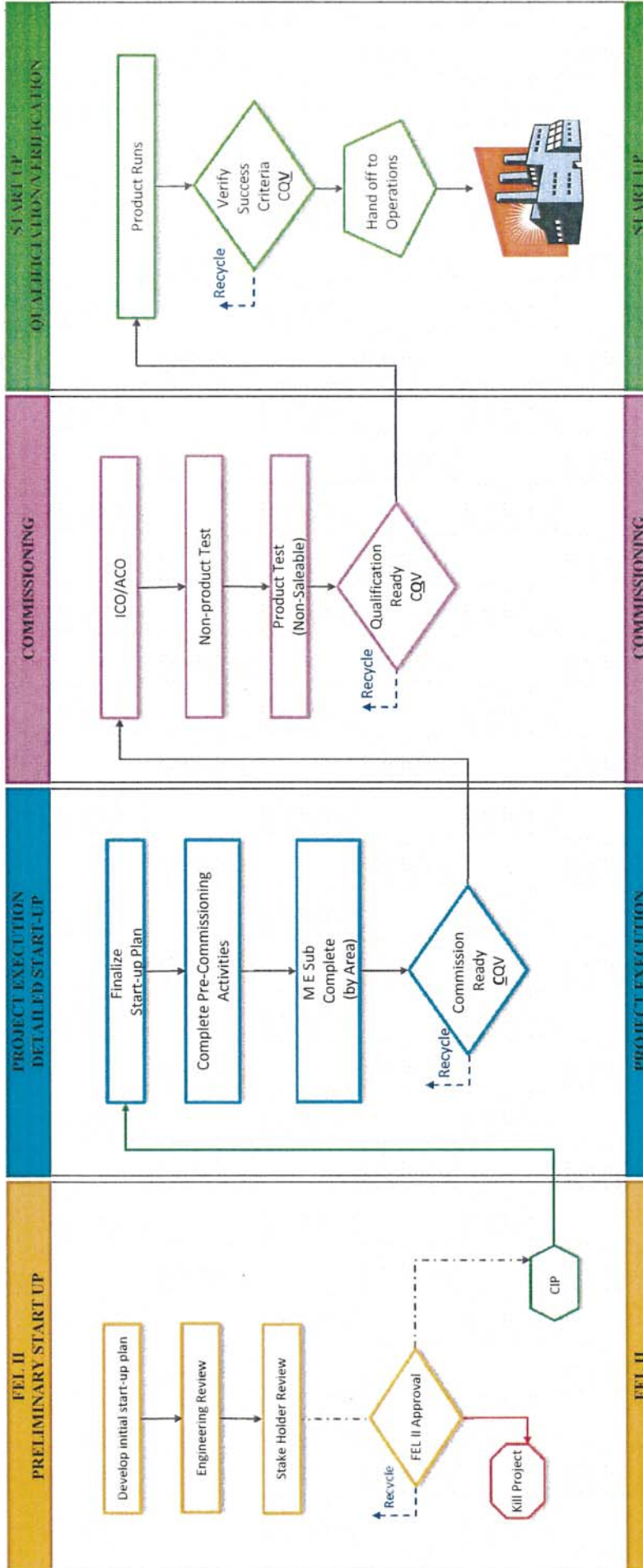
I also want to personally thank Craig for his time here in the NAFG Engineering department. He has been a valued asset and one we will miss dearly. Please join me in wishing him success as he returns back to Simplot Australia.

Lyle Schook
Senior Director – FG Engineering

EX NO.	8
	Lalley
DATE	5/14/18
ASSOCIATED REPORTING & VIDEO	

SIMPLOT 000081
000357

LEVEL I - NAFG ENGINEERING START-UP PROCESS



DEFINITIONS:

COMMISSIONING: System/Equipment runs as required - Equipment's operability is proven and includes final ICO/ACO, set ups, "water tests" and the initial full test run of product, which is generally called the "commissioning run" or "test shots".

QUALIFICATION: System/Equipment performs as required - The initial Start-Up curve making specifiable product (as planned in the Start-Up Curve) led by the Start-Up Manager. Process capabilities are validated with any design installation or Operations issues being resolved. The endpoint of qualification is when the Start-Up Curve, CIP and Success Criteria are met or nearly met and Operations accepts ownership for the installation to meet promised run rates and production schedule needs.

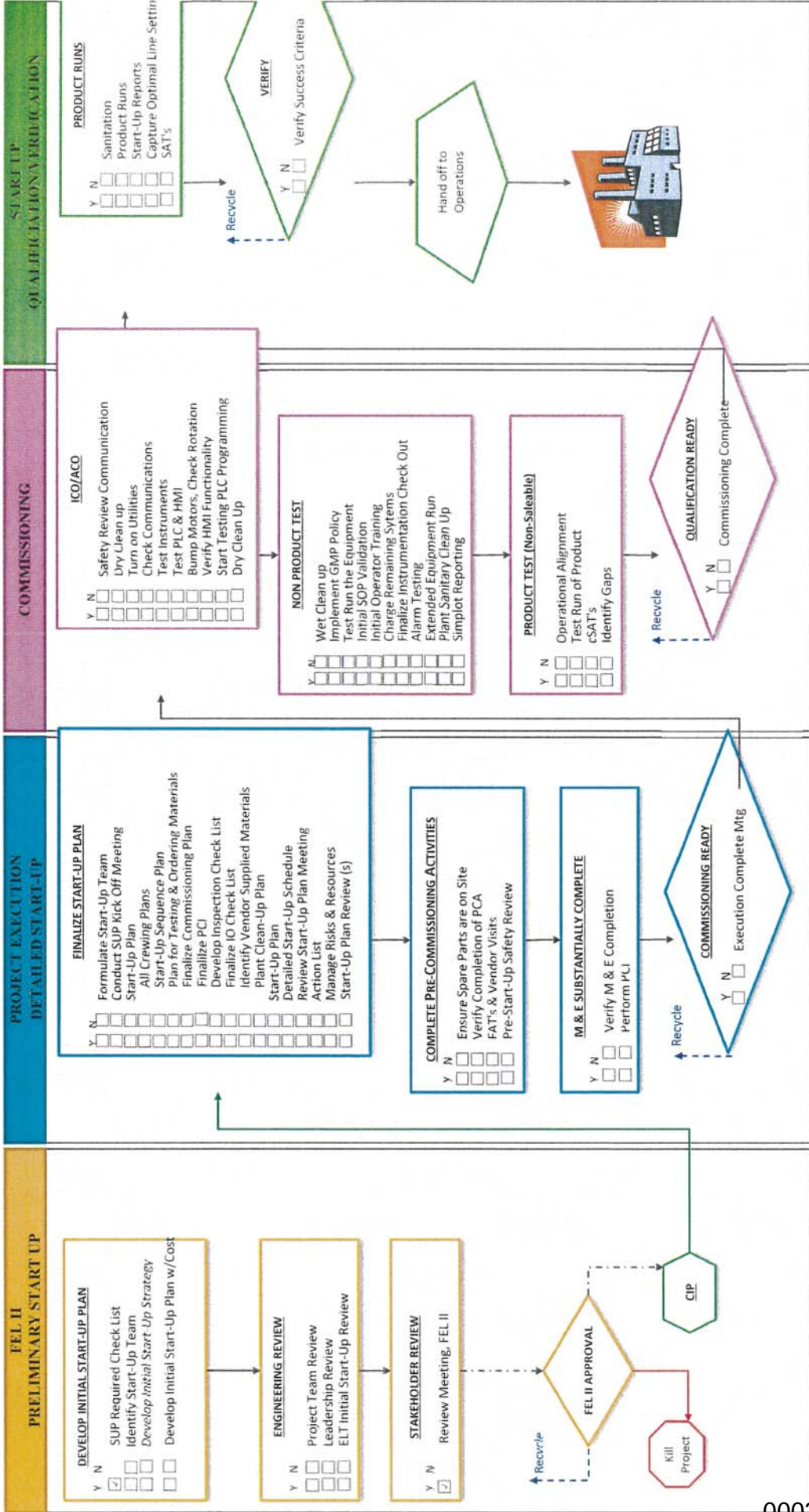
VERIFICATION: System/Equipment is sustainable - Ownership is fully transferred to the plant. This is the period after qualification. The verification timeframe (usually one run cycle) requires confirmation through the Plant (with support from Engineering as requested). Project close out signatures are expected.

EX NO. 9
Lalloy
 DATE 5/14/18
 ASSOCIATED
 REPORTING & VIDEO

SIMPLOT 000194

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LEVEL 2 - NAFG ENGINEERING START-UP PROCESS



SIMPLOT 000195

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LEVEL 3 -NAFG ENGINEERING Start-Up PROCESS

FEL II PRELIMINARY START-UP

DEVELOP INITIAL START-UP PLAN

Page 1 of 6

Tasks	Owner	Required When	Activities	Input	Forms/Tools
SUP Required Document Checklist	Startup Manager (SM)	Required	Fill in the list and agreed with manager on the required documents for the Start-Up Plan	Manager and/or ELT	Start-Up Plan Required Document Checklist Template
Identify Start-Up team	SM	As Needed	Assemble a cross functional team to be part of the Start-Up development	DPM, DICE, Plant Manager, Plant Engineer, PM	FEL II
Develop Initial Start-Up Strategy	SM	As Needed	Meeting with key team members to establish a strategy for Start-Up; Start-Up curve, Start-Up schedule, Start-Up pack plan, Identify Risks, Training, Key Assumptions	PM, ELT, CM, ICE, Stakeholders, Operations, PPIC	Project Scope, Project Schedule, Construction Strategy, Pack Plan, Start-Up Curve, Success Criteria, Planned Downtimes, SUP Strategy Template
Develop Initial Start-Up Plan with (Cost & Schedule)	SM	As Needed	Meeting with key team members to develop a plan for Start-Up; Start-Up schedule, Start-Up pack plan, Identify Risks, Training, Key Assumptions, Deliver cost estimate to Project Team for FEL II submittal	PM, ELT, CM, ICE, Stakeholders, Operations, PPIC, Plant	Project Scope, Project Schedule, Construction Strategy, Pack Plan, Start-Up Curve, Success Criteria, Start-Up Plan Cost checklist

ENGINEERING REVIEW

Tasks	Owner	Required When	Activities	Input	Forms/Tools
Project Team Review	SM	As Needed	Peer review of the SUP	Peers, SME, PM	Start-Up Plan Documents
Leadership Review	SM	As Needed	Review SUP with functional managers	Manager, PM	Start-Up Plan Documents
ELT Initial Start-Up Review	SM	As Needed	Review SUP details with ELT	ELT, PM	Start-Up Plan Documents

STAKE HOLDER REVIEW

Tasks	Owner	Required When	Activities	Input	Forms/Tools
Stakeholder review/project team review, FEL II	SM	As Needed	Meeting with the stakeholders to review project details and the FEL II at the plant	Stakeholders, Resource Team	Start-Up Plan Documents

PROJECT EXECUTION DETAILED START-UP

SIMPLOT 000196

CONFIDENTIAL

000360

LEVEL 3 -NAFG ENGINEERING Start-Up PROCESS

FINALIZE START-UP PLAN

Tasks	Owner	Required When	Activities	Input	Forms/Tools
Formulate Start-Up Team	SM	As Needed	Fill Org Chart template and Roles and responsibilities template Alignment for resources	DPM, DICE, Plant Manager, Plant Engineer, PM	Organizational chart template, Roles and Responsibilities template
Conduct SUP kick-off meeting	SM	As Needed	Prepare and conduct team meeting to set expectations	Start-Up Team, Project team and stakeholders	Kick off meeting agenda
Continue developing Start-Up / Commissioning Plan	SM	As Needed	Meeting with key team members to establish a strategy for Start-Up; Start-Up curve, Start-Up schedule, Start-Up pack plan, Identify Risks, Training, Key Assumptions	PM, ELT, CM, ICE, Stakeholders, Operations, PPIC	Start -Up plan template, PExP, Pre Commissioning Inspection (PCI)
Finalize Start-Up Plan	SM	As Needed	Training plan	Project team, Operations	Start-Up plan workbook Start-Up Plan check-list (documents that would be included in project)
	SM	As Needed	Identify and order spare parts for equipment and provide to plant maintenance group	Project team, Operations	



FINALIZE START-UP PLAN cont.

2 of 6

Tasks	Owner	Required When	Activities	Input	Forms/Tools
Finalize Start-Up plan	SM	As Needed	Operation/Production/Maintenance/ Sanitation Crewing plan for Commissioning & Start-Up activities	Project team, Operations	Start-Up plan workbook Start-Up Plan check-list (documents that would be included in project)
	SM	As Needed	System (Utilities & Equipment) Start-Up sequence plan	Project team, Operations	
	SM	As Needed	Plan for ordering, testing and production materials (raw and packaging)	Project team, Operations	
	SM	As Needed	Finalize Commissioning plan	Project team, Operations	
	SM	As Needed	Finalize PCI, develop inspection check list (lubrication, hardware, alignment, guarding, etc..)		
	SM	As Needed	Finalize IO Check list	Project team, Operations	
	SM	As Needed	Identify Vendor supplied materials including but not limited to: (O&M, Software, Passwords, GA Drawings, Specs, Schematics)	Project team, Operations, Vendors	
	SM	As Needed	Identify required operational Procedures such as; SOP, SSOP, PSM, PHA, Recipe Management, LOTO, (Product Data Management) PDM, Process Narrative, etc.....	Operations	
	SM	As Needed	Plant Clean Up Plan	Operations, Sanitation Sup	

LEVEL 3 -NAFG ENGINEERING Start-Up PROCESS

Detailed Start-Up Schedule	SM	As Needed	Plan and conduct meetings with all contractors, vendors, team members as needed to develop a detailed Commissioning/Start-Up Schedule	Start-Up Team, Project team, stakeholders, Vendors, Contractors, PPIC, Procurement, Operations	Interactive Planning Session procedure, Schedule
Review Start-Up plan meeting	SM	As Needed	Meet to ensure all stakeholders are aligned on Start-Up plan	Project team, Operations	Meeting agenda Meeting notes
Action List	SM	As Needed	Document, distribute and store Actions list for Start-Up Plan	Project team	Action list
Manage Risks & Resources	SM	As Needed	Re-evaluate / Manage risks /Resources	TL, Project team	Start-Up Plan
Start-Up Plan review(s)	SM	As Needed	Hold regular Start-Up Plan reviews with the plant and project team. Discuss completion status and relative risk of commissioning & Start-Up	Project team, operations, safety, EE, PM, SM	Start-Up Plan review meeting agenda Meeting notes Issues List

COMPLETE PRE-COMMISSIONING ACTIVITIES

Tasks	Owner	Required When	Activities	Input	Forms/Tools
Ensure Spare Parts are on site	SM	As Needed	Verify with maintenance manager that spare parts have arrived prior to start up	Plant Engineer, Maintenance, TL, Vendor	Spare parts list
Verify Completion of Pre Commissioning Activities	SM	As Needed	Verify Commissioning plan complete	Project team, Plant	Start-Up plan workbook Start-Up Plan check-list (documents that would be included in project)
	SM	As Needed	Verify Start-Up plan complete	Project team, Plant	
	SM	As Needed	Verify Start-Up Schedule complete	Project team, Plant	
	SM	As Needed	Verify PCI complete	Project team, Plant	
	SM	As Needed	Verify IO Check list complete	Project team, Plant	
	SM	As Needed	Verify Operation/Production/ Maintenance /Sanitation Crewing plan complete for Commissioning & Start-Up activities	Project team, Operations	
	SM	As Needed	Verify system (Utilities & Equipment) ready to be put in service. Verify System (Utilities & Equipment) Start-Up sequence plan complete	Project team, Operations	

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000362

LEVEL 3 -NAFG ENGINEERING Start-Up PROCESS

COMPLETE PRE-COMMISSIONING ACTIVITIES cont.

Tasks	Owner	Required When	Activities	Input	Forms/Tools
Verify Completion of Pre Commissioning Activities	SM	As Needed	Verify plan for ordering, testing and production materials (raw and packaging) has been completed	Project team, Operations	Start-Up plan workbook Start-Up Plan check-list (documents that would be included in project)
	SM	As Needed	Verify Vendor supplied materials including but not limited to: (O&M, Software, Passwords, GA Drawings, Specs, Schematics) have been ordered	Project team, Operations, Vendors	
	SM	As Needed	Verify required operational Procedures such as; SOP, SSOP, PSM, PHA, Recipe Management, LOTO, etc..... Are complete	Project team, Operations, Vendors	
	SM	As Needed	Verify Clean Up plan complete	Operations, Sanitation Sup	
	SM	As Needed	Verify with maintenance manager that spare parts have arrived prior to start up	Plant Engineer, Maintenance, TL, Vendor	
	SM	As Needed	Verify Training plan complete	Project team, Operations	
FAT (Factory Acceptance Test) and vendor visits	SM	As Needed	Start to develop, verify and/or validate SOP's, Initial Training, Test Equipment	ICE, Project team, TL, Operations	Equipment contract FAT procedure, SOP's, Equipment Specs
Pre-Start-Up safety review	SM	As Needed	Walkthrough with plant and/or corporate safety rep. findings are documented on project punch list	Safety	Project punch list

ME SUBSTANTIALLY COMPLETE

Tasks	Owner	Required When	Activities	Input	Forms/Tools
Verify Mechanical & Electrical Completion	SM	As Needed	Verify with the Project Team that the project is ME Substantially Complete	Construction Manager	ME Substantially complete sign off template
Perform PCI	SM	As Needed	Perform PCI	Project team, Operations	PCI Check List

COMMISSIONING READY

Tasks	Owner	Required When	Activities	Input	Forms/Tools
Verify Execution complete	SM	As Needed	Meeting with project team to determine if execution phase is complete	Project Team	Execution sign off template



LEVEL 3 -NAFG ENGINEERING Start-Up PROCESS



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LEVEL 3 -NAFG ENGINEERING Start-Up PROCESS

COMMISSIONING

ICO/ACO

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Tasks	Owner	Required When	Activities	Input	Forms/Tools
Safety Review	SM	As Needed	Safety Review communication prior to commissioning activities	Plant, Contractors, Project team, and Other affected personnel	Sanitation plan
Dry clean-up	SM	As Needed	Verify vacuum equipment, pick up large debris, swipe area with magnets has been completed	Project team, sanitation manager	Sanitation plan
Turn on utilities	SM	As Needed	Verify power, air, network, water, steam, all required utilities are functional. Communicate in daily construction meeting utilities updates.	ICE, Project team, CM, Plant	Start-Up plan
Check communication	SM	As Needed	Verify network communication, point to point communication, network addresses, original equipment manufacture (OEM) communication, bus network has been completed	ICE, Project team, CM, Plant	Network architecture
Test instruments	SM	As Needed	Verify wiring, calibrations, installation, location, etc. has been completed	ICE, Project team, CM, Plant	Equipment list
Test PLC and HMI	SM	As Needed	Verify hardware and software. Check PLC and HMI configuration, servers, historian, data servers has been completed	ICE, Project team, CM, Plant	Network architecture
Bump motors, check rotation	SM	As Needed	Verify all motor overloads settings, jumpers. Set up all VFD parameters, motor termination has completed	ICE, Project team, CM, Plant	Equipment list
Verify HMI functionality	SM	As Needed	Verify each display point, navigation, standards, alarms have been completed	ICE, Project team, CM, Plant	Equipment list
Start testing PLC programming	SM	As Needed	Verify control system performs as described in functional description has been completed	ICE, Project team, CM, Plant	Functional description, commissioning plan
Dry clean-up	SM	As Needed	Verify vacuum equipment, pick up large debris, swipe area with magnets has been completed	Project team, sanitation manager	Sanitation plan



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000365

LEVEL 3 -NAFG ENGINEERING Start-Up PROCESS

NON PRODUCT TEST

Tasks	Owner	Required When	Activities	Input	Forms/Tools
Wet clean-up	SM	As Needed	Cleaning with water Rinse the inside of the equipment with water	QA, Sanitation	Sanitation plan
Implement GMP Policy	SM	As Needed	Put in place all food safe GMPs in production areas	Project team, plant	GMP Policy
Test run the equipment	SM	As Needed	Area by area systematically turn on equipment using HMI and test functionality including all interlocks. Including sanitation systems. Test the controls system with water only and no product to balance all pump loops	ICE, Project team and plant	Commissioning plan functional description
Initial SOP validation	SM	As Needed	Operator validate SOP with trainer assistance	Operations	SOP
Initiate Operator training	SM	As Needed	Operator work under the guidance of ICE helping to test and validate automation	ICE, Training specialist, Vendors	Training plan
Charge remaining systems	SM	As Needed	Fill systems with water, steam, chemicals, oil, etc.	Project team, plant, sanitation	Commissioning plan
Finalize instrumentation check out	SM	As Needed	Test and configure all inline instrumentation that requires water, ammonia, steam, etc.	Plant, ICE	Commissioning plan functional description
Alarm testing	SM	As Needed	Verify alarming on all HMIs, fire systems, ammonia systems, etc.	ICE, Project team and plant	Commissioning plan functional description
Extended equipment run	SM	As Needed	Running equipment without product and let it run for an extended period of time. Full Non-product system test using HMI	Project team	Commissioning plan functional description, SOPs
Plant Sanitary Cleanup	SM	As Needed	Perform sanitary clean up	Project Team, Startup Team, Operations	SSOP's
Simplot reporting	SM	As Needed	Verification of commissioning activities Update project status Use communication plan	CM, Project team, Vendors, Contractors	Project reports Verbal updates to ELT/ Manager Email Status

PRODUCT TEST (Non-Saleable)

Tasks	Owner	Required When	Activities	Input	Forms/Tools
Operation alignment	SM	As Needed	Have a meeting with operations to verify product runs	Operations, project team	Commissioning plan Meeting notes
Test run of product	SM	As Needed	Short run of product to test equipment, controls, and transitions	Project team	Commissioning plan
CSAT	SM	As Needed	Verify equipment and control system performance	TL, ICE, Project team, plant	Commissioning plan Contract

LEVEL 3 -NAFG ENGINEERING Start-Up PROCESS

Identify gaps	SM	As Needed	Report PIL items, Punch list items, operational issues, OEM issues, Controls/Programming issues, ect.. To PM	SM, Project team, Plant, ICE, Vendors	PIL, Punch List
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**QUALIFICATION READY
(Start-Up Ready)**

Tasks	Owner	Required When	Activities	Input	Forms/Tools
Commissioning complete	SM	Required	Meeting with project team to determine if commissioning phase is complete. Manage Start-Up production plan	Project team	Commissioning sign-off template



SIMPLOT 000203

LEVEL 3 -NAFG ENGINEERING Start-Up PROCESS

START-UP QUALIFICATION/VERIFICATION

PRODUCT RUNS

Page 6 of 6

Tasks	Owner	Required When	Activities	Input	Forms/Tools
Sanitation	SM	As Needed	Clean with water and chemicals, pass micros	Sanitation manager	Sanitation plan
Production runs	SM	As Needed	Run Start-Up production plan products at specified rates, quality	PPIC, Plant Operations	Production plan Start-Up plan Success criteria
Start-Up reports	SM	As Needed	Verification of Start-Up curve measured against success criteria	Operations, Project team	Success criteria Start-Up plan
Capture optimal line settings	Production Manager	As Needed	Capture and document all optimal line and equipment settings	MMS, Operators, vendors, equipment suppliers, production, black belts	Recipe management
SAT	SM	As Needed	Satisfactory complete and sign off on SAT's	TL, ICE, Project team, plant	Commissioning plan Contract, SAT Protocol

VERIFY SUCCESS CRITERIA

Tasks	Owner	Required When	Activities	Input	Forms/Tools
Verification complete	SM	As Needed	Verify system meets throughput and quality	Plant, PM	Production plan Start plan Success criteria Verification sign off template

END

SIMPLOT 000204

CONFIDENTIAL

000368

Monday November 30, 2015

To: Grand Forks Packaging Upgrade Project Team Members

RE: Communication Plan

EX NO.	10
DATE	5/14/15
ASSOCIATED REPORTING & VIDEO	

This letter outlines the communication plan for all design team members working on the Grand Forks Packaging Upgrade Project. The design team Point of Contact (POC) resources and areas of responsibility are outlined below:

Name	Company	Responsibility	Phone (Cell/Office)	Email Address
Kent Anderson	Simplot	Director of Technical Engineering	C:(208) 890-7147 O:(208) 454-4386	Kent.Anderson@simplot.com
James Turner	Simplot	Director of ICE	C:(208) 841-6640 O:(208) 780-4418	James.Turner@simplot.com
Byron Smith	Simplot	Director of Project Management	C:(208) 241-0913 O:(208) 780-4655	Byron.Smith@simplot.com
Craig Lamberton	Simplot	Director of Packaging	C:(208) 890-0188 O:(208) 454-4682	Craig.Lamberton@simplot.com
Barry Robinson	Simplot	Director of Procurement	C:(208) 867-5716 O:(208) 454-4566	Barry.Robinson@simplot.com
Tal Elseth	Simplot	Plant Operations	C:(701) 215-9039 O:(701) 780-7868	Tal.Elseth@simplot.com
Chris Hams	Simplot	Plant Production	C:(701) 740-3830 O:(701) 780-7849	Chris.Hams@simplot.com
Pete Bruggerman	Simplot	Plant Engineering	C:(701) 740-1530 O:(701) 780-7868	Pete.Bruggerman@simplot.com
Dave Wylot	Simplot	Plant Maintenance	C:(701) 741-0697 O:(701) 780-7843	Dave.Wylot@simplot.com
Dave Brungardt	Simplot	Packaging Maintenance	C:(701) 740-3366 O:(701) 780-7804	David.Brungardt@simplot.com
Harley Leake	Simplot	Palletizing/logistics	C:(701) 739-0427 O:(701) 780-7820	Harley.Leake@simplot.com
Scott Lund	Simplot	Plant Quality Manager	C:(701) 741-0130 O:(701) 780-7818	Scott.Lund@simplot.com
Mark Monday	Jacobs	Project Manager	C:(901) 601-0100	Mark.Monday@jacobs.com
Laura Aristizabal	Simplot	Assistant Project Manager	C:(208) 515-6536 O:(208) 780-4504	Laura.Aristizabal@simplot.com
Tim Veerkamp	Jacobs	Technical Lead	C:(513) 313-8284	Tim.Veerkamp@jacobs.com
John Byrnes	Jacobs	Packaging Engineer	C:(864) 676-5661	John.Byrnes@jacobs.com
Troy Van Nuland	Faith	Electrical Lead	C:(920) 427-2042	Troy.Vannuland@faithtechnologies.com
Erik Knudsen	Simplot	Startup Manager	C:(208) 850-3291 O:(208) xxx-xxxx	Erik.Knudsen@simplot.com
Michael Whiting	Simplot	Packaging Materials Lead	C:(208) 899-6304 O:(208) 780-4278	Michael.Whiting@simplot.com
Kevin Petersen	Simplot	Technical Engineer Utilities	C:(208) 914-5174 O:(208) 454-4651	Kevin.Petersen@simplot.com
Raul Barrios	Simplot	Automation Lead	C:(208) 505-7105 O:(208) 780-4711	Raul.Barrios@simplot.com
Dave Mondry	Simplot	IT Lead	C:(208) 890-5825	Dave.Mondry@simplot.com

			O:(208) 780-4296	
Brad Sanada	Sanada Design	Design Engineer	C:(208) 313-7144	Brad@sanadadesign.com

Design team members have direct responsibility for design area(s) identified above. It is the responsibility of each design team member to identify and include the required team members/resources on communications that pertain to their respective area(s).

Each design team member must ask the question: "Who needs to know this information?" to be sure the correct people are getting the communications. At a minimum the "[Core](#)" team members [highlighted](#) above shall be included in all project communications.

All "[Core](#)" team members need to communicate their travel schedules to Mark Monday to update the master resource staffing plan.

Core Design Team Meetings:

The following meeting structure has been established for the Grand Forks Packaging Upgrade Project.

Tuesday at 2:00pm (MT): **Action List and Technical Review Meeting**

This meeting is for the "[Core](#)" design team members to review action list and technical deliverables.

Wednesday at 1:00pm (MT): **Palletizer Coordination Meeting**

This meeting is for the "[Core](#)" design team members to review palletizer items.

Wednesday at 10:00am (MT): **ELT Update Meeting**

This meeting for the Project Manager to present budget, P-Log, Schedule and engineering progress with ELT, GF Plant Leads and design team leads.

Project Documents and Document Owners:

The following list of project documents are considered to be "living" or "real-time" documents that will be continuously modified throughout the life of the project. As such, the "document owner" shall be the **only** team member with the authority to make any and all modifications/revisions. That being said, various team members may be contributors to the information contained within the document which shall be transmitted to the document owner for inclusion and/or revision.

Document Name	Document Owner	Project Role
Project Cost Estimate	Mark Monday	Project Manager
Budget	Mark Monday	Project Manager
Procurement Log	Mark Monday	Project Manager
Project Schedule	Byron Smith/Mark Monday	Dir of PM/Project Manager
FEL II	Mark Monday	Project Manager
Project Execution Plan	Mark Monday	Project Manager
Action List	Mark Monday	Project Manager

Communication to Senior Management:

Throughout the project design and/or execution phases there can be decision points or new information that can impact the project schedule, budget, or technical performance that shall be communicated to senior management as soon as possible. It is the responsibility of all design team members to notify the technical engineering leads and the project manager of such information so it can be communicated to senior management on a timely basis.

Email:

Email is an excellent tool that provides a convenient way to exchange a variety of information between team members, but it is only partially effective as a “communication” tool. Sending an email doesn’t necessarily mean that communication has taken place so we need to understand its limitations and some inherent pitfalls so we can be as efficient as possible.

Email is least effective when an immediate response is required and other means of communication is recommended. It is a best practice to assume every email requesting a response will require 3 days. We will call this the rule of “3” and if your needs require a more timely response it’s recommended you place a phone call and follow up with an email outlining your conversation to confirm your understanding and documenting the outcome.

All “[Core](#)” design team members should always be copied on all email transmissions regardless of their role or responsibilities. This allows team members to be “up-to-speed” on a variety of design issues which could reveal that the topic may involve others that have not been identified.

Phones:

Outside of “face-to-face” communication, this is by far the best, especially given the location of our design team members. As noted above, when an immediate response is needed, a phone call provides the best communication tool. It’s recommended that a follow up email be sent to the entire team to document any decisions that were made.

On-Line Meetings:

On line meetings are an excellent tool that will be utilized extensively throughout the duration of this project. On-line meeting protocols will require a “Roll Call” at the beginning of each meeting, if you arrive late, please let everyone on the team know that you’ve joined the meeting at the earliest opportune time. These meetings will be held to the scheduled time slot so all team members can actively participate (going over the scheduled time slot is unacceptable). Please turn your cell phones to vibrate and move them away from the conference phone to reduce potential feedback. If you need to take a phone call during a meeting, please step outside of the conference room so the meeting can continue uninterrupted. Likewise, please turn down production radios so they do not create a distraction during the meeting.

Project Documentation:

As with all large projects, the ability of the design and/or project team to collect, share, and transmit information will be critical to the success of the project. To that end, this project will be utilizing the Simplot “Share-file” site for this purpose where **ALL** project documents must be uploaded to the appropriate project directory.

Utilizing sharefile for this purpose requires the design team to understand the inherent limitations of the site.

- 1.) The sharefile site is **NOT** a file management system. Therefore, if a document is downloaded onto your local computer, sharefile does **NOT**:
 - a. Lock the file to prevent usage by others whom have access, or
 - b. Automatically upload the revised document.

Therefore, it is critical to understand that each document downloaded and revised must also be re-uploaded to the site in the appropriate directory.

- 2.) The sharefile site does provide document version tracking, however for this project we will **NOT** be relying on this feature but rather utilizing the file naming protocols outlined further in this document which contain date stamps.
- 3.) Sharefile does provide “Notifications” to users when documents are uploaded to the site.

It is highly recommended that each design team member turn on “notifications” for the directories that access has been granted.

The following directory structure has been created on the Sharefile site to store project documentation. The documents that are to be stored in each directory are identified *[below]*. If there are additional questions where documents should be stored or additional directories required, please contact the Technical Engineering Project Lead and/or Project Manager for direction and/or access. Each team member, internal or external to Simplot, will be granted access to the information that is required to perform their specific project role/responsibility. The Sharefile site can be accessed using the following link:

<https://simplot.sharefile.com/>

1. FEL 1 *[store all FEL 1 documents and template files]*
2. FEL 2 *[store all FEL 2 document and template files in the root directory]*
 - a. Archive *[store all previous document versions]*
 - b. Quotes *[store all equipment quotes and budgetary ROMS]*
 - c. Pictures *[store all drawings and pictures relative to the FEL 2 Process]*
 - d. Correspondence *[store all correspondence with the appropriate filename as outlined in this document e.g. email-from-subject-project-date]*
 - e. Reference Documents *[store all FEL II reference documents]*
3. Execution
 - a. Execution Plan *[store the project execution plan and supporting documents and/or screen shots as needed]*
4. Commissioning
 - a. Archive
5. Startup
 - a. Archive
6. Shared *[this directory will be shared for all vendors, contractors, consultants, etc. so no confidential and/or proprietary information shall be stored here.]*
 - a. Equipment Vendor Drawings
 - b. Commissioning Plan

- c. Design Data
 - d. General Arrangements- GAs
 - e. Mechanical Design Data
 - f. Meeting Notes
 - g. Process & Instrumentation Drawings - P&IDs
 - h. Project Schedule
 - i. Reference Documents
7. GF Packaging Equipment Audit

Access to all project directories will be limited and granted on a "Need-to-Know" basis that will be determined by Simplot's Engineering Leadership Team.

Each design team member will be **required** to turn "notifications" on for the directories for which access has been granted. During the process of uploading a document, an option to "send notifications" will need to be selected so other design team members will be notified of the upload.

File Naming Convention:

There will be a variety of documents throughout the duration of the project and the file naming convention is outlined below:

The project name for file naming will be **GF Packaging Upgrade** and the date code will be **MM-DD-YY** as shown in the example below.

Quote-Bosch-Baggers-GF Packaging Upgrade-03-18-15

The file naming convention is outlined below:

1. RFP, [package ID], [package description], [project name], [date]
2. Quote, [who from], [what for], [project name], [date]
3. Spec, [package ID], [package description], [project name], [date]
4. PO, [PO number], [package ID], [package description], [project name], [date]
5. Picture, [description], [project name], [date]
6. Email, [who from], [subject], [project name], [date]
7. Contract, [package ID], [package description], [project name], [date]
8. RFI, [who from], [subject], [project name], [date]
9. Invoice, [PO number],[vendor invoice number], [package ID], [package description], [project name], [date]
10. SOW, [package ID], [package description], [project name], [date]
11. Correspondence, [who from], [subject], [project name], [date]
12. NDA, [who], [project name], [date]

From: Shaw, Michael
To: [Knudsen, Erik](#)
Subject: JRS-16-07-0001 - Acknowledgment of receipt of complaint
Date: Thursday, July 07, 2016 4:42:00 PM
Attachments: [image001.png](#)
Sensitivity: Confidential

Hello Mr. Knudsen,

I wanted to let you know I am in receipt of your concern about unfair employment practices, received this afternoon. I am in the process of gathering some additional information.

I do want you to know it is a violation of Company policy to retaliate against any employee by taking an adverse employment action against a person for filing a complaint with Simplot's Employee Complaint Department or participating in the investigative process as a witness.

A few follow-up questions:

Who were the HR and Management person(s) who conducted your employment interview and made your initial offer?

When were you told that the job description for your position had changed? Who told you it had changed?

When did you speak with Senior Director Lyle Schook to address this issue?

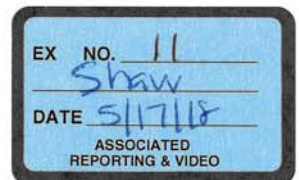
When did you try to escalate this issue through HR and who did you speak with?

You said you were getting a "hard time" from Management for not excelling as a Start Up Manager, can you be more specific about what you are referring to, when this happened, and who is engaging in the behavior?

Kind regards,

Michael

Michael Jay Shaw
Complaint Process Manager
J. R. Simplot Company
999 Main Street
Boise, Idaho 83702
Tel. 208 780-7308 | Fax. 208 780-7433
Cell. 208 867-6532
Michael.Shaw@simplot.com



Simplot: Passion for People, Spirit of Innovation, Respect for Resources

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SIMPLOT 000145

000374

CASE DETAILS

JRS-16-07-0001

CONFIDENTIAL MEMORANDUM

Report Initiated	2016-07-07 16:31 ET	Primary Priority	C
Scheduled Follow-up	2016-07-21	Case Indicator	
Source	Web Submission	Current Status	New 2016-07-07
Awareness Resource	Other	Case Opened	
Language	English	Case Closed	
Documented by	WEBALLEGATIONSUBMIT	Days Open	N/A
		Case Due Date	2016-07-07

Allegation	Class	Priority	Primary
Unfair Employment Practices	Employee Relations	C	Yes

Location	Location Geography	Location Function
Location Provided by Caller Caldwell - Engineering		

Parties Involved	Party Type	Job title	Description
Anonymous Caller	Caller		
Lyle Schook Other (208) 972-0119 lyle.schook@simplot.com	Subject	Senior Director Engineering	
Kent Anderson Other (208) 780-4386 kent.anderson@simplot.com	Subject	Director Technical Engineering	
Jason Schwark Other (989) 277.3990 jason.schwark@simplot.com	Witness	Senior Packaging Engineer	
Tim Lalley Other (208) 789.7778 timothy.lalley@simplot.com	Witness	Senior Packaging Engineer	
Sue Cooper Other (208) 780-8425 susan.cooper@simplot.com	Witness	Purchasing Manager 5	

Issue Summary

Misrepresenting a job description to a perspective/new employee.

Issue Details

SIMPLOT 000146

000375

I'm a new employee and recently interviewed/accepted a role within the food group engineering team as "packaging engineer". My name is Erik Knudsen. I left a good company to further my career in this role with Simplot. However, Simplot changed the job description before I started and without informing me. My role is 50% "packaging engineer" and 50% "start up manager". I am extremely dismayed that management changed the job description before I had a chance to decide if it was the right job for me. Had I known what the job was I wouldn't have accepted it. I spoke directly to my senior director about it and he admitted to me that he never intended for me to work strictly as a packaging engineer (he didn't tell me that at the time). I've done my own research on the topic and have learned that this is fraudulent, and I have a good suit against the company (according to my lawyer) with lots of documentation. I am really struggling with my predicament and feel helpless. I don't know what to do. I don't like the drama, and just want to contribute in the role I interviewed for. I've tried to escalate the issue through HR (up to VP level) but have not received an answer. Further, my management is giving me an extremely hard time for not excelling in the role of "start up manager", but this is understandable as I never wanted it in the first place. I've been warned not to bring the topic up again, and nearly got fired the last time I did. This has negatively affected the entire packaging engineering team in terms of trust in our management.

Two files are attached. 1)Job description I interviewed for and 2)Roles and responsibilities of the role I didn't interview for. As you can see, they are vastly different jobs.

NAVEX Global Comments

At least one file was attached to this report during submission. File attachments are only accessible via the Global Compliance web system. If you do not have a web account, contact your program administrator.

Additional Questions

Answers

Were other people treated the same way?	I do not know
What is your involvement in the issue?	It happened to me
Is this an ongoing issue?	Yes
What is the date of the most recent occurrence?	N/A
Have you reported this issue to anyone within the organization?	Yes
Do you believe that anyone has taken steps to hide this issue?	Yes
Where did the issue occur?	At a location of J.R. Simplot Company
What is your relationship to J.R. Simplot Company?	Employee

Communication with Reporter

No Communications found for this call report.

Other Background Details

Jurisdictional

Complaint Initiation

Assignee	Assignment Type	Complete/Removed	Date Assigned	Assigner
No Assignment found for this call report.				

Assignment Notes	Date Entered	Entered By
No Case Assignment Notes found for this call report.		

Investigation Notes

SIMPLOT 000147

Date Entered Entered By

No Case Investigation Notes found for this call report.

Other Investigation Details

Date of Incident N/A

Monetary Field 1: Currency

Monetary Field 2: Currency

Monetary Field 3: Currency

Case Indicator

Legally Privileged
Reportable to Audit Committee
Significant
Up the Ladder

Related Case Same Case Date Added Added by

No Related case found for this call report.

Resolution Details

No Resolution found for this call report.

Executive Summary

Other Resolution Details

Deciding Official
Deciding Official Ruling
Jurisdictional Basis
Debrief Completed
Report to Management

Attachments

File Name	Date Added	Uploaded By
Senior Packaging Engineer.docx	2016-07-07 17:31 ET	webAllegationSubmit
Startup Manager R&R - NAFG SUP L1-L2-L3 - 5-26-16r2.xlsx	2016-07-07 17:31 ET	webAllegationSubmit

*Client agrees and understands that NAVEX Global neither warrants, vouches for, nor authenticates the reliability of the allegations provided in this report. Client agrees that it shall have the sole responsibility for investigating or otherwise evaluating these allegations and other information provided and to comply with all local, state and federal laws pertaining to the investigation and protection of such information, as well as the protection of all rights of any person or persons accused of any wrongdoing.

SIMPLOT 000148

000377

CASE DETAILS

JRS-16-07-0001

CONFIDENTIAL MEMORANDUM

Report Initiated	2016-07-07 16:31 ET	Primary Priority	C
Scheduled Follow-up	2016-07-21	Case Indicator	
Source	Web Submission	Current Status	Closed 2016-09-06
Awareness Resource	Other	Case Opened	2016-07-07
Language	English	Case Closed	2016-09-06
Documented by	WEBALLEGATIONSUBMIT	Days Open	61 days
		Case Due Date	2016-09-13

Allegation	Class	Priority	Primary
Unfair Employment Practices	Employee Relations	C	Yes

Location	Location Geography	Location Function
Location Provided by Caller Caldwell - Engineering		

Parties Involved	Party Type	Job Title	Description
Anonymous Caller	Caller		
Lyle Schook Other (208) 972-0119 lyle.schook@simplot.com	Subject	Senior Director Engineering	
Kent Anderson Other (208) 780-4386 kent.anderson@simplot.com	Subject	Director Technical Engineering	
Jason Schwark Other (989) 277.3990 jason.schwark@simplot.com	Witness	Senior Packaging Engineer	
Tim Lalley Other (208) 789.7778 timothy.lalley@simplot.com	Witness	Senior Packaging Engineer	
Sue Cooper Other (208) 780-8425 susan.cooper@simplot.com	Witness	Purchasing Manager 5	

Issue Summary

Misrepresenting a job description to a perspective/new employee.

Issue Details

SIMPLOT 000149

000378

I'm a new employee and recently interviewed/accepted a role within the food group engineering team as "packaging engineer". My name is Erik Knudsen. I left a good company to further my career in this role with Simplot. However, Simplot changed the job description before I started and without informing me. My role is 50% "packaging engineer" and 50% "start up manager". I am extremely dismayed that management changed the job description before I had a chance to decide if it was the right job for me. Had I known what the job was I wouldn't have accepted it. I spoke directly to my senior director about it and he admitted to me that he never intended for me to work strictly as a packaging engineer (he didn't tell me that at the time). I've done my own research on the topic and have learned that this is fraudulent, and I have a good suit against the company (according to my lawyer) with lots of documentation. I am really struggling with my predicament and feel helpless. I don't know what to do. I don't like the drama, and just want to contribute in the role I interviewed for. I've tried to escalate the issue through HR (up to VP level) but have not received an answer. Further, my management is giving me an extremely hard time for not excelling in the role of "start up manager", but this is understandable as I never wanted it in the first place. I've been warned not to bring the topic up again, and nearly got fired the last time I did. This has negatively affected the entire packaging engineering team in terms of trust in our management.

Two files are attached. 1)Job description I interviewed for and 2)Roles and responsibilities of the role I didn't interview for. As you can see, they are vastly different jobs.

NAVEX Global Comments

At least one file was attached to this report during submission. File attachments are only accessible via the Global Compliance web system. If you do not have a web account, contact your program administrator.

Additional Questions	Answers
Were other people treated the same way?	I do not know
What is your involvement in the issue?	It happened to me
Is this an ongoing issue?	Yes
What is the date of the most recent occurrence?	N/A
Have you reported this issue to anyone within the organization?	Yes
Do you believe that anyone has taken steps to hide this issue?	Yes
Where did the issue occur?	At a location of J.R. Simplot Company
What is your relationship to J.R. Simplot Company?	Employee

Communication with Reporter

Type	Date Entered	Entered By	Reply Given to Reporter	Language
Reply	2016-07-07 18:47 ET	Michael J Shaw	No	English
Initial				

Hello Mr. Knudsen,

I wanted to let you know I am in receipt of your concern about unfair employment practices, received this afternoon. I am in the process of gathering some additional information.

I do want you to know it is a violation of Company policy to retaliate against any employee by taking an adverse employment action against a person for filing a complaint with Simplot's Employee Complaint Department or participating in the investigative process as a witness.

A few follow-up questions:

Who were the HR and Management person(s) who conducted your employment interview and made your initial offer?

When were you told that the job description for your position had changed? Who told you it had changed?

When did you speak with Senior Director Lyle Schook to address this issue?

When did you try to escalate this issue through HR and who did you speak with?

You said you were getting a "hard time" from Management for not excelling as a Start Up Manager, can you be more specific about what you are referring to, when this happened, and who is engaging in the behavior?

Kind regards,

Michael

Michael Jay Shaw
 Complaint Process Manager
 J.R. Simplot Company
 999 Main Street
 Boise, Idaho 83702
 (208) 389-7308 – Office
 (208) 867-6532 – Cell
 (208) 389-7433 – Fax
 Michael.Shaw@simplot.com

Simplot: Passion for People, Spirit of Innovation, Respect for Resources

Other Background Details

**Jurisdictional
 Complaint Initiation**

Assignee	Assignment Type	Complete/Removed	Date Assigned	Assigner
Michael J Shaw	Case Manager	Complete	2016-09-06 15:55 ET	Michael J Shaw

Assignment Notes	Date Entered	Entered By
Discussed with Kayce McEwan 7/8/16, Kayce indicated she would follow up with Erik to obtain additional information.	2016-07-11 16:53 ET	Michael J Shaw

Investigation Notes

SIMPLOT 000151

000380

Date Entered **Entered By**

No Case Investigation Notes found for this call report.

Other Investigation Details

Date of Incident N/A

Monetary Field 1: **Currency**

Monetary Field 2: **Currency**

Monetary Field 3: **Currency**

Case Indicator

Legally Privileged
 Reportable to Audit Committee
 Significant
 Up the Ladder

Related Case **Same Case** **Date Added** **Added by**

No Related case found for this call report.

Resolution Details

Case Action Taken Engaged Human Resources

Case Action Summary Forwarded to Management for further discretionary action.

Disposition Case Unsubstantiated

Disposition Summary Not investigated by ECD.
Executive Summary

Other Resolution Details

Deciding Official
Deciding Official Ruling
Jurisdictional Basis Non-jurisdictional

Debrief Completed
Report to Management

Attachments

File Name	Date Added	Uploaded By
Senior Packaging Engineer.docx	2016-07-07 17:31 ET	webAllegationSubmit
Startup Manager R&R - NAFG SUP L1-L2-L3 - 5-26-16r2.xlsx	2016-07-07 17:31 ET	webAllegationSubmit

SIMPLOT 000152

000381

*Client agrees and understands that NAVEX Global neither warrants, vouches for, nor authenticates the reliability of the allegations provided in this report. Client agrees that it shall have the sole responsibility for investigating or otherwise evaluating these allegations and other information provided and to comply with all local, state and federal laws pertaining to the investigation and protection of such information, as well as the protection of all rights of any person or persons accused of any wrongdoing.

CASE DETAILS

JRS-16-07-0001

CONFIDENTIAL MEMORANDUM

Report Initiated	2016-07-07 16:31 ET	Primary Priority	C
Scheduled Follow-up	2016-07-21	Case Indicator	
Source	Web Submission	Current Status	Open 2016-07-07
Awareness Resource	Other	Case Opened	2016-07-07
Language	English	Case Closed	
Documented by	WEBALLEGATIONSUBMIT	Days Open	4 days
		Case Due Date	2016-08-11

Allegation	Class	Priority	Primary
Unfair Employment Practices	Employee Relations	C	Yes

Location	Location Geography	Location Function
Location Provided by Caller Caldwell - Engineering		

Parties Involved	Party Type	Job title	Description
Anonymous Caller	Caller		
Lyle Schook Other (208) 972-0119 lyle.schook@simplot.com	Subject	Senior Director Engineering	
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Sue Cooper Other (208) 780-8425 susan.cooper@simplot.com	Witness	Purchasing Manager 5	

Issue Summary

Misrepresenting a job description to a perspective/new employee.

Issue Details

SIMPLOT 000154

000383

I'm a new employee and recently interviewed/accepted a role within the food group engineering team as "packaging engineer". My name is Erik Knudsen. I left a good company to further my career in this role with Simplot. However, Simplot changed the job description before I started and without informing me. My role is 50% "packaging engineer" and 50% "start up manager". I am extremely dismayed that management changed the job description before I had a chance to decide if it was the right job for me. Had I known what the job was I wouldn't have accepted it. I spoke directly to my senior director about it and he admitted to me that he never intended for me to work strictly as a packaging engineer (he didn't tell me that at the time). I've done my own research on the topic and have learned that this is fraudulent, and I have a good suit against the company (according to my lawyer) with lots of documentation. I am really struggling with my predicament and feel helpless. I don't know what to do. I don't like the drama, and just want to contribute in the role I interviewed for. I've tried to escalate the issue through HR (up to VP level) but have not received an answer. Further, my management is giving me an extremely hard time for not excelling in the role of "start up manager", but this is understandable as I never wanted it in the first place. I've been warned not to bring the topic up again, and nearly got fired the last time I did. This has negatively affected the entire packaging engineering team in terms of trust in our management.

Two files are attached. 1)Job description I interviewed for and 2)Roles and responsibilities of the role I didn't interview for. As you can see, they are vastly different jobs.

NAVEX Global Comments

At least one file was attached to this report during submission. File attachments are only accessible via the Global Compliance web system. If you do not have a web account, contact your program administrator.

Additional Questions

Answers

Were other people treated the same way?	I do not know
What is your involvement in the issue?	It happened to me
Is this an ongoing issue?	Yes
What is the date of the most recent occurrence?	N/A
Have you reported this issue to anyone within the organization?	Yes
Do you believe that anyone has taken steps to hide this issue?	Yes
Where did the issue occur?	At a location of J.R. Simplot Company
What is your relationship to J.R. Simplot Company?	Employee

Communication with Reporter

Type	Date Entered	Entered By	Reply Given to Reporter	Language
Reply	2016-07-07 18:47 ET	Michael J Shaw	No	English
Initial				

Hello Mr. Knudsen,

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I do want you to know it is a violation of Company policy to retaliate against any employee by taking an adverse employment action against a person for filing a complaint with Simplot's Employee Complaint Department or participating in the investigative process as a witness.

A few follow-up questions:

Who were the HR and Management person(s) who conducted your employment interview and made your initial offer?

When were you told that the job description for your position had changed? Who told you it had changed?

When did you speak with Senior Director Lyle Schook to address this issue?

When did you try to escalate this issue through HR and who did you speak with?

You said you were getting a "hard time" from Management for not excelling as a Start Up Manager, can you be more specific about what you are referring to, when this happened, and who is engaging in the behavior?

Kind regards,

Michael

Michael Jay Shaw
 Complaint Process Manager
 J.R. Simplot Company
 999 Main Street
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 (208) 389-7308 – Office
 (208) 867-6532 – Cell
 (208) 389-7433 – Fax
 Michael.Shaw@simplot.com

Simplot: Passion for People, Spirit of Innovation, Respect for Resources

Other Background Details

**Jurisdictional
 Complaint Initiation**

Assignee	Assignment Type	Complete/Removed	Date Assigned	Assigner
Michael J Shaw	Case Manager		2016-07-11 16:53 ET	Michael J Shaw

Assignment Notes	Date Entered	Entered By
Discussed with Kayce McEwan 7/8/16, Kayce indicated she would follow up with Erik to obtain additional information.	2016-07-11 16:53 ET	Michael J Shaw

Investigation Notes
 Date Entered

Entered By

SIMPLOT 000156

000385

No Case Investigation Notes found for this call report.

Other Investigation Details

Date of Incident N/A

Monetary Field 1: Currency

Monetary Field 2: Currency

Monetary Field 3: Currency

Case Indicator

Legally Privileged
 Reportable to Audit Committee
 Significant
 Up the Ladder

Related Case	Same Case	Date Added	Added by
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No Related case found for this call report.

Resolution Details

No Resolution found for this call report.
Executive Summary

Other Resolution Details

Deciding Official
 Deciding Official Ruling
 Jurisdictional Basis
 Debrief Completed
 Report to Management

Attachments

File Name	Date Added	Uploaded By
Senior Packaging Engineer.docx	2016-07-07 17:31 ET	webAllegationSubmit
Startup Manager R&R - NAFG SUP L1-L2-L3 - 5-26-16r2.xlsx	2016-07-07 17:31 ET	webAllegationSubmit

*Client agrees and understands that NAVEX Global neither warrants, vouches for, nor authenticates the reliability of the allegations provided in this report. Client agrees that it shall have the sole responsibility for investigating or otherwise evaluating these allegations and other information provided and to comply with all local, state and federal laws pertaining to the investigation and protection of such information, as well as the protection of all rights of any person or persons accused of any wrongdoing.

-On first day, found out the boss I interviewed with was leaving, I'd report to Kent and the packaging engineering team would be split into two with different managers.

-On first day, informed that the job I interviewed for was only going to be half time, and the other half would be a job I didn't interview for.

-I attended several meetings in Grand Forks. As I learned more, I became concerned that I wasn't the best for the role, and realized my experience didn't match well. Also became concerned about learning two very different jobs in a new field at the same time.

-Talked to Kent about my concerns. Kent assured me that I have support, don't worry about it, this is just for exposure, I have a whole team working the details. He also asked me if I've had two jobs before. No one else in engineering is working two jobs, why the new guy?

-TELL JT STORY – pacing, taking a picture of me sitting in his seat, scattering my stuff after going to the restroom.

-I received a review/evaluation very early for a new hire. I had only met with Kent twice before my evaluation. There was a lot of negative feedback given verbally. I remember being extremely disappointed, as if Kent had jumped to a lot of conclusions about me before I had ever had a chance to do anything. Specifically he said that I was trying too hard.

-In first month, as an introduction, I shared a list of my strengths with Kent to help him understand me. Kent wanted to talk about how these strengths can turn into weaknesses. Huh? How could such a positive and fun topic, something that energizes me turn into a negative conversation? I was baffled.

-After ~2 months I started meeting with Byron to get his advice on this start-up manager role and for him to mentor me (Kent and I never seemed to be able to meet, travel, etc. We had gone weeks and weeks and weeks without a meeting) . Byron and I thought it'd be good to start a meeting with the Grand Forks operations team to start mapping out a plan. I informed the ELT about what we thought we'd do. Kent and Lyle were there. At some point later, Kent decided that we needed to have a strategy for start-up approved by the ELT (Lyle), I was told that I should have checked with Kent first, and I was told to cancel the meeting. Lyle was angry, Kent was angry, Byron got into trouble and it turned into a big ordeal (I still have no idea why). I got into trouble over it, it was reflected in my review (verbally), but also Kent apologized to me for the situation turning so ugly.

-After this a team was selected to start meeting (2-3 hour clips) to map out a start-up engineering work flow. The task was to develop a plan for how we'd go about managing the start-up process. This is when the topic of my lack of engagement started coming up. I was really struggling to help map out a process for something I'd never been a part of before. I also couldn't do any work on the actual grand forks project. Equipment installation is not in my background. These meetings lasted months and months. Pressure for me to contribute something started during this time, but I expressed that I just didn't have the background to contribute anything meaningful.

-JT – In a meeting “do you even know what we're talking about?” I had to say no and that I hadn't been through an equipment start-up and I was having trouble following the conversation. He told me that I needed to study the material at my desk so I'd better understand. Very embarrassing.

-Jason and Tim were disappointed that their resource was taken away. This was brought up in one staff meeting with Lyle (Jason, me, Lyle and Kent attended)- Lyle informed us that we didn't need to worry, he can always find a replacement start-up manager, but not another packaging engineer if workload got to be too much. Our thinking was that this start-up role wouldn't last and they'd find someone else.

-After much discussion and the help of Jason and Tim (Tim and Jason could see what the start-up manager role was now that we had better documentation), I was informed that the start-up manager roll would be reduced to just "training PM"; Kent admitted that it was all probably too much and unreasonable to ask me to take on all of it. But I was asked to keep title of start-up manager, and that these roles would be discussed at a later point. I was thinking a lot had been taken off my plate and was relieved. I was still being invited to lots of start-up meetings. It didn't make sense, but I didn't want to argue further since there seemed to be a lot of tension around the topic.

-After this, I started getting even more feedback that I wasn't showing enough involvement/leadership/engagement etc. But I was only focused on training (or so I thought). Through all of this, I am given zero direction of what I should be doing. It seems like the only expectation is that I sit in meetings and give meaningless contributions?!?!? This isn't how I operate, but it is seen to management as a weakness. Talking openly (content doesn't matter) and thinking quickly in big groups seems like what they think leadership is.

-Jason informed me that Lyle was very disappointed in my performance around start-up manager. Jason told Lyle that I was coming along just fine with packaging, but he recommended I talk to Lyle. It was embarrassing that Lyle was talking negatively about me to my coworker. I talked to Lyle about his/my concerns, that it wasn't that I had lack of engagement, it was that I just didn't know how to contribute to conversations. **He also informed me that he never intended for me to be a full time packaging engineer from the start. This is when I started talking to lawyers.**

June
-In several meetings I was asked what my role was, and I made it obvious that I wasn't sure if I had all start-up manager responsibilities. Kent then informed me that "things had changed" and that I WAS the start up manager. He apologized for not having told me that things had changed. I realized that months had gone by where the entire team (and Lyle?) thought I was the start-up manager, while I was thinking I wasn't.

-At an offsite – Lyle told the team that he had chewed Byron's ass out so much he was surprised he had an ass left, there wasn't much laughter after that. In the beginning, we were asked what we wanted out of the offsite. There was lots of negativity, so I asked that we review something that had gone well to use as an example. Lyle immediately shut this idea down and went into a story about how people don't change by studying what went well, it's only through study the wrong (and something about emotion distress) that makes people change.

-At the same offsite, everyone had to state their roles, and then mention what they thought they needed to improve on. The rest of the team was then asked to evaluate each individual and give their feedback (mostly negative). We were then asked to email to Byron and our managers the list of things we needed to improve on. We needed to state in the email that we'd pledge to work on these items. This is weird, and it was embarrassing.

-In one 1x1 Kent showed enormous disrespect for Tim and Jason (and my profession) by telling me that they weren't going anywhere in their careers and that engineering was a better place to be with more opportunity. He said he was sick and tired of Jason "crying wolf" that the PDM (Oracle) project was going to consume a lot of time for packaging engineering, and that he didn't think they needed my help full time. He also complained about the hours they work. He claimed they come in at 9 and leave at 4, but in actuality I know they work hard and have to be in many different places. Kent was visibly upset, raised voice, Tim overheard it, was walking by office constantly. It was very awkward. I didn't defend them to keep things calm. So I have to work for a guy who seems to not understand what the packaging role is, or have any desire to learn it, or have respect for it.

-In another meeting, I told Kent that I felt Simplot had been dishonest with me during the hiring process. Kent told me that Simplot thought I was dishonest because I had claimed to have leadership skills, but that they haven't seen any leadership skills from me. This is when things really started heating up with me and Kent. I had reached the point where I had to speak up about the situation.

-After this, I sent a note to Kayce. I had had enough and needed help.

-The next day, Kent came in my office upset again (I don't remember why), at which point I said I'm tired of getting my butt chewed out ALL THE TIME. I told him I felt like all he did was criticize me and that he never once gave me a compliment. He then said that if I think this is a butt chewing, then I need to grow a set. After that I lost my temper and told him I wouldn't do this start-up manager role any longer. I later said I'd do it anyway.

-The next day Kent reported me to Laura, told me that if I ever acted out again I'd be fired.

-Laura had us go through a disc profile on how we should work together. I went along with it, but the issue was significantly deeper.

-Soon after this, I reached out to the hotline for help.

-The next day, Kent started questioning my calendar and where I was through text. I sent a screenshot of what it looked like on my side via email. After that he sent an strange email, probing why I was at FG when we've talked about it so many times. I defended myself. He then admitted "Sorry, Erik, but I just saw this email. I didn't see it come through yesterday. I can see why you maybe felt that I was continuing to dig." I thought the issue was over, but instead he scheduled an 8:00 meeting for Monday, where I got chewed out yet again. He also chewed me out on email and copied Lyle and Laura, along with an "improvement plan" for me (not mentioning his apology to me about understanding where I was coming from). I can pick this improvement plan apart.

-Since the beginning, Tim and Jason have apologized profusely to me, that they've never seen anything like this, that this isn't how it was intended to be, this wasn't how things were before I got there, and that they had done everything they could to help get me to the role I was hired for. However, they are out of ideas and don't know how to help anymore. Fast forward to yesterday. Lyle showed them the email I sent to Kent regarding Kent micromanaging me. Something happened with the conversation with Lyle - I believe they were instructed not to be a part of my business with Kent. It feels like an attempt to further isolate me. I now have no one to talk to about how to make the situation better. These two were supposed to be my team mates, but now there's a trust issue and a wall between us.

Shaw, Michael

From: McEwan, Kayce
Sent: Friday, July 08, 2016 12:08 PM
To: Knudsen, Erik
Cc: Shaw, Michael
Subject: RE: help request

Erik, sorry for the delay in getting back with you. Michael Shaw also indicated you reached out through our hotline, so we've agreed it would be best for me to follow-up with you.

Do you have some time next week to meet and discuss in more detail? I am open Monday afternoon and Tuesday morning, and happy to come your direction, or meet you somewhere other than your office, if that's more convenient.

Can you let me know when and where might be convenient for you?

Thanks, Erik.

-Kayce

From: Knudsen, Erik
Sent: Tuesday, June 21, 2016 3:55 PM
To: McEwan, Kayce <Kayce.McEwan@simplot.com>
Subject: help request

Hi Kayce,

I'm a new engineer (7 months) working in Lyle Shook's organization and come from Hewlett Packard in Boise. It's nice to meet you.

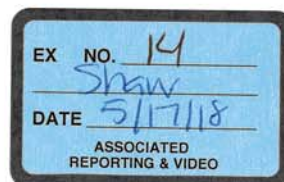
I'm in a tough situation and am not sure how to go about getting help. I thought it would be best to start with you, and am hoping to keep this confidential for now. I desperately want to fix the unfortunate situation I'm in and am seeking advice on how to do it. I also want to give feedback on my experiences as a new hire.

SUMMARY

-In November, I applied/interviewed/accepted an offer for a packaging engineering role in Caldwell. The job description and announcement is attached. HP had been a great employer for 14 years, but I thought a change would be good for me. Simplot sold me on the packaging engineering role, and that's why I chose to leave my former employer. I was so excited to start a new career in the food industry, working for a local company that I highly respected.

-On my first day, I was informed that my role had changed. I would now be doing 50% packaging engineering and 50% "Start-up Manager". I was very surprised about the start-up manager role as there was absolutely no mention of this before I took the job. I didn't know what it would entail, but I focused on being positive. I felt tricked, but quickly tried to burry any negative thoughts about it. Negativity isn't good, and I wanted to make a good first impression.

-After 7 months (today), the new packaging engineering job is going well. The transition from the tech industry to food has been the exact type of challenge I had hoped for. There was a good training plan and I have mentors to help get me up to speed. I also really enjoy working with the business teams at FGHQ. I can foresee a terrific career with Simplot either in packaging or on a business team. Product management has always been an interest area.



SIMPLOT 000126

000390

-The new startup manager job has been nothing short of a disaster. The engineering team has never had this type of role before, and the job is still being defined. See the attached spreadsheet (sheet 3) for tasks involved in the role. At HP, I had experience in starting up new printer manufacturing lines. That's why I was asked to take on this new role. However, LaserJet printer and fry manufacturing are in no way similar and this is causing large problems. I'm expected to provide leadership for the new packaging equipment upgrade startup in Grand Forks, but have zero experience with this type of work AND I'm trying to learn another job at the same time.

-The feedback I've been getting for this startup manager role has been poor. On a regular basis, I get 'chewed out' for lack of engagement. I've tried to explain that I have no background in equipment installation or equipment startups, so it isn't that I'm not trying. I'm not clear on what the expectations are or even what questions to ask, and I'm trying to learn another new job at the same time. In one of many heated discussions with my manager (Kent Andersen), we began discussing whether I was a good fit for Simplot. As I fear getting fired, I learned that this all depends on my performance as startup manager and not the job I interviewed for.

-In the same heated discussion yesterday, I told my manager that I never would have left HP had Simplot been honest with me from the beginning. It's the truth - I have no interest, background or aspirations in the startup manager role. As a new hire, why is it my obligation to fill a job I never applied for? And why is my job on the line if I don't take it? Does Simplot expect me to be motivated to excel in a job that I was tricked into?

-Something has to give here. It's obvious that the 'startup manager role' is more important to engineering management than the 'packaging engineering role'. I already have accomplishments in packaging, but they haven't scored me any points. [My manager doesn't manage the packaging engineering team, another source for problems.] I'm going to have to invest significantly more time in the startup role to have a shot at pulling this off, and therefore am thinking of trying to hand off most of my packaging engineering responsibilities. I'm not sure if that will work either. Based on experience in the engineering team, I'll get chewed out for this idea as well. 'Chewing people out' is a standard affair in engineering.

-I'm supporting a family and we have rooted ourselves firmly in Boise. My career is so specialized that if Simplot doesn't work out, we will most likely have to move. This all could have been avoided had Simplot been honest with me from the start.

QUESTIONS

-Simplot misrepresented a job opening, enticed me to leave a career with a company for which I had 14 years of service, and I'm now at risk of losing my job completely. Simplot must have standards of business conduct, and surely this situation doesn't align. Am I wrong in my thinking? How would I go about making this situation better without ticking off my management? I fear that going to you with this issue will be the beginning of the end for me, and I don't want that to happen.

-Are there any checks and balances to assure this type of thing doesn't happen to others?

-Is it normal to ask a new hire to learn two completely separate jobs? Obviously every job has variations with lots of different projects/tasks/etc. This is different. I have two completely separate jobs with no overlap. Management claims that one will help the other, but that's a facade. They need a startup manager, and my impression is that they don't have the money to hire someone.

Thanks for your time. I want to have a successful career here, and am running out of options. I hope you can help.

Erik

July 11, 2016

Improvement Plan
Erik Knudsen

1. Improved, more frequent communications
 - a. Take a more proactive approach from the employee side, not just depending on manager initiating the communication
 - b. Share deliverables with manager, including intermediate check-ins as appropriate
 - c. Communicate and verbalize approach on deliverables
 - d. Inform manager the tasks being worked on, and how long it takes
 - e. Inform manager when not going to be in the office
2. Take the positive intent, and don't assume things without communication
 - a. Call or talk in person to get a mutual understanding
 - b. Seek to understand before reacting
3. Be more participative and engaged on project teams
 - a. Show interaction in team meetings
 - b. Show initiative and activeness as the start-up manager
 - c. Show engagement by asking questions, and sharing with the team your approach and deliverables
4. Competencies to work on (with "skilled" definitions from FYI book):
 - a. Planning (and share these plans)
 - i. Accurately scopes out length and difficulty of tasks and projects
 - ii. Sets objectives and goals
 - iii. Breaks down work into the process steps
 - iv. Develops schedules and task/people assignments
 - v. Anticipates and adjusts for problems and roadblocks
 - vi. Measure performance against goals
 - vii. Evaluates results
 - b. Learning on the fly
 - i. Learns quickly when facing new problems
 - ii. A relentless and versatile learner
 - iii. Open to change
 - iv. Analyzes both successes and failures for clues to improvement
 - v. Experiments and will try anything to find solutions
 - vi. Enjoys the challenge of unfamiliar tasks
 - vii. Quickly grasps the essence and the underlying structure of anything

EX NO.	116
DATE	5/17/18
ASSOCIATED REPORTING & VIDEO	

1

SIMPLOT 000161

000392

Rebecca Nichols

Process Training Specialist at J.R. Simplot Company



6/5/2015

Senior Packaging Engineer

Hello Eric,

The JR Simplot Company currently has a Sr. Packaging Engineer position available in the Boise Area. If you are interested you can find more information at simplot.com/careers (JOB ID 2664).

Thanks,
Becca

Becca Nichols
Recruiter- Food Group
J. R. Simplot Company
[Tel. \(208\) 780-7241](tel:(208)780-7241) | [Cell. \(208\) 577-8705](tel:(208)577-8705)
becca.nichols@simplot.com

Start your reply by choosing one

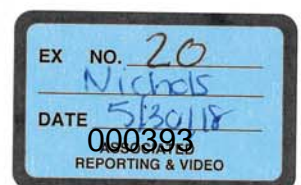
Interested... >

Maybe later... >

No thanks... >

KNUDSEN000001

Write a message or attach a file





Erika Birch <erika@utahjobjustice.com>

Fwd: J.R. Simplot Company - Interview

1 message

Erik Knudsen <erik.knudsen12@gmail.com>

Tue, Aug 16, 2016 at 11:00 AM

To: Erika Birch <erika@idahojobjustice.com>, Sarah Simmons <sarah@idahojobjustice.com>

Redacted - attorney client privilege

----- Forwarded message -----

From: **Nichols, Becca** <rebecca.nichols@simplot.com>

Date: Tue, Oct 13, 2015 at 11:10 AM

Subject: J.R. Simplot Company - Interview

To: "erik.knudsen12@gmail.com" <erik.knudsen12@gmail.com>

Erik,

I am sending you this confirmation regarding the Sr. Packaging Engineer position you have applied for.

Please respond back to this email to confirm the scheduled interview.

Idaho Plant Tour-

When: Thursday, October 22, 2015 @ 3:00 p.m. (Mountain Time)

Where: Simplot Engineering Building

16768 Simplot Blvd

Caldwell, ID 83605

Interview One

Interview Panel:

Laura Nessen: HR Manager

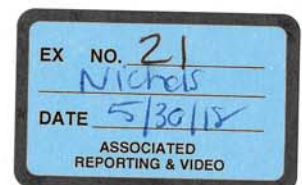
Timothy Lalley: Sr. Packaging Engineer

Sue Cooper: Purchasing Manager

Jason Schwark: Sr. Packaging Engineer

Craig Lamberton: Director Packaging Engineering

What to Expect:



KNUDSEN000056

You are scheduled to meet with the interview panel for 45 minutes to one hour. The panel will ask you several technical questions and some behavioral based questions. They likely give you time at the end of the interview for any questions you may have.

Interview Two

Interview Panel:

Laura Nessen: HR Manager

Lyle Schook: Senior Director Engineering

Kent Anderson: Director Technical Engineering

Craig Lamberton: Director Packaging Engineering

What to Expect:

You are scheduled to meet with the interview panel for 45 minutes to one hour. The panel will ask you several behavioral based questions and some technical questions. They likely give you time at the end of the interview for any questions you may have.

Background Consent: Please fill out the attached background consent form through the signature line. Once completed please return back to me via email. We must have this in order to consider you for the position

I have attached a job description for your review. Please let me know if you have any questions or concerns before or after your interview. You can reach me at 208-577-8705 or 208-780-7241.

Becca Nichols

Recruiter- Food Group

J. R. Simplot Company

Tel. (208) 780-7241 | Cell. (208) 577-8705

becca.nichols@simplot.com



2 attachments



Background Consent Form.pdf

177K

KNUDSEN000057

11/2/2017

Strindberg & Scholnick Mail - Fwd: J.R. Simplot Company - Interview



Senior Packaging Engineer 2828.docx
29K

KNUDSEN000058

<https://mail.google.com/mail/u/0/?ui=2&ik=cc84ef211b&jsver=ZOgYGgvFjfY.en.&view=pt&q=erik.knudsen12%40gmail.com%20cooper&qs=104594c...> 3/3

000396

Engineer 5 (Food Group - Boise, ID)(Job Id 3388)

Location: Idaho

Post Date: 06/30/2016

Category: Engineering

Description

Engineer 5 (Food Group – Boise, ID)

The J.R. Simplot Company is a diverse, privately held organization with roots firmly planted in agriculture and agriculture-related businesses. These endeavors have been around for centuries and will continue to be a vital part of the global economy. **We currently have a position available in Engineering - Boise, ID.**

Summary:

This position supports production efforts of the company/group by providing technical support to plant operating and maintenance department to work or manage projects to develop new or existing equipment, processes, instrumentation, and raw materials.

Responsibilities:

- Leads the engineering and development of capital improvement projects in the food industry. Activities to be led or performed may include: equipment specifications, bidding & evaluation, assembling construction bid packages, cost estimating, gaining alignment with operations and key stakeholders, assembling cross-functional teams, and providing technical oversight to construction & start-up activities.
- Assesses and aligns with key stakeholders the feasibility and soundness of proposed engineering evaluation tests, products, or equipment solutions
- Leads and is accountable for the development and evaluation of plans and success criteria (often by others) to ensure that project and/or system performance meets business objectives for a variety of projects and activities that are usually carried out by others.
- May lead the development of new or modified components, products, manufacturing processes, materials and equipment.
- Leads teams in establishing the appropriate designs, engineering and execution processes.
- Prepares engineering development proposals and feasibility studies.
- Responsible for leading the communication of project updates to senior management and key stakeholders.
- Responsible for preparing and gaining alignment on engineering proposals, feasibility studies, and vendor/construction packages.

Requirements:

- B.S. Degree in Engineering from 4 year college or university (Mechanical or Chemical Engineering preferred)
- 10 plus years related experience and/or training May have passed EIT and/or PE.

EX NO.	24
Lamberton	
DATE	5/30/18
ASSOCIATED REPORTING & VIDEO	

continued...

Disclaimer - These statements are intended to describe the general nature and level of work being performed by people assigned to this classification. They are not intended to be construed as an exhaustive list of all responsibilities, duties and skills required of personnel so classified.

HOW TO APPLY

Internal Simplot Candidates:

- Please apply via Employee Space to Job ID#3388

External Candidates:

- Visit www.simplot.com/careers
- Select Job Search
- Select Current Opportunities
- Select All Open Positions
- Apply to Job ID#3388

Please prepare a cover letter outlining your interest and qualifications and submit with your resume via our online application process described above. For best results, please upload your resume as a Microsoft Word or Adobe PDF document. This process includes additional job-relevant questions, so plan on at least 20 minutes when you apply.

When a position is in the interview stage or has been filled, it will no longer appear on our Simplot Careers website. If you experience any technical difficulties when applying through our online system, please contact our Employment Center for assistance at careers@simplot.com.

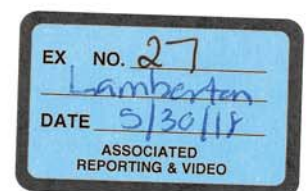
*****The J.R. Simplot Company is proud to be an Equal Opportunity Employer and all qualified applicants will receive consideration for employment without regard to race, color, religion, national origin, ancestry, age, sex, gender, gender identity, gender expression, genetic information, physical or mental disability, medical condition, sexual orientation, military or veteran status, marital status, or any other protected status.*****

From: Knudsen, Erik
To: [Kaufman, Scott](#); [Jennings, Jennifer](#); [Smith, Byron](#); [Aristizabal, Laura](#); [Turner, James](#); [Barrios, Raul](#); ilconsulting@outlook.com
Cc: [Anderson, Kent](#)
Subject: Startup Workbook NAFG-Template 08-5-16
Date: Friday, August 05, 2016 11:09:21 AM
Attachments: [Startup Workbook NAFG-Template 08-5-16.docx](#)

Hi Team,

Attached is the startup workbook template (work in progress). We left off on the purple shaded "Clean up Plan" bullet point and will continue next week.

Erik



SIMPLOT 000609

000399

Project Location
Project Name
Startup Workbook (SUWB)

Startup Workbook (SUWB)

The purpose of the Startup Workbook (SUWB) is to serve as a guideline or reference tool for the Startup Manager and team members during the startup portion of the project. The SUWB is a living document from its creation during FEL II



phase until completion of startup. It is expected that this document to remain current, up to date and stored on a shared location.

Contents

Startup Workbook (SUWB) 1

1 Project Overview 4

 1.1 Project title: **Error! Bookmark not defined.**

 1.2 Project Location: **Error! Bookmark not defined.**

 1.3 Project Description: **Error! Bookmark not defined.**

 1.4 Project Related Documents 4

 1.5 Startup Team 4

 1.6 Project Team Roles and Responsibilities 4

 1.7 Startup Organizational Chart 4

 1.8 Startup Strategy 6

 1.9 Inter-Active Planning Session (IAP) 6

 1.10 Detailed Startup Schedule 6

 1.11 Project Reporting 7

 1.11.1 Vendor or contractor must provide a progress report to PM or CM. ... 7

 1.11.2 Project progress report 7

 1.12 Action list 7

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 2.1 Training Plan 8

 2.2 Spare Parts 8

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 2.4 Crewing Plans 9

 2.5 Testing & Ordering Production Materials **Error! Bookmark not defined.**

 2.6 Vendor Supplied Materials 9

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 3.4.2 Non-Saleable Product Test Plan 11

- 3.4.3 CAT 11
- 4 Start-up Plan 11
 - 4.1 Standard Operational Procedures (SOP's) 11
 - 4.2 Startup Cost Control..... 11
 - 4.3 Verification..... 11
 - 4.3.1 SAT 11
 - 4.3.2 Success Criteria 11

Note: All text in italics and gray color are mainly instructions, and must be deleted after the instruction is complete. All text in italics and black color are to be modified to the specifics of the project. Please proceed to delete this paragraph.

1 Project Overview

1.1 Required Document Checklist (SUP Level II)

Startup Manager shall ensure this checklist is filled out interdependantly with the Project Team and reviewed by the Project Manager and appropriate Functional Managers.

1.2 Project Related Documents

Startup Manager must read and acknowledge the following documents:
PM shall populate the table below with the applicable document names and locations.

Document (from PM)	Document location
PEXP	<i>Insert PEXp doc location</i>
Functional Description	<i>Insert Functional Description doc location</i>

1.3 Startup Team

1.3.1 Startup Team Roles and Responsibilities (Laura)

Role	Execution Resource
Project Manager	
Startup Manager	
Facility Purchasing (spare parts, etc)	
Technical Lead	
Technical Engineer Utilities	
Technical Engineer Controls	
Technical Engineer Packaging	
Technical Engineer Electrical	
Technical Engineer IT	
Design Engineer	
Packaging Materials Lead	
Construction Manager	
Plant Operations Manager	
Plant Operations	

Plant Safety Representative	
Plant Quality Representative	
Plant Engineering Manager	
Plant Maintenance Manager	
Plant Maintenance	
FG Scheduler	
Plant Scheduler	
Plant LOTO	
Plant Training Coordinator	
Plant SOP Contact	
Environmental Representative	
Vendors - training, support, etc	

1.3.2 Startup Organizational Chart (Jen)

The team members have been selected because of their vast experience and/or expertise as it relates to this specific project. Outlined below is the project team organizational chart that shows the direct and dotted line project reporting structure.

[PM to populate and insert project organizational chart. Use the FEL II Resource team list to fill in the blanks in the org-chart. The chart should include internal and external resources. A standard project org-chart is shown below and the project specific org-chart should be inserted.]

1.3.3 Resource Schedule (Jen)

Simplot GF2			Resource Schedule																									
Key			Assign Leads																									
Green Boxes = Lead																												
Red Boxes = Shift Lead																												
F = Fronts																												
B = Backs																												
R = Remote Support																												
OC = On Call																												
D = Days																												
S = Swing																												
T = Travel																												
Name	Group	Discipline	01/24/15	01/25/15	01/26/15	01/27/15	01/28/15	01/29/15	01/30/15	01/31/15	02/01/15	02/02/15	02/03/15	02/04/15	02/05/15	02/06/15	02/07/15	02/08/15	02/09/15	02/10/15	02/11/15	02/12/15	02/13/15	02/14/15	02/15/15	02/16/15	02/17/15	02/18/15
Rob Sheel	Jacobs	Construction Administrator																										
Brad Champagne	Jacobs	Construction Administrator																										
Jack Housley	Simplot	Construction Administrator																										
Mark Mondar	Jacobs	PM/CM Support																										
Simplot																												
Curtis Cook	Simplot	PE	S	S	F	F	F	T																				
Scott Easman	Simplot	PM																										
Emily Schultz	Simplot	Cost																										
Brian Smith	Simplot	Director of PM																										
Kent Anderson	Simplot	Director of Engineering																										
James Turner	Simplot	Director of Electrical																										
Craig Lamberton	Simplot	Director of Packaging																										
Laura Aristizabal	Simplot	PM																										
Pete Bruggeman	Simplot	Plant Engineer																										
Consultants																												
Brad Senada	Senada Design	General Arrangements																										
Kevin Watson	Scamtec	Mechanical/Piping																										
Eric Versloot	Skantec	Mechanical/Piping/IVAC																										
David Givny	Skantec	Project Scheduler																										
Todd Jester	Jacobs	Packaging Engineer																										
Mik Moore	Innovative Engineering	Structural																										

1.4 Startup Strategy (JT)

(this section will change after start up plan template is develop)

The PM will review the status of the start-up plan development to ensure that the plan is scheduled and coordinated with the **current** overall project execution schedule. The PM has to ensure that role and responsibility assignments are made and the status of the startup plan is current with all aspects of the plan being implemented including:

1. The SAT for all equipment
2. The commissioning/checkout of all systems equipment
3. The review of the installation by the Safety team.
4. The review of the installation by the Sanitation team.
5. The training for all department teams: Operations, Process Control, Sanitation, Maintenance.
6. The Operation and Maintenance manuals have been received by the respective departments.
7. The critical Spare parts have been identified, ordered, and received.
8. The Spare parts list is developed and on order by the facilities team.
9. The dry run tests are scheduled and completed.
10. The Wet run tests are scheduled and completed.
11. The product run tests are scheduled and completed.
12. All test run measurable(s) are taken and compared with the success criteria document with results communicated to the project team.

Document	Document location
Start-Up Plan	<i>Insert doc location</i>

1.5 Inter-Active Planning Session (IAP)

A startup Interactive Planning Session should be executed prior to startup.

Key Stakeholders and participants of the Startup IAP session are:

- Startup Team
- Operations
- Vendors
- Project Management
- Engineering

The execution of the IAP shall follow guidelines of the Interactive Planning session procedure as outlined by PEMS.

Folder or Document	Document location
IAP Procedure	<i>Insert doc location</i>
IAP minutes log	<i>Insert folder location</i>

1.6 Detailed Startup Schedule (Byron)

The high level project schedule shown below represents the major phases of the project starting with the Capital Improvement Project (CIP) approval and going through project start up. A detailed project schedule is available for review from either, the project manager or the project file location.

[The PM is to prepare a project schedule using the template that provides the milestone dates for the entire project as was submitted in the CIP. The schedule template is shown below and should be replaced with the actual project specific project schedule.] Project

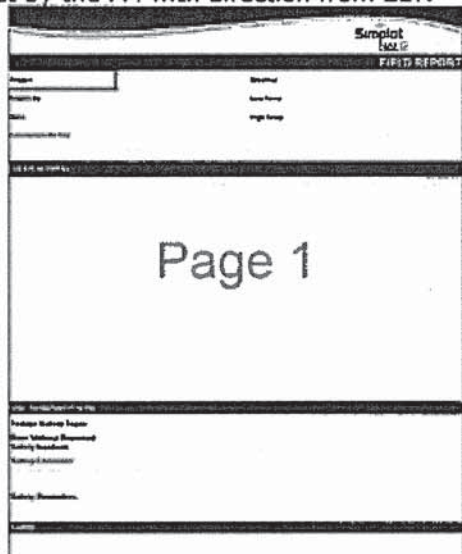
1.7 Project Reporting (SUWB template team)

1.7.1 Vendor or contractor must provide a progress report to PM or CM.

- Daily time and materials report
- Daily Toolbox Safety form

1.7.2 Project progress report

The CM must do a Project progress report. Frequency of the project progress report is determined on each project by the PM with direction from ELT.



Folder	Document location
Project progress report log	Insert folder location

1.8 Action list (Laura)

Action is defined as any event that occurs during the project that may have an impact on safety, cost, schedule, resources, compliance, quality or other key parameters. Any Project Team member or contractor may introduce an action item, which should be submitted to the Project Manager in writing or at project meetings. The PM will maintain a log of all actions. Action items will be reviewed by the appropriate team members. An action item is closed when the issue has been successfully resolved or it is determined that no action is required.

The Project Manager supported by the project team is responsible for assessing and managing the impact of project action items. All identified action items will be reviewed on a regular basis as needed per the specifics of the project.

Document	Document location
Action List	Insert doc location

An example of the Action list is shown below:

No	ISSUE Description	Comments	Priority	Raised on	Due	Days Late	Resp	Completed on	Status
4	Review names of templates			4/13/15	3/15/15	-23	ELT		Open
5	Review names of templates			4/13/15	3/15/15	-23	Laura A	4/15/15	Closed
6	Add success criteria to FEL II	It is on FEL II but it is not mentioned on document		4/16/15		NA	Egert A		Open
7	Propose to change EWF Level 1 by adding 1 arrow from DEP to REP	Raised by Laura		4/16/15		NA	ELT		Open
8	Revise FEL II To include a section for permits required					NA			Open
9	PSID development and evolution road map, including definitions, percentage complete, how this process evolves	With input from Kent and Byron		4/21/15		NA	James T		Open

1.9 Coordination Meetings

The coordination meetings with vendors or contractors can take place prior to the outage and then during construction. The PM will determine dates or frequency of the meetings as needed depending in the phase of the construction. A log shall be kept with minutes from coordination meetings.

2 Pre-commissioning

2.1 Production Planning (PPIC Plan)

Startup Manager to coordinate with PPIC, unit director, production manager, and production scheduler to put together plan. Plan should include ordering of testing and production materials. Ensure contingencies are included in planning for varying production throughput performance.

Non-saleable production planned owned by production team. PPIC production plan is owned by PPIC.

Document	Document location
Non-saleable Production Plan	Insert Training Plan doc location
PPIC Production Plan	Insert Training Plan doc location

2.2 Training Plan (Erik)

SM shall populate the table below with the master training plan document.

Document	Document location
Master Training Plan	Insert Training Plan doc location

(reference for now, maybe delete later)

Task Name
Grand Forks Plant Training Plan
Recipe Management Training
Overall System Training - Using Functional Description
Controls - Maintenance Personnel
Bagger/Scale
Case Packer

Palletizer

2.3 Spare Parts (Byron)

Identify and order spare parts for equipment and provide to plant maintenance group

Equipment List Complete	Develop an equipment
Obtain JDE Numbers for Equipment	Enter Equipment into JDE and obtain JDE Equipment Numbers
Identify Mechanical Spare Parts	Identify Spare Parts Required for MRO Stock
Identify Electrical Spare Parts	Identify Spare Parts Required for MRO Stock
Identify Packaging Spare Parts	Identify Spare Parts Required for MRO Stock
Identify Boiler/Refrigeration Spare Parts	Identify Spare Parts Required for MRO Stock

2.4 cFAT (JT)

2.5 Crewing Plans

Startup Manager to work with:
 Facility Unit Director
 Production Manager
 HR Manager
 Sanitation Lead
 Maintenance Manager

Document	Document location
Maintenance Crewing Plan	Insert Training Plan doc location
Production Crewing Plan	Insert Training Plan doc location
Sanitation Crewing Plan	Insert Training Plan doc location
Other???	Brainstorm if other docs needed

2.6 Vendor Supplied Materials

Startup Manager to verify that the following materials have been obtained and are onsite prior to commissioning: Operator and Maintenance manuals, drawings (autoCAD), SOP's, test results, passwords, SW, recommended parts list, etc.

**Need electronic and paper copies*

Document	Document location
Appropriate documents	Insert doc location

2.7 Cleanup Plan

2.8 Pre-commissioning Inspection (PCI)

3 Commissioning

3.1 System (Utilities & Equipment) Start-Up sequence plan

3.2 ICO Plan

3.2.1 IO Checklist

Tasks	Owner	Required When	Activities	Input
Safety Review	SM	As Needed	Safety Review communication prior to commissioning activities	Plant, Contractors, Project team, and Other affected personnel
Dry clean-up	SM	As Needed	Verify vacuum equipment, pick up large debris, swipe area with magnets has been completed	Project team, sanitation manager
Turn on utilities	SM	As Needed	Verify power, air, network, water, steam, all required utilities are functional. Communicate in daily construction meeting utilities updates.	ICE, Project team, CM, Plant
Check communication	SM	As Needed	Verify network communication, point to point communication, network addresses, original equipment manufacture (OEM) communication, bus network has been completed	ICE, Project team, CM, Plant
Test instruments	SM	As Needed	Verify wiring, calibrations, installation, location, etc. has been completed	ICE, Project team, CM, Plant
Test PLC and HMI	SM	As Needed	Verify hardware and software. Check PLC and HMI configuration, servers, historian, data servers has been completed	ICE, Project team, CM, Plant
Bump motors, check rotation	SM	As Needed	Verify all motor overloads settings, jumpers. Set up all VFD parameters, motor termination has completed	ICE, Project team, CM, Plant
Verify HMI functionality	SM	As Needed	Verify each display point, navigation, standards, alarms have been completed	ICE, Project team, CM, Plant
Start testing PLC programming	SM	As Needed	Verify control system performs as described in functional description has been completed	ICE, Project team, CM, Plant

Dry clean-up	SM	As Needed	Verify vacuum equipment, pick up large debris, swipe area with magnets has been completed	Project team, sanitation manager
--------------	----	-----------	---	----------------------------------

3.3 ACO Plan

3.3.1 Non-Product Test Plan

3.3.2 Non-Saleable Product Test Plan

3.3.3 CAT

4 Start-up Plan

(this section will change after start up plan template is develop)

The PM will review the status of the start-up plan development to ensure that the plan is scheduled and coordinated with the **current** overall project execution schedule. The PM has to ensure that role and responsibility assignments are made and the status of the startup plan is current with all aspects of the plan being implemented including:

13. The SAT for all equipment
14. The commissioning/checkout of all systems equipment
15. The review of the installation by the Safety team.
16. The review of the installation by the Sanitation team.
17. The training for all department teams: Operations, Process Control, Sanitation, Maintenance.
18. The Operation and Maintenance manuals have been received by the respective departments.
19. The critical Spare parts have been identified, ordered, and received.
20. The Spare parts list is developed and on order by the facilities team.
21. The dry run tests are scheduled and completed.
22. The Wet run tests are scheduled and completed.
23. The product run tests are scheduled and completed.
24. All test run measurable(s) are taken and compared with the success criteria document with results communicated to the project team.

Document	Document location
Start-Up Plan	<i>Insert doc location</i>

4.1 Standard Operational Procedures (SOP's)

4.2 Startup Cost Control (Jen)

4.3 Verification

4.3.1 SAT

4.3.2 Success Criteria

The "Success Criteria" is critical information and will be used to measure the overall success of the project. The success criterion identifies the tangible deliverables to the business as well as other project success criteria.

[The PM shall insert the project success criteria document that was approved and submitted with the CIP. The success criteria template is shown below and should be replaced with the actual project specific success criteria.]

NAFG Project Success Criteria

Project Name: [Enter Project Name]
 Project Scope: [Enter Project Scope]
 Project Description: Provide a brief description of the project

Project Sponsor: [Enter Project Sponsor]
 Project Managers: [Enter Project Manager]

Item	Success	Measure	Comment	
Operational	Production Throughput [Enter Product Family A] [Enter specific SKUs] [Enter Product Family B] [Enter specific SKUs]	Each Plan % [X %] [Enter Design Rate] [Y %] [Enter Design Rate]	Interim/Interim Cost/Rate [Enter CIP Budget Rate] PFC Budget Rate [Enter PFC Budget Rate] Finish Budget Rate [Enter Finish Budget Rate]	[Enter how this criteria will be measured] [Enter additional information here]
	Staffing Requirements [Enter Product Family A] Week 1 Production Week 2 Production Week 3 Production [Enter Product Family B] Week 1 Production Week 2 Production Week 3 Production	[Enter staffing expectations related to the project] [Enter week 1 salable product as % of expected throughput-normally 80%] [Enter Rate] [Enter week 2 salable product as % of expected throughput-normally 80%] [Enter Rate] [Enter week 1 salable product as % of expected throughput-normally 100%] [Enter Rate] [Enter week 1 salable product as % of expected throughput-normally 80%] [Enter Rate] [Enter week 2 salable product as % of expected throughput-normally 80%] [Enter Rate] [Enter week 1 salable product as % of expected throughput-normally 100%] [Enter Rate]	[Enter Measurement] [Enter additional information here]	
	Capital & Expense Capital Expense	\$ [enter CIP Capital Dollar Amount] \$ [enter CIP Expense Dollar Amount]	Actual vs Budget	[Enter additional information here]
	Schedule Salable Production... [Enter Date from Project Schedule]			[Enter additional information here]
	Quality First Time Quality	95%	FTD	[Enter additional information here]
	Safety Zero Recordable Incidents		No Recordable Injuries	[Enter additional information here]

Figure 1: Project Success Criteria

Document	Document location
Success Criteria	Insert doc location

Folder	Document location
Contractors coordination meetings log	Insert folder location

PHCP .01		PLCP .02	Page: 1
		Date: 12/01/2011	Supersedes: 02/20/1998
Subject: Complaint Process Policy			
Written By: Wes Scrivner	Functional Sponsor Approval: Terry Uhling	VP of Human Resources Approval: Erin Nuxoll	
Legal Approval: Wes Scrivner	Policy Owner: Keith Harkless	CEO Approval:	
Primary Policy Administrator: Corporate Complaint Dept.	Secondary Policy Administrator: Managers/Supervisors Employees Location Human Resources	Other Policy Administrator: HR Services	

PURPOSE / INTENT / PHILOSOPHY

The J. R. Simplot Company is firmly committed to promoting the full realization of equal employment opportunity for all of its employees and to prohibiting discrimination on the basis of gender, race, color, religion, national origin, disability, age, sexual orientation, genetics, veteran status, or acts of retaliation. To that end, the Company has created an in-house process to resolve claims of discrimination and other policy violations. This process will supplement, not replace, any existing in-house problem resolution processes, including grievance procedures, peer-to-peer review committees, and the personnel/human resources (HR) function. Nothing contained herein shall be viewed in any manner as modifying or impacting the Company's policy of employment at will. The Company retains the right to modify or alter the Complaint Process.

SCOPE/APPLICATION

The objective of the Complaint Process is to provide a procedure for the prompt and fair processing and resolution of claims of discrimination on the basis of gender, race, color, religion, national origin, disability, age, sexual orientation, genetics, veteran status, or acts of retaliation, and other policy violations. All employees of the J. R. Simplot Company working in the United States and Canada are covered under this process. (Employee is defined as any person employed by the Company.)

CONFIDENTIALITY

All persons involved in the processing of a complaint shall respect the confidentiality of all communications with the employee and the right of the employee to privacy. Information related to a complaint shall be disclosed only to persons who have a "need to know." The Company is not required to provide information which is proprietary.

EX NO. 29
M. Ewan
DATE 5/31/18
ASSOCIATED REPORTING & VIDEO

SIMPLOT 000717

000412

PROCEDURAL DETAIL

1. Requirements of a Complaint

- A complaint should: (1) be in writing, utilizing the Complaint Intake Form, or if expressed verbally, should be entered on the form by the person taking the complaint (with the complaining party asked to review and sign the Intake Form); (2) indicate the basis for the alleged discrimination; (3) clearly identify the matter or matters being alleged; (4) be within 30 days of the alleged complaint; (5) specify the desired resolution.
- Consolidation of complaints: When more than one complaint is filed regarding a particular event, or more than one complaint is filed involving the same behavior on the part of a particular individual, the Company may consolidate the complaints in the interest of achieving an expedited resolution of the issues raised.

2. Complaint Closure

A complaint may be closed when: (1) the employee withdraws the complaint; (2) the employee leaves employment with the J. R. Simplot Company, unless the complainant seeks personal relief or benefits that may be granted after the employment is terminated; (3) the employee dies, unless the complaint involves a question of pay or benefit that may be paid after the death of an employee or the correction of Company records concerning the employee; or (4) the employee fails to cooperate or furnish information so that the complaint cannot be processed.

A complaint should be filed as closely as possible to the occurrence of the alleged act of discrimination. A complaint may be filed with any HR department or the Corporate Complaint Department regardless of the locale of the alleged discriminatory incident(s). The Company will conduct the fact-finding inquiry in a timely manner.

3. Responsibilities

The Company is responsible for cooperating with an employee(s) who believes that he/she has been discriminated against, and shall furnish relevant information to the complainant.

Managers, supervisors, and employees of the Company are responsible for cooperating fully with fact finders, Deciding Officials, and the Company and for not

withholding any potentially relevant information. Any employee who intentionally files a false complaint, fails to cooperate, or withholds or falsifies information will be subject to discipline, up to and including termination.

4. Rights of the Employee

The employee has the right to be free from restraint, interference, coercion, discrimination, or reprisal when filing a complaint or providing information or otherwise supporting the complaint. The complaining employee has the right to be accompanied, represented, and advised by a representative of his/her own choosing. Representatives shall be designated, in writing, by the employee. The Company may deny the employee's choice of representative when there is an apparent conflict of interest or for substantial work-related reasons. Denial of an employee's choice of representative must be justified in writing.

The employee has the right to reasonable time to present and process a complaint. Any Company employee whose participation is required will be granted paid time off during work hours.

In a Company operation where employees are represented by a labor union, an employee who files a complaint has a right to union representation, if requested. The union representative is expected to maintain the confidentiality of the complaint.

5. Filing a Complaint

Any employee of the Company who believes that he/she has been denied equal employment opportunity because of gender, race, color, religion, national origin, disability, age, sexual orientation, genetics, veteran status, or acts of retaliation associated with his/her filing or processing a complaint or who knows of a discriminatory act against an employee should contact an official of the Company to begin the Complaint Process. The Company will provide the complainant with a qualified fact finder who will investigate the complaint and report in writing to the Group/location HR department and/or the Corporate Complaint Department. The written report will contain a summary of the facts, the proposed resolution, and the options made available to the complainant under the Complaint Process.

The official contacted by the complainant should be guided by the following:

- If the initial contact is a supervisor or manager, he/she should forward form

CP-1, Statement of Complaint, to the local HR department. The complaining employee should complete and sign, or review and sign CP-1. **Allegations of *Quid Pro Quo* sexual harassment and allegations of retaliations must be immediately referred to the Corporate Complaint Department.**

- If the initial contact is the Location/Group HR department, that department will supervise completion of intake form CP-1 and initiate a fact-finding inquiry.
- If the employee is dissatisfied with the outcome at the Location/Group level, then the HR representative should inform the employee of the options available through the Complaint Process.
- If the initial contact is made with the Corporate Complaint Department, then a representative of that department will be assigned to the case and will initiate a fact-finding inquiry.
- If the initial contact is made through the Company's Employee Reporting Hotline, the employee will be given the opportunity to file the complaint anonymously. However, if the complaint raises issues of discrimination (based on gender, race, color, religion, national origin, disability, age, sexual orientation, genetics, veteran status, or acts of retaliation,) the Corporate Complaint Department may require identifying information, such as the employee's name, to investigate the allegations. The employee is responsible for providing the requested information.

6. The Appeal Process

If the employee filing the complaint (based on gender, race, color, religion, national origin, disability, age, sexual orientation, genetics, veteran status, or acts of retaliation,) is not satisfied with the resolution at the Location/Group or the Corporate Complaint Department, the case may be appealed to the Deciding Official. The Corporate Complaint Department will assign the complaint to the Deciding Official, an individual who is external to the Company and who will review the case and render a final decision. The Deciding Official's written decision on the merits of the complaint shall include, but not be limited to: (1) a statement of the issues with a description of all matters that the employee alleges to have been discriminatory; (2) the personal relief requested by the employee; (3) a statement of the facts relevant to the issues identifying those that are in dispute; (4) a discussion of the issues in light of the facts,

including any written regulations or policies; (5) the personal relief that shall be afforded the complainant.

Any employee who has been terminated or otherwise disciplined, for violation of the Company EEO, Affirmative Action & Harassment Guideline (or similar policy or rule), based on the finding of a Complaint Investigation, has the right to appeal to a Deciding Official. The appeal will be limited to the issue of whether the investigation was sufficient to warrant corrective action. Should the Deciding Official determine that the investigative findings are insufficient, and then the matter will be remanded back to the Company for further investigation. At the conclusion of the follow-up investigation, the employee will be advised of the Company's decision, based on any new findings, whether the prescribed corrective action will stand or be reversed, and, if reversed, what action will be taken.

The decision of the Deciding Official is final unless modified or overturned by the Company's Chief Executive Officer. The Deciding Official will provide the final decision to the Corporate Complaint Department which shall advise all necessary parties. The Corporate Complaint Department shall follow up on complaint resolutions and decisions that require action to assure that those actions are fully implemented.

7. Relationship to Other Complaint Procedures

When the Company identifies a complaint in which essentially the same issues are also being processed under another procedure or tribunal, the Company may hold the complaint in abeyance pending the outcome of the alternative process.

8. Record-Keeping Requirements

All documents or copies of documents related to the complaint shall be kept in a complaint file. The complaint file shall include, but not be limited to, a copy of the complaint with supporting documentation; personnel action associated with the complaint, if any; informal resolution and/or informal disposition; witness statements; notes on personal interviews; investigation report with exhibits; final complaint decision; and documentation confirming the implementation of any resolution or decision.

The locations or Groups will maintain the complaint files on any cases they investigate and will forward forms CP1, CP3, and CP4 to the Corporate Complaint Department. The Corporate Complaint Department will maintain the files on any cases it or its designated fact finders review.

COMMUNICATION

This policy will be made available for all employees to access via the J.R. Simplot Company Intranet. Managers, supervisors, and HR staffs should review the policy and be familiar with its contents. Employees should be informed of the existence of this process through a variety of communication vehicles, including notices, new hire orientation, employee handbooks, and Respectful Workplace training.


DISTRIBUTION

This policy will be located on the J.R. Simplot Company Intranet for all employees to access.

REVIEW AND REVISION

Additions, deletions and revisions to this policy are the responsibilities of the Director of Employee Practices and Labor Relations. Matters of interpretation will be resolved by Legal or the Director of Employee Practices and Labor Relations.

Exhibits:

- A. [CP-1 - COMPLAINT INTAKE FORM](#)
- B. [CP-2 - COMPLAINT WITNESS INTERVIEW FORM](#)
- C. [CP-3 - COMPLAINT CLOSURE OR APPEAL FORM](#)
- D. [CP-4, Summary of Investigation Form](#)
- E. [Complaint Process Flow Chart](#)  [Download & Install Help](#)

DATE: (Date of Summary)
TO: Complaint File (Complaint File #)
FROM: (Fact Finder)
SUBJECT: Summary of Investigation

Complainant - Name of the Complainant.
Chronological Time Frame –
Intake (Initial Contact) date and by whom.

Title

PLCP .02

Page:
7

Interviews - Names, dates, times, places.

Summary of Allegation –

Summarize the allegation(s) from the complainant's statement.
This can include any additional allegations that have surfaced.

List of Individuals Interviewed –

Names of individuals interviewed and their contribution.

Summary of Key Major Facts –

Summarize the key facts that can be
substantiated

Final Determination of Complaint –

What Corrective Action, if any, was taken.



Fwd: T. Rowe Price: Important Information about Your Retirement Account Options

1 message

Erik Knudsen <erik.knudsen12@gmail.com>

Wed, Sep 7, 2016 at 1:19 PM

To: Erika Birch <erika@idahojobjustice.com>, Sarah Simmons <sarah@idahojobjustice.com>

Redacted - attorney client privileged

----- Forwarded message -----

From: "eTermination Kit Notifications" <TRP_Retirement_Plan_Services@rps-news.troweprice.com>

Date: Sep 7, 2016 1:00 PM

Subject: T. Rowe Price: Important Information about Your Retirement Account Options

To: <erik.knudsen12@gmail.com>

Cc:



Keep Your Retirement Savings On Track

Dear Erik,

We understand your employment status has recently changed. Whether you are experiencing a job transition or approaching retirement, we can provide information to help you keep your retirement savings on track.

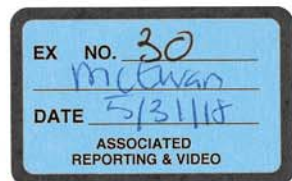
The good news is that you don't need to make a decision today. However, we encourage you to explore your retirement distribution options and keep your retirement savings working for you.

[Explore Your Options](#)

CALL US

If your phone number has changed, let us know so we can best serve you. Call 1-800-831-1455 on business days between 8 a.m. and 10 p.m. Eastern time.

Our knowledgeable noncommissioned retirement specialists are here to help you. In fact, one of our specialists may be calling you soon to discuss your plan options.



RETIRE WITH CONFIDENCE®



Please do not reply to this e-mail message. Contact us with your questions and comments about our services:

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9/8/2016

Strindberg & Scholnick Mail - Fwd: T. Rowe Price: Important Information about Your Retirement Account Options

U.S. Mail: T. Rowe Price Retirement Plan Services, Inc.
P.O. Box 17215
Baltimore, MD 21297-1215

Phone: 1-800-922-9945

T. Rowe Price will never ask for personal information, such as Social Security or login information, in an e-mail.

C1RR759UN RWC_AE



Simplot

FOOD GROUP

Senior Packaging Engineer (Food Group – Caldwell, ID)

The J.R. Simplot Company is a diverse, privately held organization, with roots firmly planted in agriculture and agriculture-related businesses. These endeavors have been around for centuries and will continue to be a vital part of the global economy. We currently have a position available for a Senior Packaging Engineer. This position will be based out of our Engineering Facility in Caldwell, ID.

Summary:

This position is responsible for The J. R. Simplot Food Group packaging development efforts to include packaging design and specification, testing packaging materials, establishing written packaging specifications, and project management related to packaging equipment operation and capabilities. Supports foodservice customers and retail customers in packaging design, with particular emphasis on retail packaging design that delivers the presentation and consumer appeal attributes as designated by the client.

Responsibilities:

- Participate on teams for new product concepts and provide packaging material specifications and costing. Research new packaging technology and provide recommendations when required.
- Provide support to R&D for new and existing products and assist in testing and production runs when necessary. Support Engineering in the selection of new packaging equipment. May require providing research on new packaging technology and/or packaging equipment.
- Responsible for the packaging material specifications, supplier development, and packaging material qualifications for division frozen potato-processing facilities, vegetable operations, and other ventures and projects as needed.
- The Sr. Packaging Engineer will work directly with the plant locations to specify primary and secondary packaging materials to protect the finished product while maximizing packaging efficiency with the equipment and load ability for warehousing and transportation and minimizing material costs.
- Responsible for identifying and managing projects related to cost reduction opportunities.
- Work qualifying new suppliers and/or new or alternate materials. Act as a liaison between plant locations and suppliers for any supplier related issues or trials.



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- This position is also responsible for maintaining and specifying the technical packaging portion of our Packaging internet based specification system for all required types of packaging for all plant locations.

Requirements:

- Bachelor's degree in Engineering from a 4-year college or university and ten years related experience in FMCG environment highly preferred.
- 10 + years related experience and/or training.
- Comprehensive knowledge covering all aspects related to packaging structures and equipment.
- Strong knowledge of factory operations and packaging equipment to transfer a theoretical application into real-time production.
- Ability to effectively communicate with colleagues in different departments, including, but not limited to, plant operations, marketing, and senior management.
- Demonstrates successful project management, documentation, presentation, and problem-solving skills.
- Must have a valid driver's license and the ability to obtain a valid U.S. passport for required travel to facilities in Mexico and Canada.
- International and domestic travel as required up to 40% to support plant test runs for new products, material trials, vendor visits, packaging audits, and packaging material complaint resolution.

Application Instructions

External Candidates:

- Click **Apply Now** if viewing this posting from the Simplot website **OR**
- Visit www.simplot.com/careers
- Select **Job Search**
- Select **Current Opportunities**
- Select **All open positions**
- Apply to **Job ID # 2828**

Please prepare a cover letter outlining your interest and qualifications and submit with your resume via our online application process described above. For best results, please upload your resume as a Microsoft Word or Adobe PDF document. This process includes additional job relevant questions, so plan on at least 20 minutes when you apply.

When a position is in the interview stage or has been filled, it will no longer appear on our Simplot Careers website. If you experience any technical difficulties when applying through our online system, please contact our Employment Center for assistance at careers@simplot.com.

The J.R. Simplot Company is proud to be an Equal Opportunity Employer and all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, national origin, sexual orientation, disability status, protected veteran status, or any other characteristic protected by law.

ERIK KNUDSEN

Accomplished HP LaserJet professional seeking Senior Packaging Engineering Position with Simplot.

PACKAGING ENGINEERING ~ TEAM-BUILDING & LEADERSHIP ~ PROGRAM MANAGEMENT

PROFILE OF QUALIFICATIONS

Dependable and committed leader offering 7 years of packaging engineering and 8 years of operations program management experience. Proven success in leading domestic and global teams through complex challenges and initiatives. Able to precisely identify project requirements and steer completion according to demanding timeline, scope, and budget parameters. Possesses a strong blend of interpersonal, strategic planning, prioritization, decision making, and supervisory talents. Enthusiastic and resourceful trail blazer and change agent; constantly striving to fuel improvements to product output, market positioning, cost reduction, and quality levels. Inherent leadership attributes; highly regarded for abilities in mentoring, coaching, inspiring, and influencing.

Selected Achievements:

- Led 20+ member cross-functional team comprised of Ink and LaserJet employees to develop and execute a complex new Operations NPI model for revolutionary Enterprise Ink printer. Standardized process for executing new supply chain while simultaneously meeting global launch date, business needs, and quality objectives.
- Directed business leads, engineers, and master level architects through the NPI release process of 10 LaserJet printers while meeting timeline, quality, and availability requirements.
- Captured \$10M+ in annual savings by leading global teams to seamlessly consolidate manufacturing processes for five products across multiple factories to one site.
- Championed efforts to enhance OOBE for all LaserJet printers, resulting in accolade from PC Magazine for including pre-installed toner cartridges.
- Drove groundbreaking changes in package design and development methods to decrease package size by 71% over previous product, saving \$12M+ annually in materials and freight.

PROFESSIONAL EXPERIENCE

Hewlett-Packard Company, Boise, Idaho

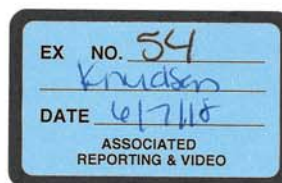
2002 to Present

Packaging Engineer, LaserJet Division (2015 to present)

NPI Manufacturing Program Manager, LaserJet Division (2006 to 2014)

- Applied significant leadership expertise toward directing, motivating, and coordinating NPI teams in creating detailed manufacturing plans for prototype builds and ramp for new LaserJet printers.
- Formulated manufacturing goals, guided worldwide team to attain goals, and accurately measured and monitored metrics against defined targets.
- Designed back-end program schedules encompassing contract manufacturer's capabilities, quality objectives, lab delivery timelines, transit times, supply goals, and introduction dates.

Continued ...



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Erik Knudsen – Page 2 of 2

Professional Experience continued ...

- Influenced contract manufacturers through all NPI phases by setting clear expectations, leading weekly meetings, building trusting relationships, providing meaningful feedback, and coaching through ambiguous scenarios.
- Critically analyzed and evaluated complex prototype build quotes and negotiated with contract manufacturers to optimize pricing.
- Key advisor and primary point of contact for all manufacturing and supply chain related issues and items.
- Drove unified efforts among R&D teams, regions, and all manufacturing partners to ensure production readiness by maintaining open and constant lines of communications.
- Communicated with senior management regarding manufacturing status, supply chain conditions, and manufacturing strategy and escalations.
- Prudently anticipated risks to ramp start-up, established suitable contingency plans, and coordinated rework as needed to achieve 100% of quality requirements.

Senior Packaging Engineer, LaserJet Division (2006)

Packaging Engineer, LaserJet Division (2002 to 2005)

- Designed, tested, and released innovative, high-impact and cost-efficient packaging solutions for high-volume LaserJet printers.
- Negotiated with Canon to improve printer robustness.
- Established packaging development methods to support new supply chain models, providing engineers with consistency in project management and design activities.
- Managed vendors and negotiated with OEMs to optimize budget compliance, quality, and efficiency.
- Leveraged exceptional communication skills to interface with regional and international stakeholders to support flawless release of eight new products.
- Proactively developed and standardized Excel program to aid packaging engineers in choosing most cost-effective package size.

Agilent Technologies, Rohnert Park, California

2000 to 2002

Packaging Engineer, Electronic Products Solutions Group

- Designed, tested, documented and approved packaging for electronic test equipment in precise alignment with time-sensitive product release dates.
- Achieved productivity requirements by convincing management to create job requisitions for packaging technician and an additional packaging engineer.
- Researched and secured quality crating vendors for production line moves to Malaysia, fostered cohesive relationships with suppliers, and performed TQRDCE (Technical, Quality, Response, Delivery, Cost, and Environment) assessments.
- Examined and approved crate designs or recommended specific improvements to meet established requirements.
- Markedly decreased product damage complaints by identifying root cause and directing team in establishing written and photographic packaging instructions for assembly line workers; concurrently expedited assembly time by 75%.

EDUCATION

Master of Science, Packaging Science, Michigan State University, East Lansing, MI

Bachelor of Science, Textile Materials Science, North Carolina State University, Raleigh, NC

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proofpoint:

MAILBOX: MY MAILBOX

SENT: ANY DATE

ATTACHMENT: Not Required

SEARCH CLEAR

PRINT PROPERTIES RETRIEVE FULL UI

FROM: Knudsen, Erik

TO: [redacted]

CONTENT: [redacted]

- RESULTS**
- | | Sent - Oldest first | |
|--|---------------------|---|
| RE: P2P JUMP Grand Opening Call for Volunteers | 35.3 KB | 0 |
| From: Knudsen, Erik | 12/8/2015 | |
| To: Whitting, Michael; Lalley, Timothy | | |
| RE: One Card | 142 KB | 0 |
| From: Knudsen, Erik | 12/8/2015 | |
| To: Jones, Belinda | | |
| FW: Everything DISC Workplace Profile attached | 837 KB | 0 |
| From: Knudsen, Erik | 12/8/2015 | |
| To: Nessen, Laura | | |
| FW: JUMP Grand Opening Call for Volunteers | 471 KB | 0 |
| From: Knudsen, Erik | 12/8/2015 | |
| To: elishaknudsen12@gmail.com | | |
| volunteer | 12/8/2015 | |
| From: Knudsen, Erik | 3.3 KB | |
| To: shane@blissevents.net | | |
| hey man! | 12/8/2015 | |
| From: Knudsen, Erik | 4.4 KB | |
| To: john.teel@hp.com | | |
| RE: Bemis P2P Trial weds | 12/8/2015 | |
| From: Knudsen, Erik | 25.0 KB | |
| To: Lalley, Timothy | | |
| RE: FW: JUMP Grand Opening Call for Volunteers | 12/8/2015 | |
| From: Knudsen, Erik | 472 KB | |
| To: Elisha Knudsen [elishaknudsen12@gmail.com] | | |
| RE: One Card | 12/8/2015 | |
| From: Knudsen, Erik | 143 KB | |
| To: Jones, Belinda; Busch, Becky | | |
| RE: One Card | 12/8/2015 | |
| From: Knudsen, Erik | 12/8/2015 | |
| To: [redacted] | | |
- ITEMS: 1,808 5 / 108 PAGES

hey man!

Hi John,
 I just wanted to check in with you to see how things were going. Have you guys gotten approval for my replacement yet?
 Things are going pretty well here. I forgot what it was like to have no idea how to get things done (be the new guy). I guess that's part of starting a new job though. It'll come.
 So my role already changed a little bit already. Funny story - on the first day to meet my boss, I walked into his office to say hello and he said "we need you to go to Grand Forks, ND tomorrow with us on the corporate jet to be a project lead for a capital upgrade project". Well ok then! So, I'll be a packaging engineer part time and leading a team through the start-up process for a new line in North Dakota (sort of similar to past MPM work). It is nice flying the corporate jet up there as I'll have to go a lot, and exciting to have two different roles.
 Anyway, hope you are doing well, and that Firebird/Suzuka isn't killing you! We had a great Canon team on that program, but know that they are extremely conservative!!!
 -Erik



J.R. Simplot Company
6360 S Federal Way,
Boise, Idaho 83716

Personal and Confidential

DATE: September 7, 2016
TO: Erik Knudsen
FROM: James Pegram
SUBJECT: Your Employment with the J.R. Simplot Company

Erik,

This memo is in follow-up to discussions you had with Kayce McEwan before I returned to Food Group regarding your position as an Engineer 4. I understand from reviewing the file your conversations with Kayce led to you being presented with the following options:

1. You continue in your current role, which includes involvement on engineering projects across the North American Food Group, and continue to focus on the improvement plan presented to you by your supervisor.
2. You voluntarily resign your position with the Company. As requested, we would be willing to provide you with assistance in this transition, which would include 10 weeks of separation pay, in exchange for a signed release of all claims against the Company.

On August 5, 2016, you were placed on paid administrative leave while you considered your options. The deadline for you to make a decision on which option you were choosing was end of business on Monday, August 8, 2016. On August 9, 2016, Simplot's in house counsel was contacted by your attorney asking for the date to be extended to August 17, 2016. We granted this request. On August 17, 2016 we received another correspondence from your attorney indicating you would not accept either option listed above.

Since you had not yet made a decision, your attorney was informed that the options outlined above would remain open to you until August 31, 2016 at 5 pm. Your attorney again responded that neither option was acceptable. The Company had a pressing need to have someone performing the functions of your role, and could no longer continue to keep you on paid administrative leave in the absence of you making a decision. As a result, the decision was made to terminate your employment so a replacement could be hired. That decision was effective September 1, 2016.

We're sorry that things didn't work out for you with Simplot. A packet regarding benefit information will be sent to you under separate cover. If you have any other questions including how to retrieve any personal belongings left in your work area, feel free to contact me or to have your attorneys contact Simplot counsel, whichever you prefer. Best of luck in your future endeavors.

Sincerely,

James Pegram
Sr. Director Human Resources, NAFG

EX NO.	61
DATE	9/7/16
ASSOCIATED REPORTING & VIDEO	

Rating and Overall Comments

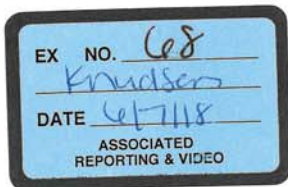
Manager Overall Evaluation

Rating: AE - Achieves Expectations

Comment: Erik joined our team in March, and immediately started contributing to the team's success. He quickly ramped up on Carl's prior programs (Suzuka/Firebird), started driving the EVA cost reductions, ClearView improvements, and participated more broadly in the team from a teamwork and leadership standpoint. A big feather in Erik's cap was the process of interviewing for the Packaging Manager position. In a short time, Erik proved to me that he had the leadership skills and management potential necessary for the role. Although he wasn't selected, he did well in the process and it allowed Erik to gain useful feedback about his future in management and allowed the team and I to evaluate his leadership potential. Since the interview, Erik has also been selected to help facilitate the HP-Canon Packaging Managers Meeting, a key forum requiring excellent facilitation and communication skills, and he has stepped up to cover the key page-wide array ink programs, Blackbird and Nighthawk. In addition, I feel like Erik has worked well to build positive relationships with the broader team, and I already see him applying his MPM experience to his packaging work. For instance, Erik evaluated the manufacturing & assembly cost impacts of a potential change prior to moving forward – a great best practice. Feedback thus far has been positive. Here are a few quotes from partners that represent typical feedback:

- "Erik has three of these attributes - Always Accountable, Highly Capable and Innovative, and People Developer. In his project work, Erik has a "get'er done" <approach> that enables him to press through a large workload while coming up to speed. His design insights on Firebird/Sazuka Clearview have been spot on. He has a good sense of simple, elegant design. Regarding People Developer, I often hear him contributing to project team meetings. He has a way of drawing team members into a common solution path and keeping everyone calm, moving the discussions forward without getting derailed."
- "People and Team Developer: Works well with others and partnered with CPE, QPM and myself to deliver on common goals and put HP's overall objectives first. His teamwork has allowed "in funnel projects to move to commit" and deliver planned cost save efforts. "
- "As a member of the Suzuka/Firebird PMT, Erik is engaged. This program has had an ever changing schedule & unit allocations. Erik has had to work through scenarios for the schedule & allocations several times. He had a great attitude, is knowledgeable, and willing to participate. " I'll review other comments, but they are along a similar theme of strong teamwork, ramping up quickly in the position, and contributing well in just the first several months.

In terms of development, I'll encourage Erik to further developing his leadership skills, his overall impact and contribution to the broader team, and take on projects and responsibilities of growing and higher impact. His role on the Canon PMM is a great example, along with taking on futher critical programs like Blackbird/Nighthawk. I think Erik has great potential in our team and I see him as emerging as one of our key leaders over the coming months and year. Thanks for a great start with our team, Erik!



Employee Overall Evaluation

Comment: In the first two months of FY '15 I was an environmental program manager, and focused primarily on RoHS. My goals were to identify any parts that risked not being 2.05 compliant for the FY '16 year. We reviewed and documented tens of thousands of parts and didn't find a single part at risk. When I left the team, we only had a few hundred low-risk parts left to document.

After that I accepted a role in the packaging team as packaging engineer, a field within the business I'm passionate about. This represented a major leap forward in my career as I'm now able to leverage 8 years of program management experience into a field I'm experienced and educated in. I've been on the team for close to 4 months, and learned everything needed to have a very full workload. Major accomplishments to date include:

- Leading the Garnett-Opal Fabricated solution cost savings project (\$40k savings). This new solution is set to roll in early Q4.
- Leading the eVa Arcel to EPS cost savings solution with estimated savings over \$400k. This new material will be rolled in early Q4.
- Fixing numerous packaging design issues on Suzuka-Firebird to set us up for a successful DE1 JDT in August.
- Developing an EPEAT Clearview solution for a brand new class of floor standing printers. This design includes a new pallet/bottom cushion design to provide adequate product protection plus a outstanding OOB and corrugated cushions. A proof of concept is complete and gives us a high level of confidence leading into DE phase.

Additionally, I was selected to be interviewed for a packaging manager role. This is a position that I identified in my career goals a few years ago, and am proud to have been selected to interview. Though I wasn't selected for the position, I was able to bring more visibility to my background, skills and talents to the broader CDPS organization.

Being new to the team, it has been extremely important that I fit back into the group effectively. Team dynamics are so important, and it is absolutely essential that I add to the already positive team dynamic. I believe I've done that by leveraging my relationship skills and high level of emotional intelligence. I'm trying to lay the foundation for being a good leader within the team and believe I'm on track for earning the trust and respect needed from each individual.

Acknowledgment

Manager

Entered by: _____ Date: _____
Status: _____
Comment: _____

Employee

Entered by: Erik Knudsen (Terminated) (00367138) Date: 08/04/2015
Status: Acknowledge without comments
Comment: _____

Brian K. Julian, ISB No. 2360
Andrea J. Fontaine, ISB No. 7175
ANDERSON, JULIAN & HULL LLP
C. W. Moore Plaza
250 South Fifth Street, Suite 700
Post Office Box 7426
Boise, Idaho 83707-7426
Telephone: (208) 344-5800
Facsimile: (208) 344-5510
E-Mail: bjulian@ajhlaw.com
ajfontaine@ajhlaw.com
iCourt/e-File: service@ajhlaw.com

Attorneys for Defendant

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

ERIK KNUDSEN,

Plaintiff,

vs.

**J.R. SIMPLOT COMPANY, a Nevada
corporation,**

Defendant.

Case No. CV01-17-13956

**REPLY TO MEMORANDUM IN
OPPOSITION TO DEFENDANT'S
MOTION FOR SUMMARY
JUDGMENT**

COMES NOW, Defendant J.R. Simplot Company ("Simplot"), by and through its counsel of record, Anderson, Julian & Hull, LLP, and hereby submits this Reply to Memorandum in Opposition to Defendant's Motion for Summary Judgment.

I. Knudsen Cannot Assert a New Fraud Theory In Response to a Motion for Summary Judgment.

Knudsen failed to allege fraud by nondisclosure in his Complaint, and he cannot now assert a theory that was never pled. In alleging fraud, a party must "state with particularity the

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circumstances constituting the fraud.” I.R.C.P. 9(b). The failure to properly assert a cause of action in the complaint cannot be cured in response to a motion for summary judgment. *See Edmondson v. Shearer Lumber Products*, 139 Idaho 172, 75 P.3d 733 (2003). Rather, the party alleging fraud must support the existence of each of the elements of the cause of action for fraud by pleading the factual circumstances with particularity. *Jenkins v. Boise Cascade Corp.*, 141 Idaho 233, 108 P.3d 380 (2005). A cause of action for fraud based on misrepresentation differs from fraud by omission; fraud by silence requires the plaintiff to assert a duty on the part of the defendant to speak. *G & M Farms v. Funk Irr. Co.*, 119 Idaho 514, 521, 808 P.2d 851, 858 (1990); *see also Tusch Enterprises v. Coffin*, 113 Idaho 37, 740 P.2d 1022 (1987) (a “failure to disclose” fraud claim requires a showing that there was a duty to inform the plaintiff of concealed facts). A party may be under a duty to disclose: (1) if there is a fiduciary or other similar relation of trust and confidence between the parties; (2) to prevent a partial statement of the facts from being misleading; or (3) if a fact known by one party and not the other is so vital that if the mistake were mutual the contract would be voidable, and the party knowing the fact also knows that the other does not know it.” *Sowards v. Rathbun*, 134 Idaho 702, 707, 8 P.3d 1245, 1250 (2000). Where a party intends to assert a fraud claim based on nondisclosure, Rule 9 requires the plaintiff to plead facts supporting the existence of one of the scenarios set forth above which demonstrates the existence of a duty to disclose.

Knudsen’s Complaint failed to allege a duty to disclose, and this critical element cannot be now inserted in response to a motion for summary judgment. *See Harms Memorial Hospital v. Morton*, 112 Idaho 129, 730 P.2d 1049 (2003) (No dispute of fact is “material,” however, unless it relates to an issue that is disclosed by the pleadings.) Knudsen’s fraud claim was pled as an “Intentional Misrepresentation.” (Compl. at 8.) Knudsen alleged that “Simplot made

multiple material representations” with knowledge of the falsity of these representations. (Compl. ¶¶ 40-41.) Knudsen makes no mention of what was not disclosed or the facts which gave rise to a duty to disclose. Knudsen pled his cause of action as a fraudulent misrepresentation case and cannot use a response to a motion for summary judgment to amend the Complaint. Any argument that Simplot failed to disclose information about a future job assignment must be disregarded by this Court.

II. Knudsen Has Failed to Demonstrate the Existence of a Duty to Disclose.

Even accepting Knudsen’s newly asserted nondisclosure claim for purposes of this argument only, Simplot is aware of no Idaho case addressing a duty to disclose every possible job duty an employee may be asked to perform for a prospective job. The duty to disclose has been quoted by the Idaho Supreme Court as follows:

A person under the duty in this [Restatement] is required to disclose only those matters that he has reason to know will be regarded by the other as important in determining his course of action in the transaction at hand. He is therefore under no duty to disclose matters that the ordinary man would regard as unimportant unless he knows of some peculiarity of the other that is likely to lead him to attach importance to matters that are usually regarded as of no moment.

Tusch Enterprises v. Coffin, 113 Idaho 37, 740 P.2d 1022 (1987) (quoting Restatement (Second) of Torts § 551 cmt c.) Knudsen claims that a duty to disclose a startup manager assignment arose because the position was touted as a packaging engineer position. However, Knudsen’s argument fails to set forth a critical factor, which is that Simplot had reason to know that disclosure of the startup assignment would be important.

An ordinary person applying for a job could not reasonably expect to be told of every job duty or set of job duties. Simplot indicated that the job would require project management, which Knudsen anticipated in applying for the position and highlighted in his resume.

(Anderson Dep. Ex. 33; Knudsen Dep. 139:21-25.) Knudsen's requirement to be informed of a potential temporary startup assignment prior to accepting a job was peculiar to Knudsen and did not give rise to a duty on the part of Simplot to disclose the assignment.

III. Knudsen Has Failed to Set Forth an Affirmative Misrepresentation.

Having failed to identify a duty to disclose, Knudsen attempts to argue that not telling him about the startup assignment is nonetheless a misrepresentation. As noted above, Knudsen's case is a nondisclosure case, not an intentional misrepresentation case. No false representation concerning project management was made during the interview process, and the Job Announcement accurately included Knudsen's startup duties. At Knudsen's interview, the following discussion took place:

Q. ...

What was said specifically in the interview that you recall that gave you your impression as to what would be involved with project management, if you remember?

A. I don't remember. Tim Lalley had been a friend of mine for a while, and he said, "It's kind of the similar stuff that you were working on at HP as a packaging engineer."

Q. But you simply don't recall what every person said or –

A. Of course not.

Q. -- statement made?

And, of course, you wanted to get hired?

A. Sure. I wanted a – I would like a – I wanted an offer that I could consider.

Q. Okay.

A. I wasn't ready to, like, bail on HP yet.

Q. And you knew that if you said, "I don't really want to be managing other projects like I did for HP," you probably wouldn't get hired?

A. No.

Q. You knew that?

A. Of, course, yeah.

Q. “Yes”?

A. Yes.

(Knudsen Dep. 215:18-216:18.) The foregoing demonstrates that the only representation concerning project management that Knudsen can recall is that he would, in fact, be expected to engage in project management like he admittedly did at HP. *See* Knudsen Dep. Ex. 54. There was no misrepresentation. In fact, it was Knudsen who concealed a material fact from Simplot; Knudsen knew that if he revealed that he did not want to manage projects, he would not get the job. Implicit in that admission is the fact that Knudsen knew and understood that Simplot was looking for project management skills. The only affirmative statement by Simplot concerning project management that Knudsen identified in his deposition was actually consistent with what Knudsen was asked to do at Simplot. There is no basis for a fraudulent misrepresentation.

Furthermore, the Job Announcement did not contain a misrepresentation. It is unclear to Simplot how Knudsen can maintain with any credibility that an issue of fact remains on this issue where the Job Announcement includes the requirement of “project management related to packaging equipment operations and capabilities.” (Knudsen Dep. Ex. 33.) The mere fact that the word “startup” is not specifically listed in no way alters the fact that Simplot posted a Job Announcement to recruit an engineer who could manage a project, whether that occurred at the front end of the project or not.

Knudsen appears to have assumed the role of the employer in this case, telling Simplot exactly what is and what is not an Engineer 4 at Simplot. Knudsen cannot create an issue of fact

by mischaracterizing a job that was in the unique capacity of Simplot to define. Knudsen was hired to be an engineer with project management responsibilities, and Knudsen was never told anything inconsistent with this. Because no issue of material fact remains concerning the critical element of a fraudulent misrepresentation, Knudsen's fraud claim must be dismissed as a matter of law.

IV. No Idaho Case Has Held That a Job Announcement's "Responsibilities" Can Be a Basis for Fraudulent Inducement.

Knudsen relies on *Verway v. Blincoe Packing Company, Inc.* for the proposition that a job advertisement seeking "permanent employees" could serve as a basis for a fraudulent misrepresentation. 108 Idaho 315, 317 (Ct. App. 1985). However, there are significant differences between *Verway* and the present case. The critical factor in *Verway* was that the job advertisement sought "permanent employees" in the midst of a union strike. Blincoe informed applicants that the strike would have no impact on their "permanent employment" despite knowing the opposite to be true. The fraudulent misrepresentation in *Verway* was with respect to the fact of employment, not to any potential job assignment within that employment. The misrepresentation was also affirmative, quantifiable and made with the intent to induce the employees to accept employment.

Likewise, the promise of employment in *Harvey v. Maximus*, which case is not binding on this Court, was based on affirmative statements about "open ended career opportunities" when it knew they were limited in time. 2014 WL 6474051 (D. Idaho 2014). The court explained that the misrepresentation of career type positions versus seasonal or temporary positions was a misrepresentation about the nature of employment that actually induced the employees to leave their prior employment. *Id.* at *3. Ultimately, the court only held that the

plaintiffs could *state a claim* for fraud if an employer offered open ended career opportunities despite knowing the job was seasonal or temporary. *Id.* at *1. The court did not hold that the omission of a job duty in a Job Announcement was a misrepresentation that could induce reasonable reliance. This case simply does not extend to what Knudsen is attempting to argue, and, in any event, is not binding on this Court.

Similarly, in *Meade v. Cedarapids, Inc.*, an Oregon case upon which Knudsen relies, the court held that nondisclosure of a plant closing could be the basis of a fraud claim where the future growth of the company was represented as a “long term situation.” 164 F.3d 1218 (1999). The plaintiffs in that case did not contend that they were entitled to any particular job position, rather, the plaintiffs claimed they would not have moved their families to a new location had their questions concerning the plant’s prospects, and thus, job security, been truthfully answered. *Id.* at 1221. However, it is unlikely that any facet of this case could be applied to an Idaho case where the Idaho Supreme Court has held that statements pertaining to “anticipated corporate performance” is “promise or a statement as to a future event” and cannot give rise to an action for fraud. *Sharp v. Idaho Inc. Corp.*, 95 Idaho 113, 122, 504 P.2d 386, 395 (1972). Contrary to Knudsen’s assertion, this case has *not* been “adopted by Idaho courts.” It has been informally referenced (without a full citation) in one federal district court case (*Harvey*) and has been cited by two other Ninth Circuit courts on entirely unrelated grounds.

None of the above cases fits the circumstances at hand, and only *Verway* is binding. Unlike *Verway*, however, Simplot made no *affirmative*, identifiable or intentionally false statement to Knudsen for the purpose of inducing him to leave his former job. Even construing the facts in favor of Knudsen, Knudsen has yet to identify an affirmative statement that he would not have duties other than what Knudsen considered to be wholly “packaging engineer” duties.

Furthermore, unlike the employers in the above cases, there is no evidence that Simplot made any statement concerning the existence or nonexistence of a startup manager assignment with the intent to induce Knudsen to take the job, knowing that such an acceptance would be to Knudsen's detriment. Because Knudsen remained silent about his refusal to perform project management duties, Simplot would have no basis for making fraudulent statements one way or other. Whereas the employer in *Verway* was obviously attempting to maintain an operable workforce in the face of a union strike when it deceived the job applicants into accepting positions, Simplot had no conceivable purpose in misrepresenting the job. In fact, the person who ultimately performed the four month startup assignment was a lower level engineer with no leadership experience. (Anderson Dep. 23:1-17; Schook Dep. 178:9-15.) This engineer certainly was not tricked into an engineering job at Simplot; he simply performed a task that he was assigned.

Moreover, like the defendant in *Sharp*, any representation concerning future job duties was based on anticipated corporate decisions, which is a future event and cannot form the basis of fraud. Knudsen contends that it is of no consequence that the project for which the startup assignment was slated was not approved until after he was hired. However, this fact is actually critical because any statement concerning the assignment could only be based on the anticipation of a future event, that being the board's decision to either approve or deny the project.

Knudsen asks this Court to find an unprecedented actionable fraud claim based on the "Responsibilities" section of a Job Announcement and alleged interview discussions that omitted a job assignment that Knudsen subjectively disliked. Even accepting Knudsen's unsubstantiated claim that the startup job had a different set of job duties from an Engineer 4, he has yet to identify one case that allows for an employee with no employment contract to dictate when and

how an employer may assign job duties. Because no Idaho court has even broached the topic of guaranteed job duties for any at-will employee, Knudsen's nebulous claims of misrepresentation by omission should not form the basis of any recognized cause of action.

V. Knudsen Has Yet to Establish the Affirmative Representation Upon Which He Reasonably Relied.

Knudsen's promissory estoppel claim rests on his subjective interpretation of Simplot's Engineer 4 position. In order to assert a claim for promissory estoppel, the reliance must be reasonable and "based on the representation made." *Nicholson v. Coeur D'Alene Placer Mining Corp.*, 161 Idaho 877, 392 P.3d 1218 (2017). Contrary to Knudsen's assertion, "the relevant decision on promissory estoppel" is not *Harvey*, which is a federal district court's decision on a 12(b)(6) motion to dismiss. In fact, Simplot cited *Harvey* to demonstrate facts that are inapposite to the current case because there was simply no agreement between Simplot and Knudsen that Knudsen would get to define the scope of his job. Knudsen has yet to establish that he reasonably relied on an affirmative representation by Simplot rather than his own subjective interpretation of what he thought his engineering position was.

For instance, Knudsen gives great weight to his own interpretation of what he thought the scope of his Engineer 4 job at Simplot would be and the percentage of time he thought he should devote to his packaging duties. However, even in response to a motion for summary judgment, Knudsen cannot point to any one statement telling him that he would never be asked to perform project management when he accepted the job at Simplot. In fact, Knudsen claims that another engineer "told him that the 'project management' element of the job description was similar to project management required of Packaging Engineers at HP". (Pls. Opp. at 19.) While it may not be objectively reasonable to assume that an engineer at a separate corporation really has a

precise understanding of what Knudsen did at HP, the fact remains that Knudsen knew he would be performing project management. While Knudsen may have had a different interpretation of what project management at Simplot entailed, Knudsen was objectively unreasonable in making a decision without further inquiry into a job duty that was known only to Knudsen to be a deal breaker.

Moreover, Knudsen gives great weight to the fact that the job title in the Job Announcement is referred to as a “packaging engineer.” It was not reasonable for Knudsen to rely on a job title alone to define his job expectations, particularly where his job *offer* was listed as Engineer 4. The Engineer 4 job title was brought to Knudsen’s particular attention when he was informed that he did not qualify as a Senior Packaging Engineer, which was the job for which he applied. (Anderson Dep. Ex. 33.) To allow the job title for a position that Knudsen did not qualify for to serve as a basis for reasonable reliance would essentially create an employment contract based on one party’s subjective interpretation of that title, and Simplot specifically disavowed any employment contract in its offer letter to Knudsen. The absurdity of allowing a job title to form the basis of promissory estoppel would set an undesirable precedent; one in which an employee could refuse an assignment simply because it falls outside of his or her perception of what that job entails.

VI. *Sorensen* Does Not Apply to Knudsen’s Breach of the Covenant of Good Faith and Fair Dealing Claim.

Knudsen’s explanation of the *Sorensen* case is entirely misleading. *See Sorensen v. Comm Tek, Inc.*, 118 Idaho 664 (1990); Pl.’s Opp. at 22-23. The Idaho Supreme Court made no determination as to the merit of the breach of the covenant of good faith and fair dealing claim in that case. Rather, the court held without discussion that the claim had to be remanded in light of

Metcalf v. Intermountain Gas Company, 116 Idaho 622, 778 P.2d 744 (1989). The court in no way applied the law or facts to the plaintiff's breach of the covenant claim, and Knudsen's attempt to use it as precedent in this case is entirely without a basis.

The law cited by Simplot remains the appropriate standard: "The implied covenant of good faith and fair dealing arises only regarding terms agreed to by the parties." *Taylor v. Browning*, 129 Idaho 483, 491, 927 P.2d 873 (1996). Simplot offered and Knudsen accepted an Engineer 4 position at Simplot, and Simplot did everything in its power to help Knudsen thrive there. (Anderson Dep. 139:7-23; 144:6-19.). Alleged omissions in a Job Announcement and alleged interview discussions are not agreed upon terms and cannot form the basis of a breach of the covenant. If unilateral statements made during hiring were a basis for breach of the covenant, Knudsen would be in breach because he failed to live up to the project management requirements contained in his resume and he failed to demonstrate the program management capabilities of which he boasted during his interview. The employment agreement was contained in the signed offer letter, and Knudsen cannot now attempt to insert substantive terms to which the parties did not agree.

VII. Idaho Does Not Recognize a Duty By Employers to Ensure Their Employees Are Satisfied With Every Assignment.

Knudsen's emotional distress claim fails for the same reason as his fraud by omission claim fails: he has failed to establish that Simplot owed Knudsen a duty to disclose information that was only subjectively critical to Knudsen. Knudsen claims that the duty to affirmatively disclose the possibility of a startup assignment stems from the foreseeability of the risk of harm to Knudsen. However, no Idaho court has established a duty owed by a prospective employer to a prospective applicant to prevent a potentially foreseeable risk that the employee would not

ultimately like the job duties. When asked to recognize a duty not previously recognized, Idaho courts consider:

[T]he foreseeability of harm to the plaintiff, the degree of certainty that the plaintiff suffered injury, the closeness of the connection between the defendant's conduct and the injury suffered, the moral blame attached to the defendant's conduct, the policy of preventing future harm, the extent of the burden to the defendant and consequences to the community of imposing a duty to exercise care with resulting liability for breach, and the availability, cost, and prevalence of insurance for the risk involved.

Rife v. Long, 127 Idaho 841, 846, 908 P.2d 143, 148 (1995). Knudsen argues in favor of a policy that requires employers to ferret out each possible task that an applicant wants to avoid, to disclose all feasibilities of the employee being assigned to that task and to ensure that from the date of hire until termination, that employee is never asked to perform that task. If Knudsen's alleged duty were recognized, employers would be unreasonably encumbered in both the job application process and in determining which projects to assign to individual employees.

VIII. Simplot Requested Oral Argument, and Was Not Required to Duplicate the Request in Its Motion for Summary Judgment.

Plaintiff contends that because Simplot failed to include a request for oral argument in its Motion for Summary Judgment, this Court is entitled to deny the Motion without further notice. (Pl.'s Mem. in Opp. to Def.'s Mot. for Summ. J. ("Pl.'s Opp.") at 3, n.2.) However, Plaintiff cites to no authority requiring that the request for an oral hearing in the actual Motion is a prerequisite to this Court considering Defendant's Motion. Idaho Rule of Civil Procedure 7(b)(3)(E) simply states that "[i]f the moving party does not request oral argument or does not timely file a supporting memorandum or brief the court may deny the motion without further notice if it determines the motion does not have merit." Simplot requested an oral hearing on several occasions, of which Plaintiff's counsel was made aware. The mere fact that a

perfunctory and unnecessary request for oral argument was not within the four corners of the Motion but made contemporaneously with the Motion cannot be a basis for this Court to relinquish its obligation to decide Simplot's Motion on the merits.

Obviously, the point of Rule 7(b)(3)(E) is to weed out unsupported motions that fail to promote the court's ability to decide an argument on the merits. Simplot has taken every conceivable step to allow this Court to fully consider its Motion for Summary Judgment; the Court should decide the case on the merits and find in favor of Simplot.

IX. CONCLUSION

Based on the foregoing, Simplot respectfully requests that this Court find, in accordance with Idaho Rule of Civil Procedure 56(c), that there exists no issue of material fact and that Simplot is entitled to judgment as a matter of law as to all of Knudsen's claims.

DATED this 29th day of August, 2018.

ANDERSON, JULIAN & HULL LLP

By Brian K. Julian

Brian K. Julian, Of the Firm
Attorneys for Defendant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 29th day of August, 2018, I served a true and correct copy of the foregoing **REPLY TO MEMORANDUM IN OPPOSITION TO DEFENDANT’S MOTION FOR SUMMARY JUDGMENT** by delivering the same to each of the following attorneys of record, by the method indicated below, addressed as follows:

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IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE STATE OF

IDAHO, IN AND FOR THE COUNTY OF ADA

Filed: 11/13/2018 12:56:30
 Fourth Judicial District, Ada County
 Christopher Rich, Clerk of the Court
 By: Deputy Clerk - Villereal, Tara

ERIK KNUDSEN,)	Case No.: CV 01-17-13956
)	
Plaintiff,)	DECISION RE: MOTION FOR SUMMARY
)	JUDGMENT
vs.)	
)	
)	
J.R. SIMPLOT COMPANY, a Nevada)	
corporation,)	
)	
)	
Defendant.)	
)	
)	
)	

On July 27, 2017, Erik Knudsen filed this action against J.R. Simplot Co. (“Simplot”) asserting that it had falsely advertised, recruited and hired him for one position in the company when the job that he was actually to fill was a “completely separate position” with substantially different responsibilities. He contends that the nature of the position that he was hired for was fraudulently misrepresented from the outset--that it was advertised as being a position for a senior packaging engineer, a position for which he had both the necessary professional background and deep interest in performing—but was, in fact, for a position that was 50% or more as a startup engineer—a position he had no interest in filling. He contends that, had he known what the true job description was, he would not have accepted the position. He alleges that the misrepresentation about the job description and duties led him to leave a good position with a respected company which he enjoyed for a job that he would never have wanted. His action is not one for wrongful termination but hiring fraud. He raises several causes of action

arising out of his hiring. Simplot has filed this motion for summary judgment seeking dismissal of Mr. Knudsen's claims. The issues have been fully briefed and argued.

I.

Standard of Review

Summary judgment is only proper "if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." I.R.C.P. 56(a). The moving party has the burden of establishing that there is no genuine issue of material fact. *Wattenbarger v. A.G. Edwards & Sons, Inc.*, 150 Idaho 308, 317, 246 P.3d 961, 970 (2010). "When considering whether the evidence in the record shows that there is no genuine issue of material fact, the trial court must liberally construe the facts, and draw all reasonable inferences, in favor of the nonmoving party." *Liberty Bankers Life Ins. Co. v. Witherspoon, Kelley, Davenport & Toole, P.S.*, 159 Idaho 679, 685, 365 P.3d 1033, 1039 (2016). The moving party has the burden of establishing there is no genuine issue of material fact. *Wattenbarger v. A.G. Edwards & Sons, Inc.*, 150 Idaho 308, 317, 246 P.3d 961, 970 (2010). Once a moving party has demonstrated that there is a material fact without dispute, then the burden shifts to the non-moving party to challenge that position by coming forward with admissible evidence which shows, that contrary to the moving party's assertion, there are indeed genuine issues of material fact which must be resolved by a jury. The non-moving party is always required to come up with more than slight doubt or "[a] mere scintilla of evidence" to defeat a properly supported motion for summary judgment. *Wright v. Ada Cnty.*, 160 Idaho 491, 495, 376 P.3d 58, 62 (2016) (citing *Finholt v. Cresto*, 143 Idaho 894, 897, 155 P.3d 695, 698 (2007)). *Johnson v. Wal-Mart Stores, Inc.*, 164 Idaho 53, 423 P.3d 1005, 1008 (2018). The Idaho Supreme Court explained the

shifting burdens of proof required to prevail at summary judgment:

The burden of proving the absence of a genuine issue of material fact rests at all times on the moving party. Where the non-moving party will bear the burden of proof at trial, the moving party's burden may be satisfied by showing the absence of material fact with regard to any essential element of the non-moving party's claim. The absence of a genuine issue of fact with regard to an essential element of the plaintiff's claim renders any other potential issues of fact irrelevant. Once the absence of sufficient evidence on an element has been shown, the burden shifts to the non-moving party to establish a genuine issue of material fact. The non-moving party cannot merely rely upon its pleadings, but must produce affidavits, depositions, or other evidence establishing an issue of material fact.

Holdaway v. Broulim's Supermarket, 158 Idaho 606, 610-11, 349 P.3d 1197, 1201-02 (2015), reh'g denied (June 22, 2015)(citing *Bromley v. Garey*, 132 Idaho 807, 810–11, 979 P.2d 1165, 1168–69 (1999) (internal citations and quotation marks omitted). “Such an absence of evidence may be established either by an affirmative showing with the moving party's own evidence or by a review of all the nonmoving party's evidence and the contention that such proof of an element is lacking.” *Id.* (citing *Antim v. Fred Meyer Stores, Inc.*, 150 Idaho 774, 776, 251 P.3d 602, 604 (Ct.App.2011)).

While the standards for summary judgment are often passed over quickly, they are critical to focus on in this case. Both briefs submitted range strongly into the area of disputable factual assertions and hyperbole but there is indeed a central problem with the evidence before the Court—with the undisputed evidence—which will be addressed in this Decision. For that reason, the factual statement by this Court will focus on those facts which are truly undisputed.

II.

Undisputed Facts

Erik Knudsen is a highly trained, experienced engineer. He earned his B.S. in Textile Material Science from North Carolina State University and an M.S. in Packaging Science from Michigan State University. While working on his master's degree, he had an internship with Hewlett-Packard ("HP") in Greeley Colorado. He worked as a Packaging Engineer at Agilent Technologies for two years and then moved to a position as a Packaging Engineer in the HP LaserJet Division. His experience was entirely in the technology industry. A general job announcement of the availability of a Senior Packaging Engineer was sent to Mr. Knudsen on June 5, 2015 by Simplot with a link to further information at the corporate website. The Senior Packaging Engineer job description provided that the position included packaging development, design and specification, testing and project management in the agricultural industry. Job responsibilities included providing support for research and development for "new and existing products" and assisting in testing production runs when necessary. It stated that part of the job would involve working directly with plant locations to specify materials among other general responsibilities described in the job description. Skills were sought which included a "strong knowledge of factory operations and packaging equipment to transfer a theoretical application into real-time production" and the ability to work with others in different departments. A requirement specifically flagged was "successful project management." The announcement indicated that international and domestic travel would be required "to support plant test runs for new products, material trials" and other tasks.

Mr. Knudsen applied for the position of Senior Packaging Engineer. His resume flagged

his experience not only in packaging for the technology industry but emphasized his leadership skills and abilities. He highlighted his experience working with teams and senior management with respect to “manufacturing status, supply chain conditions and manufacturing strategy and escalations.” He also listed: “[p]rudently anticipated risks to ramp start-up, established suitable contingency plans, and coordinated rework as needed to achieve 100% of quality requirements.” His resume reflected that he moved through various promotions at HP from Packaging Engineer to Senior Packaging Engineer to NPI Manufacturing Program Manager for the LaserJet Division from 2006-2014. The position he held at the time he became interested in the Simplot position was as a Packaging Engineer for the LaserJet Division at HP. He was by experience and education a very qualified and capable Packaging Engineer in the technology industry who also brought valuable leadership skills. He emphasized his skills not only in packaging engineering but team-building, leadership and program management with “[p]roven success in leading domestic and global teams through complex challenges and initiatives” and said that he had proven skills in “interpersonal, strategic planning, prioritization, decision making, and supervisory talents” as well as being an “[e]nthusiastic and resourceful trail blazer and change agent.” In particular, he said:

Selected Achievements:

- Led 20+ member cross-functional team comprised of Ink and LaserJet employees to develop and execute a complex new Operations NPI model for revolutionary Enterprise Ink printer. Standardized process for executing new supply chain while simultaneously meeting global launch date, business needs, and quality objectives.
- Directed business leads, engineers, and master level architects through the NPI release process of 10 LaserJet printers while meeting timeline, quality, and availability requirements
- Captured \$10M+ in annual savings by leading global teams to seamlessly consolidate manufacturing processes for five products across multiple factories to one site.
- Championed efforts to enhance OOB for all LaserJet printers, resulting in accolade from PC Magazine for including pre-installed toner cartridges.
- Drove groundbreaking changes in package design and development methods to

decrease package size by 71% over previous product, saving \$12M+ annually in materials and freight.

His resume highlighted leadership skills which included working with a variety of other groups to produce products and save costs.

Mr. Knudsen clearly indicated that his interest was in the Senior Packaging Engineering Position with Simplot. Although he did not have any food industry experience, he was an experienced and talented Packaging Engineer who had held very responsible positions with HP. The job description for the position was general and very broad.

After his application was received, Mr. Knudsen was notified that he would be interviewed by two panels. His first panel interview was to include the Laura Nessen, HR manager, two senior Packaging Engineers, the Director of Packaging Engineering, Craig Lamberton, and Sue Cooper, the purchasing manager. His second interview panel was to be comprised of the HR manager again; Lyle Schook, the Senior Director Engineering; Kent Anderson, Director Technical Engineering; and also again, Craig Lamberton. The interviews were generally described as likely to cover technical questions and behavioral based questions, with the emphasis in the first being more technical and the second interview as being more behavioral. He was advised that at the end of each interview he would be able to ask questions he might have. The HR manager, Laura Nessen, was aware at the time of the panel interview that the position would involve an engineer who would be managing a startup project or doing startup activities. There was significant interest in Mr. Knudsen's prior leadership roles.

On October 30, 2015, Simplot offered Mr. Knudsen the position of Engineer 4. The job designation had been changed from a Senior Packaging Engineer 5 position to an Engineer 4

position because Mr. Knudsen did not have prior food packaging experience. No specific job description of Engineer 4 is contained in this record. Mr. Knudsen accepted and began work effective November 23, 2015—a week which was considerably shortened because Thanksgiving fell on the Thursday.

Before Mr. Knudsen was hired, a project was in the works called the Grand Forks Packaging Upgrade Project. Craig Lamberton, whose departure back to Australia was announced the same day and in the same message that announced that Erik Knudsen had accepted the position of Packaging Engineer, testified that the Grand Forks Project had a scope of around \$22 million and was in the planning stage when Mr. Lamberton left. A detailed memorandum outlining a communication plan for all design team members was issued on Monday November 30, 2015. It contained an extensive list of people working on the Grand Forks Project and their areas of responsibility. Kent Anderson was designated as the Director of Technical Engineering and led the list. A number of people were listed with the designation of their responsibilities. Among those listed was Mark Monday as the project manager and Erik Knudsen as the startup manager. Each design team member had the direct responsibility for the identified design area. A meeting structure was established revealing a tight time schedule. A presentation was scheduled for the immediate upcoming Wednesday which was to include the budget, the schedule, and engineering progress with various design teams. There is no dispute that Mr. Knudsen was not told before his first day that he was to be the startup manager for the Grand Forks project. Likewise, both sides agree that the employment was at-will. The Grand Forks Project was clearly in the works before it was given final board approval on February 23, 2016. It is undisputed that it was not mentioned in any interview or in any job description prior to his acceptance of employment that Mr. Knudsen would be acting as the startup manager for

the Grand Forks Project.

Mr. Knudsen was subsequently terminated. He filed this action on July 27, 2017. In his Complaint, he asserts causes of action for Fraud/Intentional Misrepresentation, Promissory Estoppel, Breach of the Covenant of Good Faith and Fair Dealing, and Negligent Infliction of Emotional Distress.

III.

ANALYSIS

The gravamen of this case is Mr. Knudsen's definite position that he would not have quit a job he liked at a company that he had been with for years had he known what the true nature of his job duties would be at Simplot, specifically, that he would be working as a startup manager on the Grand Forks Project. It is undisputed that no reference was made to Mr. Knudsen acting as the startup manager on the Grand Forks Project in the interviews before he was hired.

A. Fraud.

Simplot has made the argument that the Court should not recognize any cause of action for hiring fraud because this was an employment-at-will relationship. In an employment at-will agreement, unless the employee is hired under a contract which specifies either the duration of the employment or limits the reasons for discharge, either the employer or the employee may terminate the relationship at any time for any reason without incurring liability. *Mitchell v. Zilog, Inc.*, 125 Idaho 709, 874 P.2d 520 (1994). Hiring fraud has been recognized in Idaho. In *Verway v. Blincoe Packing Co.*, 108 Idaho 315, 698 P.2d 377 (Ct. App. 1985), the Court of Appeals upheld a jury verdict for fraud in the hiring process for employees who contended that

they were promised that if they were hired for work during a strike, they would not be fired if the strike was settled. *Verway* had no discussion of employment at-will status but it clearly involved fraud in the hiring process. In the past, Idaho has rejected the idea that the employer-employee relationship alone warrants exclusion of an employee from the application of general legal concepts applicable to every other type of relationship between people. It has held that basic contract principles that apply to all contracts apply even where the employment relationship is at-will. See, *Metcalf v. Intermountain Gas Co.*, 116 Idaho 622, 624, 778 P.2d 744, 746 (1989); *Sorenson v. Comm Tek Inc.*, 118 Idaho 664, 669 799 P.2d 70, 75 (1990). There is no compelling reason why, in the context of hiring, fraud should be excluded solely because the relationship could later be terminated at-will. There is no reason to exclude the creation of the employment relationship from principles which generally apply to the formation of all other agreements. Other types of agreements may be induced by fraud, so, at least conceptually, can the employment relationship. For example, if an attorney applies to be an Idaho Supreme Court Justice, goes through the judicial council with questions about his or her fitness to serve as a justice, is recommended to the Governor and appointed, and then comes to the Supreme Court to find out that he or she is expected to be the IT director, quitting the position alone would not redress the harm caused to an attorney who had wrapped up his or her practice. Even though the person could quit and find another job, the harm caused by the hiring fraud would not be fully redressed. Any employee who leaves a position that he or she has and enjoys for a new position takes some level of risk but the risk should not be compounded by fraudulent misrepresentation about the new job at the outset. At the same time, most job positions have duties that are not fully spelled out when a person is hired to fill a position and, over time, duties can change. When duties change, when a position is no longer fulfilling, then the employment at-will

relationship can enable an employee to leave and find a more satisfactory position, recognizing that leaving employment for other employment is often decision involving many trade-offs as employees evaluate the decision with respect to pay, benefits including tangible benefits such as insurance, retirement options, and other benefits as well as the impact upon family. There is no reason to bar, in all instances, a properly supported claim for hiring fraud. Just as the employment relationship is not excluded from normal contract concepts, i.e. *Sorensen v. Comm Tek, Inc., id.*, neither should tort claims be barred solely because employment is at-will. Other jurisdictions have agreed that a cause of action for fraud- in-hiring is not barred solely because the employment relationship is at-will. In *Stewart v. Nash*, 976 F.2d 86 (2nd Cir. 1992), a lawyer who was enticed away from her job in environmental law at her existing firm by promises that the firm which was recruiting her had secured a large environmental law client and would be establishing an environmental law department which she would head, was allowed to raise a claim for fraud based upon the fact that no such client ever existed nor did the firm actually do environmental law work. Her case was allowed to go forward even though the employment relationship was at-will. The Court noted that the harms she suffered—leaving a firm where she was already engaged in the practice of her chosen specialty with all the resulting career damage—resulted from her reliance on false statements made in hiring, therefore, she could bring an action for fraud in the inducement.

Where an employment contract is induced by false representations, a cause of action for fraud can exist even though the relationship is terminable at-will and there are no damages which can be awarded for the termination itself. The Ninth Circuit recognized an action for hiring fraud because of misrepresentations made in the hiring process in *Meade v. Cedarapids, Inc.*, 164 F.3d 1218(1999), a case involving the interpretation of Oregon law. In *Meade*, the four

asserted that they quit their prior jobs and were hired on the representation that the division that they were being hired for would be growing, that the area was improving economically, that sales were up, that production rates were expanding and the company was “ramping up” the plant when, in fact, the plan already existed for the division to be closed. The Court held that if the representations were false when made, a cause of action for fraud would exist and secondly, the nondisclosure of material facts could be a form of misrepresentation, “where the defendant has concealed a known fact that is material to the transaction” or made a representation that would be misleading without full disclosure. *Id.* at 1222. The fraud was based not on any statement about duration of employment but rather on fraudulent statements about the health of the company and concealment that the division was closing. The fraud lay in the inducement to enter into the employment relationship, not in its termination. Therefore, if the statements were knowingly or recklessly false, a fraud cause of action could be pursued even in the at-will employment relationship. For a general discussion, see “Truth-In-Hiring Claims and the At-Will Rule,” 1997 Colum. Bus. L. Rev. 105.

There is a difference between materially false statements made to induce a person to take a job and the fact that the relationship may be terminable at-will. While the relationship’s terminable at-will status can bar damages for the termination itself, there is no reason to grant blanket protection for fraudulent statements made in hiring any more than there are any blanket protections for fraudulent misrepresentations made in the inducement of real estate transactions or any other type of contract. That being said, intentional misrepresentation or fraud in the inducement is a very difficult cause of action to pursue because of the specific elements of the claim.

In order to state a cause of action for fraud or intentional misrepresentation, the party

asserting it must show:

- (1) a statement or a representation of fact;
- (2) its falsity;
- (3) its materiality;
- (4) the speaker's knowledge of its falsity;
- (5) the speaker's intent that there be reliance;
- (6) the hearer's ignorance of the falsity of the statement;
- (7) reliance by the hearer;
- (8) justifiable reliance; and
- (9) resultant injury.”

Apr. Beguesse, Inc. v. Rammell, 156 Idaho 500, 509, 328 P.3d 480, 489 (2014) citing *Bank of Commerce v. Jefferson Enters., LLC*, 154 Idaho 824, 833, 303 P.3d 183, 192 (2013)(other cites omitted). There is no factual dispute that nothing was said about having Mr. Knudsen be the startup manager for the Grand Forks project during the interviews. There is nothing in the position description which would indicate, one way or another that he would be acting as a startup manager. The job description for Senior Engineer was very general. No job description for Engineer 4 has been provided.

No false statement or misrepresentation has been identified by Mr. Knudsen as being made by Simplot. This record is devoid of any evidence of any express fraudulent or intentional misrepresentation of any fact about what the job of Senior Engineer would entail. In certain limited circumstances, the omission of information can constitute fraud if a duty to disclose exists. *Humphries v. Becker*, 159 Idaho 728, 366 P.3d 1088 (2016); *Sowards v. Rathbun*, 134 Idaho 702, 707, 8 P.3d 1245, 1250 (2000).

A party may be under a duty to disclose: (1) if there is a fiduciary or other similar relationship of trust and confidence between the two parties; (2) in order to prevent a partial statement of the facts from being misleading; or (3) if a fact known by one contracting party and not the other is so vital that if the mistake were mutual the contract would be voidable, and the party knowing the fact also knows that the other does not know it. *Sowards*, 134 Idaho at 707, 8 P.3d at 1250. **With respect to fraud, it is the court that determines whether, as a matter of law, the facts asserted would give rise to a duty to disclose.** *Printcraft Press, Inc. v. Sunnyside Park Util., Inc.*, 153 Idaho 440, 452, 283 P.3d 757, 769 (2012).

Humphries v. Becker, 159 Idaho at 736, 366 P.3d at 1096 (2016), reh'g denied (Feb. 23, 2016)(emphasis added). *Humphries v. Becker* places the obligation on this Court to determine whether the facts asserted give rise to a duty to disclose. As the Idaho Supreme Court specifically held, this issue is solely a question of law.

Because on summary judgment, Mr. Knudsen is entitled to the benefit of all favorable inferences in his favor, the fact that at least one Simplot employee thought that he might be functioning as the startup manager on the Grand Forks Project and the fact that the very detailed memorandum announcing his appointment and Craig Lamberton's departure to Australia, set forth his responsibilities as startup manager for the Grand Forks project, the Court will assume that was a task that Simplot had in mind for Mr. Knudsen when he was hired. However, Mr. Knudsen can point to no facts which expressly limit the type of tasks he would be performing as a Senior Engineer, much less as an Engineer 4. The job description is very general. There is no evidence that he asked questions about what his day might be like, or what exactly he might be doing nor does he point to anything specific that misled him in any way about the role he was being hired to fulfill. Recognizing that he is absolute in his certainty that this was a function that he would not be performing, there is nothing in the record that shows what Simplot did by word or actions that led him to his belief.

There is no fiduciary relationship between a person seeking to be hired and a prospective

employer. Likewise, Mr. Knudsen has not pointed to any full or “partial statement of facts” which was misleading. The job description was very general. In the few cases addressing fraud in the inducement because of statements made in the hiring process, there were intentional, direct misrepresentations of fundamental facts, as in *Verway* and *Stewart v. Nash*, or reckless misstatements such as in *Meade*, where representations were made about how the business would be growing even though the plant was scheduled to be closed. There were specific false statements made by the employer or specific false or reckless misstatements. Mr. Knudsen does not point to any false or reckless misstatements. If there was simply miscommunication, then he has only stated a cause of action for negligent misrepresentation which is not recognized in Idaho with the exception of the accountant relationship. *Feld v. Idaho Crop Imp. Ass'n*, 126 Idaho 1014, 1016, 895 P.2d 1207, 1209 (1995); *Duffin v. Idaho Crop Improvement Ass'n*, 126 Idaho 1002, 1010, 895 P.2d 1195 (1995); *Hudson v. Cobbs*, 118 Idaho 474, 477, 797 P.2d 1322 (1990). The only party liable for negligent misrepresentation in Idaho is a certified public accountant who negligently prepares an audit and is aware that the audit is to be used for a particular purpose by a known party who is expected to rely upon it. *Idaho Bank & Tr. Co. v. First Bancorp of Idaho*, 115 Idaho 1082, 1084, 772 P.2d 720, 722 (1989).

The existence of a duty to disclose is a question of law. The law imposes a number of duties on employers. Discrimination in hiring on the basis of sex, religion or ethnic origin is barred. Employers have a number of duties imposed by law with respect to taxes and withholding. Employers have duties imposed by law relating to worker safety. The courts, as well as legislative bodies, have also imposed duties on employers. The bar against discharging employees at-will for reasons which violate public policy is court-imposed. An employee cannot be discharged for a number of reasons which contravene public policy:

The public policy exception has been held to protect employees who refuse to commit unlawful acts, who perform important public obligations, or who exercise certain legal rights or privileges. *Staggie v. Idaho Falls Consolidated Hospitals, Inc.*, 110 Idaho 349, 715 P.2d 1019 (Ct.App.1986). Cf. *Petermann v. International Brotherhood of Teamsters*, 174 Cal.App.2d 184, 344 P.2d 25 (1959) (employee discharged for refusing to commit perjury); *Frampton v. Central Indiana Gas Company*, 260 Ind. 249, 297 N.E.2d 425 (1973) (employee discharged for filing worker's compensation claim); *Monge v. Beebe Rubber Company*, 114 N.H. 130, 316 A.2d 549 (1974) (employee discharged for refusing to "date" her supervisor); *Nees v. Hocks*, 272 Or. 210, 536 P.2d 512 (1975) (employee discharged for serving on jury duty).

Anderson v. Farm Bureau Mutual Insurance Company of Idaho, 112 Idaho 461, 469, 732 P.2d 699, 707 (Ct.App.1987). See, *Jackson v. Minidoka Irrigation Dist.*, 98 Idaho 330, 563 P.2d 54 (1977). However, no case has been cited that confines the job duties of employees hired under broad descriptions to the tasks listed in a general job description. While I gave the admittedly imperfect example of a Supreme Court Justice ending up as an IT department head, a justice could not fairly complain if he or she has to wrestle with cases which lead to politically unpopular decisions or which call upon him or her to invalidate a law imposed by the same legislature which pays judicial salaries because the law is unconstitutional. In that situation, he or she should find another job.

It is not reasonable to require employers to list every possible task which they might require an employee to perform. An employee can resist being asked to perform an illegal act. However, it is not reasonable to impose a duty on employers to list every possible task that they need their employees to do. "With respect to fraud, it is the court that determines whether, as a matter of law, the facts asserted would give rise to a duty to disclose." *Printcraft Press, Inc. v. Sunnyside Park Util., Inc.*, 153 Idaho 440, 452, 283 P.3d 757, 769 (2012). *Printcraft Press* involved fraud committed by omission. In that case, a printing business entered into a ten-year lease with an industrial park which in turn entered into an agreement with Sunnyside Park Utilities to manage its sewer system for the park's occupants. Problems with the sewer system

developed and eventually led to Printcraft's suit for fraudulent misrepresentation. In that case the issue involved the third aspect which causes a duty to disclose to arise: "(3) if a fact known by one contracting party and not the other is so vital that if the mistake were mutual the contract would be voidable, and the party knowing the fact also knows that the other does not know it." *Id.* at 153 Idaho 452. There is no evidence in this case, even assuming that Simplot knew that it would ask Mr. Knudsen to perform startup manager functions, that Mr. Knudsen was about to accept employment under the mistaken belief that he would never be required to perform such a task. An employer cannot be expected to read the mind of prospective job applicants to determine if there is some task that the employer considers a part of the job that would be repugnant to the prospective employee. If an employee asks, then, obviously an employer should answer honestly if only for the practical reason that there is no earthly benefit to either an employee or an employer to hire someone who is not going to work out in a position. It is a waste of everyone's time not to communicate fully about job expectations and duties but it is not realistic to impose upon an employer the affirmative duty to disclose all possible tasks that they might need an employee to perform. A misunderstanding based upon incomplete communication sounds in negligent misrepresentation not the tort of fraud/intentional misrepresentation.

Giving Mr. Knudsen the benefit of every doubt and assuming for the purpose of this motion that, at the time he interviewed for the position of Senior Engineer and, at the time an offer was extended to him for the position of Engineer 4, Simplot intended to ask him to perform the task of startup manager on the Grand Forks Project, he has not stated a claim for fraud or intentional misrepresentation. Even assuming all facts in his favor, there is no duty on the part of an employer to disclose every possible task that might be asked of an employee. Simplot is

entitled to summary judgment in its favor on the claim of fraud and intentional misrepresentation.

B. Breach of the Implied Covenant of Good Faith and Fair Dealing.

Employment contracts are as subject to the implied covenant of good faith and fair dealing as are all other contracts. *Metcalf v. Intermountain Gas Co.*, 116 Idaho 622, 778 P.2d 744 (1989); *Sorenson v. Comm Tek Inc.*, 118 Idaho 664, 799 P.2d 70 (1990). The covenant of good faith and fair dealing requires the parties to perform, in good faith, the obligations required by their agreement, and a violation of the covenant occurs when either party violates, nullifies or significantly impairs any benefit of the contract. *Idaho Power Co. v. Cogeneration, Inc.*, 134 Idaho 738, 750, 9 P.3d 1204, 1216 (2000). The covenant of good faith and fair dealing may be implied with regard to terms agreed to by the parties, and requires that the parties perform, in good faith, the obligations imposed by their agreement. *Independent Lead Mines v. Hecla Mining Co.*, 143 Idaho 22, 26, 137 P.3d 409, 413 (2006). It is a covenant in contract, not in tort, and its breach is a breach of contract, not a tort. *Idaho First National Bank v. Bliss Valley Foods, Inc.*, 121 Idaho 266, 288, 824 P.2d 841, 863 (1991); *Burton v. Atomic Workers Federal Credit Union*, 119 Idaho 17, 23, 803 P.2d 518, 524 (1990). “The implied covenant of good faith does not inject substantive terms into the contract but, rather, ‘requires only that the parties perform in good faith the obligations imposed by their agreement.... Thus, the duty arises only in connection with terms agreed to by the parties....’ The covenant does not create on the part of the employer a duty that is not inherent in the employment agreement.” *Jones v. Micron Tech., Inc.*, 129 Idaho 241, 247, 923 P.2d 486, 492 (Ct. App. 1996).

The implied covenant of good faith and fair dealing does not create additional contract

terms—it applies to the manner in which the parties are to handle the terms that they agreed upon. There is nothing in this record which would support an action for the breach of the implied covenant of good faith and fair dealing because one of the duties that an Engineer 4 was asked to do was to act as a startup manager on a project. The covenant of good faith and fair dealing does not create terms which do not otherwise exist in a contract; the covenant requires that the duties and obligations of the contract be performed in good faith. The description of the Senior Engineer position was broad. It involved travel. It involved assisting in testing and production runs. It involved “project management related to packaging equipment operation and capabilities.” It involved working directly with plant locations. It involved multiple, general tasks. It required someone with a “[s]trong knowledge of factory operations and packaging equipment to transfer a theoretical application into real-time production.” The position description specifically listed demonstrable skill in project management as a job requirement. There is nothing in the position description which would preclude a packaging engineer from acting as a startup manager on a project.

C. Promissory Estoppel

There is no viable cause of action for promissory estoppel. In *Smith v. Boise Kenworth Sales, Inc.*, 102 Idaho 63, 67–68, 625 P.2d 417, 421–22 (1981), the Supreme Court quoted the Restatement (Second) of Contracts § 90(1) (1973):

A promise which the promisor should reasonably expect to induce action or forbearance on the part of the promisee or a third person and which does induce such action or forbearance is binding if injustice can be avoided only by enforcement of the promise.”

There would need to be a promise for this to be a viable cause of action. There is no promise that the position would never include tasks like startup manager. The doctrine of promissory

estoppel is a substitute for consideration. It is not a substitute for an agreement between the parties. *Nicholson v. Coeur D'Alene Placer Mining Corp.*, 161 Idaho 877, 883, 392 P.3d 1218, 1224 (2017), reh'g denied (Apr. 14, 2017). Any agreement would have to some affirmative representation by the promisor which would give a reasonable basis for the one receiving the promise to take action or to give up taking an action which he or she would otherwise undertake. In *Harvey v. Maximus Inc.*, No. 1:14-CV-00161-BLW, 2014 WL 6474051, at *5 (D. Idaho Nov. 19, 2014), a case involving pleading standards sufficient to survive a motion to dismiss, future employees were told that they would be “regular capacity” employees instead of “limited service” employees which led them to believe they were applying for a more stable position which would be a career opportunity. There was a specific promise which they could have justifiably relied on, therefore promissory estoppel was an available cause of action and the case could survive a motion to dismiss. This is a summary judgment motion where the plaintiff has failed to bring forth any evidence that any promise was made. There was no specific promise in this case. Mr. Knudsen did undertake the position of Engineer 4 but there is no showing at all that the tasks of a packaging engineer would never include assisting in the startup of a packaging operation. In fact, the job description is so broad that it would reasonably include tasks like making certain that the packaging equipment worked and that the people called upon to operate the equipment would understand how to do their job.

D. Negligent Infliction of Emotional Distress

Idaho recognizes the tort of negligent infliction of emotional distress, but in order to establish the claim, there must be a breach of a recognized legal duty. *Nation v. State, Dep't of Correction*, 144 Idaho 177, 191, 158 P.3d 953, 967 (2007). Mr. Knudsen can point to no legal duty breached by Simplot by asking him to perform the task of startup manager for the Grand

Forks Project. Miscommunication, failure to fully communicate are aspects of negligent misrepresentation which is not a claim that the plaintiff can pursue against Simplot. *Feld v. Idaho Crop Imp. Ass'n*, 126 Idaho 1014, 1016, 895 P.2d 1207, 1209 (1995); *Duffin v. Idaho Crop Improvement Ass'n*, 126 Idaho 1002, 1010, 895 P.2d 1195 (1995); *Hudson v. Cobbs*, 118 Idaho 474, 477, 797 P.2d 1322 (1990). There is no legal duty for an employer to list every possible legal task that it might ask an employee to perform in a job description or the hiring process. An employer must answer questions honestly but it is not realistic to impose an obligation to disclose every possible task either in a job description or an employment interview.

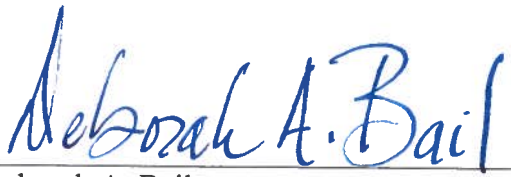
IV.

Conclusion

There is no legal duty for an employer to list every possible lawful task that it may ask an employee to perform in either a job interview or in a position description. While hiring fraud can exist in an employment at-will relationship, there is no basis for a claim for fraud in the inducement or intentional misrepresentation when there were no fraudulent or intentionally misleading statements made in the hiring process. There is no basis for the plaintiff's claims for breach of the implied covenant of good faith and fair dealing, promissory estoppel or negligent infliction of emotional distress based upon the facts of this case, even giving the plaintiff the benefit of all favorable inferences from the facts before the Court. At best, this case presents a claim for negligent misrepresentation which is not available in Idaho except in the context of a public accountant's negligent misrepresentations in an audit relied upon by a limited class of persons whose reliance on the accountant's representations was specifically foreseen. This is not such a case.

Simplot's motion for summary judgment is granted.

Dated this 12th day of November, 2018.

A handwritten signature in blue ink that reads "Deborah A. Bail". The signature is written in a cursive style and is positioned above a horizontal line.

Deborah A. Bail
District Judge

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Attorneys for Defendant

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

ERIK KNUDSEN,

Plaintiff,

vs.

**J.R. SIMPLOT COMPANY, a Nevada
corporation,**

Defendant.

Case No. CV01-17-13956

**MEMORANDUM AND AFFIDAVIT
OF COSTS AND ATTORNEYS'
FEES**

COMES NOW Defendant J.R. Simplot Company, by and through its counsel of record, Anderson, Julian & Hull LLP, and pursuant to Idaho Code section 12-120(3) and Idaho Rule of Civil Procedure 54(d) and 54(e), sets forth the costs, disbursements, and attorneys' fees incurred, as of December 18, 2018, in the prosecution of this case as follows:

COSTS AS A MATTER OF RIGHT

- | | |
|-----------------------------------|-----------|
| 1. Court Filing (Answer) | \$ 140.08 |
| 2. Reasonable Expert Witness Fees | 2,000.00 |

3. Deposition Reporting and Transcription Costs	4,403.32
TOTAL COSTS AS A MATTER OF RIGHT	\$6,543.40

DISCRETIONARY COSTS

1. Additional Expert Witness Fees	\$ 5,300.00
2. Mediation Fee	450.00
TOTAL DISCRETIONARY COSTS	\$ 5,750.00
TOTAL COSTS	\$12,293.40

ATTORNEYS' FEES

Idaho Code 12-120(3) states that “[I]n any civil action to recover ... in any commercial transaction unless otherwise provided by law, the prevailing party shall be allowed a reasonable attorney’s fee to be set by the court, to be taxed and collected as costs.”

Defendant requests the Court award a total of \$130,627.00 as reasonable attorneys’ fees incurred, as of December 18, 2018, in recovering the amounts owed to the Defendant in this case, pursuant to Idaho Code Section 12-120(3). The hourly rates and the amount of attorneys’ fees are reflected in the attached billings marked as Exhibit A to this Memorandum.

This request for attorneys’ fees is supported by the below Affidavit of Brian K. Julian.

TOTAL COSTS AND ATTORNEYS’ FEES REQUESTED, AS OF NOVEMBER 13, 2018: \$142,920.40.

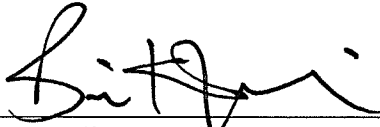
Brian K. Julian, being first duly sworn upon oath, deposes and states:

I am an attorney of record for the Defendant in the above-captioned case, and as such am informed regarding the costs, disbursements, and attorneys’ fees set forth herein. To the best of my knowledge and belief, the items of costs, disbursements and attorneys’ fees set forth above are correct, have been necessarily incurred in pursuing collection of amounts owed by Plaintiff,

and are in compliance with Rule 54 of the Idaho Rules of Civil Procedure and Idaho Code section 12-120(3).

DATED this 18th day of December, 2018.

ANDERSON, JULIAN & HULL LLP

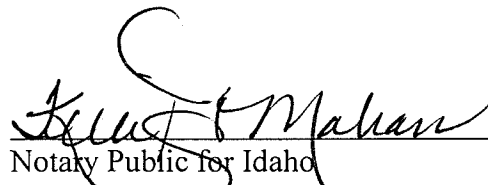
By 
Brian K. Julian, Of the Firm
Attorneys for Defendant

STATE OF IDAHO)
) ss:
County of Ada)

I, Kelli G. Mahan, a Notary Public, do hereby certify that on this 18th day of December, 2018, personally appeared before me Brian K. Julian, who, being by me first duly sworn, declared that he is an attorney of record for the Defendant in the foregoing action, that he signed the foregoing document, and that the statements contained therein are true.

IN WITNESS WHEREOF, I have hereunto set by hand and affixed my official seal the day and year first above written.



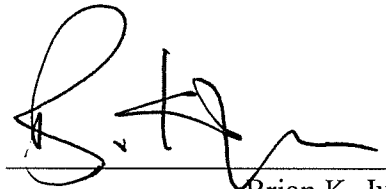

Notary Public for Idaho
Residing at: Kuna, Idaho
My Commission Expires: April 23, 2022

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 8th day of December, 2018, I served a true and correct copy of the foregoing MEMORANDUM AND AFFIDAVIT OF COSTS AND ATTORNEYS' FEES by delivering the same to each of the following attorneys of record, by the method indicated below, addressed as follows:

Erika Birch
T. Guy Hallam
Grant Burgoyne
STRINDBERG & SCHOLNICK, LLC
1516 W. Hays St.
Boise, ID 83702
T: (208) 336-1788
F: (208) 278-3708
E: erika@idahojobjustice.com
guy@idahojobjustice.com
grant@idahojobjustice.com
Attorneys for Plaintiff

- U.S. Mail, postage prepaid
- Hand-Delivered
- Overnight Mail
- Facsimile
- E-Mail
- iCourt/e-File



Brian K. Julian

EXHIBIT “A”

Anderson, Julian & Hull

250 S. 5th St., Ste. 700
P.O. Box 7426
Boise, ID 83707-7426

Ph: 208-344-5800
Fax: 208-344-5510

IRS No. 82-0504369

JR Simplot
P.O. Box 27
1099 W. Front Street
Boise, Idaho 83707

September 27, 2017
File #: 1700-043
Inv #: 50516

Attention: Luke Howarth;
luke.howarth@simplot.com
RE: Knudsen v. Simplot
Plaintiff: Erik Knudsen

PROFESSIONAL SERVICES RENDERED:

DATE	DESCRIPTION	HOURS	AMOUNT	LAWYER
7/31/17	Telephone conference with client; review and analysis of file and email; analysis of suit allegations.	0.80	176.00	BKJ
	Receipt and review new assignment, Complaint and correspondence from Erika Birch to Luke Howarth.	0.10	22.00	BKJ
	Receipt and review of Complaint and prior email correspondence.	0.70	126.00	CDE
8/1/17	Receipt and review documentation re: hiring and evaluation of Eric Knudsen.	1.60	352.00	BKJ
	Receipt and review of personnel file, interview file and email correspondence.	0.10	22.00	BKJ
	Email correspondence to Luke Howarth	0.10	18.00	CDE

File #: 1700-043
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 Page # 2

re: service of process.

	Receipt and review of personnel file, interview file and other email correspondence uploaded into Simplot Sharefile.	1.50	270.00	CDE
	Draft timeline of events based on documents received.	1.50	270.00	CDE
	Download, receive, review and store documents from client to litigation file.	0.30	31.50	JS
	Download, receive, convert, review and store documents from client to litigation file.	0.90	94.50	JS
8/2/17	Further review of investigation, personnel file and emails.	1.50	330.00	BKJ
8/3/17	Research re: Idaho case law related to claim for change of job description of an at-will employee being considered adverse employment action.	0.40	72.00	CDE
8/11/17	Receipt and review email from Luke Howarth re: the Food Group indicating that they would settle this matter for 10 weeks' pay.	0.10	22.00	BKJ
	Receipt and review of email correspondence from Luke Howarth re: authorization to settle.	0.10	18.00	CDE
8/22/17	Review and analysis of legal claims re: false advertising and reach of contract.	1.20	264.00	BKJ
	Receipt and review email from Angela Buffalin with attached Summons and Complaint service documents confirming Simplot was served on August 22, 2017.	0.10	22.00	BKJ
8/23/17	Draft Notice of Appearance on behalf of J.R. Simplot Company.	0.10	22.00	BKJ

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	Draft Motion to Disqualify Judge Norton and Proposed Order pursuant to I.R.C.P. 40(d)(1)(A).	0.10	22.00	BKJ
	Draft correspondence to Judge Norton re: Motion to Disqualify Without Cause and Proposed Order.	0.10	22.00	BKJ
	Communication with client; prepare and file Notice of Appearance; Prepare Notice of Disqualification of District Judge; Review and analysis of Complaint and file.	1.80	396.00	BKJ
	Review and analyze complaint and claim file in preparation to draft answer to complaint.	0.50	90.00	AJF
8/28/17	Review and analysis of potential affirmative defenses.	0.90	198.00	BKJ
8/29/17	Receipt and review email from Luke Howarth re: Kayce McEwan will be the lead contact on this matter as she was the principal HR person involved.	0.10	22.00	BKJ
	Revise answer to complaint re: breach of contract.	0.50	90.00	AJF
	Receive, review, compile and format records for attorney review and use.	0.60	63.00	JS
8/30/17	Draft email correspondence to Kayce McEwan re: information about Knudsen's time at Simplot.	0.10	18.00	CDE
8/31/17	Receipt and review email from Kayce McEwan re: meeting to discuss specifics of case (x2).	0.10	22.00	BKJ
	Receipt and review email correspondence from Angela Buffalin re: litigation hold reminder and document hold notice.	0.10	22.00	BKJ
	Email correspondence to Kayce McEwan	0.10	18.00	CDE

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 Inv # 50516
 Page # 4

re: meeting time to discuss Knudsen.

Current Fees:

16.10 \$3,115.00

(Please remit balance due located on last page of invoice)

FEE SUMMARY:

Timekeeper	Category	Time	Rate	Value
Julian, Brian K.	Senior Partner	8.80	\$220.00	\$1,936.00

FEE SUMMARY:

Timekeeper	Category	Time	Rate	Value
Julian-Fontaine, Andrea	Associate	1.00	\$180.00	\$180.00

FEE SUMMARY:

Timekeeper	Category	Time	Rate	Value
Earl, Cody D.	Associate	4.50	\$180.00	\$810.00

FEE SUMMARY:

Timekeeper	Category	Time	Rate	Value
Sotelo, Jessica	Paralegal	1.80	\$105.00	\$189.00

JR Simplot

September 27, 2017

File #: 1700-043
Inv # 50516
Page # 5
\$3,115.00

Current Fees and Disbursements:

Balance Due With Invoice: \$3,115.00

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000473

Anderson, Julian & Hull

250 S. 5th St., Ste. 700

P.O. Box 7426

Boise, ID 83707-7426

Ph: 208-344-5800

Fax: 208-344-5510

IRS No. 82-0504369

JR Simplot
P.O. Box 27
1099 W. Front Street
Boise, Idaho 83707

October 24, 2017

File #: 1700-043

Inv #: 50788

Attention: James Alderman;
james.alderman@simplot.com

RE: Knudsen v. Simplot
Plaintiff: Erik Knudsen

PROFESSIONAL SERVICES RENDERED:

DATE	DESCRIPTION	HOURS	AMOUNT	LAWYER
9/1/17	Review and analyze questions for company re: answer to Complaint in preparation for conference call.	0.20	36.00	AJF
9/5/17	Review and analyze claim file in preparation to finalize answer to complaint.	1.50	270.00	AJF
9/6/17	Send and receive correspondence with Kayce McEwan re: information to answer complaint.	0.10	18.00	AJF
	Continue to draft and revise answer based on review of claim file.	1.80	324.00	AJF
9/7/17	Telephone conference with Kayce McEwan re: answer to complaint information.	0.80	144.00	AJF
	Continue to draft answer to complaint and affirmative defenses.	2.80	504.00	AJF

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	Review and analyze damages available and viability of causes of action in complaint.	0.50	90.00	AJF
	Draft correspondence to Kent Anderson re: information needed for answer to complaint.	0.10	18.00	AJF
9/8/17	Review and analyze cause of action for answer and potential motion to dismiss.	1.90	342.00	AJF
	Draft correspondence and send and receive voicemails with Kent Anderson re: Answer to Complaint.	0.20	36.00	AJF
	Telephone conference with and follow up e-mail to Kent Anderson re: response to Complaint.	0.20	36.00	AJF
9/11/17	Telephone conference with Kent Anderson re: answer to complaint.	0.80	144.00	AJF
	Continue to draft and revise answer and affirmative defenses based on additional information.	2.50	450.00	AJF
	Review and analyze implied covenant of good faith and fair dealing for affirmative defense in response to answer.	0.20	36.00	AJF
9/15/17	Receipt and review Notice of Status Conference Under I.R.C.P. 16(a) for signature.	0.10	22.00	BKJ
	Review and analysis of Notice of Status Conference Under I.R.C.P. 16(a) received from Court.	0.10	22.00	BKJ
9/18/17	Receipt and review Notice of Change of Address from Plaintiff's counsel.	0.10	22.00	BKJ
	Review notice of status conference from Court.	0.10	18.00	AJF
9/26/17	Begin drafting Stipulation for Scheduling and Planning.	0.60	63.00	JS

JR Simplot

October 24, 2017

File #: 1700-043
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9/27/17	Draft initial discovery to plaintiff.	0.80	144.00	AJF
	Draft and finalize initial discovery to plaintiff.	0.50	90.00	AJF
	Begin drafting Request for Production and Interrogatories to Plaintiff.	0.30	31.50	JS
9/28/17	Review and revise defendant's first set of discovery requests to plaintiff.	1.40	252.00	AJF
	Continued drafting of interrogatories and request for production to Plaintiff.	1.40	147.00	JS

Current Fees:

19.00	\$3,259.50
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(Please remit balance due located on last page of invoice)

FEE SUMMARY:

Timekeeper	Category	Time	Rate	Value
Julian, Brian K.	Senior Partner	0.30	\$220.00	\$66.00

FEE SUMMARY:

Timekeeper	Category	Time	Rate	Value
Julian-Fontaine, Andrea	Associate	16.40	\$180.00	\$2,952.00

FEE SUMMARY:

Timekeeper	Category	Time	Rate	Value
Sotelo, Jessica	Paralegal	2.30	\$105.00	\$241.50

DISBURSEMENTS

Description	Payee (if applicable)
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JR Simplot

October 24, 2017

File #: 1700-043

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9/3/17 Court Fees - Filing Fee Wells Fargo \$140.08

Current Disbursements:

\$140.08

Current Fees and Disbursements: **\$3,399.58**

Balance Due With Invoice: **\$3,399.58**

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Fax: 208-344-5510

IRS No. 82-0504369

JR Simplot
P.O. Box 27
1099 W. Front Street
Boise, Idaho 83707

November 21, 2017
File #: 1700-043
Inv #: 50977

Attention: James Alderman;
james.alderman@simplot.com

RE: Knudsen v. Simplot
Plaintiff: Erik Knudsen

PROFESSIONAL SERVICES RENDERED:

DATE	DESCRIPTION	HOURS	AMOUNT	LAWYER
10/9/17	Review status of litigation; outline and review legal basis for Motion for Summary Judgment based upon misrepresentation in hiring process.	3.40	748.00	BKJ
10/18/17	Review stipulated and scheduled planning documents to be sent to opposing counsel.	0.20	21.00	JS
10/19/17	Receipt and review email from Plaintiff's counsel with attached proposed stipulation on scheduling.	0.10	22.00	BKJ
	Communication with Plaintiff's attorney; Email to Plaintiff's attorney; Prepare discovery and motion schedule.	2.00	440.00	BKJ
10/20/17	Receipt and review signed Stipulation for Scheduling and Planning.	0.10	22.00	BKJ
10/24/17	Receipt and review Plaintiff's First Requests	0.10	22.00	BKJ

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for Discovery to Defendant and Notice of Service.

Receipt and review discovery requests. 0.50 110.00 BKJ

10/31/17 Review and analysis of discovery and factual basis of claim. 1.30 286.00 BKJ

Email exchange with Plaintiff's counsel re: extension of time to respond to our discovery requests and scheduling conference has been vacated (x2). 0.10 22.00 BKJ

Current Fees: 7.80 \$1,693.00

(Please remit balance due located on last page of invoice)

FEE SUMMARY:

Timekeeper	Category	Time	Rate	Value
Julian, Brian K.	Senior Partner	7.60	\$220.00	\$1,672.00

FEE SUMMARY:

Timekeeper	Category	Time	Rate	Value
Sotelo, Jessica	Paralegal	0.20	\$105.00	\$21.00

Current Fees and Disbursements: \$1,693.00

Balance Due With Invoice: \$1,693.00

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Fax: 208-344-5510

IRS No. 82-0504369

JR Simplot
P.O. Box 27
1099 W. Front Street
Boise, Idaho 83707

December 15, 2017

File #: 1700-043

Inv #: 51284

Attention: James Alderman;
james.alderman@simplot.com

RE: Knudsen v. Simplot
Plaintiff: Erik Knudsen

PROFESSIONAL SERVICES RENDERED:

DATE	DESCRIPTION	HOURS	AMOUNT	LAWYER
11/6/17	Communication with Plaintiff's attorney; Review and authorize Protective Order; Analysis of produced documents from Plaintiff.	1.50	330.00	BKJ
	Receipt and review email from Plaintiff's counsel re: discovery responses and attached Joint Motion for Protective Order.	0.10	22.00	BKJ
	Email exchange with Plaintiff's counsel re: discovery and Joint Motion for Protective Order (x2).	0.10	22.00	BKJ
11/7/17	Receipt and review Joint Motion and Stipulation for Protective Order.	0.10	22.00	BKJ
	Receipt and review email from Plaintiff's counsel with attached Plaintiff's First Discovery Responses and responsive documents with bates number Knudsen 1-64.	0.10	22.00	BKJ

000480

JR Simplot

December 15, 2017

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	Review and analyze plaintiff's responses to defendant's initial discovery requests.	0.70	126.00	AJF
11/8/17	Receipt and review Notice of Appearance from Plaintiff's counsel.	0.10	22.00	BKJ
	Receipt and review email from Plaintiff's counsel with attached, signed Verification by Plaintiff for Plaintiff's Responses to Defendant's First Set of Interrogatories.	0.10	22.00	BKJ
	Review notice of appearance by co-counsel for plaintiff.	0.10	18.00	AJF
11/10/17	Preparation of discovery responses.	1.40	308.00	BKJ
	Review and analysis of documents provided to Plaintiff re: job announcement, job description and correspondence.	2.50	550.00	BKJ
11/14/17	Email exchange with Plaintiff's counsel re: discovery responses.	0.10	22.00	BKJ
	Draft objections and responses to plaintiff's first set of discovery.	4.50	810.00	AJF
	Correspondence to opposing counsel re: discovery due dates.	0.20	21.00	JS
11/15/17	Conference with Plaintiff's attorney; Preparation of initial responses to discovery.	0.70	154.00	BKJ
	Receipt and review email from Plaintiff's counsel re: discovery responses.	0.10	22.00	BKJ
	Revise discovery responses and provide written requests and instruction to company.	2.50	450.00	AJF
11/16/17	Receipt and review emails from Angela Buffalin with attached documents in response to discovery requests (x2).	0.10	22.00	BKJ
	Receive, review and download files from fileshare for case.	0.70	73.50	JS

000481

JR Simplot

December 15, 2017

File #: 1700-043
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11/17/17	Receipt and review emails from Angela Buffalin with attached documents in response to discovery requests (x3).	0.10	22.00	BKJ
	Review voicemail and draft e-mail re: responses to discovery requests.	0.20	36.00	AJF
	Receive, review and convert 153 PST files to PDF files.	1.30	136.50	JS
11/20/17	Receipt and review email from Angela Buffalin with attached documents for discovery responses re: redacted notes for Michael Shaw.	0.10	22.00	BKJ
	Draft correspondence and follow up telephone conference with Kent Anderson re: information needed for discovery responses.	0.80	144.00	AJF
	Review and analyze documents produced by Simplot in response to discovery requests.	2.50	450.00	AJF
	Review and analyze cause of action for fraud in employee at will context for future discovery.	1.20	216.00	AJF
	Receive, review, convert and download records from Simplot Sharefile.	0.40	42.00	JS
11/24/17	Receipt and review Notice of Trial Setting and Order Governing Further Proceedings.	0.10	22.00	BKJ
11/27/17	Review court order re: trial scheduling order.	0.10	18.00	AJF
	Review, draft responses to discovery requests and begin pulling responsive documents.	0.70	73.50	JS
11/28/17	Convert emails and attachments received from client Simplot for use in discovery responses.	1.70	178.50	JS
11/29/17	Receipt and review scheduling order; Further research re: misrepresentation claim.	1.60	352.00	BKJ

000482

JR Simplot

December 15, 2017

File #: 1700-043
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Receipt and review email from Court with attached Amended Notice of Trial Setting and Order Governing Further Proceedings. 0.10 22.00 BKJ

Continue discovery document compiling, removing of attorney/client privilege documents and bates documents for service with response to plaintiff's request for discovery. 1.80 189.00 JS

11/30/17 Receipt and review Motion to Disqualify Alternate Judge Pursuant to I.R.C.P. 40(d)(1). 0.10 22.00 BKJ

Receipt and review email from Angela Buffalin with attached Litigation Hold Reminder and Document Hold Notice. 0.10 22.00 BKJ

Review and analyze Simplot documents for proprietary information in preparation for discovery responses. 0.60 108.00 AJF

Continue compiling documents, removing attorney/client privilege and entering bates numbers into defendant's responses to request for discovery. 1.10 115.50 JS

Current Fees:

30.30 \$5,229.50

(Please remit balance due located on last page of invoice)

FEE SUMMARY:

Timekeeper	Category	Time	Rate	Value
Julian, Brian K.	Senior Partner	9.20	\$220.00	\$2,024.00

FEE SUMMARY:

Timekeeper	Category	Time	Rate	Value
Julian-Fontaine, Andrea	Associate	13.20	\$180.00	\$2,376.00

JR Simplot

December 15, 2017

File #: 1700-043
Inv # 51284
Page # 5

FEE SUMMARY:

Timekeeper	Category	Time	Rate	Value
Sotelo, Jessica	Paralegal	7.90	\$105.00	\$829.50

Current Fees and Disbursements: \$5,229.50

Balance Due With Invoice: \$5,229.50

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Ph: 208-344-5800

Fax: 208-344-5510

IRS No. 82-0504369

JR Simplot
P.O. Box 27
1099 W. Front Street
Boise, Idaho 83707

January 23, 2018

File #: 1700-043

Inv #: 51494

Attention: James Alderman;
james.alderman@simplot.com

RE: Knudsen v. Simplot
Plaintiff: Erik Knudsen

PROFESSIONAL SERVICES RENDERED:

DATE	DESCRIPTION	HOURS	AMOUNT	LAWYER
12/1/17	Receipt and review Order to Disqualify Alternate Judge Copsey received from Court.	0.10	22.00	BKJ
	Continue to draft and revise responses to plaintiff's first set of discovery and review documents provided by client.	3.50	630.00	AJF
	Continue compiling documents, removing attorney/client privilege and entering bates numbers into defendant's responses to request for discovery.	1.30	136.50	JS
	Email correspondence with Kent Anderson re: Knudsen's replacement and tenure.	0.20	21.00	JS
12/4/17	Email the client re: discovery questions and verifications.	0.20	21.00	JS
	Finish discovery responses and adding bates	0.40	42.00	JS

000485

JR Simplot

January 23, 2018

File #: 1700-043
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numbers of responsive documents into
discovery pleading.

12/5/17	Continue to draft and revise discovery responses to plaintiff's first set of discovery.	0.80	144.00	AJF
	Execute attorney requested changes to discovery responses.	0.60	63.00	JS
12/6/17	Final preparation of written responses to discovery, including review of 650 pages of documents produced.	1.80	396.00	BKJ
	Review correspondence to and from Simplot re: outstanding discovery responses.	0.30	54.00	AJF
	Contact Simplot re: discovery responses due today.	0.20	21.00	JS
	Compile documents to be sent with discovery responses onto disk.	0.40	42.00	JS
12/7/17	Draft and revise supplemental discovery response based on information provided by company.	0.70	126.00	AJF
	Email correspondence with Kent Anderson re: verification.	0.10	10.50	JS
	Begin drafting defendant's supplemental responses to plaintiff's first discovery requests.	0.90	94.50	JS
12/11/17	Preparation of written discovery responses.	0.90	198.00	BKJ

Current Fees:

12.40 **\$2,021.50**

(Please remit balance due located on last page of invoice)

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 Page # 3

FEE SUMMARY:

Timekeeper	Category	Time	Rate	Value
Julian, Brian K.	Senior Partner	2.80	\$220.00	\$616.00

FEE SUMMARY:

Timekeeper	Category	Time	Rate	Value
Julian-Fontaine, Andrea	Associate	5.30	\$180.00	\$954.00

FEE SUMMARY:

Timekeeper	Category	Time	Rate	Value
Sotelo, Jessica	Paralegal	4.30	\$105.00	\$451.50

Current Fees and Disbursements: \$2,021.50

Balance Due With Invoice: \$2,021.50

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Ph: 208-344-5800

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IRS No. 82-0504369

JR Simplot
P.O. Box 27
1099 W. Front Street
Boise, Idaho 83707

February 9, 2018

File #: 1700-043

Inv #: 51580

Attention: Clay Gill - email: Clay.Gill@simplot.com

RE: Knudsen v. Simplot
Plaintiff: Erik Knudsen

PROFESSIONAL SERVICES RENDERED:

DATE	DESCRIPTION	HOURS	AMOUNT	LAWYER
1/5/18	Receipt and review email from Plaintiff's counsel with attached Proposed Protective Order that was filed with the Court today.	0.10	22.00	BKJ
	Review Protective Order filed with the Court.	0.10	18.00	AJF

Current Fees:	0.20	\$40.00
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(Please remit balance due located on last page of invoice)

FEE SUMMARY:

Timekeeper	Category	Time	Rate	Value
Julian, Brian K.	Senior Partner	0.10	\$220.00	\$22.00

JR Simplot

February 9, 2018

File #: 1700-043
Inv # 51580
Page # 2

FEE SUMMARY:

Timekeeper	Category	Time	Rate	Value
Julian-Fontaine, Andrea	Associate	0.10	\$180.00	\$18.00

Current Fees and Disbursements: \$40.00

Balance Due With Invoice: \$40.00

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Boise, ID 83707-7426

Ph: 208-344-5800
Fax: 208-344-5510

IRS No. 82-0504369

JR Simplot
P.O. Box 27
1099 W. Front Street
Boise, Idaho 83707

March 20, 2018

File #: 1700-043
Inv #: 51819

Attention: Clay Gill - email: Clay.Gill@simplot.com

RE: Knudsen v. Simplot
Plaintiff: Erik Knudsen

PROFESSIONAL SERVICES RENDERED:

DATE	DESCRIPTION	HOURS	AMOUNT	LAWYER
2/5/18	Review status of litigation; conference with client.	0.20	44.00	BKJ
2/8/18	Draft status report to Company per request.	0.20	36.00	AJF
2/27/18	Review and analysis of Knudsen statement, improvement plan, packaging error announcement and interview process.	1.50	330.00	BKJ
2/28/18	Receipt and review correspondence from Plaintiff's counsel re: supplementing our discovery responses and depositions.	0.10	22.00	BKJ
	Review and analyze letter from plaintiff's attorney re: discovery issues and supplemental responses.	0.30	54.00	AJF

File #: 1700-043
 Inv # 51819
 Page # 2

Current Fees:

2.30	\$486.00
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(Please remit balance due located on last page of invoice)

FEE SUMMARY:

Timekeeper	Category	Time	Rate	Value
Julian, Brian K.	Senior Partner	1.80	\$220.00	\$396.00

FEE SUMMARY:

Timekeeper	Category	Time	Rate	Value
Julian-Fontaine, Andrea	Associate	0.50	\$180.00	\$90.00

Current Fees and Disbursements: \$486.00

Balance Due With Invoice: \$486.00

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Anderson, Julian & Hull

250 S. 5th St., Ste. 700

P.O. Box 7426

Boise, ID 83707-7426

Ph: 208-344-5800

Fax: 208-344-5510

IRS No. 82-0504369

JR Simplot
P.O. Box 27
1099 W. Front Street
Boise, Idaho 83707

April 18, 2018

File #: 1700-043

Inv #: 52082

Attention: Clay Gill - email: Clay.Gill@simplot.com

RE: Knudsen v. Simplot
Plaintiff: Erik Knudsen

PROFESSIONAL SERVICES RENDERED:

DATE	DESCRIPTION	HOURS	AMOUNT	LAWYER
3/1/18	Receipt and review letter from Plaintiff's Attorney; Review discovery responses for completeness; Review necessity of requested depositions.	1.20	264.00	BKJ
	Draft correspondence to plaintiff's attorney in response to clarification re: discovery responses.	2.00	360.00	AJF
	Draft status report to Company requesting additional information for supplemental answers to discovery.	0.30	54.00	AJF
3/2/18	Review documents produced (approximately 600 pages) to prepare for discovery supplementation.	2.40	528.00	BKJ
3/5/18	Receipt and review email from Client re: litigation hold reminder and document hold notice.	0.10	22.00	BKJ

000492

JR Simplot

April 18, 2018

File #: 1700-043
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Page # 2

3/8/18	Telephone conversation and email follow up with Angela Buffalin of Simplot re: discovery questions and deposition availability.	0.70	73.50	JS
3/9/18	Review and analyze supplemental responses from Simplot and determine additional information.	0.50	90.00	AJF
3/12/18	Review and analysis of emails and documentation leading to improvement plan.	1.60	352.00	BKJ
	Continue to review supplemental response information and draft responses for discovery and in preparation for depositions.	2.60	468.00	AJF
	Receive and review documents re: case and dates for availability on upcoming depositions.	0.40	42.00	JS
3/13/18	Communication with Plaintiff's Attorney re: massive deposition schedule.	0.40	88.00	BKJ
	Review correspondence from Simplot re: request for maintenance file.	0.20	36.00	AJF
3/14/18	Receipt and review email from Plaintiff's Attorney re: depositions, mediation and damages calculations.	0.10	22.00	BKJ
	Email exchange with Clay Gill re: attached example of Memorandum in Support of Motion for Summary Judgment addressing long term employment (x2).	0.10	22.00	BKJ
	Review and analysis of wage loss and supporting documents; Prepare for and attend conference call re: mediation.	1.80	396.00	BKJ
	Compile documents for attorney use in mediation discussions with client.	0.20	21.00	JS
3/15/18	Response to Plaintiff's Attorney re: protected documents for damages calculations.	0.10	22.00	BKJ
	Receipt and review email from Plaintiff's Attorney Erika Birch with attached	0.10	22.00	BKJ

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confidential documents with bates numbers
 KNUDSEN 0065-116.

	Review and analysis of tax information of Plaintiff to determine potential damages.	0.90	198.00	BKJ
3/16/18	Letter to Plaintiff's Attorney; Telephone conference with Plaintiff's Attorney; Review documents produced by Plaintiff.	1.20	264.00	BKJ
	Receipt and review email from Angela Buffalin re: deposition dates and mediation.	0.10	22.00	BKJ
	Review correspondence from Simplot and plaintiff's attorney and draft response.	0.20	36.00	AJF
	Continue to review documents responsive to requests for production for supplemental responses.	1.90	342.00	AJF
3/19/18	Conference with Plaintiff's Attorney re: mediation and discovery.	0.40	88.00	BKJ
	Letter to Client re: mediation and discovery.	0.50	110.00	BKJ
	Enter pertinent bates numbers into defendant's supplemental responses to plaintiff's first discovery requests.	0.70	73.50	JS
	Email correspondence with Angela Buffalin re: Simplots binding agents.	0.20	21.00	JS
3/22/18	Receipt and review email from Client re: is okay with either Dave Lombardi or Dave Knotts as mediator, and moving deposition dates to May.	0.10	22.00	BKJ
3/23/18	Receipt and review Plaintiff's Expert Witness Disclosure.	0.10	22.00	BKJ
	Receipt and review email from Angela Buffalin re: contact by Plaintiff's counsel.	0.10	22.00	BKJ

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	Receipt and review email form Dave Knotts re: potentially acting as mediator.	0.10	22.00	BKJ
	Email to and response from Clay Gill re: Plaintiff's Expert Disclosures.	0.10	22.00	BKJ
	Receipt and review letter from client; telephone conference with Plaintiff's attorney.	0.50	110.00	BKJ
	Telephone conference with mediator; letter to Plaintiff's attorney; analysis of damage issues; review legal issues for mediation.	2.40	528.00	BKJ
	Review and analyze plaintiff's expert report and draft brief analysis.	1.80	324.00	AJF
	Email client Simplot re: follow up on binding agents.	0.30	31.50	JS
3/25/18	Email exchange with Clay Gill re: extension of time for expert disclosure and retaining Dennis Reinstein (x4).	0.10	22.00	BKJ
3/26/18	Receipt and review email from David Knotts re: mediation.	0.10	22.00	BKJ
	Receipt and review letter from Mediator; Letter to Client.	0.40	88.00	BKJ
	Analysis of damage report and basis for expert opinion.	0.80	176.00	BKJ
	Conference with mediator; Letter to Client; Review expert witness needs.	1.10	242.00	BKJ
	Receipt and review email from Plaintiff's counsel re: potential mediation dates.	0.10	22.00	BAW
	Telephone conference with defendant's expert and follow up e-mail correspondence.	0.40	72.00	AJF
	Review and analyze missing document production from plaintiff and draft correspondence to plaintiff's attorney.	0.60	108.00	AJF

JR Simplot

April 18, 2018

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	Continue to supplement and determine outstanding discovery issues.	2.30	414.00	AJF
	Compile information received from Simplot into defendant's supplemental responses to interrogatories for attorney's review.	0.60	63.00	JS
	Review plaintiff's prior response to request for production of documents and review bated documents for plaintiff's HP personnel file.	0.40	42.00	JS
	Draft subpoena for records from Plaintiff's prior employer.	0.40	42.00	JS
3/27/18	Receipt and review email from Plaintiff's counsel re: mediation dates.	0.10	22.00	BKJ
	Draft correspondence with necessary documents for expert Reinstein's review and use in compiling report.	0.70	73.50	JS
3/28/18	Receipt and review email from Plaintiff's counsel re: mediation availability.	0.10	22.00	BKJ
	Email to Clay Gill re: availability for mediation.	0.10	22.00	BKJ
3/30/18	Communication with Client and Mediator re: mediation date.	0.20	44.00	BKJ

Current Fees:

34.90	\$6,637.00
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(Please remit balance due located on last page of invoice)

FEE SUMMARY:

Timekeeper	Category	Time	Rate	Value
Julian, Brian K.	Senior Partner	17.40	\$220.00	\$3,828.00

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FEE SUMMARY:

Timekeeper	Category	Time	Rate	Value
Walther, Bret	Partner	0.10	\$220.00	\$22.00

FEE SUMMARY:

Timekeeper	Category	Time	Rate	Value
Julian-Fontaine, Andrea	Associate	12.80	\$180.00	\$2,304.00

FEE SUMMARY:

Timekeeper	Category	Time	Rate	Value
Sotelo, Jessica	Paralegal	4.60	\$105.00	\$483.00

Current Fees and Disbursements: \$6,637.00

Balance Due With Invoice: \$6,637.00

When you make a payment to Anderson, Julian & Hull, LLP by check, you authorize us to electronically process your check using the information on your check. If we electronically process your check instead of depositing your check, the electronic debit to your checking account may be on the same day we receive the check by transmitting the amount of the check, routing and transit number and check number to your bank. Electronically processing your check makes us better stewards.

Anderson, Julian & Hull

250 S. 5th St., Ste. 700

P.O. Box 7426

Boise, ID 83707-7426

Ph: 208-344-5800

Fax: 208-344-5510

IRS No. 82-0504369

JR Simplot
P.O. Box 27
1099 W. Front Street
Boise, Idaho 83707

May 21, 2018

File #: 1700-043

Inv #: 52266

Attention: Clay Gill - email: Clay.Gill@simplot.com

RE: Knudsen v. Simplot
Plaintiff: Erik Knudsen

PROFESSIONAL SERVICES RENDERED:

DATE	DESCRIPTION	HOURS	AMOUNT	LAWYER
4/3/18	Receipt and review Protective Order.	0.10	22.00	BKJ
	Receipt and review email from Mediator Dave Knotts re: logistics and mediation agreement.	0.10	22.00	BKJ
	Receipt and review email from Mediator with attached Mediation Confirmation Letter and Mediation Agreement.	0.10	22.00	BKJ
	Draft and revise mediation statement.	4.80	864.00	AJF
4/4/18	Receipt and review letter from Mediator with enclosed Mediation Agreement for signature.	0.10	22.00	BKJ
	Continue to draft and revise mediation statement per mediator's requirements.	3.50	630.00	AJF
4/5/18	Receipt and review Plaintiff's First Supplemental Responses to Defendant's First	0.10	22.00	BKJ

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Set of Interrogatories and Requests for Production of Documents to Plaintiff.

	Continue to draft and revise mediation statement per mediator's requirements.	2.20	396.00	AJF
4/6/18	Receipt and review Plaintiff's First Supplemental Responses to Defendant's First Set of Interrogatories and Requests for Production of Documents to Plaintiff with attached Exhibits 117 - 247.	0.10	22.00	BKJ
	Review Plaintiff's supplemental discovery responses.	0.80	144.00	AJF
	Compile documents referenced in mediation statement and add as exhibits.	0.60	63.00	JS
4/9/18	Email exchange with Client re: Plaintiff's Attorney in preparation for mediation tomorrow (x2).	0.10	22.00	BKJ
4/11/18	Receipt and review email from Plaintiff's Counsel with attached Notice of Service of Discovery for Plaintiff's Supplemental Responses that were previously filed.	0.10	22.00	BKJ
4/12/18	Review and analysis of file in preparation of Mediation; Receipt and review supplemental responses to Discovery.	2.50	550.00	BKJ
	Compile required documents for use in mediation.	0.70	73.50	JS
4/13/18	Prepare for and attend mediation conference.	3.30	726.00	BKJ
	Prepare and serve Offer of Judgment.	0.40	88.00	BKJ
	Prepare letter to Plaintiff's Attorney.	0.20	44.00	BKJ
	Prepare letter to Client.	0.10	22.00	BKJ

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	Review discovery for depositions.	0.50	110.00	BKJ
	Receipt and review email from Clay Gill re: authority to file Offer of Judgment for \$50,000.00.	0.10	22.00	BKJ
	Receipt and review copy of fully executed Protective Order received from Court.	0.10	22.00	BKJ
	Email exchange with Plaintiff's Attorney re: dates of availability for depositions (x2).	0.10	22.00	BKJ
	Email exchange with Plaintiff's Attorney re: Defendant's expert disclosures and deposition availability and schedule (x2).	0.10	22.00	BKJ
	Draft Offer of Judgment to be sent to opposing counsel in case.	0.60	63.00	JS
4/16/18	Prepare for and attend conference with expert witness, Dennis Reinstein.	1.00	220.00	BKJ
	Meet with Dennis Reinstein re: defendant's expert disclosures and report.	1.00	180.00	AJF
	Draft correspondence to company re: information needed for expert report.	0.20	36.00	AJF
4/19/18	Receipt and review email from our expert Dennis Reinstein re: health insurance costs from Simplot or stock options with Micron.	0.10	22.00	BKJ
	Prepare email to our expert Dennis Reinstein re: response to his email re: stock options.	0.10	22.00	BKJ
	Research neighboring jurisdictions re: fraud allegation stemming from "At Will" job assignment.	1.40	308.00	BKJ
	Review and analyze case law re: no wrongful termination damages in preparation for deposition and motion for summary judgment.	1.00	180.00	AJF

JR Simplot

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4/20/18	Receipt and review email from expert Dennis Reinstein with attached draft Expert Report.	0.10	22.00	BKJ
	Receipt and review email from expert Dennis Reinstein with attached final, signed expert report.	0.10	22.00	BKJ
	Prepare and review expert report.	0.80	176.00	BKJ
	Review and analyze defendant's expert report and correspond with expert re: supplemental report.	1.00	180.00	AJF
	Review and respond to correspondence from Simplot re: supplemental expert report.	0.20	36.00	AJF
	Email expert and client re: expert's report and upcoming trial dates.	0.60	63.00	JS
	Draft defendant's expert witness disclosure for attorney review and service on opposing counsel in accordance with the Court Order.	1.10	115.50	JS
4/23/18	Receipt and review email from Plaintiff's Attorney re: dates for depositions.	0.10	22.00	BKJ
4/24/18	Receipt and review email from Clay Gill re: expert Dennis Reinstein speaking to Kayce McEwan concerning historical payments of bonuses.	0.10	22.00	BKJ
4/25/18	Communications with expert re: bonus structure; Letter to Plaintiff's Attorney; Coordinate discovery schedule.	1.30	286.00	BKJ
	Draft and revise deposition outline for plaintiff's deposition.	1.20	216.00	AJF
	Email plaintiff's benefit information to expert Dennis Reinstein for review.	0.40	42.00	JS
4/26/18	Draft and revise deposition outline for plaintiff's deposition.	1.90	342.00	AJF

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JR Simplot

May 21, 2018

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4/27/18	Receipt and review witness statement for Client; Review substance of submitted discovery requests.	1.00	220.00	BKJ
	Receipt and review email from Clay Gill re: Tim Lalley's upcoming deposition and attached Journal Excerpts of Tim Lalley.	0.10	22.00	BKJ
4/30/18	Receipt and review Plaintiff's Second Set of Discovery to Defendant.	0.10	22.00	BKJ
	Receipt and review Plaintiff's Second Set of Discovery to Defendant.	0.10	22.00	BKJ
	Review and analyze plaintiff's second request for discovery and request for supplementation and determine responses.	1.50	270.00	AJF
	Review and analyze employee interview statement and notes in preparation for deposition.	0.90	162.00	AJF
	Draft second set of discovery to plaintiff.	0.40	72.00	AJF

Current Fees:

39.20	\$7,340.00
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(Please remit balance due located on last page of invoice)

FEE SUMMARY:

Timekeeper	Category	Time	Rate	Value
Julian, Brian K.	Senior Partner	14.60	\$220.00	\$3,212.00

FEE SUMMARY:

Timekeeper	Category	Time	Rate	Value
Julian-Fontaine, Andrea	Associate	20.60	\$180.00	\$3,708.00

JR Simplot

May 21, 2018

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FEE SUMMARY:

Timekeeper	Category	Time	Rate	Value
Sotelo, Jessica	Paralegal	4.00	\$105.00	\$420.00

DISBURSEMENTS

	Description	Payee (if applicable)	
4/13/18	Arbitrators/mediators - 1/2 share	Hawley Troxell Ennis & Ha	\$450.00
	Current Disbursements:		\$450.00
	Current Fees and Disbursements:		\$7,790.00
	Balance Due With Invoice:		\$7,790.00

When you make a payment to Anderson, Julian & Hull, LLP by check, you authorize us to electronically process your check using the information on your check. If we electronically process your check instead of depositing your check, the electronic debit to your checking account may be on the same day we receive the check by transmitting the amount of the check, routing and transit number and check number to your bank. Electronically processing your check makes us better stewards.

Anderson, Julian & Hull

250 S. 5th St., Ste. 700
P.O. Box 7426
Boise, ID 83707-7426

Ph: 208-344-5800
Fax: 208-344-5510

IRS No. 82-0504369

JR Simplot
P.O. Box 27
1099 W. Front Street
Boise, Idaho 83707

June 21, 2018

File #: 1700-043
Inv #: 52539

Attention: Clay Gill - email: Clay.Gill@simplot.com

RE: Knudsen v. Simplot
Plaintiff: Erik Knudsen

PROFESSIONAL SERVICES RENDERED:

DATE	DESCRIPTION	HOURS	AMOUNT	LAWYER
5/1/18	Telephone conference with Plaintiff's Attorney; Further Analysis of HP records to determine pattern of employee conduct at work.	1.90	418.00	BKJ
	Email client with second set of discovery from plaintiff for help with documents.	0.20	21.00	JS
	Draft responsive letter to plaintiff's counsel responding to various complaints and requests for information and documents.	0.70	73.50	JS
5/2/18	Receipt and review email from Angela Buffalin re: discovery responses with attached responsive documents.	0.10	22.00	BKJ
5/3/18	Receipt and review email from Angela Buffalin with attached policies that were in effect between 11/23/15 and 9/1/16	0.10	22.00	BKJ
	Receipt and review email from Angela Buffalin re: discovery responses and	0.10	22.00	BKJ

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with attached Engineering Announcement - Erik Knudsen.

	Review and analyze benefits information and perform damages analysis.	0.50	90.00	AJF
5/7/18	Receipt and review letter with deposition notices; Analysis of emails to be produced.	2.80	616.00	BKJ
	Review and Analyze deposition testimony planned by Plaintiff.	0.70	154.00	BKJ
	Receipt and review Notices of Deposition of Craig Lamberton, Jason Schwark, Kacey McEwan, Kent Anderson, Laura Nessen, Lyle Schook, Michael Shaw, Rebecca Nichols, and Tim Lalley.	0.10	22.00	BKJ
	Draft and revise discovery responses and determine production of documents.	3.80	684.00	AJF
	Review notices of deposition and determine response to plaintiff's inquiry re: plaintiff's deposition.	0.20	36.00	AJF
	Review and analyze disclosure of employee personnel file in response to plaintiff's requests for production.	0.20	36.00	AJF
5/8/18	Further Review of medical records and personnel records of Plaintiff for deposition preparation.	3.50	770.00	BKJ
	Receipt and review email from Angela Buffalin re: additional document for discovery responses with email export.	0.10	22.00	BKJ
	Review and analyze correspondence from plaintiff's attorney and draft response re: international deposition issues.	0.40	72.00	AJF
	Continue to draft and revise deposition outline for plaintiff.	1.70	306.00	AJF

JR Simplot

June 21, 2018

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	Coordinate deposition preparations with 7 deponents, Simplot and Brian K. Julian calendars.	1.30	136.50	JS
5/9/18	Draft and revise response to plaintiff's attorney re: supplemental discovery responses and redactions.	0.80	144.00	AJF
	Telephone conference with Company and review of records in preparation for deposition of Russ Armstrong.	0.30	54.00	AJF
	Continue to draft and revise deposition outline for plaintiff and identify exhibits.	4.60	828.00	AJF
	Download and import 60 thousand emails from Simplot re: Knudsen.	1.10	115.50	JS
	Configure date for Kingsford deposition and send correspondence to Kingsford.	0.60	63.00	JS
5/10/18	Prepare for deposition conference with Simplot employees and identify documents for meeting.	4.10	738.00	AJF
	Email client re: documents needed unaltered due to protective order.	0.40	42.00	JS
	Review documents from client and speak with Simplot's Angela Buffalin.	0.40	42.00	JS
5/11/18	Receipt and review Plaintiff's Second Supplemental Response to Defendant's First Set of Interrogatories and Requests for Production of Documents third-party Plaintiff.	0.10	22.00	BKJ
	Receipt and review Rebuttal to Dennis R. Reinstein, Coles Reinstein PLLC Report April 20, 2018.	0.10	22.00	BKJ
	Receipt and review Bated documents KNUDSEN 248-255.	0.10	22.00	BKJ
	Prepare for and attend deposition preparation session with Simplot employees; Conference	3.30	726.00	BKJ

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with Client; Receipt and review email from Client.

Review newly produced documents. 0.70 154.00 BKJ

Further review of Project Manager Plans and emails in preparation for deposition. 1.60 352.00 BKJ

Receipt and review Plaintiff's Second Supplemental Responses to Defendant's First Discovery Request. 0.10 22.00 BKJ

Receipt and review Plaintiff's Expert Rebuttal Report. 0.10 22.00 BKJ

Receipt and review documents with bates numbers KNUDSEN 248-255. 0.10 22.00 BKJ

Prepare for meeting with Simplot employees re: deposition preparation. 1.00 180.00 AJF

Meet with Simplot employees for deposition preparation. 2.30 414.00 AJF

Continue to draft and revise supplemental discovery and responses to plaintiff's second set of discovery. 2.70 486.00 AJF

Draft third supplemental discovery responses with recent documents from Simplot. 0.90 94.50 JS

Compile and redact documents to be produced with correspondence to Erika Birch's office re: litigation. 0.40 42.00 JS

5/14/18 Receipt and review Plaintiff's Second Supplemental Responses to Defendant's First Set of Interrogatories and Requests for Production of Documents to Plaintiff. 0.10 22.00 BKJ

Prepare for and attend depositions of Tim Lalley and Jason Schwark. 7.10 1,562.00 BKJ

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	Continue to draft discovery responses and identify responsive documents.	1.00	180.00	AJF
	Continue to draft deposition outline for plaintiff's deposition and identify deposition exhibits.	3.50	630.00	AJF
	Send documents with correspondence to expert witness Dennis Reinstein.	0.40	42.00	JS
5/15/18	Prepare summaries of depositions of Tim Lalley and Jason Schwark.	1.50	330.00	BKJ
	Witness preparation conference with Craig Lamberton.	0.60	132.00	BKJ
	Continue to draft responses to discovery and prepare for deposition of Craig Lamberton.	1.80	324.00	AJF
	Time research for Craig Lamberton in Australia.	0.40	42.00	JS
5/16/18	Conference with Plaintiff's Attorney re: discovery issues.	0.20	44.00	BKJ
	Receipt and review email from Becca Nichols re: requisition information for the position Plaintiff was hired into.	0.10	22.00	BKJ
	Receipt and review email from Angela Buffalin to Becca Nichols re: information and attached documents received from Cheryl Gottsch.	0.10	22.00	BKJ
	Receipt and review email from Plaintiff's counsel re: logistics for Deposition of Craig Lamberton.	0.10	22.00	BKJ
	Receipt and review email from Becca Nichols to Angela Buffalin re: offer letter and position #2664.	0.10	22.00	BKJ
	Review recruitment documents in preparation for Becca Nichols deposition.	0.50	90.00	AJF

JR Simplot

June 21, 2018

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	Review correspondence from plaintiff's attorney re: deposition of Craig Lamberton and issues for deposition.	0.10	18.00	AJF
	Review and analyze correspondence from Simplot re: deposition preparation issues with Becca Nichols and Craig Lamberton.	0.20	36.00	AJF
	Draft deposition notice for plaintiff Knudsen.	0.70	73.50	JS
5/17/18	Receipt and review Rule 29 Stipulation Re: Out-of-State Witness.	0.10	22.00	BKJ
	Prepare for and attend Deposition of Michael Shaw.	3.20	704.00	BKJ
	Communication with Plaintiff's Attorney re: missing emails.	0.20	44.00	BKJ
	Search database for missing emails requested by Plaintiff's Attorney.	0.80	176.00	BKJ
	Letter to Plaintiff's Attorney.	0.20	44.00	BKJ
	Receipt and review email from Plaintiff's counsel re: documents discussed during Mr. Shaw's deposition.	0.10	22.00	BKJ
	Receipt and review Stipulation re: Lamberton Deposition.	0.10	22.00	BKJ
	Receipt and review Amended Deposition Notice for Becca Nichols.	0.10	22.00	BKJ
	Receipt and review email from Becca Nichols re: position 2664 and Erik Knudsen's personnel file.	0.10	22.00	BKJ
	Retrieve and drop box documents for use in deposition.	0.40	42.00	JS
	Review documents produced, compile documents requested from opposing counsel and bates for service.	0.70	73.50	JS

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	Email Craig Lamberton re: upcoming deposition and preparation with Brian K. Julian.	0.40	42.00	JS
5/18/18	Letter to Client re: deposition summary of Michael Shaw.	1.80	396.00	BKJ
	Receipt and review email from Angela Buffalin with attached personnel files for Craig Jarvis, Erik Knudsen, John Kobs, Tim Lalley, Jason Schwark and Michael Whiting.	0.10	22.00	BKJ
	Receipt and review email from Angela Buffalin with attached offer letter for Erik Knudsen.	0.10	22.00	BKJ
	Receipt and review email from Angela Buffalin with attached job descriptions for positions held by Erik Knudsen, Michael Whiting, Tim Lalley, Jason Schwark, Craig Jarvis and John Kobs.	0.10	22.00	BKJ
5/21/18	Communication with Human Resources, general counsel and witnesses re: depositions and related preparation.	0.80	176.00	BKJ
	Receipt and review email from Clay Gill re: employee records request for Craig Lamberton.	0.10	22.00	BKJ
	Review and respond to correspondence re: Anderson and Lamberton deposition issues and preparation.	0.60	108.00	AJF
	Draft memorandum in support of motion for summary judgment.	3.10	558.00	AJF
5/22/18	Review and analysis of exhibits to depositions.	0.90	198.00	BKJ
	Meet and confer with witness Becca Nichols for deposition preparation.	1.50	330.00	BKJ
	Letter to Plaintiff's attorney re: deposition of Craig Lamberton.	0.30	66.00	BKJ

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	Prepare for and attend Craig Lamberton deposition attorney preparation meeting.	2.40	528.00	BKJ
	Receipt and review Amended Deposition Notice for Kent Anderson.	0.10	22.00	BKJ
	Conference with Becca Nichols re: deposition preparation.	0.90	162.00	AJF
	Continue to prepare plaintiff's deposition outline and identify and request documents for exhibits.	2.90	522.00	AJF
	Meet with Craig Lamberton in preparation for his deposition.	0.80	144.00	AJF
5/23/18	Review and analyze voluminous documents re: documents referred to during Schook's deposition.	1.00	180.00	AJF
	Attend deposition of Lyle Schook.	5.80	1,044.00	AJF
	Draft status report to Company re: summary of deposition and issues for future discovery.	1.20	216.00	AJF
5/24/18	Review and analyze documents for potential production in discovery re: approval of Grand Forks update.	1.00	180.00	AJF
	Draft and receive correspondence to Simplot re: production of CIP for discovery purposes.	0.20	36.00	AJF
	Begin loading 60 thousand emails into eclipse to sort through and eventually produce in discovery.	3.80	399.00	JS
5/25/18	Meet with Kayce McEwan re: deposition preparation.	1.00	180.00	AJF
	Review and analyze documents in preparation for deposition meeting with Kayce McEwan.	0.50	90.00	AJF
	Draft and receive e-mail correspondence re: Kent Anderson deposition preparation.	0.20	36.00	AJF

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	Continue to draft deposition outline for plaintiff and identify exhibits.	1.90	342.00	AJF
5/29/18	Receipt and review Plaintiff's Responses to Defendant's Second Set of Interrogatories and Requests for Production of Documents to Plaintiff.	0.10	22.00	BKJ
	Receive and review responses to request for production of documents.	0.30	66.00	BKJ
	Receipt and review Plaintiff's Responses to Defendant's Second Discovery Requests and documents with bates numbers KNUDSEN 256-257.	0.10	22.00	BKJ
	Continue to draft and revise responses to plaintiff's second set of discovery requests.	4.80	864.00	AJF
	Compile, bates and redact responsive documents to discovery as well as enter bates numbers into discovery responses.	1.90	199.50	JS
5/30/18	Review and analyze documents related to the HR investigation for upcoming depositions.	2.40	528.00	BKJ
	Receipt and review Plaintiff's deposition exhibits for Craig Lamberton's upcoming deposition.	0.10	22.00	BKJ
	Attend and participate in deposition of Craig Lamberton.	5.20	1,144.00	BKJ
	Review and analyze plaintiff's response to defendant's second set of discovery requests.	0.30	54.00	AJF
	Review and analyze issue re: disclosure of personnel files and draft correspondence to Clay Gills re: the same.	0.30	54.00	AJF
	Attend deposition of Becca Nichols.	2.60	468.00	AJF
	Continue to prepare defendant's discovery responses and submit to plaintiff.	0.50	90.00	AJF

JR Simplot

June 21, 2018

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Continue to prepare outline and exhibits for deposition of plaintiff.	3.50	630.00	AJF
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Prepare for deposition of Craig Lamberton and review documents recently produced re: the same.	0.50	90.00	AJF
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Compile disk of documents for service with discovery responses.	0.40	42.00	JS
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Download and compile exhibits for attorney use in Lamberton Deposition.	0.30	31.50	JS
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5/31/18	Receipt and review Plaintiff's Third Supplemental Responses to Defendant's First Set of Interrogatories and Requests for Production of Documents to Plaintiff.	0.10	22.00	BKJ
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Prepare for attend depositions of Laura Nesson and Kayce McEwan.	8.20	1,804.00	BKJ
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Continue to prepare for plaintiff's deposition and deposition of Kent Anderson.	2.60	468.00	AJF
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Draft summary of deposition of Kayce McEwan.	0.90	162.00	AJF
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Current Fees:

137.30	\$25,763.00
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(Please remit balance due located on last page of invoice)

FEE SUMMARY:

Timekeeper	Category	Time	Rate	Value
Julian, Brian K.	Senior Partner	55.10	\$220.00	\$12,122.00

FEE SUMMARY:

Timekeeper	Category	Time	Rate	Value
Julian-Fontaine, Andrea	Associate	66.80	\$180.00	\$12,024.00

JR Simplot

June 21, 2018

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FEE SUMMARY:

Timekeeper	Category	Time	Rate	Value
Sotelo, Jessica	Paralegal	15.40	\$105.00	\$1,617.00

DISBURSEMENTS

	Description	Payee (if applicable)	
5/30/18	Out-of-Town Travel - Deposition Parking	Julian Brian K.	\$12.00
	Current Disbursements:		<hr/> \$12.00
	Current Fees and Disbursements:		\$25,775.00
	Balance Due With Invoice:		\$25,775.00

When you make a payment to Anderson, Julian & Hull, LLP by check, you authorize us to electronically process your check using the information on your check. If we electronically process your check instead of depositing your check, the electronic debit to your checking account may be on the same day we receive the check by transmitting the amount of the check, routing and transit number and check number to your bank. Electronically processing your check makes us better stewards.

Anderson, Julian & Hull

250 S. 5th St., Ste. 700
P.O. Box 7426
Boise, ID 83707-7426

Ph: 208-344-5800
Fax: 208-344-5510

IRS No. 82-0504369

JR Simplot
P.O. Box 27
1099 W. Front Street
Boise, Idaho 83707

July 17, 2018

File #: 1700-043
Inv #: 52774

Attention: Clay Gill - email: Clay.Gill@simplot.com

RE: Knudsen v. Simplot
Plaintiff: Erik Knudsen

PROFESSIONAL SERVICES RENDERED:

DATE	DESCRIPTION	HOURS	AMOUNT	LAWYER
5/25/18	Prepare for and attend deposition preparation meeting with Kayce McEwan.	3.30	726.00	BKJ
6/1/18	Prepare for and summarize deposition of Lamberton, McEwan and Nessen.	1.20	264.00	BKJ
	Conference with Ken Anderson re: witness preparation.	1.50	330.00	BKJ
	Receipt and review email from Plaintiff's Attorney re: concerns discussing our Responses to Plaintiff's Second Set of Discovery and deposition testimony.	0.10	22.00	BKJ
6/4/18	Conference with witness; Attend and participate in deposition of Kent Anderson.	5.50	1,210.00	BKJ
	Receipt and review Requests for Supplementation of Discovery; Review produced documents.	0.70	154.00	BKJ

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	Receipt and review email from Plaintiff's Attorney re: discovery issues and additional requests for documents.	0.10	22.00	BKJ
	Review and manage documents loaded into eclipse.	1.90	199.50	JS
	Begin compiling deposition documents for attorney use in depositions and motions.	0.90	94.50	JS
6/5/18	Index and summarize deposition of Kent Anderson.	1.20	264.00	BKJ
	Analysis of produced documents to prepare for Plaintiff's deposition and Summary Judgment.	6.20	1,364.00	BKJ
	Receipt and review email from Company re: Litigation Hold Reminder and Document Hold Notice re: Employment Issue.	0.10	22.00	BKJ
	Review and analyze issues from Kent Anderson's deposition in preparation for motion for summary judgment.	0.50	90.00	AJF
	Review all bated documents and compile relevant documents for attorney use in Plaintiff's deposition.	3.80	399.00	JS
6/6/18	Further review and outline of issue for deposition of Plaintiff.	3.50	770.00	BKJ
	Continued compiling of documents for plaintiff's deposition and compiling of previously entered deposition exhibits.	1.30	136.50	JS
	Contact Simplot's Angela Buffalin re: correspondence needed for Plaintiff's deposition and review and prepare received documents for use in deposition.	1.40	147.00	JS
6/7/18	Prepare for and take deposition of Plaintiff Erik Knudsen.	7.90	1,738.00	BKJ
	Attend first half of deposition of plaintiff and	3.20	576.00	AJF

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record notes in preparation for motion for summary judgment.

Review and analyze supplemental discovery issues and search voluminous records for additional responsive correspondence. 0.90 162.00 AJF

Continue to draft memorandum in support of motion for summary judgment re: fraud claim. 0.80 144.00 AJF

Email expert reports to client with update on our expert's report. 0.30 31.50 JS

6/8/18 Review and analysis of newly produced notes and diaries of Plaintiff; Prepare index and summary of deposition of Erik Knudsen. 4.60 1,012.00 BKJ

Continue to draft and review memorandum in support of motion for summary judgment re: fraud and promissory estoppel. 5.00 900.00 AJF

6/11/18 Receipt and review Plaintiff's Fourth Supplemental Responses to Discovery and documents with bates numbers KNUDSEN 347-357. 0.10 22.00 BKJ

Unitize documents in Eclipse SE for use in discovery productions and litigation. 2.20 231.00 JS

6/12/18 Receipt and review Plaintiff's Fourth Supplemental Responses to Defendant's First Set of Interrogatories and Requests for Production of Documents to Plaintiff. 0.10 22.00 BKJ

Receipt and review email from Plaintiff's Attorney re: supplemental discovery responses to Plaintiff's Second Set of Discovery. 0.10 22.00 BKJ

Continue to draft and revise memorandum in support of motion for summary judgment re: fraud and damages. 5.20 936.00 AJF

6/13/18 Draft correspondence to Simplot and plaintiff's attorney re: supplemental discovery responses and review recently produced documents. 2.90 522.00 AJF

JR Simplot

July 17, 2018

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	Continue to draft and revise memorandum in support of motion for summary judgment re: damages.	1.60	288.00	AJF
6/14/18	Continue to draft and revise supplemental responses and identify documents to respond to plaintiff's correspondence.	2.40	432.00	AJF
	Draft correspondence to plaintiff's attorney re: response to follow-up discovery questions subsequent to depositions.	1.50	270.00	AJF
	Continue to draft and revise memorandum in support of motion for summary judgment re: promissory estoppel.	2.50	450.00	AJF
	Compile documents received from client, bates and enter responsive bates numbers into discovery responses.	0.80	84.00	JS
6/15/18	Continue to draft and revise memorandum in support of motion for summary judgment re: promissory estoppel.	3.80	684.00	AJF
	Begin to enter and revise search terms for 60,000 emails from client in Eclipse for production response.	2.10	220.50	JS
6/18/18	E-mail and telephone correspondence with plaintiff's attorney re: extension of motion for summary judgment deadline.	0.50	90.00	AJF
	Continue to draft and revise memorandum in support of motion for summary judgment re: legal analysis and statement of facts.	5.50	990.00	AJF
	Draft affidavits in support of motion for summary judgment.	1.00	180.00	AJF
6/19/18	Receipt and review depositions of Lyle Schook, Erik Knudsen, Tim Lalley, Michael Shaw, Jason Schwark, and Kent Anderson.	0.10	22.00	BKJ
	Draft stipulation to extend motion for summary judgment deadline and	0.50	90.00	AJF

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telephone conference with plaintiff's attorney
 re: the same.

Continue to draft and revise memorandum in support of motion for summary judgment re: statement of facts. 4.80 864.00 AJF

Email five deponents their deposition certifications for review and execution. 0.60 63.00 JS

Compile additional deposition exhibits for attorney use and review in drafting motion for summary judgment. 0.90 94.50 JS

6/20/18 Draft motion for summary judgment and affidavit to preserve motion until stipulation for extension is approved by the Court. 0.60 108.00 AJF

Draft and revise statement of facts for memorandum in support of motion for summary judgment. 4.20 756.00 AJF

Compile depositions for attorney use in motion for summary judgment drafting and contact court reporter on remainder of depositions needed. 0.70 73.50 JS

Email and telephone conversation with Judge's Clerk re: Stipulation to Extend Filing Date on Motion for Summary Judgment. 0.70 73.50 JS

6/21/18 Receipt and review deposition transcript for Rebecca Nichols, Kayce McEwen, Laura Nessen, Jason Schwark and Craig Lamberton. 0.10 22.00 BKJ

Review and analyze deposition transcripts and determine statement of facts. 3.50 630.00 AJF

Continue to draft and revise memorandum in support of motion for summary judgment. 3.50 630.00 AJF

Email correspondence re: deposition change sheets for client review and execution. 0.60 63.00 JS

JR Simplot

July 17, 2018

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6/22/18	Receipt and review original, signed Verification page of deponent Tim Lalley.	0.10	22.00	BKJ
	Receipt and review depositions of Craig Lamberton, Kayce McEwen, Laura Nessen, Jason Schwark, and Rebecca Nichols with Verification and Change Sheets for signatures.	0.10	22.00	BKJ
	Review and analysis of deposition testimony of Simplot personnel and Plaintiff to provide factual basis for Summary Judgment Motion.	1.60	352.00	BKJ
	Review and analyze recently produced deposition transcripts in preparation for motion for summary judgment.	1.00	180.00	AJF
	Email deposition change sheets as well as download deposition transcripts and exhibits for use in motion for summary judgment drafting.	0.40	42.00	JS
	Search and tag over 60,000 documents received from client for use in defendant's discovery responses.	0.60	63.00	JS
6/25/18	Receipt and review deposition of Michael Shaw with change sheet.	0.40	88.00	BKJ
6/26/18	Receipt and review original, signed Verification and Change Sheet from deponent Michael Shaw.	0.10	22.00	BKJ
	Review depositions for citations to record in dispositive motion.	2.00	440.00	BKJ
	Continue to draft and revise memorandum in support of motion for summary judgment.	5.60	1,008.00	AJF
6/27/18	Email exchange with Court re: Judge Bail not granting extension for Motion for Summary Judgment (x3).	0.10	22.00	BKJ
	Receipt and review email from Plaintiff's Attorney to Court re: attached documents referenced in Court's earlier email.	0.10	22.00	BKJ

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	Preparation of Memorandum in Support of Motion for Summary Judgment.	2.50	550.00	BKJ
	Continue to draft and revise memorandum in support of motion for summary judgment and affidavit and file with court.	5.10	918.00	AJF
	Review and analyze deposition transcripts for compliance with protective order.	0.50	90.00	AJF
	Pull and line deposition transcripts for exhibits to Brian K. Julian affidavit in support of motion for summary judgment.	1.40	147.00	JS
6/28/18	Receipt and review email exchange between Plaintiff's Attorney and Court re: attached document referenced in Court's email (x2).	0.10	22.00	BKJ

Current Fees:

130.70 \$23,721.00

(Please remit balance due located on last page of invoice)

FEE SUMMARY:

Timekeeper	Category	Time	Rate	Value
Julian, Brian K.	Senior Partner	43.50	\$220.00	\$9,570.00

FEE SUMMARY:

Timekeeper	Category	Time	Rate	Value
Julian-Fontaine, Andrea	Associate	66.60	\$180.00	\$11,988.00

FEE SUMMARY:

Timekeeper	Category	Time	Rate	Value
Sotelo, Jessica	Paralegal	20.60	\$105.00	\$2,163.00

JR Simplot

July 17, 2018

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DISBURSEMENTS

	Description	Payee (if applicable)	
6/26/18	Deposition Transcripts - Witness: Tim Lalley, Jason Schwark, Michael Shaw, Lyle Schook, Rebecca Nichols, Craig Lamberton, Kayce NcEwan, Laura Nessen, Kent Anderson, Erik Knudsen	Associated Reporting & Vi	\$4,403.32
	Current Disbursements:		<hr/> \$4,403.32
	Current Fees and Disbursements:		\$28,124.32
	Balance Due With Invoice:		\$28,124.32

When you make a payment to Anderson, Julian & Hull, LLP by check, you authorize us to electronically process your check using the information on your check. If we electronically process your check instead of depositing your check, the electronic debit to your checking account may be on the same day we receive the check by transmitting the amount of the check, routing and transit number and check number to your bank. Electronically processing your check makes us better stewards.

Anderson, Julian & Hull

250 S. 5th St., Ste. 700

P.O. Box 7426

Boise, ID 83707-7426

Ph: 208-344-5800

Fax: 208-344-5510

IRS No. 82-0504369

JR Simplot
P.O. Box 27
1099 W. Front Street
Boise, Idaho 83707

August 14, 2018

File #: 1700-043

Inv #: 52931

Attention: Clay Gill - email: Clay.Gill@simplot.com

RE: Knudsen v. Simplot
Plaintiff: Erik Knudsen

PROFESSIONAL SERVICES RENDERED:

DATE	DESCRIPTION	HOURS	AMOUNT	LAWYER
7/2/18	Email expert Reinstein re: case agreements.	0.20	21.00	JS
7/3/18	Review and analysis of Summary Judgment Motion; Review basis of grievance policy; Communication with Client.	2.10	462.00	BKJ
7/5/18	Receipt and review original, signed Verification sheet and Change Sheet from Jason Schwark.	0.10	22.00	BKJ
	Receipt and review original, signed Verification sheet and Change Sheet from Lyle Schook.	0.10	22.00	BKJ
	Receipt and review original, signed Verification sheet and Change Sheet from Kent Anderson.	0.10	22.00	BKJ
	Receipt and review email from Clay Gill re: Complaint Process Policy.	0.10	22.00	BKJ

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JR Simplot

August 14, 2018

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7/9/18	Send verifications to court reporter and e-mail follow up with McEwan and Lamberton re: verifications due.	0.60	63.00	JS
7/11/18	Receipt and review original, signed Verification and Change Sheet from deponent Rebecca Nichols.	0.10	22.00	BKJ
7/13/18	Receipt and review Plaintiff's Addendum to Expert Witness Disclosure.	0.10	22.00	BKJ
	Prepare motion for extension or motion in limine.	1.50	330.00	BKJ
7/16/18	Receipt and review Plaintiff's Supplemental Expert Report; Letter to Dennis Reinstein; Analysis of motions available to extend time; Initial preparation of motion.	2.50	550.00	BKJ
	Receipt and review email from Dennis Reinstein re: vocational rehab specialist.	0.10	22.00	BKJ
	Receipt and review email from Clay Gill re: supplemental expert report and naming Nancy Collins.	0.10	22.00	BKJ
	Receipt and review email from Clay Gill re: Motion for Summary Judgment, upcoming trial date, and informing Simplot witnesses of trial.	0.10	22.00	BKJ
	Review and analyze plaintiff's expert addendum and determine response.	0.80	144.00	AJF
	Draft motion in limine for expert addendum and correspondence to Simplot re: the same.	1.00	180.00	AJF
	Email plaintiff's supplemental expert witness report to defendant's expert Dennis Reinstein for review before trial.	0.30	31.50	JS
	Email correspondence to potential new expert Nancy Collins with case information.	0.40	42.00	JS

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JR Simplot

August 14, 2018

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7/17/18	Receipt and review email from Plaintiff's Attorney, Guy Hallam, re: additional time needed for expert to prepare rebuttal.	0.10	22.00	BKJ
7/18/18	Review expert witness needs; Communication with Plaintiff's Attorney.	0.90	198.00	BKJ
	Letter to Client; Review Judicial Council complaint process.	0.80	176.00	BKJ
	Review and analyze pre-trial motions and continue to prepare pre-trial litigation plan.	1.00	180.00	AJF
	Email correspondence with Lamberton and McEwan re: deposition verifications due to court reporters office.	0.40	42.00	JS
7/19/18	Receipt and review Motion for Summary Judgment Hearing communication; Analysis of evidentiary issues; Prepare outline of Motion in Limine; Letter to Clay Gill.	2.70	594.00	BKJ
	Review and analysis of deposition of Lyle Schook.	1.30	286.00	BKJ
	Receipt and review email from Angela Buffalin to Simplot witnesses re: trial date.	0.10	22.00	BKJ
	Review and analyze damages analysis in preparation for motion in limine re: economic loss.	1.70	306.00	AJF
	Continue to draft and revise pre-trial litigation report to company.	3.00	540.00	AJF
7/23/18	Receipt and review Verification for deposition signed by Kayce McEwan.	0.10	22.00	BKJ
	Review file to determine exhibits and evidence for trial; Communication with Plaintiff's Attorney.	3.30	726.00	BKJ
	Draft trial calendar for case and log when our witnesses are unavailable.	0.60	63.00	JS

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JR Simplot

August 14, 2018

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7/25/18	Receipt and review email from Plaintiff's Attorney re: Motion to Strike and additional time to prepare expert rebuttal report.	0.10	22.00	BKJ
	Receipt and review email from Plaintiff's Attorney re: Motion for Summary Judgment hearing date and final pretrial conference meeting to exchange witness and exhibit lists.	0.10	22.00	BKJ
7/26/18	Trial preparation re: deposition review, analysis of expert testimony and initial preparation of Jury Instructions.	3.60	792.00	BKJ
	Plan and prepare for Pre-Trial Conference, pre-trial hearings and motions in limine.	2.80	504.00	AJF
	Review documents received for micron records requested from plaintiff at plaintiff's deposition.	0.60	63.00	JS
7/27/18	Receipt and review Unopposed Request for Status Conference.	0.10	22.00	BKJ
	Draft and receive correspondence to and from plaintiff's attorney re: requested status conference.	0.20	36.00	AJF
7/30/18	Receipt and review original, signed deposition of Erik Knudsen with attached, signed Verification and Change Sheets.	0.10	22.00	BKJ
	Plan and prepare for pre-trial disclosures re: witnesses and pre-trial report.	3.50	630.00	AJF
	Draft letter to Nancy Collins with documents for her review re: expert witness assistance.	0.60	63.00	JS
7/31/18	Review and analyze discovery documents in preparation for motion to compel.	1.50	270.00	AJF
	Draft motion to compel, memorandum in support and affidavit re: missing employment records.	3.20	576.00	AJF

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File #: 1700-043
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Current Fees:

42.70	\$8,220.50
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(Please remit balance due located on last page of invoice)

FEE SUMMARY:

Timekeeper	Category	Time	Rate	Value
Julian, Brian K.	Senior Partner	20.30	\$220.00	\$4,466.00

FEE SUMMARY:

Timekeeper	Category	Time	Rate	Value
Julian-Fontaine, Andrea	Associate	18.70	\$180.00	\$3,366.00

FEE SUMMARY:

Timekeeper	Category	Time	Rate	Value
Sotelo, Jessica	Paralegal	3.70	\$105.00	\$388.50

Current Fees and Disbursements: \$8,220.50

Balance Due With Invoice: \$8,220.50

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Ph: 208-344-5800
Fax: 208-344-5510

IRS No. 82-0504369

JR Simplot
P.O. Box 27
1099 W. Front Street
Boise, Idaho 83707

September 21, 2018
File #: 1700-043
Inv #: 53173

Attention: Clay Gill - email: Clay.Gill@simplot.com

RE: Knudsen v. Simplot
Plaintiff: Erik Knudsen

PROFESSIONAL SERVICES RENDERED:

DATE	DESCRIPTION	HOURS	AMOUNT	LAWYER
8/2/18	Review and Analysis of Records to identify evidence for trial.	1.50	330.00	BKJ
8/6/18	Communication with Plaintiff's attorney re: Protective Order; Analyze Micron employment records of Plaintiff; Identify exhibits for trial.	1.80	396.00	BKJ
8/7/18	Review and analyze plaintiff's proposed addendum to protective order and respond to plaintiff's attorney.	0.90	162.00	AJF
	Telephone conference with plaintiff's attorney and e-mail correspondence re: amendments to scheduling order.	0.30	54.00	AJF
8/8/18	Draft motion in limine re: expert testimony and other issues per Court order.	4.20	756.00	AJF
	Begin draft defendant's trial exhibits and witness lists.	1.40	147.00	JS

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JR Simplot

September 21, 2018

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8/9/18	Draft Order and Stipulation to push out Motion for Summary Judgment dates.	0.80	84.00	JS
8/10/18	Review and Analysis of deposition to prepare for trial testimony.	2.80	616.00	BKJ
8/13/18	Receipt and review Plaintiff's Response Memorandum Re: Defendant's Motion to Compel.	0.10	22.00	BKJ
	Review and analysis of Lyle Shucks deposition and exhibits for trial.	4.20	924.00	BKJ
	Review and revise exhibit list in preparation for exchange of exhibit lists per court order.	2.00	360.00	AJF
	Review and analyze damages case law and analysis in preparation for motion in limine.	1.50	270.00	AJF
	Continue to draft and revise motion in limine re: damages.	2.50	450.00	AJF
8/14/18	Receipt and review Plaintiff's Fifth Supplemental Responses to Defendant's First Set of Interrogatories and Requests for Production of Documents to Plaintiff.	0.10	22.00	BKJ
	Prepare exhibits for trial; Review Summary Judgment materials; Complete review and analysis of Lyle Shuck testimony for trial preparation.	6.50	1,430.00	BKJ
	Continue to review file for trial exhibits and draft correspondence to Simplot re: production of new Simplot documents.	2.50	450.00	AJF
	Continue to draft and revise motions in limine re: damages and expert.	2.00	360.00	AJF
	Compile trial exhibits for exchange with opposing counsel and use in upcoming trial.	2.10	220.50	JS
	Compile Motion for Summary Judgment documents for attorney review and use in Motion for Summary Judgment hearing.	0.70	73.50	JS

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JR Simplot

September 21, 2018

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	Download jury instructions for attorney review and use in upcoming Trial.	0.80	84.00	JS
8/15/18	Further Trial preparation including Jury Instruction preparation, review of depositions, and review of proposed exhibits.	5.00	1,100.00	BKJ
	Review and analyze proposed witness and exhibit lists and determine additional exhibits.	3.80	684.00	AJF
8/16/18	Review proposed exhibits (app. 1000 pages) for relevance and foundation.	5.50	1,210.00	BKJ
	Correspondence re: late disclosures of evidence and admissibility of certain exhibits.	0.50	110.00	BKJ
	Compile defendant and plaintiff's exhibit and witness lists as well as plaintiff's exhibits not on our list for attorney use and review in final telephonic pretrial conference.	1.80	189.00	JS
	E-mail and draft letter to expert Nancy Collins on matter and prepare documents for her review.	0.40	42.00	JS
8/17/18	Attend and participate in pre-trial conference regarding exhibits and witnesses.	1.50	330.00	BKJ
	Outline and edit three (3) motions in limine regarding damage claims.	1.00	220.00	BKJ
	Continue review and analysis of Simplot depositions for trial preparation.	4.10	902.00	BKJ
	Prepare for pre-trial conference with plaintiff's attorney.	1.00	180.00	AJF
	Participate in pre-trial conference with plaintiff's attorney.	1.00	180.00	AJF
	Continue to draft and revise defendant's motion in limine.	3.20	576.00	AJF
	Plan and prepare for trial re: witnesses and exhibit identification and analysis.	2.00	360.00	AJF

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8/20/18	Further review of documents and evidence supplied by Plaintiff showing work assignments of all engineers over eight month period.	2.60	572.00	BKJ
	Telephone conference with Nancy Collins re: expert opinion and follow-up with additional requested information.	0.30	54.00	AJF
	Review and revise affidavit for memorandum in support of motion in limine.	0.30	54.00	AJF
	Plan and prepare for jury trial re: revised witness list, status report to Company and proposed exhibits.	2.60	468.00	AJF
	Email expert Nancy Collins supplemental documents for her review and use in assisting Dennis Reinstein in case report.	0.30	31.50	JS
	Compare plaintiff's supplemental trial exhibit list with defendant's trial exhibit list for cross over documents to be used in combined stipulated list.	0.90	94.50	JS
8/21/18	Receipt and review Plaintiff's Motions in Limine.	0.10	22.00	BKJ
	Receipt and review Plaintiff's Memorandum in Support of Motions in Limine.	0.10	22.00	BKJ
	Receive and review witness list; receive and review Micron separation documents; prepare new exhibit list.	2.40	528.00	BKJ
	Receive and review e-mail from E. Birch regarding availability of documents.	0.10	22.00	BKJ
	Receive and review letter from Plaintiff's attorney enclosing check for unused time off received by Plaintiff.	0.10	22.00	BKJ

JR Simplot

September 21, 2018

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	Draft and email opposing counsel updated defendant's witness list and request to add an additional two exhibits to joint exhibit list.	0.80	84.00	JS
	Review and update exhibit list as well as witness list.	0.90	94.50	JS
8/22/18	Further trial preparation regarding review of exhibits and proposed witness testimony	2.40	528.00	BKJ
	Receive and review Plaintiff's Response Brief.	0.80	176.00	BKJ
	Receive, review and compile documents from opposing counsel re: letter from defendant's regarding documents produced from plaintiff after plaintiff's deposition.	0.70	73.50	JS
	Finish compiling combined trial exhibits for attorney review and use in trial.	2.70	283.50	JS
8/23/18	Receipt and review Memorandum in Opposition to Defendant's Motion for Summary Judgment.	0.10	22.00	BKJ
	Receipt and review Statement of Disputed Facts.	0.10	22.00	BKJ
	Receipt and review Affidavit of T. Guy Hallam in Opposition to Defendant's Motion for Summary Judgment.	0.10	22.00	BKJ
	Receive and review e-mail correspondence from client to M. Shaw and S. Cooper notifying them they have been identified as potential witnesses to testify at trial.	0.10	22.00	BKJ
	Review and analyze Plaintiff's Response to Summary Judgment; outline Response to Summary Judgment Opposition.	4.80	1,056.00	BKJ
	Telephone conference with Nancy Collins re: preparation of expert opinion.	0.30	54.00	AJF

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	Draft correspondence to experts re: expert opinion supplemental report.	0.20	36.00	AJF
	Draft affidavit in support of motion in limine.	0.30	54.00	AJF
	Review and analyze plaintiff's response to defendant's motion for summary judgment and begin draft of reply.	3.00	540.00	AJF
	Draft correspondence to client re: designation of corporate representative and trial preparation.	0.40	72.00	AJF
	Receive, review and compile plaintiff's opposition to defendant's motion for summary judgment for attorney review and use in hearing.	0.60	63.00	JS
8/24/18	Receive and review e-mail from client regarding witness preparation prior to trial.	0.10	22.00	BKJ
	Analysis of Plaintiff's deposition and history of 15 years with Hewlett Packard, including salary history and evaluations.	4.00	880.00	BKJ
	Receive and review e-mail from C. Gill regarding notification of potential trial witnesses and notification of Simplot's corporate representative for trial.	0.10	22.00	BKJ
	Draft motion to strike and memorandum in support of motion to strike re: Local Rules.	1.90	342.00	AJF
	Draft and revise reply to plaintiff's opposition to motion for summary judgment.	5.00	900.00	AJF
	Review correspondence from client re: preparation of trial witnesses.	0.10	18.00	AJF
	Compile documents for attorney use in drafting jury instructions for trial.	0.40	42.00	JS
8/27/18	Analysis of expert testimony and evidentiary matters; communicate with Hewlett Packard	4.80	1,056.00	BKJ

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 Inv # 53173
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regarding interview of E. Knudsen's last supervisor.

	Review record in preparation for motion for summary judgment and request additional documents from client.	1.00	180.00	AJF
	Continue to draft and revise reply in support of defendant's motion for summary judgment.	7.30	1,314.00	AJF
	Telephone call and email with trial witness Erik Troelsen from plaintiff's witness list and email HP information to Troelsen for conversation with Brian K. Julian.	0.60	63.00	JS
	Email with Simplot re: search for Knudsen online application for position.	0.40	42.00	JS
	Contact experts Collins and Reinstein re: case and upcoming trial.	0.30	31.50	JS
8/28/18	Review exhibits and depositions for preparation of trial testimony outlines.	4.60	1,012.00	BKJ
	Further preparation of Reply Memorandum.	1.20	264.00	BKJ
	Locate packaging engineering jobs in Idaho.	0.50	110.00	AGW
	Receive and respond to email correspondence from plaintiff's attorney re: motion to strike.	0.20	36.00	AJF
	Continue to draft and revise reply in support of motion for summary judgment.	7.70	1,386.00	AJF
	Confirm documents sent to Troelsen for telephone call and for attorney review.	0.40	42.00	JS
	Review trial exhibits for inclusion and completion of each exhibit in Joint Exhibit List.	0.40	42.00	JS
8/29/18	Receipt and review Plaintiff's Opposition to Defendant's Motion in Limine Striking	0.10	22.00	BKJ

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Plaintiff's Expert or in the Alternative, Motion for Extension of Time to Prepare Expert Witness Regarding Vocational Opportunities.

Receipt and review Affidavit of Erika Birch in Support of Plaintiff's Opposition to Defendant's Motion Striking Plaintiff's Expert/	0.10	22.00	BKJ
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Receipt and review Plaintiff's Opposition to Defendant's Motion to Strike Plaintiff's Statement of Disputed Facts.	0.10	22.00	BKJ
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Final preparation of Reply Memorandum; letter to client; further preparation of trial testimony outlines.	5.80	1,276.00	BKJ
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Continue to draft and revise reply in support motion for summary judgment.	2.50	450.00	AJF
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Continue to draft and revise reply in support motion for summary judgment.	2.50	450.00	AJF
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Receive, download and compile job findings for experts review and use in reports.	0.40	42.00	JS
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8/30/18	Outline cross examination of Plaintiff's expert; review depositions for trial preparation.	3.20	704.00	BKJ
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Prepare for trial re: review of documents and final production of documents to plaintiff.	2.60	468.00	AJF
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Draft motion to withdraw motion to compel.	0.20	36.00	AJF
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Receive and respond to e-mails from Simplot re: reply brief and plaintiff's job application.	0.20	36.00	AJF
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Email correspondence with HP internal counsel re: requested telephone conversation with named witnesses.	0.60	63.00	JS
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Compile Motion to Strike documents for attorney review and use in upcoming hearing.	0.40	42.00	JS
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8/31/18	Conference with experts D. Reinstein and N.	6.80	1,496.00	BKJ
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Collins; prepare further outlines for testimony; prepare jury instructions for submission at pre-trial conference.

Meet and confer with experts re: economic damages and vocational rehabilitation opinions.	1.30	234.00	AJF
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Review and analyze record and answer expert inquiry into Medicaid benefits for plaintiff.	0.50	90.00	AJF
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Continue to plan and prepare for trial re: jury instructions on damages.	1.00	180.00	AJF
--	------	--------	-----

Email expert Dennis Reinstein plaintiff's deposition for review.	0.20	21.00	JS
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Draft fourth supplemental responses to plaintiff's first set of discovery requests.	1.30	136.50	JS
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Current Fees:

168.40	\$31,981.50
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(Please remit balance due located on last page of invoice)

FEE SUMMARY:

Timekeeper	Category	Time	Rate	Value
Julian, Brian K.	Senior Partner	79.30	\$220.00	\$17,446.00

FEE SUMMARY:

Timekeeper	Category	Time	Rate	Value
White, Amy G.	Partner	0.50	\$220.00	\$110.00

FEE SUMMARY:

Timekeeper	Category	Time	Rate	Value
Julian-Fontaine, Andrea	Associate	68.30	\$180.00	\$12,294.00

JR Simplot

September 21, 2018

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FEE SUMMARY:

Timekeeper	Category	Time	Rate	Value
Sotelo, Jessica	Paralegal	20.30	\$105.00	\$2,131.50

DISBURSEMENTS

	Description	Payee (if applicable)	
8/31/18	Experts/Consultant Fees	VocConsult Services, Inc.	\$1,860.00
	Experts/Consultant Fees - Coles Reinstein	Coles Reinstein	\$2,720.00
	Current Disbursements:		<hr/> \$4,580.00
	Current Fees and Disbursements:		\$36,561.50
	 Balance Due With Invoice:		 \$36,561.50

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Anderson, Julian & Hull

250 S. 5th St., Ste. 700
P.O. Box 7426
Boise, ID 83707-7426

Ph: 208-344-5800
Fax: 208-344-5510

IRS No. 82-0504369

JR Simplot
P.O. Box 27
1099 W. Front Street
Boise, Idaho 83707

October 17, 2018

File #: 1700-043
Inv #: 53426

Attention: Clay Gill - email: Clay.Gill@simplot.com

RE: Knudsen v. Simplot
Plaintiff: Erik Knudsen

PROFESSIONAL SERVICES RENDERED:

DATE	DESCRIPTION	HOURS	AMOUNT	LAWYER
9/4/18	Prepare Jury Instructions; further preparation; trial preparations; review extensive briefing regarding summary judgment.	6.30	1,386.00	BKJ
	Draft and revise outline in preparation for oral argument on motion for summary judgment.	3.20	576.00	AJF
	Compile Defendant's proposed jury instructions for trial and e-mail and call court re: judge's copies.	1.10	115.50	JS
9/5/18	Receipt and review Plaintiff's Proposed Jury Instructions.	0.10	22.00	BKJ
	Continue to prepare for hearing on defendant's motion for summary judgment.	2.10	378.00	AJF
	Attend hearing on defendant's motion for summary judgment.	1.00	180.00	AJF

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JR Simplot

October 17, 2018

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	Draft supplemental expert report with Expert Reinstein's supplemental report.	0.80	84.00	JS
	Finish supplemental expert report for filing and e-mail simplot copies of pertinent documents.	0.70	73.50	JS
9/6/18	Attend and participate in summary judgment hearing.	1.50	330.00	BKJ
	Conference with K. McEwan regarding questions about job assignment and restrictions brought up at oral argument.	1.40	308.00	BKJ
	Preparation for oral argument on summary judgment; review approximately 75 pages of briefing.	4.20	924.00	BKJ
	Confer with Plaintiff's attorney; letter to client; review exhibits; communicate with witnesses; trial preparation.	4.80	1,056.00	BKJ
	Receive and review correspondence from plaintiff's attorney and client re: trial setting and trial preparation.	0.20	36.00	AJF
	Email various Simplot employees re: Trial Preparation Meeting.	0.40	42.00	JS
	Compile documents needed for trial witness preparation with Simplot employees.	0.70	73.50	JS
9/7/18	Receipt and review Plaintiff's Motion to Vacate Trial and for Expedited Hearing Oral Argument Requested.	0.10	22.00	BKJ
	Telephone conference with Plaintiff's attorney.	0.30	66.00	BKJ
	Letter to client.	0.30	66.00	BKJ
	Meet and confer with witnesses L. Nessen, K. McEwan, and M. Shaw with attendance by B. Coonts.	3.20	704.00	BKJ

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JR Simplot

October 17, 2018

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	Meet and confer with Simplot HR witnesses in preparation for jury trial.	2.50	450.00	AJF
	Review correspondence to and from plaintiff's attorney re: vacating trial dates.	0.20	36.00	AJF
	Compile additional documents for additional trial witness preparation.	0.60	63.00	JS
	Begin compiling documents and pleadings for use in trial and trial preparation.	2.80	294.00	JS
	Email trial witnesses and set meeting re: trial preparation.	0.30	31.50	JS
9/10/18	Receipt and review Plaintiff's Sixth Supplemental Responses to Defendant's First Set of Interrogatories and Requests for Production of Documents to Plaintiff.	0.10	22.00	BKJ
	Draft response to plaintiff's motions in limine.	2.00	360.00	AJF
	Telephone conversation with deposition witness John Bob re: preparation meeting with Brian K. Julian.	0.20	21.00	JS
9/11/18	Attend and participate in hearing; letter to client; telephone conference with client.	1.20	264.00	BKJ
	Analysis of proposed jury instructions and amended witness list.	1.30	286.00	BKJ
	Participate in telephonic hearing re: motion to vacate.	0.30	54.00	AJF
	Draft status report to Company re: trial setting and send correspondence to plaintiff's attorney re: pre-trial pleadings.	0.70	126.00	AJF
	Receive, review and compare plaintiff's supplemental trial exhibits, jury instructions and documents for trial.	1.10	115.50	JS

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JR Simplot

October 17, 2018

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Emails re: trial being vacated to our experts and witnesses expected to appear at trial next week. 0.40 42.00 JS

9/17/18 Review proposed jury instructions and analyze whether certain exhibits regarding termination offers can be eliminated. 1.60 352.00 BKJ

9/20/18 Analysis of recent case law regarding fraud in the inducement of an employment contract. 3.60 792.00 BKJ

Current Fees: 51.30 \$9,751.50
(Please remit balance due located on last page of invoice)

FEE SUMMARY:

Timekeeper	Category	Time	Rate	Value
Julian, Brian K.	Senior Partner	30.00	\$220.00	\$6,600.00

FEE SUMMARY:

Timekeeper	Category	Time	Rate	Value
Julian-Fontaine, Andrea	Associate	12.20	\$180.00	\$2,196.00

FEE SUMMARY:

Timekeeper	Category	Time	Rate	Value
Sotelo, Jessica	Paralegal	9.10	\$105.00	\$955.50

DISBURSEMENTS

	Description	Payee (if applicable)	
9/30/18	Experts/Consultant Fees	Coles Reinstein	\$2,720.00

Current Disbursements: \$2,720.00

JR Simplot

October 17, 2018

File #: 1700-043
Inv # 53426
Page # 5
\$12,471.50

Current Fees and Disbursements:

Balance Due With Invoice: \$12,471.50

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Boise, ID 83707-7426

Ph: 208-344-5800

Fax: 208-344-5510

IRS No. 82-0504369

JR Simplot
P.O. Box 27
1099 W. Front Street
Boise, Idaho 83707

December 17, 2018

File #: 1700-043

Inv #: 53920

Attention: Clay Gill - email: Clay.Gill@simplot.com

RE: Knudsen v. Simplot
Plaintiff: Erik Knudsen

PROFESSIONAL SERVICES RENDERED:

DATE	DESCRIPTION	HOURS	AMOUNT	LAWYER
10/29/18	Review employment records of Plaintiff to determine extent of mitigation of damages.	0.60	132.00	BKJ
11/13/18	Receive and review Memorandum Opinion; letter to client regarding same.	0.80	176.00	BKJ
11/14/18	Further review of legal issues addressed in Opinion; initial preparation of Cost Bill.	1.40	308.00	BKJ
	Review and analyze memorandum decision granting motion for summary judgment and determine availability of attorney's fees.	1.00	180.00	AJF
11/15/18	Draft memorandum in support of award for attorneys fees.	2.10	378.00	AJF
11/29/18	Letter to Guy Hallam; review claim and amount of attorney fees.	0.80	176.00	BKJ

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File #: 1700-043
Inv # 53920
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Current Fees:

6.70 \$1,350.00

(Please remit balance due located on last page of invoice)

FEE SUMMARY:

Timekeeper	Category	Time	Rate	Value
Julian, Brian K.	Senior Partner	3.60	\$220.00	\$792.00

FEE SUMMARY:

Timekeeper	Category	Time	Rate	Value
Julian-Fontaine, Andrea	Associate	3.10	\$180.00	\$558.00

Current Fees and Disbursements: \$1,350.00

Balance Due With Invoice: \$1,350.00

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Erika Birch (Bar No.7831)
T. Guy Hallam, Jr. (Bar No. 6101)
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BOISE, ID 83702
(t) 208.336.1788
(f) 208.287-3708
erika@idahojobjustice.com
guy@idahojobjustice.com

Attorneys for Plaintiff

**IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA**

ERIK KNUDSEN,

Plaintiff,

vs.

**J.R. SIMPLOT COMPANY, a Nevada
Corporation**

Defendant.

**PLAINTIFF'S OBJECTION TO
DEFENDANT'S REQUEST FOR COSTS
AND ATTORNEY'S FEES**

Case No: CV01-17-13956

Judge: Deborah A. Bail

COMES NOW Plaintiff Erik Knudsen, by and through his undersigned counsel, and submits this Memorandum in Support of Plaintiff's Motion to Costs and Attorney's Fees.

I. PROCEDURAL HISTORY

Defendant's *Motion for Summary Judgment* was argued September 5, 2018, less than two weeks prior to the first day of trial. On September 7, 2018, Mr. Knudsen filed a *Motion to Vacate Trial* which was orally granted by the Court on or about September, 11, 2018. The Court rendered its decision granting Defendant's motion on November 13, 2018. Defendant subsequently filed its *Memorandum and Affidavit of Costs and Attorneys' Fees* on December 18, 2018, seeking an award

1 | PLAINTIFF'S OBJECTION TO DEFENDANT'S REQUEST FOR COSTS AND ATTORNEYS' FEES

for \$142,920.40 for costs and fees. The parties agreed to extend the deadline for Plaintiff to submit his opposition to the Defendant's *Memorandum and Affidavit of Costs and Attorneys' Fees* to January 9, 2019. Plaintiff now timely submits this *Memorandum*.

II. ARGUMENT

This matter resulted when Simplot terminated Mr. Knudsen's employment on September 7, 2016. In cursory fashion, Simplot simply says that it seeks recovery of attorney fees incurred pursuant to Idaho Code § 12-120(3). Simplot does not provide this Court with any basis to exercise its discretion to award the attorney fees or costs requested. Specifically, as will be outlined below, there is no argument or basis provided as to why Simplot's claim falls under the purview of I.C. § 12-120(3). Simplot does not differentiate or apportion attorney fees associated with the various claims or issues in this matter, and Simplot has provided no support or analysis to allow this Court to consider the requisite factors under Rule 54. Additionally, Simplot has not met its burden to receive an award of discretionary costs. In light of the foregoing, this Court should exercise its discretion and DENY the attorney fees and discretionary costs requested by Simplot.

A. Legal Standard.

Under Idaho law, "[i]n any civil action the court may award reasonable attorney fees, including paralegal fees, to the prevailing party or parties as defined in Rule 54(d)(1)(B), when provided for by any statute or contract." I.R.C.P. 54(e)(1). However, attorney fees are awardable only where they are authorized by statute or contract. *Bream v. Benscoter*, 139 Idaho 364, 369, 79 P.3d 723, 728 (2003); *Hellar v. Cenarrusa*, 106 Idaho 571, 682 P.2d 524 (1984). If the party is claiming that a statute provides authority for an award of attorney fees, the party must cite to the statute and, if applicable, the specific subsection of the statute upon which the party relies. *Bream, supra*; *Appel v. LePage*, 135 Idaho 133, 15 P.3d 1141 (2000). "The party must then provide a

reasoned argument, supported by case law as necessary, explaining why that statutory or contractual provision entitles the party to an award of attorney fees” *Bream, supra*.

Additionally, “[w]hen awarding attorney’s fees, a district court must consider the applicable factors set forth in I.R.C.P. 54(e)(3) and may consider any other factor that the court deems appropriate.” *See Hines v. Hines*, 129 Idaho 847, 855, 934 P.2d 20, 28 (1997).

The factors listed under I.R.C.P. 54(e)(3) include:

- A. the time and labor required;
- B. the novelty and difficulty of the questions;
- C. the skill requisite to perform the legal service properly and the experience and ability of the attorney in the particular field of law;
- D. the prevailing charges for like work;
- E. whether the fee is fixed or contingent;
- F. the time limitations imposed by the client or the circumstances of the case;
- G. the amount involved and the results obtained;
- H. the undesirability of the case;
- I. the nature and length of the professional relationship with the client;
- J. awards in similar cases;
- K. the reasonable cost of automated legal research (Computer Assisted Legal Research), if the court finds it was reasonably necessary in preparing a party's case;
- L. any other factor which the court deems appropriate in the particular case.

The Idaho Supreme Court has stated that the “court need not specifically address all of the factors contained in I.R.C.P. 54(e)(3) in writing, so long as the record clearly indicates that the court considered them all.” *Boel v. Stewart Title Guar. Co.*, 137 Idaho 9, 16, 43 P.3d 768, 775 (2002).

Finally, Idaho Rule of Civil Procedure 54(d)(1)(C) sets forth the costs to which the prevailing party is entitled to as a matter of right. Pursuant to Idaho Rule of Civil Procedure 54(d), “except when otherwise limited by these rules, costs are allowed as a matter of right to the prevailing party or parties, unless otherwise ordered by the court.” I.R.C.P. 54(d)(1)(A). When costs are awarded to a party, that party is entitled to the following costs, actually paid, as a matter of right:

- i. court filing fees;
- ii. actual fees for service of any pleading or document in the action, whether served by a public officer or other person;
- iii. witness fees of \$20.00 per day for each day that a witness, other than a party or expert, testifies at a deposition or in the trial of an action;
- iv. travel expenses of witnesses who travel by private transportation, other than a party, who testify in the trial of an action, computed at the rate of \$.30 per mile, one way, from the place of residence, whether it is in or outside the state of Idaho;
- v. travel expenses of witnesses who travel other than by private transportation, other than a party, computed as the actual travel expenses of the witness, but not more than \$.30 per mile, one way, from the place of residence of the witness, whether it is in or outside the state of Idaho;
- vi. expenses or charges of certified copies of documents admitted as evidence in a hearing or the trial of an action;
- vii. reasonable costs of the preparation of models, maps, pictures, photographs, or other exhibits admitted in evidence as exhibits in a hearing or trial of an action, but not more than \$500 for all of such exhibits of each party;
- viii. cost of all bond premiums;
- ix. reasonable expert witness fees for an expert who testifies at a deposition or at a trial of an action, but not more than \$2,000 for each expert witness for all appearances;
- x. charges for reporting and transcribing of a deposition taken in preparation for trial of an action, whether or not read into evidence in the trial of an action; and
- xi. charges for one (1) copy of any deposition taken by any of the parties to the action in preparation for trial of the action.

I.R.C.P. 54(d)(1)(C). Defendant has provided little support for its claim for costs as a matter of right.

B. This Court Should Exercise Its Discretion and Deny the Requested Attorney Fees.

Good cause exists for the Court to exercise its discretion and decline to award attorneys' fees in this matter.

1. Simplot has failed to provide necessary support or analysis associated with its request for attorney fees.

“In order to be awarded attorney fees, a party must actually assert the specific statute or common law rule on which the award is based.” *Bingham v. Montane Resource Assocs.*, 133 Idaho 420, 424, 987 P.2d 1035, 1039 (1999). As noted by the Court in *Bingham*, a request for attorney fees should alert the other party to the basis upon which attorney fees are requested in order that

the other party may have a sufficient opportunity to object. *Bingham, supra*. The appropriate time for a party claiming fees to provide the necessary statutory and case authority is in the memorandum in support of costs. I.R.C.P. 54(e)(5); *see also Eighteen Mile Ranch, LLC v. Nord Excavating & Paving, Inc.*, 141 Idaho 716, 721, 117 P.3d 130, 135 (2005).

Simplot has failed to meet its burden related to its request for an award of attorney fees. Simplot provides no argument, explanation, or reasoning as to why it should be awarded the requested attorney fees. Instead, Simplot, “pursuant to Idaho Code section 12-120(3)” merely “sets forth the costs, disbursements, and attorneys’ fees incurred” *See Memorandum and Affidavit of Costs and Attorneys’ Fees*, at page 1. Simplot does not explain why the gravamen of the instant matter falls within the sweep of section 12-120(3). Simplot does not provide any analysis. Indeed, Simplot does not even provide this Court with the complete language of Idaho Code § 12-120(3), which states:

In any civil action to recover on an open account, account stated, note, bill, negotiable instrument, guaranty, or contract relating to the purchase or sale of goods, wares, merchandise, or services and in any commercial transaction unless otherwise provided by law, the prevailing party shall be allowed a reasonable attorney’s fee to be set by the court, to be taxed and collected as costs.

Under Idaho law it is not enough to merely cite a statute when seeking an award of attorney fees. One must “then provide a reasoned argument, supported by case law as necessary, explaining why that statutory or contractual provision entitles the party to an award of attorney fees”

Bream, supra. As noted by the Idaho Supreme Court in *Bream*:

For example, if the party seeks an award of attorney fees under Idaho Code § 12-120(3) on the ground that the case is an action to recover in a commercial transaction, the party should, to the extent necessary, provide facts, authority, and argument supporting the claim that the case involves a “commercial transaction” and that such transaction is the gravamen of the lawsuit.

Bream, 139 Idaho at 369-70, 79 P.3d at 728-29. *See also Stephen v. Sallaz & Gatewood, Chtd.*, 150 Idaho 521, 529, 248 P.3d 1256, 1264 (2011) (denying an award of attorney fees because “Neither party paid heed to this holding [from *Bream*] in district court.”). Simplot must suffer a similar denial of its skeletal attorney fee request because it has not met the requirement to support its claim.

Perhaps Simplot neglected its duty to provide analysis because it could not apportion its attorney fees in an appropriate manner. Perhaps Simplot did not feel that it could offer enough support for the exercise of this Court’s discretion as part of the requisite analysis pursuant to *Blimka v. My Web Wholesaler, LLC*, which held:

the award of attorney's fees is not warranted every time a commercial transaction is remotely connected with the case. Rather, the test is whether the commercial transaction comprises the gravamen of the lawsuit. Attorney’s fees are not appropriate under I.C. § 12-120(3) unless the commercial transaction is integral to the claim, and constitutes the basis upon which the party is attempting to recover. To hold otherwise would be to convert the award of attorney's fees from an exceptional remedy justified only by statutory authority to a matter of right in virtually every lawsuit filed.

Blimka v. My Web Wholesaler, LLC, 143 Idaho 723, 152 P.3d 594, (2007). Here, Simplot has provided no argument, support, or basis which would allow this Court to conclude, pursuant to *Blimka*, that a commercial transaction was integral to the claim in this matter.

2. Simplot Has Not Provided Any Argument or Analysis of the Factors in Rule 54.

Simplot also neglects to provide the Court or Mr. Knudsen with any argument or application related to the factors outlined in Rule 54(e)(3). As noted previously, Rule 54(e) provides the factors that the Court must consider in their decision to award fees. The Defendant’s *Memorandum* provides insufficient evidence for the Court to determine that the award is appropriate under IRCP 54. Neither the *Memorandum and Affidavit of Costs and Attorneys’ Fees*

nor the associated *Affidavit of Brian K. Julian* provide any facts for the Court to consider that would satisfy the factors provided in IRCP 54(e)(3).

The Idaho Supreme Court “has repeatedly held” that it will not consider a request for attorney fees that is not supported by legal authority or argument. *Capps v. FIA Card Services, N.A.*, 149 Idaho 737, 744, 240 P.3d 583, 590 (2010) (*citing Bream, supra*). This Court should exercise its discretion and decline to award Simplot its requested attorney fees for this reason.

C. This Court Should Award Only Simplot’s Costs as a Matter of Right, to the Extent Supported by the Record.

Idaho Rule of Civil Procedure (IRCP) 54 provides that costs and fees may be awarded as well as factors that the court will consider when deciding if an award of costs is appropriate. Simplot seeks \$6,543.40 as a matter of right and discretionary costs totaling \$5,750.00.

Based upon the *Memorandum and Affidavit of Costs and Attorneys’ Fees* and the associated *Affidavit of Brian K. Julian*, it is difficult to determine whether the record supports the requested award of costs as a matter of right. Simplot’s request for costs as a matter of right includes a request for recovery of the filing fee, deposition costs, and the maximum available for expert witness fees. I.R.C.P. 54(d)(1)(C) allows the recovery of filing fees,¹ deposition costs,² and expert witness fees up to the amount of \$2,000.00.³ Simplot has not provided this Court or counsel with copies of the underlying invoices to support the proposed cost award. Additionally, the requested expert witness fee appears to include costs associated with an expert who was not disclosed by Simplot.⁴ This Court should only award Simplot costs as a matter of right which have a basis within the record.

¹ I.R.C.P. 54(d)(1)(C)(i).

² I.R.C.P. 54(d)(1)(C)(xi).

³ I.R.C.P. 54(d)(1)(C)(ix).

⁴ See Experts/Consulting Fees – VocConsult Services, Inc., in the amount of \$1,860.00. Additionally, the attorney time entries include time billed for meeting with Nancy Collins, an expert who was not identified as a witness in this matter.

D. Simplot Provides No Basis or Support for an Award of Discretionary Costs.

IRCP 54(d)(1)(D) provides “Discretionary Costs...may be allowed on a showing that the costs were necessary and reasonably incurred, and should in the interest of justice be assessed against the adverse party.” The Defendant’s *Memorandum* lists discretionary costs in the amount of \$5,750.00 for “mediation fee” and “additional expert witness fees.” However, the Defendant has failed to demonstrate a necessary showing that “the costs were necessary and reasonably incurred” pursuant to IRCP 54(d)(1)(D). As with the request for attorney fees, there is no basis, argument, or other analysis provided by Simplot to support an award of discretionary costs. This Court should therefore exercise its discretion and decline to award the requested discretionary costs.

III. CONCLUSION

For the reasons set forth herein, the Mr. Knudsen respectfully requests that Simplot’s request for attorney fees and discretionary costs be DENIED *in toto*. To the extent this Court finds acceptable support in the record related to the request for an award of costs as a matter of right, Mr. Knudsen does not object to the same.

DATED this 9th day of January, 2019.

STRINDBERG & SCHOLNICK, LLC

/s/ T. Guy Hallam, Jr.
Erika Birch
T. Guy Hallam
Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that on January 9, 2019 a true and correct copy of the foregoing pleading was served on the following via electronic filing system:

Brian K. Julian
Andrea Fontaine
ANDERSON, JULIAN & HULL LLP
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250 South Fifth Street, Suite 700
PO Box 7426
Boise, ID 83707-7426
bjulian@ajhlaw.com
ajfontaine@ajhlaw.com

/s/ Dunja Subasic
Dunja Subasic, of the firm

Brian K. Julian, ISB No. 2360
Andrea J. Fontaine, ISB No. 7175
ANDERSON, JULIAN & HULL LLP
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Attorneys for Defendant

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

ERIK KNUDSEN,

Plaintiff,

vs.

**J.R. SIMPLOT COMPANY, a Nevada
corporation,**

Defendant.

Case No. CV01-17-13956

**AMENDED MEMORANDUM AND
AFFIDAVIT OF COSTS AND
ATTORNEYS' FEES**

COMES NOW Defendant J.R. Simplot Company ("Simplot"), by and through its counsel of record, Anderson, Julian & Hull LLP, and pursuant to Idaho Code section 12-120(3) and Idaho Rules of Civil Procedure 54(d) and 54(e), hereby submits an amended memorandum supporting Simplot's costs, disbursements, and attorneys' fees incurred, as of December 18, 2018, in the prosecution of this case as follows:

COSTS AS A MATTER OF RIGHT

1. Court Filing (Answer) \$ 140.08

AMENDED MEMORANDUM AND AFFIDAVIT OF COSTS AND ATTORNEYS' FEES

2. Deposition Reporting and Transcription Costs	4,403.32
TOTAL COSTS AS A MATTER OF RIGHT	\$4,543.40

Simplot is the prevailing party and is therefore entitled to the foregoing costs. “[C]osts are allowed as a matter of right to the prevailing party or parties, unless otherwise ordered by the court.” I.R.C.P. 54(d)(1)(A). “In determining which party to an action is a prevailing party and entitled to costs, the trial court must, in its sound discretion, consider the final judgment or result of the action in relation to the relief sought by the respective parties.” When costs are awarded to a party, that party is entitled to, *inter alia*, court filing fees and charges for reporting and transcribing of a deposition. I.R.C.P. 54(d)(1)(C)(i) &(x) (respectively).

Simplot was the prevailing party on all counts included in the Complaint. The costs for court filing and deposition fees sought by Simplot are clearly allowed under the express language of Rule 54(d)(1)(C) and must be awarded as a matter of right.

DISCRETIONARY COSTS

1. Expert Witness Fees	\$ 7,300.00
TOTAL DISCRETIONARY COSTS	\$ 7,300.00
TOTAL COSTS	\$11,843.00

Discretionary costs may be awarded by this Court under Rule 54(d)(1)(D) upon “a showing that the costs were necessary and exceptional costs, reasonably incurred, and should in the interest of justice be assessed against the adverse party.” The trial court must make express findings as to why a party’s discretionary costs should be allowed. I.R.C.P. 54(d)(1)(D). “Express findings as to the general character of requested costs and whether such costs are necessary, reasonable, exceptional, and in the interests of justice is sufficient to comply with

this requirement.” *Hayden Lake Fire Protection Dist. v. Alcorn*, 141 Idaho 307, 314, 109 P.3d 161, 168 (2005).

Courts have construed the requirement that a cost be “exceptional” to include those costs incurred because the nature of the case was itself exceptional. *Id.* Such discretionary costs, including those for “expert witness fees” can be awarded based on the magnitude and nature of the case. See *Great Plains Equipment, Inc. v. Northwest Pipeline Corp.*, 136 Idaho 466, 474, 36 P.3d 218, 226 (2001). Expert fees are properly awarded to the prevailing party on a summary judgment motion based on the length of the litigation, the necessity of multiple valuations, and whether the legal and factual issues raised by the non-prevailing party were dependent on the expert’s testimony. *Bodine v. Bodine*, 114 Idaho 163, 167-68, 754 P.2d 1200, 1204-05 (1988). Costs incurred for preparation of trial, even when a motion for summary judgment is ultimately granted, can be awarded by the court as the “decision to prepare for an eventual trial if [the party’s] motion were denied could not be considered unreasonable.” *Zimmerman v. Volkswagon of America, Inc.*, 128 Idaho 851, 857, 920 P.2d 67, 73 (1996).

Simplot’s expert fees should be awarded as they were both necessary and exceptional. Simplot was required to respond to allegations that Simplot lured Knudsen away from a job at HP that he never would have left but for the alleged misrepresentations by Simplot and that he was entitled to back losses equaling \$93,264. Knudsen likewise alleged that, but for alleged misrepresentation and/or breach of the covenant of good faith and fair dealing, Knudsen was entitled to back losses and front losses of \$215,779 based on his subsequent employment at Micron. This initial report was provided to Simplot on or around March 23, 2018. Simplot was required to disclose its own expert report, which it did on or around April 20, 2018. It was necessary for Simplot’s expert, Dennis Reinstein, CPA, to review the economic losses alleged

by Knudsen, which included damages not actually based on wrongful termination, as claimed, but on the new and unfounded theory proffered by Knudsen, which was not a reasonable extension of Idaho law. Simplot's expert disclosures therefore addressed not only some of the miscalculations included in Couillard's report but also damages that were unfounded, i.e., damages based on a "wrongful termination economic damage model" despite the fact that this case was never pled as a wrongful termination.

Mr. Couillard submitted an "Addendum" on or around July 9, 2018, which amended Knudsen's damages from \$309,043 to \$2,774,494. This drastic increase in damages two months before the trial date was based on the fact that Knudsen had received notice of his layoff at Micron. Notably, Knudsen was informed of the layoff in May but did not provide an amended expert report until two months later. Again, Simplot was required to address not only the drastically amended economic loss valuations but the fact that Knudsen was alleging that he was essentially entitled to front pay for the remainder of his work life. This required the services of Nancy Collins, Ph.D., a vocational expert, to provide a foundation upon which Mr. Reinstein could respond to Knudsen's amended expert report as it was not reasonable to assume that a highly educated and skilled engineer could never again obtain employment.¹ Notably, Simplot is *not* seeking expert fees for the services of Ms. Collins, contrary to what Knudsen has alleged in his objection to Simplot's Memorandum of Costs. Rather, Simplot has sought *attorneys' fees* based on its necessary discussions with Ms. Collins for the purpose of assisting Mr. Reinstein.

¹ Though Simplot moved to extend the deadline to disclose experts, the motion was not addressed in light of other pending motions before the Court, and Simplot retained Ms. Collins not as an expert expected to testify at trial but a source upon which Mr. Reinstien could reasonably rely under Idaho Rule of Evidence 703.

The services rendered by Mr. Reinstein were both necessary and exceptional. The work performed by Mr. Reinstein in preparation for trial was necessary to address the unfounded and inconsistent valuations of Mr. Couillard yet they were exceptional because (a) the legal theories upon which Mr. Couillard relied are not recognized as a valid grounds for relief and/or misstated the appropriate economic damages model, i.e., wrongful termination, and (b) the amount of alleged damages was increased by over \$2.5 million two months before trial. As held by the Idaho Supreme Court in *Zimmerman*, the fact that a party is ultimately granted summary judgment does not dispose of the necessity of preparing for trial, particularly when summary judgment is granted near the time of trial. Simplot should be granted its necessary and exceptional expert witness fees incurred in responding to Knudsen's unreasonable extension of the law and inconsistent economic damages valuations.

ATTORNEYS' FEES

Idaho Code 12-120(3) states that “[I]n any civil action to recover ... in any commercial transaction unless otherwise provided by law, the prevailing party shall be allowed a reasonable attorney’s fee to be set by the court, to be taxed and collected as costs.” “[T]he prevailing party in an action brought for breach of an employment contract is entitled to an award of fees under § 12-120(3), ...” *Jenkins v. Boise Cascade Corp.*, 141 Idaho 233, 244, 108 P.3d 380, 391 (2005). “If a contract claim is a type embraced within the statute asserted, the proponent’s failure to prove the existence of the alleged contract does not insulate that party from liability to pay the prevailing party’s attorney’s fees.” *Atwood v. Western Constr., Inc.*, 129 Idaho 234, 241, 923 P.2d 479, 485 (Ct. App. 1996); *see also Property Management West, Inc.*, 126 Idaho 897, 900, 894 P.2d 130, 133 (1995) (former employee entitled to attorney’s fees based on employment agreement even where no liability under a contract was established). For instance, where the

AMENDED MEMORANDUM AND AFFIDAVIT OF COSTS AND ATTORNEYS' FEES

gravamen of the claims are based on unsuccessful allegations that an employment contract existed, the prevailing party is entitled to fees attributable to the defense of those claims. *Jenkins*, 141 Idaho at 244, 108 P.3d at 391. “[T]he test is whether the commercial transaction comprises the gravamen of the lawsuit.” *Property Management West*, 126 Idaho at 899, 894 P.2d at 132. Likewise, prevailing parties are entitled to fees incurred in defending against claims for breach of express and implied contract terms, including the claim for violation of the implied covenant of good faith and fair dealing. *Atwood*, 129 Idaho at 241, 923 P.2d at 486. Moreover, a “breach of the covenant is a breach of the employment contract, and is not a tort. The potential recover results in contract damages, not tort damages.” *Metcalf v. Intermountain Gas Co.*, 116 Idaho 622, 626, 778 P.2d 744, 748 (1989).

The gravamen of Knudsen’s Complaint was founded in contract, not tort. Though Knudsen alleged that a fraudulent misrepresentation resulted in his resignation from Simplot, Knudsen failed to establish that any Simplot representative made any statement that led to Knudsen’s subjective beliefs. *See* Mem. Dec. at 13. There were no “specific false statement made by the employer or specific false or reckless misstatements.” Rather, Knudsen relied upon the job description of Engineer 4 and general statements about his job title in attempting to establish a fraud claim. Thus, his claim was one that he was entitled to rely upon various, generalized statements about the job position for Engineer 4, and that these statements were a guarantee of future job duties to which Simplot was bound to comply, or, in other words, an employment agreement limiting the nature and scope of his job at Simplot.

Likewise, Knudsen’s promissory estoppel and breach of the covenant of good faith and fair dealing are grounded in contract, not tort. Knudsen’s claims are essentially that he never should have been asked to perform a Start-up Manager position because it was not part of what

he agreed to do when he accepted the job at Simplot. Notably, there is no recognized tort claim for being assigned an unwanted job task. Knudsen's recovery, if he had prevailed, would have been based on the damages he allegedly suffered from not being provided the job duties he believed he was entitled as part of the alleged employment agreement. Indeed, Knudsen recognized as much when he alleged that "[t]here was an employment agreement between Simplot and Mr. Knudsen when he signed the offer letter accepting the Engineer position." (Pl.'s Compl. ¶ 55.) Knudsen likewise sought attorney's fees pursuant to Idaho Code § 12-120(3), again, recognizing that his complaint was based on a commercial transaction. Simplot should therefore be awarded its attorneys' fees in full under Idaho Code § 12-120(3).

Defendant requests the Court award a total of \$130,627.00 as reasonable attorneys' fees incurred, as of December 18, 2018, in recovering the amounts owed to the Defendant in this case, pursuant to Idaho Code Section 12-120(3). The hourly rates and the amount of attorneys' fees are reflected in the attached billings marked as Exhibit A to this Memorandum. The requested attorneys' fees are supported by the following factors, as set forth in I.R.C.P. 54(e)(3):

(A) The time and labor required to defend this action was commensurate with the research necessary to address a cause of action not recognized in Idaho. *See* Mem. Dec. at 14. Substantial time was required to attempt to identify the actual "fraudulent" statement or statements allegedly made by Simplot representatives, as the statements were not clear from the pleadings or even after deposing all the relevant witnesses. (Julian Aff. ¶ 5.) Even at the hearing on the motion for summary judgment, when asked directly by the Court, Knudsen was unable to pinpoint the content of the fraudulent misrepresentation. Knudsen requested nine (9) depositions in this matter (Simplot requested only one), and one of the depositions required substantial time and effort as the deponent resided in Australia. (Julian Aff. ¶ 6.)

AMENDED MEMORANDUM AND AFFIDAVIT OF COSTS AND ATTORNEYS' FEES

(B) The novelty and difficulty of the questions justifies an award because there is no Idaho case supporting Knudsen's theory(ies) of recovery;

(C) The skill required to perform the legal services properly justifies the award based on the novelty of the legal issues raised and the requisite legal briefing filed in support of the motion for summary judgment;

(D) The fees requested are consistent with the prevailing charges for like work;

(E) The fees are based on fixed rates clearly set forth in Exhibit A.

(F) Counsel was required to engage in extensive trial preparation given the close proximity of the summary judgment hearing to the trial date.

This request for attorneys' fees is supported by the below Affidavit of Brian K. Julian.

TOTAL COSTS AND ATTORNEYS' FEES REQUESTED, AS OF NOVEMBER 13, 2018: \$142,920.40.

Brian K. Julian, being first duly sworn upon oath, deposes and states:

1. I am an attorney of record for the Defendant in the above-captioned case, and as such am informed regarding the costs, disbursements, and attorneys' fees set forth herein. To the best of my knowledge and belief, the items of costs, disbursements and attorneys' fees set forth above are correct, have been necessarily incurred in pursuing collection of amounts owed by Plaintiff, and are in compliance with Rule 54 of the Idaho Rules of Civil Procedure and Idaho Code section 12-120(3).
2. Attached hereto as Exhibit A are the itemized fees representing the reasonable attorney fees, including paralegal fees, to which Simplot is entitled as the prevailing party in this matter. The fees are based on the prevailing charges for like work, of which I am

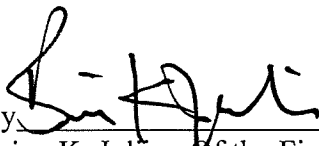
AMENDED MEMORANDUM AND AFFIDAVIT OF COSTS AND ATTORNEYS' FEES

knowledgeable based on my extensive experience representing corporations in employment law disputes.

3. Simplot is not seeking expert fees for Nancy Collins. Simplot is seeking limited attorneys' fees related to the necessary task of addressing Knudsen's claim for front pay and providing a basis for Mr. Reinstein's expert opinion.
4. Attached hereto as Exhibit B are relevant portions of the expert report submitted by Knudsen's economic loss expert, Gary Coulliard.
5. Substantial time was required to attempt to identify the actual "fraudulent" statement or statements allegedly made by Simplot representatives, as the statements were not clear from the pleadings or even after deposing all the relevant witnesses.
6. Knudsen requested nine (9) depositions in this matter (Simplot requested only one), all of which required extensive witness preparation and which depositions generally consumed an entire day. One of the depositions required substantial time and effort as the deponent resided in Australia.
7. The legal briefing required extensive experience and skill. I have been licensed to practice law in the state of Idaho and have engaged primarily in Employment Law for approximately forty years, and my experience and expertise was necessary to obtaining a successful decision on Simplot's Motion for Summary Judgment.

DATED this 18th day of January, 2019.

ANDERSON, JULIAN & HULL LLP

By: 

Brian K. Julian, Of the Firm
Attorneys for Defendant

AMENDED MEMORANDUM AND AFFIDAVIT OF COSTS AND ATTORNEYS' FEES

STATE OF IDAHO)
) ss:
 County of Ada)

I, Kelli G. Mahan, a Notary Public, do hereby certify that on this 18th day of January, 2019, personally appeared before me Brian K. Julian, who, being by me first duly sworn, declared that he is an attorney of record for the Defendant in the foregoing action, that he signed the foregoing document, and that the statements contained therein are true.

IN WITNESS WHEREOF, I have hereunto set by hand and affixed my official seal the day and year first above written.



Kelli G. Mahan

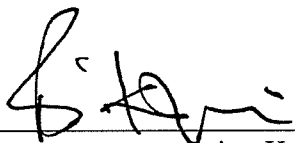
 Notary Public for Idaho
 Residing at: Kuna, Idaho
 My Commission Expires: April 23, 2022

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 18th day of January, 2019, I served a true and correct copy of the foregoing AMENDED MEMORANDUM AND AFFIDAVIT OF COSTS AND ATTORNEYS' FEES by delivering the same to each of the following attorneys of record, by the method indicated below, addressed as follows:

Erika Birch
T. Guy Hallam
Grant Burgoyne
STRINDBERG & SCHOLNICK, LLC
1516 W. Hays St.
Boise, ID 83702
T: (208) 336-1788
F: (208) 278-3708
E: erika@idahojobjustice.com
guy@idahojobjustice.com
grant@idahojobjustice.com
Attorneys for Plaintiff

- | | |
|-------------------------------------|----------------------------|
| <input type="checkbox"/> | U.S. Mail, postage prepaid |
| <input type="checkbox"/> | Hand-Delivered |
| <input type="checkbox"/> | Overnight Mail |
| <input type="checkbox"/> | Facsimile |
| <input type="checkbox"/> | E-Mail |
| <input checked="" type="checkbox"/> | iCourt/e-File |



Brian K. Julian

EXHIBIT “A”

Anderson, Julian & Hull

250 S. 5th St., Ste. 700

P.O. Box 7426

Boise, ID 83707-7426

Ph: 208-344-5800

Fax: 208-344-5510

IRS No. 82-0504369

JR Simplot
P.O. Box 27
1099 W. Front Street
Boise, Idaho 83707

September 27, 2017

File #: 1700-043

Inv #: 50516

Attention: Luke Howarth;
luke.howarth@simplot.com

RE: Knudsen v. Simplot
Plaintiff: Erik Knudsen

PROFESSIONAL SERVICES RENDERED:

DATE	DESCRIPTION	HOURS	AMOUNT	LAWYER
7/31/17	Telephone conference with client; review and analysis of file and email; analysis of suit allegations.	0.80	176.00	BKJ
	Receipt and review new assignment, Complaint and correspondence from Erika Birch to Luke Howarth.	0.10	22.00	BKJ
	Receipt and review of Complaint and prior email correspondence.	0.70	126.00	CDE
8/1/17	Receipt and review documentation re: hiring and evaluation of Eric Knudsen.	1.60	352.00	BKJ
	Receipt and review of personnel file, interview file and email correspondence.	0.10	22.00	BKJ
	Email correspondence to Luke Howarth	0.10	18.00	CDE

000566

File #: 1700-043
 Inv # 50516
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re: service of process.

	Receipt and review of personnel file, interview file and other email correspondence uploaded into Simplot Sharefile.	1.50	270.00	CDE
	Draft timeline of events based on documents received.	1.50	270.00	CDE
	Download, receive, review and store documents from client to litigation file.	0.30	31.50	JS
	Download, receive, convert, review and store documents from client to litigation file.	0.90	94.50	JS
8/2/17	Further review of investigation, personnel file and emails.	1.50	330.00	BKJ
8/3/17	Research re: Idaho case law related to claim for change of job description of an at-will employee being considered adverse employment action.	0.40	72.00	CDE
8/11/17	Receipt and review email from Luke Howarth re: the Food Group indicating that they would settle this matter for 10 weeks' pay.	0.10	22.00	BKJ
	Receipt and review of email correspondence from Luke Howarth re: authorization to settle.	0.10	18.00	CDE
8/22/17	Review and analysis of legal claims re: false advertising and reach of contract.	1.20	264.00	BKJ
	Receipt and review email from Angela Buffalin with attached Summons and Complaint service documents confirming Simplot was served on August 22, 2017.	0.10	22.00	BKJ
8/23/17	Draft Notice of Appearance on behalf of J.R. Simplot Company.	0.10	22.00	BKJ

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	Draft Motion to Disqualify Judge Norton and Proposed Order pursuant to I.R.C.P. 40(d)(1)(A).	0.10	22.00	BKJ
	Draft correspondence to Judge Norton re: Motion to Disqualify Without Cause and Proposed Order.	0.10	22.00	BKJ
	Communication with client; prepare and file Notice of Appearance; Prepare Notice of Disqualification of District Judge; Review and analysis of Complaint and file.	1.80	396.00	BKJ
	Review and analyze complaint and claim file in preparation to draft answer to complaint.	0.50	90.00	AJF
8/28/17	Review and analysis of potential affirmative defenses.	0.90	198.00	BKJ
8/29/17	Receipt and review email from Luke Howarth re: Kayce McEwan will be the lead contact on this matter as she was the principal HR person involved.	0.10	22.00	BKJ
	Revise answer to complaint re: breach of contract.	0.50	90.00	AJF
	Receive, review, compile and format records for attorney review and use.	0.60	63.00	JS
8/30/17	Draft email correspondence to Kayce McEwan re: information about Knudsen's time at Simplot.	0.10	18.00	CDE
8/31/17	Receipt and review email from Kayce McEwan re: meeting to discuss specifics of case (x2).	0.10	22.00	BKJ
	Receipt and review email correspondence from Angela Buffalin re: litigation hold reminder and document hold notice.	0.10	22.00	BKJ
	Email correspondence to Kayce McEwan	0.10	18.00	CDE

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 Page # 4

re: meeting time to discuss Knudsen.

Current Fees:

16.10 \$3,115.00

(Please remit balance due located on last page of invoice)

FEE SUMMARY:

Timekeeper	Category	Time	Rate	Value
Julian, Brian K.	Senior Partner	8.80	\$220.00	\$1,936.00

FEE SUMMARY:

Timekeeper	Category	Time	Rate	Value
Julian-Fontaine, Andrea	Associate	1.00	\$180.00	\$180.00

FEE SUMMARY:

Timekeeper	Category	Time	Rate	Value
Earl, Cody D.	Associate	4.50	\$180.00	\$810.00

FEE SUMMARY:

Timekeeper	Category	Time	Rate	Value
Sotelo, Jessica	Paralegal	1.80	\$105.00	\$189.00

JR Simplot

September 27, 2017

File #: 1700-043
Inv # 50516
Page # 5
\$3,115.00

Current Fees and Disbursements:

Balance Due With Invoice: \$3,115.00

When you make a payment to Anderson, Julian & Hull, LLP by check, you authorize us to electronically process your check using the information on your check. If we electronically process your check instead of depositing your check, the electronic debit to your checking account may be on the same day we receive the check by transmitting the amount of the check, routing and transit number and check number to your bank. Electronically processing your check makes us better stewards.

000570

Anderson, Julian & Hull

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IRS No. 82-0504369

JR Simplot
P.O. Box 27
1099 W. Front Street
Boise, Idaho 83707

October 24, 2017

File #: 1700-043

Inv #: 50788

Attention: James Alderman;
james.alderman@simplot.com

RE: Knudsen v. Simplot
Plaintiff: Erik Knudsen

PROFESSIONAL SERVICES RENDERED:

DATE	DESCRIPTION	HOURS	AMOUNT	LAWYER
9/1/17	Review and analyze questions for company re: answer to Complaint in preparation for conference call.	0.20	36.00	AJF
9/5/17	Review and analyze claim file in preparation to finalize answer to complaint.	1.50	270.00	AJF
9/6/17	Send and receive correspondence with Kayce McEwan re: information to answer complaint.	0.10	18.00	AJF
	Continue to draft and revise answer based on review of claim file.	1.80	324.00	AJF
9/7/17	Telephone conference with Kayce McEwan re: answer to complaint information.	0.80	144.00	AJF
	Continue to draft answer to complaint and affirmative defenses.	2.80	504.00	AJF

000571

JR Simplot

October 24, 2017

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	Review and analyze damages available and viability of causes of action in complaint.	0.50	90.00	AJF
	Draft correspondence to Kent Anderson re: information needed for answer to complaint.	0.10	18.00	AJF
9/8/17	Review and analyze cause of action for answer and potential motion to dismiss.	1.90	342.00	AJF
	Draft correspondence and send and receive voicemails with Kent Anderson re: Answer to Complaint.	0.20	36.00	AJF
	Telephone conference with and follow up e-mail to Kent Anderson re: response to Complaint.	0.20	36.00	AJF
9/11/17	Telephone conference with Kent Anderson re: answer to complaint.	0.80	144.00	AJF
	Continue to draft and revise answer and affirmative defenses based on additional information.	2.50	450.00	AJF
	Review and analyze implied covenant of good faith and fair dealing for affirmative defense in response to answer.	0.20	36.00	AJF
9/15/17	Receipt and review Notice of Status Conference Under I.R.C.P. 16(a) for signature.	0.10	22.00	BKJ
	Review and analysis of Notice of Status Conference Under I.R.C.P. 16(a) received from Court.	0.10	22.00	BKJ
9/18/17	Receipt and review Notice of Change of Address from Plaintiff's counsel.	0.10	22.00	BKJ
	Review notice of status conference from Court.	0.10	18.00	AJF
9/26/17	Begin drafting Stipulation for Scheduling and Planning.	0.60	63.00	JS

000572

JR Simplot

October 24, 2017

File #: 1700-043
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9/27/17	Draft initial discovery to plaintiff.	0.80	144.00	AJF
	Draft and finalize initial discovery to plaintiff.	0.50	90.00	AJF
	Begin drafting Request for Production and Interrogatories to Plaintiff.	0.30	31.50	JS
9/28/17	Review and revise defendant's first set of discovery requests to plaintiff.	1.40	252.00	AJF
	Continued drafting of interrogatories and request for production to Plaintiff.	1.40	147.00	JS

Current Fees:

19.00	\$3,259.50
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(Please remit balance due located on last page of invoice)

FEE SUMMARY:

Timekeeper	Category	Time	Rate	Value
Julian, Brian K.	Senior Partner	0.30	\$220.00	\$66.00

FEE SUMMARY:

Timekeeper	Category	Time	Rate	Value
Julian-Fontaine, Andrea	Associate	16.40	\$180.00	\$2,952.00

FEE SUMMARY:

Timekeeper	Category	Time	Rate	Value
Sotelo, Jessica	Paralegal	2.30	\$105.00	\$241.50

DISBURSEMENTS

Description	Payee (if applicable)
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JR Simplot

October 24, 2017

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Inv # 50788

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9/3/17 Court Fees - Filing Fee Wells Fargo \$140.08

Current Disbursements: \$140.08

Current Fees and Disbursements: **\$3,399.58**

Balance Due With Invoice: **\$3,399.58**

When you make a payment to Anderson, Julian & Hull, LLP by check, you authorize us to electronically process your check using the information on your check. If we electronically process your check instead of depositing your check, the electronic debit to your checking account may be on the same day we receive the check by transmitting the amount of the check, routing and transit number and check number to your bank. Electronically processing your check makes us better stewards.

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IRS No. 82-0504369

JR Simplot
P.O. Box 27
1099 W. Front Street
Boise, Idaho 83707

November 21, 2017
File #: 1700-043
Inv #: 50977

Attention: James Alderman;
james.alderman@simplot.com

RE: Knudsen v. Simplot
Plaintiff: Erik Knudsen

PROFESSIONAL SERVICES RENDERED:

DATE	DESCRIPTION	HOURS	AMOUNT	LAWYER
10/9/17	Review status of litigation; outline and review legal basis for Motion for Summary Judgment based upon misrepresentation in hiring process.	3.40	748.00	BKJ
10/18/17	Review stipulated and scheduled planning documents to be sent to opposing counsel.	0.20	21.00	JS
10/19/17	Receipt and review email from Plaintiff's counsel with attached proposed stipulation on scheduling.	0.10	22.00	BKJ
	Communication with Plaintiff's attorney; Email to Plaintiff's attorney; Prepare discovery and motion schedule.	2.00	440.00	BKJ
10/20/17	Receipt and review signed Stipulation for Scheduling and Planning.	0.10	22.00	BKJ
10/24/17	Receipt and review Plaintiff's First Requests	0.10	22.00	BKJ

000575

File #: 1700-043
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for Discovery to Defendant and Notice of Service.

	Receipt and review discovery requests.	0.50	110.00	BKJ
10/31/17	Review and analysis of discovery and factual basis of claim.	1.30	286.00	BKJ
	Email exchange with Plaintiff's counsel re: extension of time to respond to our discovery requests and scheduling conference has been vacated (x2).	0.10	22.00	BKJ

Current Fees:

7.80	\$1,693.00
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(Please remit balance due located on last page of invoice)

FEE SUMMARY:

Timekeeper	Category	Time	Rate	Value
Julian, Brian K.	Senior Partner	7.60	\$220.00	\$1,672.00

FEE SUMMARY:

Timekeeper	Category	Time	Rate	Value
Sotelo, Jessica	Paralegal	0.20	\$105.00	\$21.00

Current Fees and Disbursements: \$1,693.00

Balance Due With Invoice: \$1,693.00

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Ph: 208-344-5800
Fax: 208-344-5510

IRS No. 82-0504369

JR Simplot
P.O. Box 27
1099 W. Front Street
Boise, Idaho 83707

December 15, 2017

File #: 1700-043
Inv #: 51284

Attention: James Alderman;
james.alderman@simplot.com

RE: Knudsen v. Simplot
Plaintiff: Erik Knudsen

PROFESSIONAL SERVICES RENDERED:

DATE	DESCRIPTION	HOURS	AMOUNT	LAWYER
11/6/17	Communication with Plaintiff's attorney; Review and authorize Protective Order; Analysis of produced documents from Plaintiff.	1.50	330.00	BKJ
	Receipt and review email from Plaintiff's counsel re: discovery responses and attached Joint Motion for Protective Order.	0.10	22.00	BKJ
	Email exchange with Plaintiff's counsel re: discovery and Joint Motion for Protective Order (x2).	0.10	22.00	BKJ
11/7/17	Receipt and review Joint Motion and Stipulation for Protective Order.	0.10	22.00	BKJ
	Receipt and review email from Plaintiff's counsel with attached Plaintiff's First Discovery Responses and responsive documents with bates number Knudsen 1-64.	0.10	22.00	BKJ

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JR Simplot

December 15, 2017

File #: 1700-043
Inv # 51284
Page # 2

	Review and analyze plaintiff's responses to defendant's initial discovery requests.	0.70	126.00	AJF
11/8/17	Receipt and review Notice of Appearance from Plaintiff's counsel.	0.10	22.00	BKJ
	Receipt and review email from Plaintiff's counsel with attached, signed Verification by Plaintiff for Plaintiff's Responses to Defendant's First Set of Interrogatories.	0.10	22.00	BKJ
	Review notice of appearance by co-counsel for plaintiff.	0.10	18.00	AJF
11/10/17	Preparation of discovery responses.	1.40	308.00	BKJ
	Review and analysis of documents provided to Plaintiff re: job announcement, job description and correspondence.	2.50	550.00	BKJ
11/14/17	Email exchange with Plaintiff's counsel re: discovery responses.	0.10	22.00	BKJ
	Draft objections and responses to plaintiff's first set of discovery.	4.50	810.00	AJF
	Correspondence to opposing counsel re: discovery due dates.	0.20	21.00	JS
11/15/17	Conference with Plaintiff's attorney; Preparation of initial responses to discovery.	0.70	154.00	BKJ
	Receipt and review email from Plaintiff's counsel re: discovery responses.	0.10	22.00	BKJ
	Revise discovery responses and provide written requests and instruction to company.	2.50	450.00	AJF
11/16/17	Receipt and review emails from Angela Buffalin with attached documents in response to discovery requests (x2).	0.10	22.00	BKJ
	Receive, review and download files from fileshare for case.	0.70	73.50	JS

000578

JR Simplot

December 15, 2017

File #: 1700-043
Inv # 51284
Page # 3

11/17/17	Receipt and review emails from Angela Buffalin with attached documents in response to discovery requests (x3).	0.10	22.00	BKJ
	Review voicemail and draft e-mail re: responses to discovery requests.	0.20	36.00	AJF
	Receive, review and convert 153 PST files to PDF files.	1.30	136.50	JS
11/20/17	Receipt and review email from Angela Buffalin with attached documents for discovery responses re: redacted notes for Michael Shaw.	0.10	22.00	BKJ
	Draft correspondence and follow up telephone conference with Kent Anderson re: information needed for discovery responses.	0.80	144.00	AJF
	Review and analyze documents produced by Simplot in response to discovery requests.	2.50	450.00	AJF
	Review and analyze cause of action for fraud in employee at will context for future discovery.	1.20	216.00	AJF
	Receive, review, convert and download records from Simplot Sharefile.	0.40	42.00	JS
11/24/17	Receipt and review Notice of Trial Setting and Order Governing Further Proceedings.	0.10	22.00	BKJ
11/27/17	Review court order re: trial scheduling order.	0.10	18.00	AJF
	Review, draft responses to discovery requests and begin pulling responsive documents.	0.70	73.50	JS
11/28/17	Convert emails and attachments received from client Simplot for use in discovery responses.	1.70	178.50	JS
11/29/17	Receipt and review scheduling order; Further research re: misrepresentation claim.	1.60	352.00	BKJ

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JR Simplot

December 15, 2017

File #: 1700-043
Inv # 51284
Page # 4

Receipt and review email from Court with attached Amended Notice of Trial Setting and Order Governing Further Proceedings. 0.10 22.00 BKJ

Continue discovery document compiling, removing of attorney/client privilege documents and bates documents for service with response to plaintiff's request for discovery. 1.80 189.00 JS

11/30/17 Receipt and review Motion to Disqualify Alternate Judge Pursuant to I.R.C.P. 40(d)(1). 0.10 22.00 BKJ

Receipt and review email from Angela Buffalin with attached Litigation Hold Reminder and Document Hold Notice. 0.10 22.00 BKJ

Review and analyze Simplot documents for proprietary information in preparation for discovery responses. 0.60 108.00 AJF

Continue compiling documents, removing attorney/client privilege and entering bates numbers into defendant's responses to request for discovery. 1.10 115.50 JS

Current Fees:

30.30 \$5,229.50

(Please remit balance due located on last page of invoice)

FEE SUMMARY:

Timekeeper	Category	Time	Rate	Value
Julian, Brian K.	Senior Partner	9.20	\$220.00	\$2,024.00

FEE SUMMARY:

Timekeeper	Category	Time	Rate	Value
Julian-Fontaine, Andrea	Associate	13.20	\$180.00	\$2,376.00

JR Simplot

December 15, 2017

File #: 1700-043
Inv # 51284
Page # 5

FEE SUMMARY:

Timekeeper	Category	Time	Rate	Value
Sotelo, Jessica	Paralegal	7.90	\$105.00	\$829.50

Current Fees and Disbursements: \$5,229.50

Balance Due With Invoice: \$5,229.50

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IRS No. 82-0504369

JR Simplot
P.O. Box 27
1099 W. Front Street
Boise, Idaho 83707

January 23, 2018

File #: 1700-043
Inv #: 51494

Attention: James Alderman;
james.alderman@simplot.com

RE: Knudsen v. Simplot
Plaintiff: Erik Knudsen

PROFESSIONAL SERVICES RENDERED:

DATE	DESCRIPTION	HOURS	AMOUNT	LAWYER
12/1/17	Receipt and review Order to Disqualify Alternate Judge Copsey received from Court.	0.10	22.00	BKJ
	Continue to draft and revise responses to plaintiff's first set of discovery and review documents provided by client.	3.50	630.00	AJF
	Continue compiling documents, removing attorney/client privilege and entering bates numbers into defendant's responses to request for discovery.	1.30	136.50	JS
	Email correspondence with Kent Anderson re: Knudsen's replacement and tenure.	0.20	21.00	JS
12/4/17	Email the client re: discovery questions and verifications.	0.20	21.00	JS
	Finish discovery responses and adding bates	0.40	42.00	JS

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JR Simplot

January 23, 2018

File #: 1700-043
Inv # 51494
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numbers of responsive documents into
discovery pleading.

12/5/17	Continue to draft and revise discovery responses to plaintiff's first set of discovery.	0.80	144.00	AJF
	Execute attorney requested changes to discovery responses.	0.60	63.00	JS
12/6/17	Final preparation of written responses to discovery, including review of 650 pages of documents produced.	1.80	396.00	BKJ
	Review correspondence to and from Simplot re: outstanding discovery responses.	0.30	54.00	AJF
	Contact Simplot re: discovery responses due today.	0.20	21.00	JS
	Compile documents to be sent with discovery responses onto disk.	0.40	42.00	JS
12/7/17	Draft and revise supplemental discovery response based on information provided by company.	0.70	126.00	AJF
	Email correspondence with Kent Anderson re: verification.	0.10	10.50	JS
	Begin drafting defendant's supplemental responses to plaintiff's first discovery requests.	0.90	94.50	JS
12/11/17	Preparation of written discovery responses.	0.90	198.00	BKJ

Current Fees:

12.40 \$2,021.50

(Please remit balance due located on last page of invoice)

File #: 1700-043
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FEE SUMMARY:

Timekeeper	Category	Time	Rate	Value
Julian, Brian K.	Senior Partner	2.80	\$220.00	\$616.00

FEE SUMMARY:

Timekeeper	Category	Time	Rate	Value
Julian-Fontaine, Andrea	Associate	5.30	\$180.00	\$954.00

FEE SUMMARY:

Timekeeper	Category	Time	Rate	Value
Sotelo, Jessica	Paralegal	4.30	\$105.00	\$451.50

Current Fees and Disbursements: \$2,021.50

Balance Due With Invoice: \$2,021.50

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IRS No. 82-0504369

JR Simplot
P.O. Box 27
1099 W. Front Street
Boise, Idaho 83707

February 9, 2018

File #: 1700-043

Inv #: 51580

Attention: Clay Gill - email: Clay.Gill@simplot.com

RE: Knudsen v. Simplot
Plaintiff: Erik Knudsen

PROFESSIONAL SERVICES RENDERED:

DATE	DESCRIPTION	HOURS	AMOUNT	LAWYER
1/5/18	Receipt and review email from Plaintiff's counsel with attached Proposed Protective Order that was filed with the Court today.	0.10	22.00	BKJ
	Review Protective Order filed with the Court.	0.10	18.00	AJF

Current Fees:

0.20	\$40.00
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(Please remit balance due located on last page of invoice)

FEE SUMMARY:

Timekeeper	Category	Time	Rate	Value
Julian, Brian K.	Senior Partner	0.10	\$220.00	\$22.00

JR Simplot

February 9, 2018

File #: 1700-043
Inv # 51580
Page # 2

FEE SUMMARY:

Timekeeper	Category	Time	Rate	Value
Julian-Fontaine, Andrea	Associate	0.10	\$180.00	\$18.00

Current Fees and Disbursements: \$40.00

Balance Due With Invoice: \$40.00

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Boise, ID 83707-7426

Ph: 208-344-5800
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IRS No. 82-0504369

JR Simplot
P.O. Box 27
1099 W. Front Street
Boise, Idaho 83707

March 20, 2018

File #: 1700-043
Inv #: 51819

Attention: Clay Gill - email: Clay.Gill@simplot.com

RE: Knudsen v. Simplot
Plaintiff: Erik Knudsen

PROFESSIONAL SERVICES RENDERED:

DATE	DESCRIPTION	HOURS	AMOUNT	LAWYER
2/5/18	Review status of litigation; conference with client.	0.20	44.00	BKJ
2/8/18	Draft status report to Company per request.	0.20	36.00	AJF
2/27/18	Review and analysis of Knudsen statement, improvement plan, packaging error announcement and interview process.	1.50	330.00	BKJ
2/28/18	Receipt and review correspondence from Plaintiff's counsel re: supplementing our discovery responses and depositions.	0.10	22.00	BKJ
	Review and analyze letter from plaintiff's attorney re: discovery issues and supplemental responses.	0.30	54.00	AJF

JR Simplot

March 20, 2018

File #: 1700-043
Inv # 51819
Page # 2

Current Fees:

2.30 \$486.00

(Please remit balance due located on last page of invoice)

FEE SUMMARY:

Timekeeper	Category	Time	Rate	Value
Julian, Brian K.	Senior Partner	1.80	\$220.00	\$396.00

FEE SUMMARY:

Timekeeper	Category	Time	Rate	Value
Julian-Fontaine, Andrea	Associate	0.50	\$180.00	\$90.00

Current Fees and Disbursements: \$486.00

Balance Due With Invoice: \$486.00

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IRS No. 82-0504369

JR Simplot
P.O. Box 27
1099 W. Front Street
Boise, Idaho 83707

April 18, 2018

File #: 1700-043
Inv #: 52082

Attention: Clay Gill - email: Clay.Gill@simplot.com

RE: Knudsen v. Simplot
Plaintiff: Erik Knudsen

PROFESSIONAL SERVICES RENDERED:

DATE	DESCRIPTION	HOURS	AMOUNT	LAWYER
3/1/18	Receipt and review letter from Plaintiff's Attorney; Review discovery responses for completeness; Review necessity of requested depositions.	1.20	264.00	BKJ
	Draft correspondence to plaintiff's attorney in response to clarification re: discovery responses.	2.00	360.00	AJF
	Draft status report to Company requesting additional information for supplemental answers to discovery.	0.30	54.00	AJF
3/2/18	Review documents produced (approximately 600 pages) to prepare for discovery supplementation.	2.40	528.00	BKJ
3/5/18	Receipt and review email from Client re: litigation hold reminder and document hold notice.	0.10	22.00	BKJ

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JR Simplot

April 18, 2018

File #: 1700-043
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3/8/18	Telephone conversation and email follow up with Angela Buffalin of Simplot re: discovery questions and deposition availability.	0.70	73.50	JS
3/9/18	Review and analyze supplemental responses from Simplot and determine additional information.	0.50	90.00	AJF
3/12/18	Review and analysis of emails and documentation leading to improvement plan.	1.60	352.00	BKJ
	Continue to review supplemental response information and draft responses for discovery and in preparation for depositions.	2.60	468.00	AJF
	Receive and review documents re: case and dates for availability on upcoming depositions.	0.40	42.00	JS
3/13/18	Communication with Plaintiff's Attorney re: massive deposition schedule.	0.40	88.00	BKJ
	Review correspondence from Simplot re: request for maintenance file.	0.20	36.00	AJF
3/14/18	Receipt and review email from Plaintiff's Attorney re: depositions, mediation and damages calculations.	0.10	22.00	BKJ
	Email exchange with Clay Gill re: attached example of Memorandum in Support of Motion for Summary Judgment addressing long term employment (x2).	0.10	22.00	BKJ
	Review and analysis of wage loss and supporting documents; Prepare for and attend conference call re: mediation.	1.80	396.00	BKJ
	Compile documents for attorney use in mediation discussions with client.	0.20	21.00	JS
3/15/18	Response to Plaintiff's Attorney re: protected documents for damages calculations.	0.10	22.00	BKJ
	Receipt and review email from Plaintiff's Attorney Erika Birch with attached	0.10	22.00	BKJ

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confidential documents with bates numbers
 KNUDSEN 0065-116.

	Review and analysis of tax information of Plaintiff to determine potential damages.	0.90	198.00	BKJ
3/16/18	Letter to Plaintiff's Attorney; Telephone conference with Plaintiff's Attorney; Review documents produced by Plaintiff.	1.20	264.00	BKJ
	Receipt and review email from Angela Buffalin re: deposition dates and mediation.	0.10	22.00	BKJ
	Review correspondence from Simplot and plaintiff's attorney and draft response.	0.20	36.00	AJF
	Continue to review documents responsive to requests for production for supplemental responses.	1.90	342.00	AJF
3/19/18	Conference with Plaintiff's Attorney re: mediation and discovery.	0.40	88.00	BKJ
	Letter to Client re: mediation and discovery.	0.50	110.00	BKJ
	Enter pertinent bates numbers into defendant's supplemental responses to plaintiff's first discovery requests.	0.70	73.50	JS
	Email correspondence with Angela Buffalin re: Simplots binding agents.	0.20	21.00	JS
3/22/18	Receipt and review email from Client re: is okay with either Dave Lombardi or Dave Knotts as mediator, and moving deposition dates to May.	0.10	22.00	BKJ
3/23/18	Receipt and review Plaintiff's Expert Witness Disclosure.	0.10	22.00	BKJ
	Receipt and review email from Angela Buffalin re: contact by Plaintiff's counsel.	0.10	22.00	BKJ

File #: 1700-043
 Inv # 52082
 Page # 4

	Receipt and review email form Dave Knotts re: potentially acting as mediator.	0.10	22.00	BKJ
	Email to and response from Clay Gill re: Plaintiff's Expert Disclosures.	0.10	22.00	BKJ
	Receipt and review letter from client; telephone conference with Plaintiff's attorney.	0.50	110.00	BKJ
	Telephone conference with mediator; letter to Plaintiff's attorney; analysis of damage issues; review legal issues for mediation.	2.40	528.00	BKJ
	Review and analyze plaintiff's expert report and draft brief analysis.	1.80	324.00	AJF
	Email client Simplot re: follow up on binding agents.	0.30	31.50	JS
3/25/18	Email exchange with Clay Gill re: extension of time for expert disclosure and retaining Dennis Reinstein (x4).	0.10	22.00	BKJ
3/26/18	Receipt and review email from David Knotts re: mediation.	0.10	22.00	BKJ
	Receipt and review letter from Mediator; Letter to Client.	0.40	88.00	BKJ
	Analysis of damage report and basis for expert opinion.	0.80	176.00	BKJ
	Conference with mediator; Letter to Client; Review expert witness needs.	1.10	242.00	BKJ
	Receipt and review email from Plaintiff's counsel re: potential mediation dates.	0.10	22.00	BAW
	Telephone conference with defendant's expert and follow up e-mail correspondence.	0.40	72.00	AJF
	Review and analyze missing document production from plaintiff and draft correspondence to plaintiff's attorney.	0.60	108.00	AJF

JR Simplot

April 18, 2018

File #:	1700-043
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	Continue to supplement and determine outstanding discovery issues.	2.30	414.00	AJF
	Compile information received from Simplot into defendant's supplemental responses to interrogatories for attorney's review.	0.60	63.00	JS
	Review plaintiff's prior response to request for production of documents and review bated documents for plaintiff's HP personnel file.	0.40	42.00	JS
	Draft subpoena for records from Plaintiff's prior employer.	0.40	42.00	JS
3/27/18	Receipt and review email from Plaintiff's counsel re: mediation dates.	0.10	22.00	BKJ
	Draft correspondence with necessary documents for expert Reinstein's review and use in compiling report.	0.70	73.50	JS
3/28/18	Receipt and review email from Plaintiff's counsel re: mediation availability.	0.10	22.00	BKJ
	Email to Clay Gill re: availability for mediation.	0.10	22.00	BKJ
3/30/18	Communication with Client and Mediator re: mediation date.	0.20	44.00	BKJ

Current Fees:

34.90	\$6,637.00
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(Please remit balance due located on last page of invoice)

FEE SUMMARY:

Timekeeper	Category	Time	Rate	Value
Julian, Brian K.	Senior Partner	17.40	\$220.00	\$3,828.00

JR Simplot

April 18, 2018

File #: 1700-043
Inv # 52082
Page # 6

FEE SUMMARY:

Timekeeper	Category	Time	Rate	Value
Walther, Bret	Partner	0.10	\$220.00	\$22.00

FEE SUMMARY:

Timekeeper	Category	Time	Rate	Value
Julian-Fontaine, Andrea	Associate	12.80	\$180.00	\$2,304.00

FEE SUMMARY:

Timekeeper	Category	Time	Rate	Value
Sotelo, Jessica	Paralegal	4.60	\$105.00	\$483.00

Current Fees and Disbursements: \$6,637.00

Balance Due With Invoice: \$6,637.00

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000594

Anderson, Julian & Hull

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Boise, ID 83707-7426

Ph: 208-344-5800

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IRS No. 82-0504369

JR Simplot
P.O. Box 27
1099 W. Front Street
Boise, Idaho 83707

May 21, 2018

File #: 1700-043

Inv #: 52266

Attention: Clay Gill - email: Clay.Gill@simplot.com

RE: Knudsen v. Simplot
Plaintiff: Erik Knudsen

PROFESSIONAL SERVICES RENDERED:

DATE	DESCRIPTION	HOURS	AMOUNT	LAWYER
4/3/18	Receipt and review Protective Order.	0.10	22.00	BKJ
	Receipt and review email from Mediator Dave Knotts re: logistics and mediation agreement.	0.10	22.00	BKJ
	Receipt and review email from Mediator with attached Mediation Confirmation Letter and Mediation Agreement.	0.10	22.00	BKJ
	Draft and revise mediation statement.	4.80	864.00	AJF
4/4/18	Receipt and review letter from Mediator with enclosed Mediation Agreement for signature.	0.10	22.00	BKJ
	Continue to draft and revise mediation statement per mediator's requirements.	3.50	630.00	AJF
4/5/18	Receipt and review Plaintiff's First Supplemental Responses to Defendant's First	0.10	22.00	BKJ

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File #: 1700-043
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Set of Interrogatories and Requests for Production of Documents to Plaintiff.

	Continue to draft and revise mediation statement per mediator's requirements.	2.20	396.00	AJF
4/6/18	Receipt and review Plaintiff's First Supplemental Responses to Defendant's First Set of Interrogatories and Requests for Production of Documents to Plaintiff with attached Exhibits 117 - 247.	0.10	22.00	BKJ
	Review Plaintiff's supplemental discovery responses.	0.80	144.00	AJF
	Compile documents referenced in mediation statement and add as exhibits.	0.60	63.00	JS
4/9/18	Email exchange with Client re: Plaintiff's Attorney in preparation for mediation tomorrow (x2).	0.10	22.00	BKJ
4/11/18	Receipt and review email from Plaintiff's Counsel with attached Notice of Service of Discovery for Plaintiff's Supplemental Responses that were previously filed.	0.10	22.00	BKJ
4/12/18	Review and analysis of file in preparation of Mediation; Receipt and review supplemental responses to Discovery.	2.50	550.00	BKJ
	Compile required documents for use in mediation.	0.70	73.50	JS
4/13/18	Prepare for and attend mediation conference.	3.30	726.00	BKJ
	Prepare and serve Offer of Judgment.	0.40	88.00	BKJ
	Prepare letter to Plaintiff's Attorney.	0.20	44.00	BKJ
	Prepare letter to Client.	0.10	22.00	BKJ

File #: 1700-043
 Inv # 52266
 Page # 3

	Review discovery for depositions.	0.50	110.00	BKJ
	Receipt and review email from Clay Gill re: authority to file Offer of Judgment for \$50,000.00.	0.10	22.00	BKJ
	Receipt and review copy of fully executed Protective Order received from Court.	0.10	22.00	BKJ
	Email exchange with Plaintiff's Attorney re: dates of availability for depositions (x2).	0.10	22.00	BKJ
	Email exchange with Plaintiff's Attorney re: Defendant's expert disclosures and deposition availability and schedule (x2).	0.10	22.00	BKJ
	Draft Offer of Judgment to be sent to opposing counsel in case.	0.60	63.00	JS
4/16/18	Prepare for and attend conference with expert witness, Dennis Reinstein.	1.00	220.00	BKJ
	Meet with Dennis Reinstein re: defendant's expert disclosures and report.	1.00	180.00	AJF
	Draft correspondence to company re: information needed for expert report.	0.20	36.00	AJF
4/19/18	Receipt and review email from our expert Dennis Reinstein re: health insurance costs from Simplot or stock options with Micron.	0.10	22.00	BKJ
	Prepare email to our expert Dennis Reinstein re: response to his email re: stock options.	0.10	22.00	BKJ
	Research neighboring jurisdictions re: fraud allegation stemming from "At Will" job assignment.	1.40	308.00	BKJ
	Review and analyze case law re: no wrongful termination damages in preparation for deposition and motion for summary judgment.	1.00	180.00	AJF

JR Simplot

May 21, 2018

File #: 1700-043
Inv # 52266
Page # 4

4/20/18	Receipt and review email from expert Dennis Reinstein with attached draft Expert Report.	0.10	22.00	BKJ
	Receipt and review email from expert Dennis Reinstein with attached final, signed expert report.	0.10	22.00	BKJ
	Prepare and review expert report.	0.80	176.00	BKJ
	Review and analyze defendant's expert report and correspond with expert re: supplemental report.	1.00	180.00	AJF
	Review and respond to correspondence from Simplot re: supplemental expert report.	0.20	36.00	AJF
	Email expert and client re: expert's report and upcoming trial dates.	0.60	63.00	JS
	Draft defendant's expert witness disclosure for attorney review and service on opposing counsel in accordance with the Court Order.	1.10	115.50	JS
4/23/18	Receipt and review email from Plaintiff's Attorney re: dates for depositions.	0.10	22.00	BKJ
4/24/18	Receipt and review email from Clay Gill re: expert Dennis Reinstein speaking to Kayce McEwan concerning historical payments of bonuses.	0.10	22.00	BKJ
4/25/18	Communications with expert re: bonus structure; Letter to Plaintiff's Attorney; Coordinate discovery schedule.	1.30	286.00	BKJ
	Draft and revise deposition outline for plaintiff's deposition.	1.20	216.00	AJF
	Email plaintiff's benefit information to expert Dennis Reinstein for review.	0.40	42.00	JS
4/26/18	Draft and revise deposition outline for plaintiff's deposition.	1.90	342.00	AJF

000598

JR Simplot

May 21, 2018

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4/27/18	Receipt and review witness statement for Client; Review substance of submitted discovery requests.	1.00	220.00	BKJ
	Receipt and review email from Clay Gill re: Tim Lalley's upcoming deposition and attached Journal Excerpts of Tim Lalley.	0.10	22.00	BKJ
4/30/18	Receipt and review Plaintiff's Second Set of Discovery to Defendant.	0.10	22.00	BKJ
	Receipt and review Plaintiff's Second Set of Discovery to Defendant.	0.10	22.00	BKJ
	Review and analyze plaintiff's second request for discovery and request for supplementation and determine responses.	1.50	270.00	AJF
	Review and analyze employee interview statement and notes in preparation for deposition.	0.90	162.00	AJF
	Draft second set of discovery to plaintiff.	0.40	72.00	AJF

Current Fees:

39.20	\$7,340.00
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(Please remit balance due located on last page of invoice)

FEE SUMMARY:

Timekeeper	Category	Time	Rate	Value
Julian, Brian K.	Senior Partner	14.60	\$220.00	\$3,212.00

FEE SUMMARY:

Timekeeper	Category	Time	Rate	Value
Julian-Fontaine, Andrea	Associate	20.60	\$180.00	\$3,708.00

JR Simplot

May 21, 2018

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Page # 6

FEE SUMMARY:

Timekeeper	Category	Time	Rate	Value
Sotelo, Jessica	Paralegal	4.00	\$105.00	\$420.00

DISBURSEMENTS

	Description	Payee (if applicable)	
4/13/18	Arbitrators/mediators - 1/2 share	Hawley Troxell Ennis & Ha	\$450.00
	Current Disbursements:		\$450.00
	Current Fees and Disbursements:		\$7,790.00
	Balance Due With Invoice:		\$7,790.00

When you make a payment to Anderson, Julian & Hull, LLP by check, you authorize us to electronically process your check using the information on your check. If we electronically process your check instead of depositing your check, the electronic debit to your checking account may be on the same day we receive the check by transmitting the amount of the check, routing and transit number and check number to your bank. Electronically processing your check makes us better stewards.

Anderson, Julian & Hull

250 S. 5th St., Ste. 700
P.O. Box 7426
Boise, ID 83707-7426

Ph: 208-344-5800
Fax: 208-344-5510

IRS No. 82-0504369

JR Simplot
P.O. Box 27
1099 W. Front Street
Boise, Idaho 83707

June 21, 2018

File #: 1700-043
Inv #: 52539

Attention: Clay Gill - email: Clay.Gill@simplot.com

RE: Knudsen v. Simplot
Plaintiff: Erik Knudsen

PROFESSIONAL SERVICES RENDERED:

DATE	DESCRIPTION	HOURS	AMOUNT	LAWYER
5/1/18	Telephone conference with Plaintiff's Attorney; Further Analysis of HP records to determine pattern of employee conduct at work.	1.90	418.00	BKJ
	Email client with second set of discovery from plaintiff for help with documents.	0.20	21.00	JS
	Draft responsive letter to plaintiff's counsel responding to various complaints and requests for information and documents.	0.70	73.50	JS
5/2/18	Receipt and review email from Angela Buffalin re: discovery responses with attached responsive documents.	0.10	22.00	BKJ
5/3/18	Receipt and review email from Angela Buffalin with attached policies that were in effect between 11/23/15 and 9/1/16	0.10	22.00	BKJ
	Receipt and review email from Angela Buffalin re: discovery responses and	0.10	22.00	BKJ

000601

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with attached Engineering Announcement - Erik Knudsen.

	Review and analyze benefits information and perform damages analysis.	0.50	90.00	AJF
5/7/18	Receipt and review letter with deposition notices; Analysis of emails to be produced.	2.80	616.00	BKJ
	Review and Analyze deposition testimony planned by Plaintiff.	0.70	154.00	BKJ
	Receipt and review Notices of Deposition of Craig Lamberton, Jason Schwark, Kacey McEwan, Kent Anderson, Laura Nessen, Lyle Schook, Michael Shaw, Rebecca Nichols, and Tim Lalley.	0.10	22.00	BKJ
	Draft and revise discovery responses and determine production of documents.	3.80	684.00	AJF
	Review notices of deposition and determine response to plaintiff's inquiry re: plaintiff's deposition.	0.20	36.00	AJF
	Review and analyze disclosure of employee personnel file in response to plaintiff's requests for production.	0.20	36.00	AJF
5/8/18	Further Review of medical records and personnel records of Plaintiff for deposition preparation.	3.50	770.00	BKJ
	Receipt and review email from Angela Buffalin re: additional document for discovery responses with email export.	0.10	22.00	BKJ
	Review and analyze correspondence from plaintiff's attorney and draft response re: international deposition issues.	0.40	72.00	AJF
	Continue to draft and revise deposition outline for plaintiff.	1.70	306.00	AJF

JR Simplot

June 21, 2018

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	Coordinate deposition preparations with 7 deponents, Simplot and Brian K. Julian calendars.	1.30	136.50	JS
5/9/18	Draft and revise response to plaintiff's attorney re: supplemental discovery responses and redactions.	0.80	144.00	AJF
	Telephone conference with Company and review of records in preparation for deposition of Russ Armstrong.	0.30	54.00	AJF
	Continue to draft and revise deposition outline for plaintiff and identify exhibits.	4.60	828.00	AJF
	Download and import 60 thousand emails from Simplot re: Knudsen.	1.10	115.50	JS
	Configure date for Kingsford deposition and send correspondence to Kingsford.	0.60	63.00	JS
5/10/18	Prepare for deposition conference with Simplot employees and identify documents for meeting.	4.10	738.00	AJF
	Email client re: documents needed unaltered due to protective order.	0.40	42.00	JS
	Review documents from client and speak with Simplot's Angela Buffalin.	0.40	42.00	JS
5/11/18	Receipt and review Plaintiff's Second Supplemental Response to Defendant's First Set of Interrogatories and Requests for Production of Documents third-party Plaintiff.	0.10	22.00	BKJ
	Receipt and review Rebuttal to Dennis R. Reinstein, Coles Reinstein PLLC Report April 20, 2018.	0.10	22.00	BKJ
	Receipt and review Bated documents KNUDSEN 248-255.	0.10	22.00	BKJ
	Prepare for and attend deposition preparation session with Simplot employees; Conference	3.30	726.00	BKJ

000603

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with Client; Receipt and review email from Client.

Review newly produced documents. 0.70 154.00 BKJ

Further review of Project Manager Plans and emails in preparation for deposition. 1.60 352.00 BKJ

Receipt and review Plaintiff's Second Supplemental Responses to Defendant's First Discovery Request. 0.10 22.00 BKJ

Receipt and review Plaintiff's Expert Rebuttal Report. 0.10 22.00 BKJ

Receipt and review documents with bates numbers KNUDSEN 248-255. 0.10 22.00 BKJ

Prepare for meeting with Simplot employees re: deposition preparation. 1.00 180.00 AJF

Meet with Simplot employees for deposition preparation. 2.30 414.00 AJF

Continue to draft and revise supplemental discovery and responses to plaintiff's second set of discovery. 2.70 486.00 AJF

Draft third supplemental discovery responses with recent documents from Simplot. 0.90 94.50 JS

Compile and redact documents to be produced with correspondence to Erika Birch's office re: litigation. 0.40 42.00 JS

5/14/18 Receipt and review Plaintiff's Second Supplemental Responses to Defendant's First Set of Interrogatories and Requests for Production of Documents to Plaintiff. 0.10 22.00 BKJ

Prepare for and attend depositions of Tim Lalley and Jason Schwark. 7.10 1,562.00 BKJ

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	Continue to draft discovery responses and identify responsive documents.	1.00	180.00	AJF
	Continue to draft deposition outline for plaintiff's deposition and identify deposition exhibits.	3.50	630.00	AJF
	Send documents with correspondence to expert witness Dennis Reinstein.	0.40	42.00	JS
5/15/18	Prepare summaries of depositions of Tim Lalley and Jason Schwark.	1.50	330.00	BKJ
	Witness preparation conference with Craig Lamberton.	0.60	132.00	BKJ
	Continue to draft responses to discovery and prepare for deposition of Craig Lamberton.	1.80	324.00	AJF
	Time research for Craig Lamberton in Australia.	0.40	42.00	JS
5/16/18	Conference with Plaintiff's Attorney re: discovery issues.	0.20	44.00	BKJ
	Receipt and review email from Becca Nichols re: requisition information for the position Plaintiff was hired into.	0.10	22.00	BKJ
	Receipt and review email from Angela Buffalin to Becca Nichols re: information and attached documents received from Cheryl Gottsch.	0.10	22.00	BKJ
	Receipt and review email from Plaintiff's counsel re: logistics for Deposition of Craig Lamberton.	0.10	22.00	BKJ
	Receipt and review email from Becca Nichols to Angela Buffalin re: offer letter and position #2664.	0.10	22.00	BKJ
	Review recruitment documents in preparation for Becca Nichols deposition.	0.50	90.00	AJF

JR Simplot

June 21, 2018

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	Review correspondence from plaintiff's attorney re: deposition of Craig Lamberton and issues for deposition.	0.10	18.00	AJF
	Review and analyze correspondence from Simplot re: deposition preparation issues with Becca Nichols and Craig Lamberton.	0.20	36.00	AJF
	Draft deposition notice for plaintiff Knudsen.	0.70	73.50	JS
5/17/18	Receipt and review Rule 29 Stipulation Re: Out-of-State Witness.	0.10	22.00	BKJ
	Prepare for and attend Deposition of Michael Shaw.	3.20	704.00	BKJ
	Communication with Plaintiff's Attorney re: missing emails.	0.20	44.00	BKJ
	Search database for missing emails requested by Plaintiff's Attorney.	0.80	176.00	BKJ
	Letter to Plaintiff's Attorney.	0.20	44.00	BKJ
	Receipt and review email from Plaintiff's counsel re: documents discussed during Mr. Shaw's deposition.	0.10	22.00	BKJ
	Receipt and review Stipulation re: Lamberton Deposition.	0.10	22.00	BKJ
	Receipt and review Amended Deposition Notice for Becca Nichols.	0.10	22.00	BKJ
	Receipt and review email from Becca Nichols re: position 2664 and Erik Knudsen's personnel file.	0.10	22.00	BKJ
	Retrieve and drop box documents for use in deposition.	0.40	42.00	JS
	Review documents produced, compile documents requested from opposing counsel and bates for service.	0.70	73.50	JS

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	Email Craig Lamberton re: upcoming deposition and preparation with Brian K. Julian.	0.40	42.00	JS
5/18/18	Letter to Client re: deposition summary of Michael Shaw.	1.80	396.00	BKJ
	Receipt and review email from Angela Buffalin with attached personnel files for Craig Jarvis, Erik Knudsen, John Kobs, Tim Lalley, Jason Schwark and Michael Whiting.	0.10	22.00	BKJ
	Receipt and review email from Angela Buffalin with attached offer letter for Erik Knudsen.	0.10	22.00	BKJ
	Receipt and review email from Angela Buffalin with attached job descriptions for positions held by Erik Knudsen, Michael Whiting, Tim Lalley, Jason Schwark, Craig Jarvis and John Kobs.	0.10	22.00	BKJ
5/21/18	Communication with Human Resources, general counsel and witnesses re: depositions and related preparation.	0.80	176.00	BKJ
	Receipt and review email from Clay Gill re: employee records request for Craig Lamberton.	0.10	22.00	BKJ
	Review and respond to correspondence re: Anderson and Lamberton deposition issues and preparation.	0.60	108.00	AJF
	Draft memorandum in support of motion for summary judgment.	3.10	558.00	AJF
5/22/18	Review and analysis of exhibits to depositions.	0.90	198.00	BKJ
	Meet and confer with witness Becca Nichols for deposition preparation.	1.50	330.00	BKJ
	Letter to Plaintiff's attorney re: deposition of Craig Lamberton.	0.30	66.00	BKJ

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	Prepare for and attend Craig Lamberton deposition attorney preparation meeting.	2.40	528.00	BKJ
	Receipt and review Amended Deposition Notice for Kent Anderson.	0.10	22.00	BKJ
	Conference with Becca Nichols re: deposition preparation.	0.90	162.00	AJF
	Continue to prepare plaintiff's deposition outline and identify and request documents for exhibits.	2.90	522.00	AJF
	Meet with Craig Lamberton in preparation for his deposition.	0.80	144.00	AJF
5/23/18	Review and analyze voluminous documents re: documents referred to during Schook's deposition.	1.00	180.00	AJF
	Attend deposition of Lyle Schook.	5.80	1,044.00	AJF
	Draft status report to Company re: summary of deposition and issues for future discovery.	1.20	216.00	AJF
5/24/18	Review and analyze documents for potential production in discovery re: approval of Grand Forks update.	1.00	180.00	AJF
	Draft and receive correspondence to Simplot re: production of CIP for discovery purposes.	0.20	36.00	AJF
	Begin loading 60 thousand emails into eclipse to sort through and eventually produce in discovery.	3.80	399.00	JS
5/25/18	Meet with Kayce McEwan re: deposition preparation.	1.00	180.00	AJF
	Review and analyze documents in preparation for deposition meeting with Kayce McEwan.	0.50	90.00	AJF
	Draft and receive e-mail correspondence re: Kent Anderson deposition preparation.	0.20	36.00	AJF

JR Simplot

June 21, 2018

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	Continue to draft deposition outline for plaintiff and identify exhibits.	1.90	342.00	AJF
5/29/18	Receipt and review Plaintiff's Responses to Defendant's Second Set of Interrogatories and Requests for Production of Documents to Plaintiff.	0.10	22.00	BKJ
	Receive and review responses to request for production of documents.	0.30	66.00	BKJ
	Receipt and review Plaintiff's Responses to Defendant's Second Discovery Requests and documents with bates numbers KNUDSEN 256-257.	0.10	22.00	BKJ
	Continue to draft and revise responses to plaintiff's second set of discovery requests.	4.80	864.00	AJF
	Compile, bates and redact responsive documents to discovery as well as enter bates numbers into discovery responses.	1.90	199.50	JS
5/30/18	Review and analyze documents related to the HR investigation for upcoming depositions.	2.40	528.00	BKJ
	Receipt and review Plaintiff's deposition exhibits for Craig Lamberton's upcoming deposition.	0.10	22.00	BKJ
	Attend and participate in deposition of Craig Lamberton.	5.20	1,144.00	BKJ
	Review and analyze plaintiff's response to defendant's second set of discovery requests.	0.30	54.00	AJF
	Review and analyze issue re: disclosure of personnel files and draft correspondence to Clay Gills re: the same.	0.30	54.00	AJF
	Attend deposition of Becca Nichols.	2.60	468.00	AJF
	Continue to prepare defendant's discovery responses and submit to plaintiff.	0.50	90.00	AJF

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JR Simplot

June 21, 2018

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	Continue to prepare outline and exhibits for deposition of plaintiff.	3.50	630.00	AJF
	Prepare for deposition of Craig Lamberton and review documents recently produced re: the same.	0.50	90.00	AJF
	Compile disk of documents for service with discovery responses.	0.40	42.00	JS
	Download and compile exhibits for attorney use in Lamberton Deposition.	0.30	31.50	JS
5/31/18	Receipt and review Plaintiff's Third Supplemental Responses to Defendant's First Set of Interrogatories and Requests for Production of Documents to Plaintiff.	0.10	22.00	BKJ
	Prepare for attend depositions of Laura Nesson and Kayce McEwan.	8.20	1,804.00	BKJ
	Continue to prepare for plaintiff's deposition and deposition of Kent Anderson.	2.60	468.00	AJF
	Draft summary of deposition of Kayce McEwan.	0.90	162.00	AJF

Current Fees:

137.30	\$25,763.00
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(Please remit balance due located on last page of invoice)

FEE SUMMARY:

Timekeeper	Category	Time	Rate	Value
Julian, Brian K.	Senior Partner	55.10	\$220.00	\$12,122.00

FEE SUMMARY:

Timekeeper	Category	Time	Rate	Value
Julian-Fontaine, Andrea	Associate	66.80	\$180.00	\$12,024.00

JR Simplot

June 21, 2018

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FEE SUMMARY:

Timekeeper	Category	Time	Rate	Value
Sotelo, Jessica	Paralegal	15.40	\$105.00	\$1,617.00

DISBURSEMENTS

	Description	Payee (if applicable)	
5/30/18	Out-of-Town Travel - Deposition Parking	Julian Brian K.	\$12.00
	Current Disbursements:		<hr/> \$12.00
	Current Fees and Disbursements:		\$25,775.00
	Balance Due With Invoice:		\$25,775.00

When you make a payment to Anderson, Julian & Hull, LLP by check, you authorize us to electronically process your check using the information on your check. If we electronically process your check instead of depositing your check, the electronic debit to your checking account may be on the same day we receive the check by transmitting the amount of the check, routing and transit number and check number to your bank. Electronically processing your check makes us better stewards.

Anderson, Julian & Hull

250 S. 5th St., Ste. 700

P.O. Box 7426

Boise, ID 83707-7426

Ph: 208-344-5800

Fax: 208-344-5510

IRS No. 82-0504369

JR Simplot
P.O. Box 27
1099 W. Front Street
Boise, Idaho 83707

July 17, 2018

File #: 1700-043

Inv #: 52774

Attention: Clay Gill - email: Clay.Gill@simplot.com

RE: Knudsen v. Simplot
Plaintiff: Erik Knudsen

PROFESSIONAL SERVICES RENDERED:

DATE	DESCRIPTION	HOURS	AMOUNT	LAWYER
5/25/18	Prepare for and attend deposition preparation meeting with Kayce McEwan.	3.30	726.00	BKJ
6/1/18	Prepare for and summarize deposition of Lamberton, McEwan and Nessen.	1.20	264.00	BKJ
	Conference with Ken Anderson re: witness preparation.	1.50	330.00	BKJ
	Receipt and review email from Plaintiff's Attorney re: concerns discussing our Responses to Plaintiff's Second Set of Discovery and deposition testimony.	0.10	22.00	BKJ
6/4/18	Conference with witness; Attend and participate in deposition of Kent Anderson.	5.50	1,210.00	BKJ
	Receipt and review Requests for Supplementation of Discovery; Review produced documents.	0.70	154.00	BKJ

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	Receipt and review email from Plaintiff's Attorney re: discovery issues and additional requests for documents.	0.10	22.00	BKJ
	Review and manage documents loaded into eclipse.	1.90	199.50	JS
	Begin compiling deposition documents for attorney use in depositions and motions.	0.90	94.50	JS
6/5/18	Index and summarize deposition of Kent Anderson.	1.20	264.00	BKJ
	Analysis of produced documents to prepare for Plaintiff's deposition and Summary Judgment.	6.20	1,364.00	BKJ
	Receipt and review email from Company re: Litigation Hold Reminder and Document Hold Notice re: Employment Issue.	0.10	22.00	BKJ
	Review and analyze issues from Kent Anderson's deposition in preparation for motion for summary judgment.	0.50	90.00	AJF
	Review all bated documents and compile relevant documents for attorney use in Plaintiff's deposition.	3.80	399.00	JS
6/6/18	Further review and outline of issue for deposition of Plaintiff.	3.50	770.00	BKJ
	Continued compiling of documents for plaintiff's deposition and compiling of previously entered deposition exhibits.	1.30	136.50	JS
	Contact Simplot's Angela Buffalin re: correspondence needed for Plaintiff's deposition and review and prepare received documents for use in deposition.	1.40	147.00	JS
6/7/18	Prepare for and take deposition of Plaintiff Erik Knudsen.	7.90	1,738.00	BKJ
	Attend first half of deposition of plaintiff and	3.20	576.00	AJF

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record notes in preparation for motion for summary judgment.

Review and analyze supplemental discovery issues and search voluminous records for additional responsive correspondence. 0.90 162.00 AJF

Continue to draft memorandum in support of motion for summary judgment re: fraud claim. 0.80 144.00 AJF

Email expert reports to client with update on our expert's report. 0.30 31.50 JS

6/8/18 Review and analysis of newly produced notes and diaries of Plaintiff; Prepare index and summary of deposition of Erik Knudsen. 4.60 1,012.00 BKJ

Continue to draft and review memorandum in support of motion for summary judgment re: fraud and promissory estoppel. 5.00 900.00 AJF

6/11/18 Receipt and review Plaintiff's Fourth Supplemental Responses to Discovery and documents with bates numbers KNUDSEN 347-357. 0.10 22.00 BKJ

Unitize documents in Eclipse SE for use in discovery productions and litigation. 2.20 231.00 JS

6/12/18 Receipt and review Plaintiff's Fourth Supplemental Responses to Defendant's First Set of Interrogatories and Requests for Production of Documents to Plaintiff. 0.10 22.00 BKJ

Receipt and review email from Plaintiff's Attorney re: supplemental discovery responses to Plaintiff's Second Set of Discovery. 0.10 22.00 BKJ

Continue to draft and revise memorandum in support of motion for summary judgment re: fraud and damages. 5.20 936.00 AJF

6/13/18 Draft correspondence to Simplot and plaintiff's attorney re: supplemental discovery responses and review recently produced documents. 2.90 522.00 AJF

JR Simplot

July 17, 2018

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	Continue to draft and revise memorandum in support of motion for summary judgment re: damages.	1.60	288.00	AJF
6/14/18	Continue to draft and revise supplemental responses and identify documents to respond to plaintiff's correspondence.	2.40	432.00	AJF
	Draft correspondence to plaintiff's attorney re: response to follow-up discovery questions subsequent to depositions.	1.50	270.00	AJF
	Continue to draft and revise memorandum in support of motion for summary judgment re: promissory estoppel.	2.50	450.00	AJF
	Compile documents received from client, bates and enter responsive bates numbers into discovery responses.	0.80	84.00	JS
6/15/18	Continue to draft and revise memorandum in support of motion for summary judgment re: promissory estoppel.	3.80	684.00	AJF
	Begin to enter and revise search terms for 60,000 emails from client in Eclipse for production response.	2.10	220.50	JS
6/18/18	E-mail and telephone correspondence with plaintiff's attorney re: extension of motion for summary judgment deadline.	0.50	90.00	AJF
	Continue to draft and revise memorandum in support of motion for summary judgment re: legal analysis and statement of facts.	5.50	990.00	AJF
	Draft affidavits in support of motion for summary judgment.	1.00	180.00	AJF
6/19/18	Receipt and review depositions of Lyle Schook, Erik Knudsen, Tim Lalley, Michael Shaw, Jason Schwark, and Kent Anderson.	0.10	22.00	BKJ
	Draft stipulation to extend motion for summary judgment deadline and	0.50	90.00	AJF

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telephone conference with plaintiff's attorney
 re: the same.

Continue to draft and revise memorandum in support of motion for summary judgment re: statement of facts. 4.80 864.00 AJF

Email five deponents their deposition certifications for review and execution. 0.60 63.00 JS

Compile additional deposition exhibits for attorney use and review in drafting motion for summary judgment. 0.90 94.50 JS

6/20/18 Draft motion for summary judgment and affidavit to preserve motion until stipulation for extension is approved by the Court. 0.60 108.00 AJF

Draft and revise statement of facts for memorandum in support of motion for summary judgment. 4.20 756.00 AJF

Compile depositions for attorney use in motion for summary judgment drafting and contact court reporter on remainder of depositions needed. 0.70 73.50 JS

Email and telephone conversation with Judge's Clerk re: Stipulation to Extend Filing Date on Motion for Summary Judgment. 0.70 73.50 JS

6/21/18 Receipt and review deposition transcript for Rebecca Nichols, Kayce McEwen, Laura Nessen, Jason Schwark and Craig Lamberton. 0.10 22.00 BKJ

Review and analyze deposition transcripts and determine statement of facts. 3.50 630.00 AJF

Continue to draft and revise memorandum in support of motion for summary judgment. 3.50 630.00 AJF

Email correspondence re: deposition change sheets for client review and execution. 0.60 63.00 JS

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6/22/18	Receipt and review original, signed Verification page of deponent Tim Lalley.	0.10	22.00	BKJ
	Receipt and review depositions of Craig Lamberton, Kayce McEwen, Laura Nessen, Jason Schwark, and Rebecca Nichols with Verification and Change Sheets for signatures.	0.10	22.00	BKJ
	Review and analysis of deposition testimony of Simplot personnel and Plaintiff to provide factual basis for Summary Judgment Motion.	1.60	352.00	BKJ
	Review and analyze recently produced deposition transcripts in preparation for motion for summary judgment.	1.00	180.00	AJF
	Email deposition change sheets as well as download deposition transcripts and exhibits for use in motion for summary judgment drafting.	0.40	42.00	JS
	Search and tag over 60,000 documents received from client for use in defendant's discovery responses.	0.60	63.00	JS
6/25/18	Receipt and review deposition of Michael Shaw with change sheet.	0.40	88.00	BKJ
6/26/18	Receipt and review original, signed Verification and Change Sheet from deponent Michael Shaw.	0.10	22.00	BKJ
	Review depositions for citations to record in dispositive motion.	2.00	440.00	BKJ
	Continue to draft and revise memorandum in support of motion for summary judgment.	5.60	1,008.00	AJF
6/27/18	Email exchange with Court re: Judge Bail not granting extension for Motion for Summary Judgment (x3).	0.10	22.00	BKJ
	Receipt and review email from Plaintiff's Attorney to Court re: attached documents referenced in Court's earlier email.	0.10	22.00	BKJ

JR Simplot

July 17, 2018

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Preparation of Memorandum in Support of Motion for Summary Judgment.	2.50	550.00	BKJ
Continue to draft and revise memorandum in support of motion for summary judgment and affidavit and file with court.	5.10	918.00	AJF
Review and analyze deposition transcripts for compliance with protective order.	0.50	90.00	AJF
Pull and line deposition transcripts for exhibits to Brian K. Julian affidavit in support of motion for summary judgment.	1.40	147.00	JS

6/28/18	Receipt and review email exchange between Plaintiff's Attorney and Court re: attached document referenced in Court's email (x2).	0.10	22.00	BKJ
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Current Fees:

130.70	\$23,721.00
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(Please remit balance due located on last page of invoice)

FEE SUMMARY:

Timekeeper	Category	Time	Rate	Value
Julian, Brian K.	Senior Partner	43.50	\$220.00	\$9,570.00

FEE SUMMARY:

Timekeeper	Category	Time	Rate	Value
Julian-Fontaine, Andrea	Associate	66.60	\$180.00	\$11,988.00

FEE SUMMARY:

Timekeeper	Category	Time	Rate	Value
Sotelo, Jessica	Paralegal	20.60	\$105.00	\$2,163.00

JR Simplot

July 17, 2018

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DISBURSEMENTS

Description

Payee (if applicable)

6/26/18	Deposition Transcripts - Witness: Tim Lalley, Jason Schwark, Michael Shaw, Lyle Schook, Rebecca Nichols, Craig Lamberton, Kayce NcEwan, Laura Nessen, Kent Anderson, Erik Knudsen	Associated Reporting & Vi	\$4,403.32
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Current Disbursements:	\$4,403.32
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Current Fees and Disbursements:	\$28,124.32
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Balance Due With Invoice:	\$28,124.32
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Anderson, Julian & Hull

250 S. 5th St., Ste. 700

P.O. Box 7426

Boise, ID 83707-7426

Ph: 208-344-5800

Fax: 208-344-5510

IRS No. 82-0504369

JR Simplot
P.O. Box 27
1099 W. Front Street
Boise, Idaho 83707

August 14, 2018

File #: 1700-043

Inv #: 52931

Attention: Clay Gill - email: Clay.Gill@simplot.com

RE: Knudsen v. Simplot
Plaintiff: Erik Knudsen

PROFESSIONAL SERVICES RENDERED:

DATE	DESCRIPTION	HOURS	AMOUNT	LAWYER
7/2/18	Email expert Reinstein re: case agreements.	0.20	21.00	JS
7/3/18	Review and analysis of Summary Judgment Motion; Review basis of grievance policy; Communication with Client.	2.10	462.00	BKJ
7/5/18	Receipt and review original, signed Verification sheet and Change Sheet from Jason Schwark.	0.10	22.00	BKJ
	Receipt and review original, signed Verification sheet and Change Sheet from Lyle Schook.	0.10	22.00	BKJ
	Receipt and review original, signed Verification sheet and Change Sheet from Kent Anderson.	0.10	22.00	BKJ
	Receipt and review email from Clay Gill re: Complaint Process Policy.	0.10	22.00	BKJ

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JR Simplot

August 14, 2018

File #: 1700-043
Inv # 52931
Page # 2

7/9/18	Send verifications to court reporter and e-mail follow up with McEwan and Lamberton re: verifications due.	0.60	63.00	JS
7/11/18	Receipt and review original, signed Verification and Change Sheet from deponent Rebecca Nichols.	0.10	22.00	BKJ
7/13/18	Receipt and review Plaintiff's Addendum to Expert Witness Disclosure.	0.10	22.00	BKJ
	Prepare motion for extension or motion in limine.	1.50	330.00	BKJ
7/16/18	Receipt and review Plaintiff's Supplemental Expert Report; Letter to Dennis Reinstein; Analysis of motions available to extend time; Initial preparation of motion.	2.50	550.00	BKJ
	Receipt and review email from Dennis Reinstein re: vocational rehab specialist.	0.10	22.00	BKJ
	Receipt and review email from Clay Gill re: supplemental expert report and naming Nancy Collins.	0.10	22.00	BKJ
	Receipt and review email from Clay Gill re: Motion for Summary Judgment, upcoming trial date, and informing Simplot witnesses of trial.	0.10	22.00	BKJ
	Review and analyze plaintiff's expert addendum and determine response.	0.80	144.00	AJF
	Draft motion in limine for expert addendum and correspondence to Simplot re: the same.	1.00	180.00	AJF
	Email plaintiff's supplemental expert witness report to defendant's expert Dennis Reinstein for review before trial.	0.30	31.50	JS
	Email correspondence to potential new expert Nancy Collins with case information.	0.40	42.00	JS

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JR Simplot

August 14, 2018

File #: 1700-043
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Page # 3

7/17/18	Receipt and review email from Plaintiff's Attorney, Guy Hallam, re: additional time needed for expert to prepare rebuttal.	0.10	22.00	BKJ
7/18/18	Review expert witness needs; Communication with Plaintiff's Attorney.	0.90	198.00	BKJ
	Letter to Client; Review Judicial Council complaint process.	0.80	176.00	BKJ
	Review and analyze pre-trial motions and continue to prepare pre-trial litigation plan.	1.00	180.00	AJF
	Email correspondence with Lamberton and McEwan re: deposition verifications due to court reporters office.	0.40	42.00	JS
7/19/18	Receipt and review Motion for Summary Judgment Hearing communication; Analysis of evidentiary issues; Prepare outline of Motion in Limine; Letter to Clay Gill.	2.70	594.00	BKJ
	Review and analysis of deposition of Lyle Schook.	1.30	286.00	BKJ
	Receipt and review email from Angela Buffalin to Simplot witnesses re: trial date.	0.10	22.00	BKJ
	Review and analyze damages analysis in preparation for motion in limine re: economic loss.	1.70	306.00	AJF
	Continue to draft and revise pre-trial litigation report to company.	3.00	540.00	AJF
7/23/18	Receipt and review Verification for deposition signed by Kayce McEwan.	0.10	22.00	BKJ
	Review file to determine exhibits and evidence for trial; Communication with Plaintiff's Attorney.	3.30	726.00	BKJ
	Draft trial calendar for case and log when our witnesses are unavailable.	0.60	63.00	JS

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JR Simplot

August 14, 2018

File #: 1700-043
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Page # 4

7/25/18	Receipt and review email from Plaintiff's Attorney re: Motion to Strike and additional time to prepare expert rebuttal report.	0.10	22.00	BKJ
	Receipt and review email from Plaintiff's Attorney re: Motion for Summary Judgment hearing date and final pretrial conference meeting to exchange witness and exhibit lists.	0.10	22.00	BKJ
7/26/18	Trial preparation re: deposition review, analysis of expert testimony and initial preparation of Jury Instructions.	3.60	792.00	BKJ
	Plan and prepare for Pre-Trial Conference, pre-trial hearings and motions in limine.	2.80	504.00	AJF
	Review documents received for micron records requested from plaintiff at plaintiff's deposition.	0.60	63.00	JS
7/27/18	Receipt and review Unopposed Request for Status Conference.	0.10	22.00	BKJ
	Draft and receive correspondence to and from plaintiff's attorney re: requested status conference.	0.20	36.00	AJF
7/30/18	Receipt and review original, signed deposition of Erik Knudsen with attached, signed Verification and Change Sheets.	0.10	22.00	BKJ
	Plan and prepare for pre-trial disclosures re: witnesses and pre-trial report.	3.50	630.00	AJF
	Draft letter to Nancy Collins with documents for her review re: expert witness assistance.	0.60	63.00	JS
7/31/18	Review and analyze discovery documents in preparation for motion to compel.	1.50	270.00	AJF
	Draft motion to compel, memorandum in support and affidavit re: missing employment records.	3.20	576.00	AJF

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File #: 1700-043
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Current Fees:

42.70	\$8,220.50
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(Please remit balance due located on last page of invoice)

FEE SUMMARY:

Timekeeper	Category	Time	Rate	Value
Julian, Brian K.	Senior Partner	20.30	\$220.00	\$4,466.00

FEE SUMMARY:

Timekeeper	Category	Time	Rate	Value
Julian-Fontaine, Andrea	Associate	18.70	\$180.00	\$3,366.00

FEE SUMMARY:

Timekeeper	Category	Time	Rate	Value
Sotelo, Jessica	Paralegal	3.70	\$105.00	\$388.50

Current Fees and Disbursements: **\$8,220.50**

Balance Due With Invoice: **\$8,220.50**

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Fax: 208-344-5510

IRS No. 82-0504369

JR Simplot
P.O. Box 27
1099 W. Front Street
Boise, Idaho 83707

September 21, 2018
File #: 1700-043
Inv #: 53173

Attention: Clay Gill - email: Clay.Gill@simplot.com

RE: Knudsen v. Simplot
Plaintiff: Erik Knudsen

PROFESSIONAL SERVICES RENDERED:

DATE	DESCRIPTION	HOURS	AMOUNT	LAWYER
8/2/18	Review and Analysis of Records to identify evidence for trial.	1.50	330.00	BKJ
8/6/18	Communication with Plaintiff's attorney re: Protective Order; Analyze Micron employment records of Plaintiff; Identify exhibits for trial.	1.80	396.00	BKJ
8/7/18	Review and analyze plaintiff's proposed addendum to protective order and respond to plaintiff's attorney.	0.90	162.00	AJF
	Telephone conference with plaintiff's attorney and e-mail correspondence re: amendments to scheduling order.	0.30	54.00	AJF
8/8/18	Draft motion in limine re: expert testimony and other issues per Court order.	4.20	756.00	AJF
	Begin draft defendant's trial exhibits and witness lists.	1.40	147.00	JS

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JR Simplot

September 21, 2018

File #: 1700-043
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Page # 2

8/9/18	Draft Order and Stipulation to push out Motion for Summary Judgment dates.	0.80	84.00	JS
8/10/18	Review and Analysis of deposition to prepare for trial testimony.	2.80	616.00	BKJ
8/13/18	Receipt and review Plaintiff's Response Memorandum Re: Defendant's Motion to Compel.	0.10	22.00	BKJ
	Review and analysis of Lyle Shucks deposition and exhibits for trial.	4.20	924.00	BKJ
	Review and revise exhibit list in preparation for exchange of exhibit lists per court order.	2.00	360.00	AJF
	Review and analyze damages case law and analysis in preparation for motion in limine.	1.50	270.00	AJF
	Continue to draft and revise motion in limine re: damages.	2.50	450.00	AJF
8/14/18	Receipt and review Plaintiff's Fifth Supplemental Responses to Defendant's First Set of Interrogatories and Requests for Production of Documents to Plaintiff.	0.10	22.00	BKJ
	Prepare exhibits for trial; Review Summary Judgment materials; Complete review and analysis of Lyle Shuck testimony for trial preparation.	6.50	1,430.00	BKJ
	Continue to review file for trial exhibits and draft correspondence to Simplot re: production of new Simplot documents.	2.50	450.00	AJF
	Continue to draft and revise motions in limine re: damages and expert.	2.00	360.00	AJF
	Compile trial exhibits for exchange with opposing counsel and use in upcoming trial.	2.10	220.50	JS
	Compile Motion for Summary Judgment documents for attorney review and use in Motion for Summary Judgment hearing.	0.70	73.50	JS

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JR Simplot

September 21, 2018

File #: 1700-043
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Page # 3

	Download jury instructions for attorney review and use in upcoming Trial.	0.80	84.00	JS
8/15/18	Further Trial preparation including Jury Instruction preparation, review of depositions, and review of proposed exhibits.	5.00	1,100.00	BKJ
	Review and analyze proposed witness and exhibit lists and determine additional exhibits.	3.80	684.00	AJF
8/16/18	Review proposed exhibits (app. 1000 pages) for relevance and foundation.	5.50	1,210.00	BKJ
	Correspondence re: late disclosures of evidence and admissibility of certain exhibits.	0.50	110.00	BKJ
	Compile defendant and plaintiff's exhibit and witness lists as well as plaintiff's exhibits not on our list for attorney use and review in final telephonic pretrial conference.	1.80	189.00	JS
	E-mail and draft letter to expert Nancy Collins on matter and prepare documents for her review.	0.40	42.00	JS
8/17/18	Attend and participate in pre-trial conference regarding exhibits and witnesses.	1.50	330.00	BKJ
	Outline and edit three (3) motions in limine regarding damage claims.	1.00	220.00	BKJ
	Continue review and analysis of Simplot depositions for trial preparation.	4.10	902.00	BKJ
	Prepare for pre-trial conference with plaintiff's attorney.	1.00	180.00	AJF
	Participate in pre-trial conference with plaintiff's attorney.	1.00	180.00	AJF
	Continue to draft and revise defendant's motion in limine.	3.20	576.00	AJF
	Plan and prepare for trial re: witnesses and exhibit identification and analysis.	2.00	360.00	AJF

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File #: 1700-043
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8/20/18	Further review of documents and evidence supplied by Plaintiff showing work assignments of all engineers over eight month period.	2.60	572.00	BKJ
	Telephone conference with Nancy Collins re: expert opinion and follow-up with additional requested information.	0.30	54.00	AJF
	Review and revise affidavit for memorandum in support of motion in limine.	0.30	54.00	AJF
	Plan and prepare for jury trial re: revised witness list, status report to Company and proposed exhibits.	2.60	468.00	AJF
	Email expert Nancy Collins supplemental documents for her review and use in assisting Dennis Reinstein in case report.	0.30	31.50	JS
	Compare plaintiff's supplemental trial exhibit list with defendant's trial exhibit list for cross over documents to be used in combined stipulated list.	0.90	94.50	JS
8/21/18	Receipt and review Plaintiff's Motions in Limine.	0.10	22.00	BKJ
	Receipt and review Plaintiff's Memorandum in Support of Motions in Limine.	0.10	22.00	BKJ
	Receive and review witness list; receive and review Micron separation documents; prepare new exhibit list.	2.40	528.00	BKJ
	Receive and review e-mail from E. Birch regarding availability of documents.	0.10	22.00	BKJ
	Receive and review letter from Plaintiff's attorney enclosing check for unused time off received by Plaintiff.	0.10	22.00	BKJ

JR Simplot

September 21, 2018

File #: 1700-043
Inv # 53173
Page # 5

	Draft and email opposing counsel updated defendant's witness list and request to add an additional two exhibits to joint exhibit list.	0.80	84.00	JS
	Review and update exhibit list as well as witness list.	0.90	94.50	JS
8/22/18	Further trial preparation regarding review of exhibits and proposed witness testimony	2.40	528.00	BKJ
	Receive and review Plaintiff's Response Brief.	0.80	176.00	BKJ
	Receive, review and compile documents from opposing counsel re: letter from defendant's regarding documents produced from plaintiff after plaintiff's deposition.	0.70	73.50	JS
	Finish compiling combined trial exhibits for attorney review and use in trial.	2.70	283.50	JS
8/23/18	Receipt and review Memorandum in Opposition to Defendant's Motion for Summary Judgment.	0.10	22.00	BKJ
	Receipt and review Statement of Disputed Facts.	0.10	22.00	BKJ
	Receipt and review Affidavit of T. Guy Hallam in Opposition to Defendant's Motion for Summary Judgment.	0.10	22.00	BKJ
	Receive and review e-mail correspondence from client to M. Shaw and S. Cooper notifying them they have been identified as potential witnesses to testify at trial.	0.10	22.00	BKJ
	Review and analyze Plaintiff's Response to Summary Judgment; outline Response to Summary Judgment Opposition.	4.80	1,056.00	BKJ
	Telephone conference with Nancy Collins re: preparation of expert opinion.	0.30	54.00	AJF

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	Draft correspondence to experts re: expert opinion supplemental report.	0.20	36.00	AJF
	Draft affidavit in support of motion in limine.	0.30	54.00	AJF
	Review and analyze plaintiff's response to defendant's motion for summary judgment and begin draft of reply.	3.00	540.00	AJF
	Draft correspondence to client re: designation of corporate representative and trial preparation.	0.40	72.00	AJF
	Receive, review and compile plaintiff's opposition to defendant's motion for summary judgment for attorney review and use in hearing.	0.60	63.00	JS
8/24/18	Receive and review e-mail from client regarding witness preparation prior to trial.	0.10	22.00	BKJ
	Analysis of Plaintiff's deposition and history of 15 years with Hewlett Packard, including salary history and evaluations.	4.00	880.00	BKJ
	Receive and review e-mail from C. Gill regarding notification of potential trial witnesses and notification of Simplot's corporate representative for trial.	0.10	22.00	BKJ
	Draft motion to strike and memorandum in support of motion to strike re: Local Rules.	1.90	342.00	AJF
	Draft and revise reply to plaintiff's opposition to motion for summary judgment.	5.00	900.00	AJF
	Review correspondence from client re: preparation of trial witnesses.	0.10	18.00	AJF
	Compile documents for attorney use in drafting jury instructions for trial.	0.40	42.00	JS
8/27/18	Analysis of expert testimony and evidentiary matters; communicate with Hewlett Packard	4.80	1,056.00	BKJ

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regarding interview of E. Knudsen's last supervisor.

	Review record in preparation for motion for summary judgment and request additional documents from client.	1.00	180.00	AJF
	Continue to draft and revise reply in support of defendant's motion for summary judgment.	7.30	1,314.00	AJF
	Telephone call and email with trial witness Erik Troelsen from plaintiff's witness list and email HP information to Troelsen for conversation with Brian K. Julian.	0.60	63.00	JS
	Email with Simplot re: search for Knudsen online application for position.	0.40	42.00	JS
	Contact experts Collins and Reinstein re: case and upcoming trial.	0.30	31.50	JS
8/28/18	Review exhibits and depositions for preparation of trial testimony outlines.	4.60	1,012.00	BKJ
	Further preparation of Reply Memorandum.	1.20	264.00	BKJ
	Locate packaging engineering jobs in Idaho.	0.50	110.00	AGW
	Receive and respond to email correspondence from plaintiff's attorney re: motion to strike.	0.20	36.00	AJF
	Continue to draft and revise reply in support of motion for summary judgment.	7.70	1,386.00	AJF
	Confirm documents sent to Troelsen for telephone call and for attorney review.	0.40	42.00	JS
	Review trial exhibits for inclusion and completion of each exhibit in Joint Exhibit List.	0.40	42.00	JS
8/29/18	Receipt and review Plaintiff's Opposition to Defendant's Motion in Limine Striking	0.10	22.00	BKJ

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Plaintiff's Expert or in the Alternative, Motion for Extension of Time to Prepare Expert Witness Regarding Vocational Opportunities.

Receipt and review Affidavit of Erika Birch in Support of Plaintiff's Opposition to Defendant's Motion Striking Plaintiff's Expert/	0.10	22.00	BKJ
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Receipt and review Plaintiff's Opposition to Defendant's Motion to Strike Plaintiff's Statement of Disputed Facts.	0.10	22.00	BKJ
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Final preparation of Reply Memorandum; letter to client; further preparation of trial testimony outlines.	5.80	1,276.00	BKJ
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Continue to draft and revise reply in support motion for summary judgment.	2.50	450.00	AJF
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Continue to draft and revise reply in support motion for summary judgment.	2.50	450.00	AJF
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Receive, download and compile job findings for experts review and use in reports.	0.40	42.00	JS
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8/30/18	Outline cross examination of Plaintiff's expert; review depositions for trial preparation.	3.20	704.00	BKJ
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Prepare for trial re: review of documents and final production of documents to plaintiff.	2.60	468.00	AJF
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Draft motion to withdraw motion to compel.	0.20	36.00	AJF
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Receive and respond to e-mails from Simplot re: reply brief and plaintiff's job application.	0.20	36.00	AJF
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Email correspondence with HP internal counsel re: requested telephone conversation with named witnesses.	0.60	63.00	JS
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Compile Motion to Strike documents for attorney review and use in upcoming hearing.	0.40	42.00	JS
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8/31/18	Conference with experts D. Reinstein and N.	6.80	1,496.00	BKJ
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File #: 1700-043
 Inv # 53173
 Page # 9

Collins; prepare further outlines for testimony; prepare jury instructions for submission at pre-trial conference.

Meet and confer with experts re: economic damages and vocational rehabilitation opinions. 1.30 234.00 AJF

Review and analyze record and answer expert inquiry into Medicaid benefits for plaintiff. 0.50 90.00 AJF

Continue to plan and prepare for trial re: jury instructions on damages. 1.00 180.00 AJF

Email expert Dennis Reinstein plaintiff's deposition for review. 0.20 21.00 JS

Draft fourth supplemental responses to plaintiff's first set of discovery requests. 1.30 136.50 JS

Current Fees:

168.40 \$31,981.50

(Please remit balance due located on last page of invoice)

FEE SUMMARY:

Timekeeper	Category	Time	Rate	Value
Julian, Brian K.	Senior Partner	79.30	\$220.00	\$17,446.00

FEE SUMMARY:

Timekeeper	Category	Time	Rate	Value
White, Amy G.	Partner	0.50	\$220.00	\$110.00

FEE SUMMARY:

Timekeeper	Category	Time	Rate	Value
Julian-Fontaine, Andrea	Associate	68.30	\$180.00	\$12,294.00

JR Simplot

September 21, 2018

File #: 1700-043
Inv # 53173
Page # 10

FEE SUMMARY:

Timekeeper	Category	Time	Rate	Value
Sotelo, Jessica	Paralegal	20.30	\$105.00	\$2,131.50

DISBURSEMENTS

	Description	Payee (if applicable)	
8/31/18	Experts/Consultant Fees	VocConsult Services, Inc.	\$1,860.00
	Experts/Consultant Fees - Coles Reinstein	Coles Reinstein	\$2,720.00
	Current Disbursements:		<hr/> \$4,580.00
	Current Fees and Disbursements:		\$36,561.50
	 Balance Due With Invoice:		 \$36,561.50

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000634

Anderson, Julian & Hull

250 S. 5th St., Ste. 700

P.O. Box 7426

Boise, ID 83707-7426

Ph: 208-344-5800

Fax: 208-344-5510

IRS No. 82-0504369

JR Simplot
P.O. Box 27
1099 W. Front Street
Boise, Idaho 83707

October 17, 2018

File #: 1700-043

Inv #: 53426

Attention: Clay Gill - email: Clay.Gill@simplot.com

RE: Knudsen v. Simplot
Plaintiff: Erik Knudsen

PROFESSIONAL SERVICES RENDERED:

DATE	DESCRIPTION	HOURS	AMOUNT	LAWYER
9/4/18	Prepare Jury Instructions; further preparation; trial preparations; review extensive briefing regarding summary judgment.	6.30	1,386.00	BKJ
	Draft and revise outline in preparation for oral argument on motion for summary judgment.	3.20	576.00	AJF
	Compile Defendant's proposed jury instructions for trial and e-mail and call court re: judge's copies.	1.10	115.50	JS
9/5/18	Receipt and review Plaintiff's Proposed Jury Instructions.	0.10	22.00	BKJ
	Continue to prepare for hearing on defendant's motion for summary judgment.	2.10	378.00	AJF
	Attend hearing on defendant's motion for summary judgment.	1.00	180.00	AJF

000635

JR Simplot

October 17, 2018

File #: 1700-043
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Page # 2

	Draft supplemental expert report with Expert Reinstein's supplemental report.	0.80	84.00	JS
	Finish supplemental expert report for filing and e-mail simplot copies of pertinent documents.	0.70	73.50	JS
9/6/18	Attend and participate in summary judgment hearing.	1.50	330.00	BKJ
	Conference with K. McEwan regarding questions about job assignment and restrictions brought up at oral argument.	1.40	308.00	BKJ
	Preparation for oral argument on summary judgment; review approximately 75 pages of briefing.	4.20	924.00	BKJ
	Confer with Plaintiff's attorney; letter to client; review exhibits; communicate with witnesses; trial preparation.	4.80	1,056.00	BKJ
	Receive and review correspondence from plaintiff's attorney and client re: trial setting and trial preparation.	0.20	36.00	AJF
	Email various Simplot employees re: Trial Preparation Meeting.	0.40	42.00	JS
	Compile documents needed for trial witness preparation with Simplot employees.	0.70	73.50	JS
9/7/18	Receipt and review Plaintiff's Motion to Vacate Trial and for Expedited Hearing Oral Argument Requested.	0.10	22.00	BKJ
	Telephone conference with Plaintiff's attorney.	0.30	66.00	BKJ
	Letter to client.	0.30	66.00	BKJ
	Meet and confer with witnesses L. Nessen, K. McEwan, and M. Shaw with attendance by B. Coonts.	3.20	704.00	BKJ

000636

JR Simplot

October 17, 2018

File #: 1700-043
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Page # 3

	Meet and confer with Simplot HR witnesses in preparation for jury trial.	2.50	450.00	AJF
	Review correspondence to and from plaintiff's attorney re: vacating trial dates.	0.20	36.00	AJF
	Compile additional documents for additional trial witness preparation.	0.60	63.00	JS
	Begin compiling documents and pleadings for use in trial and trial preparation.	2.80	294.00	JS
	Email trial witnesses and set meeting re: trial preparation.	0.30	31.50	JS
9/10/18	Receipt and review Plaintiff's Sixth Supplemental Responses to Defendant's First Set of Interrogatories and Requests for Production of Documents to Plaintiff.	0.10	22.00	BKJ
	Draft response to plaintiff's motions in limine.	2.00	360.00	AJF
	Telephone conversation with deposition witness John Bob re: preparation meeting with Brian K. Julian.	0.20	21.00	JS
9/11/18	Attend and participate in hearing; letter to client; telephone conference with client.	1.20	264.00	BKJ
	Analysis of proposed jury instructions and amended witness list.	1.30	286.00	BKJ
	Participate in telephonic hearing re: motion to vacate.	0.30	54.00	AJF
	Draft status report to Company re: trial setting and send correspondence to plaintiff's attorney re: pre-trial pleadings.	0.70	126.00	AJF
	Receive, review and compare plaintiff's supplemental trial exhibits, jury instructions and documents for trial.	1.10	115.50	JS

000637

JR Simplot

October 17, 2018

File #: 1700-043
Inv # 53426
Page # 4

Emails re: trial being vacated to our experts and witnesses expected to appear at trial next week. 0.40 42.00 JS

9/17/18 Review proposed jury instructions and analyze whether certain exhibits regarding termination offers can be eliminated. 1.60 352.00 BKJ

9/20/18 Analysis of recent case law regarding fraud in the inducement of an employment contract. 3.60 792.00 BKJ

Current Fees: 51.30 \$9,751.50
(Please remit balance due located on last page of invoice)

FEE SUMMARY:

Timekeeper	Category	Time	Rate	Value
Julian, Brian K.	Senior Partner	30.00	\$220.00	\$6,600.00

FEE SUMMARY:

Timekeeper	Category	Time	Rate	Value
Julian-Fontaine, Andrea	Associate	12.20	\$180.00	\$2,196.00

FEE SUMMARY:

Timekeeper	Category	Time	Rate	Value
Sotelo, Jessica	Paralegal	9.10	\$105.00	\$955.50

DISBURSEMENTS

	Description	Payee (if applicable)	
9/30/18	Experts/Consultant Fees	Coles Reinstein	\$2,720.00

Current Disbursements: \$2,720.00

JR Simplot

October 17, 2018

File #: 1700-043
Inv # 53426
Page # 5
\$12,471.50

Current Fees and Disbursements:

Balance Due With Invoice: \$12,471.50

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Anderson, Julian & Hull

250 S. 5th St., Ste. 700
P.O. Box 7426
Boise, ID 83707-7426

Ph: 208-344-5800
Fax: 208-344-5510

IRS No. 82-0504369

JR Simplot
P.O. Box 27
1099 W. Front Street
Boise, Idaho 83707

December 17, 2018
File #: 1700-043
Inv #: 53920

Attention: Clay Gill - email: Clay.Gill@simplot.com

RE: Knudsen v. Simplot
Plaintiff: Erik Knudsen

PROFESSIONAL SERVICES RENDERED:

DATE	DESCRIPTION	HOURS	AMOUNT	LAWYER
10/29/18	Review employment records of Plaintiff to determine extent of mitigation of damages.	0.60	132.00	BKJ
11/13/18	Receive and review Memorandum Opinion; letter to client regarding same.	0.80	176.00	BKJ
11/14/18	Further review of legal issues addressed in Opinion; initial preparation of Cost Bill.	1.40	308.00	BKJ
	Review and analyze memorandum decision granting motion for summary judgment and determine availability of attorney's fees.	1.00	180.00	AJF
11/15/18	Draft memorandum in support of award for attorneys fees.	2.10	378.00	AJF
11/29/18	Letter to Guy Hallam; review claim and amount of attorney fees.	0.80	176.00	BKJ

JR Simplot

December 17, 2018

File #: 1700-043
Inv # 53920
Page # 2

Current Fees:

6.70 \$1,350.00

(Please remit balance due located on last page of invoice)

FEE SUMMARY:

Timekeeper	Category	Time	Rate	Value
Julian, Brian K.	Senior Partner	3.60	\$220.00	\$792.00

FEE SUMMARY:

Timekeeper	Category	Time	Rate	Value
Julian-Fontaine, Andrea	Associate	3.10	\$180.00	\$558.00

Current Fees and Disbursements: \$1,350.00

Balance Due With Invoice: \$1,350.00

When you make a payment to Anderson, Julian & Hull, LLP by check, you authorize us to electronically process your check using the information on your check. If we electronically process your check instead of depositing your check, the electronic debit to your checking account may be on the same day we receive the check by transmitting the amount of the check, routing and transit number and check number to your bank. Electronically processing your check makes us better stewards.

EXHIBIT “B”

Analysis of the Economic Loss to

Mr. Erik C. Knudsen

Mr. Erik C. Knudsen, Plaintiff v. Simplot, Defendant

March 19, 2018

Prepared by: Gary R. Couillard, CPA
Profile: GaryCouillard.com
Phone: (801) 824-5566
Email: garycouillard@gmail.com

Plaintiff: Mr. Erik C. Knudsen
Prepared by: Gary R. Couillard, CPA
Date of Report: March 19, 2018
Attorney: Erika Birch, Esq.
Law Firm: STRINDBERG & SCHOLNICK, LLC
Address: 1516 W. Hays St.
City, State: Boise, ID 83702
Phone: 208.336.1788
Email: Erika@idahojobjustice.com

**TABLE 1
ERIK KNUDSEN
ECONOMIC LOSS SUMMARY**

Damage Component	HP Comparison Present Value Economic Loss	Simplot Comparison Present Value Economic Loss
Unemployed Back Lost Earnings 9/1/2016 to 5/7/2017 Based on Pre- Termination HP Earnings Table #5	\$80,140	
Unemployed Back Lost Earnings 9/1/2016 to 5/7/2017 Based on Pre- Termination Simplot Earnings Table #6		\$92,865
Lost Benefits 9/1/2016 to 5/7/2017 Replacement Insurance - 9 months @ \$1,458.25/month	\$13,124	\$13,124
Back Lost Earnings 5/8/17 to 12/31/2018		\$23,778
Back Losses	\$93,264	\$129,767
Front Lost Earnings 1/1/19 to age 65		\$86,012
Front Losses		\$86,012
Total Economic Loss	\$93,264	\$215,779

ECONOMIC LOSS APPRAISAL

Mr. Erik C. Knudsen, Plaintiff v. Simplot (Defendant)

SECTION 1: REPORT OUTLINE

- Included in this report is a summary of all opinions which I presently intend to express in this case. To the extent my investigation discloses additional pertinent information, I reserve the right pursuant to applicable rules to supplement this report.
- This report provides the following information:
 - 1) All exhibits are included at the end of the written report.
 - 2) Curriculum Vitae including a list of all publications authored within the last 10 years (Appendix A)
 - 3) Statement of compensation for professional services rendered in this case (Appendix B)
 - 4) List of cases in which I have testified as an expert at trial or deposition within the last four years (Appendix C)
 - 5) Supporting information (Appendix D)

SECTION 2: QUALIFICATIONS

- STRINDBERG & SCHOLNICK, LLC has retained my services as a forensic accountant¹ to provide analysis, opinions and conclusions pertaining to the economic damages in connection with this matter. Over the past 46 years, I have assisted courts, regulators, shareholders and businesses with an independent expert opinion of values and damages in a wide variety of financial, accounting and economic litigation issues on behalf of both plaintiffs and defendants.
- I am a Certified Public Accountant (CPA) in good standing, jointly licensed in both Utah and North Carolina² with reciprocal privileges to testify in all fifty states.
- The role of the forensic accountant is not to serve as an advocate for the client's position. The forensic accountant's function is to assist the trier of fact in understanding complex or unfamiliar concepts³ after having reasonably applied reliable principles and methods to sufficient relevant data. The forensic accountant is not expected to blindly offer only evidence and opinions helpful to the client, but is instead expected to offer objective opinions, based on knowledge and experience, of how a trier of fact should interpret the relevant economic issues.
- An economic loss appraisal provides an estimate of monetary damages relying on available factual information and statistical data.
- Based on the information available, the expert applies analytic and quantitative skills to project with reasonable, although not absolute, certainty the most likely course of economic events had the injury, death, termination or event not occurred.

¹ **Forensic Accountant:** "A Certified Public Accountant who performs an orderly analysis, investigation, inquiry, test, inspection, or examination to obtain the truth and from which to make an expert opinion." The American Board of Forensic Accounting

² Utah CPA License #144269-2601 Expires 9/30/2018 and North Carolina CPA License #38811 Expires 6/30/2018.

³To assist the trier in understanding the economic standard relied upon, Section 4 of this loss appraisal includes a detailed discussion of the economic damage model that I consistently use in all employment-related loss appraisals.

- Knowledge, skill, education and experience are needed to gather the factual information, supplement it with statistical and demographical data, sift and winnow inappropriate material, and correctly interpret and analyze what is left.
- I have prepared more than 1,000 economic loss appraisals in cases involving personal injury, wrongful death and wrongful termination on behalf of both plaintiffs and defendants and have previously testified in both federal and state court as an expert on earning capacity, lost earnings, wages, labor market access, life expectancy, present value, duration of unemployment, work life expectancy and employee benefits. My credentials and experience as a forensic accountant can be found in attached Appendices A, B and C.

SECTION 3: ASSUMPTIONS, DOCUMENTS, METHODOLOGY

- Table 2 is a summary of facts and assumptions.
- My conclusions are based on the documents listed in Table 3 and other information typically relied upon by experts in preparing similar economic damage appraisals.
- This economic loss appraisal was prepared with the standard methodology, factors and inputs that I regularly rely upon in measuring economic losses.⁴ I consistently use the same wrongful termination economic damage model as the basis of my expert opinions in all cases involving employment litigation.
- An economic damage model refers to the economic principles and methodology applied in accordance with professional standards to measure economic loss.
- Regardless of which side I represent, I adhere to the same economic damage model in performing an economic loss appraisal. I maintain a public website, GaryCouillard.com, that contains an open disclosure of the both the factors and methodology I use in measuring economic losses.
- Throughout this report, I cite references to professional surveys, publications and other research material generally relied upon as support for the economic model used to measure damages in a wrongful termination matter.⁵

⁴ Legal parameters by type of case may alter the application of economic theory for purposes of measuring allowed damages. For example, legal requirements for mitigating losses in a personal injury (PI) case require offsets to future damages for hypothetical earnings that reflect the injured person's post-injury transferrable skills. Front lost earning offsets in a wrongful termination case are limited to "substantially equivalent positions" regardless of a person's transferrable skills.

⁵ The majority of the data sources and treatises relied on are available as Internet downloads or from university libraries and booksellers. The U.S. Bureau of Labor Statistics, Social Security Administration, Federal Reserve Bank and the U.S. Census now regularly provide online information, analysis, surveys and articles regarding wages, inflation, interest rates, disability income, employment, labor force participation, life expectancy, work life expectancy, employee benefits, time use diaries and a multitude of other data and journal articles.

I also rely on professional accounting and economic journals. One of the earliest and most commonly referenced journals on economic damages is the *Journal of Forensic Economics* published by the National Association of Forensic Economics founded in 1988. The *Journal of Forensic Economics*, published biannually, presents peer-reviewed academic research pertaining to the application of economics to litigation matters.

One generally accepted reference source that closely mirrors the overall damage methodology I use is Gerald D. Martin's *Determining Economic Damages*, James Publishing: Costa Mesa, CA. Originally published in 1988, the 23rd revision was released in 2013. W. Cris Lewis and Tyler J. Bowles. 2005. Assessing Economic Damages in

- The appropriate economic damage model for a specific type of claim is defined by existing case law and not by economic principles or accounting theory.
- An economic damage model is not a legal opinion but an application of economic principles and methodology within the framework of existing case law.
- My expert testimony and conclusions in this matter are the product of the reliable principles and methods of the economic damage model applied to the specific facts of this case.

SECTION 4: WRONGFUL TERMINATION ECONOMIC DAMAGE MODEL

- The usual economic remedy for a wrongful termination is money damages for the plaintiff's disappointed expectations, known as the make whole standard.⁶ The goal of such economic damages is to put the wrongfully terminated person in the same financial position he or she would have occupied had the other party fully performed on their contract.
- Typically, an economic loss appraisal in a wrongful termination case will address four damage components:
 - Lost back earnings
 - Lost back benefits
 - Lost front earnings
 - Lost front benefits
- Lost earnings⁷ are a common damage element in all forms of employment law matters. There are two categories of lost earnings in a wrongful termination economic loss appraisal: back (past) lost earnings and front (future) lost earnings.
- Back lost earnings represent the amount of lost earnings from termination to the earlier of the trial date or to the time of a good-faith offer of reinstatement.
- Lost earnings are based on pre-termination earnings likely to occur in the future, absent the alleged wrongful termination.
- The injured person's actual earnings from replacement employment are treated as an offset to pre-termination earnings.⁸

Personal Injury and Wrongful Death Litigation: The State of Utah. *Journal of Forensic Economics* 18(2-3):227. "As a general rule, the approach to measuring the economic losses is not unlike those in most states. The guidelines offered in *Martin and Vavoulis (2005)* which are followed by most forensic economists, generally would be accepted by the Utah courts." Gerald D. Martin and Ted Vavoulis. 2005. *Determining Economic Damages*, James Publishing: Costa Mesa, CA.

⁶ Make Whole: *Phelps Dodge Corp. v. NLRB*, 313 U.S. 177, 197, 61 S.Ct. 845, 854, 85 L.Ed. 1271 (1941). See also *Nathanson v. NLRB*, 344 U.S. 25, 27, 73 S.Ct. 80, 82, 97 L.Ed. 23; and *NLRB v. J.H. Rutter-Rex Mfg. Co.*, 396 U.S. 258, 263, 90 S.Ct. 417, 420, 24 L.Ed.2d 405 (1969)

⁷ Make-whole damages for lost earnings necessarily include an amount representing lost employee benefits that accompanied a position including lost medical insurance, bonuses, stock options, retirement plans, savings plans, employee discounts, Social Security's Old-Age, Survivors, and Disability Insurance (OASDI), and paid-time-off benefits.

⁸ Earnings from what would have been a second job should not be used as an offset to damages. These interim earnings would have been received had there not been a termination. To treat earnings from a second job as an offset to damages penalizes the plaintiff for his industry.

- Typically, any post-termination, non-employer-based income, including unemployment insurance benefits and government support benefits, are treated as collateral sources⁹ and not as offsets to lost earnings.
- Employer-sourced income that results from the termination such as severance pay and termination bonuses are treated as offsets to lost earnings.¹⁰
- Back damages are based on a reasonable degree of certainty and are not reduced for speculation as to what might have happened had the injured person not been terminated. The wrongfully terminated worker is made whole for disappointed expectations as if the other party fully performed on their contract.
- In general, it would be inappropriate to measure damages based on broad statistical probabilities that replace facts with statistical averages that may or may not accurately reflect the injured person's age, race, gender, geographic location, educational attainment, transferable skills, tenure, position, earnings, benefits and intentions.¹¹
- Unless the injured person had pre-termination plans to quit their job, it is assumed that the wrongfully terminated person would have continued their employment for the remainder of their work life expectancy¹² at their pre-termination level of pay¹³ had it not been for the wrongful termination, unless it can be shown with a high level of certainty that the wrongfully terminated person's employment would have been eliminated for reasons unrelated to the wrongful termination.¹⁴
- The back-pay calculation serves as the basis for the front pay damage calculation.
- To make a plaintiff economically whole for future damages requires reinstatement to the job previously held, with all seniority rights and promotion opportunities that would have accrued otherwise. Front economic losses would conclude at the time of a good-faith reinstatement.
- Assuming defendant chooses not to offer reinstatement, front damages are necessary to restore the injured person to the financial position they would have been in had the termination not occurred.
- The concept of front damages is consistent with the make whole standard and the goal to put the wrongfully terminated person in the same financial position he or she would have occupied had the other party fully performed on their contract.

⁹ Wolfgang Franz. 1990. Calculating the Economic Damages of Wrongful Termination. *The Practical Lawyer* 36(3), p. 42. "Thus the courts have generally not deducted unemployment compensation, welfare payments, and income from other non-employer sources."

¹⁰ Franz, Calculating Economic Damage, 1990, p. 42.

¹¹ Broad statistical probabilities can incorrectly be used to construct a "statistical person" to support speculative and self-serving conclusions. For example, based on employment duration averages, a "statistical person" can be constructed with a high job-turnover profile. A Defendant in a wrongful termination case could then base damages on this hypothetical "statistical person" and argue that the injured person, behaving like the "statistical person", would have likely quit their job anyway had they not been terminated, regardless of the facts in the case.

¹² It would be speculative and self-serving for the Defendant to assume that the terminated person might have voluntarily quit the position had they not been terminated.

¹³ Pre-termination earnings may need to be adjusted for the effects of past discrimination or retaliation.

¹⁴ Facts that might support post-termination of employment include the closure of the plant that employed the wrongfully terminated person, pre-termination planned exit from the workforce or the death of the plaintiff.

- Because front damages compensate the plaintiff for future income, the amount the worker would have earned but for the termination cannot be known exactly. While an award for front damages carries with it some risk of uncertainty, it is no more speculative than the awards granted in personal injury or wrongful death cases for the loss of future earning capacity. Factual and empirical data is available to assist the trier of fact in evaluating, on a case-by-case basis, the likelihood, magnitude and duration of front losses.

The mere fact that damages may be difficult to compute should not exonerate a wrongdoer from liability.

The most elementary conceptions of justice and public policy require that the wrongdoer shall bear the risks of the uncertainties his own wrong has created.¹⁵

- *Reinstatement is generally recommended as a remedy because employment opportunities elsewhere may be nonexistent or curtailed after termination. In addition, reinstatement may be the only way to remove the embarrassment and humiliation resulting from the termination.¹⁶*
- Assuming reinstatement is not feasible, the wrongfully terminated worker faces reduced future employability, reputational damage and psychological effects.^{17, 18}

In general, then, there is no dearth either of theoretical explanation or empirical evidence in support of the connection between job loss and subsequent long-term wage loss.¹⁹

Future employability may be greatly reduced as a result of the termination since the resume has been damaged.²⁰

- A wrongful termination may be particularly punitive if it is used by prospective and future employers as a negative signal about worker performance. Based on the assumption that a worker's current employer is better informed about the worker's productive ability than a prospective employer, Gibbons and Katz (1991)²¹ argue "when firms have discretion with respect to whom to lay off, the market infers that laid-off workers are of low ability."²²
- The "low ability" stigma attached to being terminated at an employer's discretion translates into longer unemployment and lower pay following a termination compared to being laid off due to a plant closing or quitting.²³

¹⁵ Franz, Calculating Economic Damage, 1990; *Koyen v. Consolidated Edison Co. of New York, Inc.*, 560F Supp. 1161, 1169 (S.D.N.Y. 1983), quoting *Bigelow v. RKO Radio Pictures*, 327 U.S. 251, 265 (1946).

¹⁶ Franz, Calculating Economic Damage, 1990.

¹⁷ Richard D. Raymond. 2005. Comments on "The Use of Attrition Rates for Economic Loss Calculations in Employment Discrimination Cases: A Hypothetical Case Study". *Journal of Forensic Economics*, 18(1): 83-89.

¹⁸ In our society, where most persons' livelihood and status depend to a great degree on employment and earning a living, loss of the same often leads to emotional and mental distress. In some situations, the emotional problems caused by termination have contributed to an incapacity to find new employment. Franz, Calculating Economic Damage, 1990.

¹⁹ Raymond, 2005.

²⁰ Franz, Calculating Economic Damage, 1990.

²¹ Robert Gibbons and Lawrence F. Katz. 1991. Layoffs and Lemons. *Journal of Labor Economics* 9(4): 351-380.

²² Lori G. Kletzer and Robert W. Fairlie. 2003. The Long-Term Costs of Job Displacement for Young Adult Workers. *Industrial and Labor Relations Review* 56(4): 682-698.

²³ Gibbons and Katz, 1991. "This fact suggests that a laid-off worker might try to escape the lemons inference described in our model by claiming to have quit rather than admit to having been laid off. Similarly, a laid-off worker could claim to have been displaced by a plant closing."

- One's past work history becomes more important for persons seeking jobs in highly competitive positions. A job applicant may be asked to disclose litigation or to explain the nature of a career job termination. For any one job, employers may have hundreds of applicants. Their first task is to eliminate as many applications as possible, as quickly as possible. A termination, sudden demotion or change in career path, lack of references from a prior employer and negative press archives can only be negative considerations in the screening process.
- Even with re-employment, forward aspects of the injury caused by a wrongful termination may affect a person's future opportunity for advancement.²⁴ In today's digital world, Internet reference to the termination may cause permanent damage to a person's reputation and will continue to exist and trail the wrongfully terminated worker no matter the outcome of their case.
- Terminations beget subsequent terminations. A displaced worker may accept temporary employment or experiment with different job types that result in subsequent terminations. Also, a displaced worker may be subject to a new employer's reliance on a last-hired-first-fired separation standard.²⁵

Recognizing the substantial and persistent economic risk placed on the wrongfully terminated worker if reinstatement is not feasible, plaintiff's front economic loss is conservatively measured for the length of time it takes to find a replacement position that is substantially equivalent²⁶ to plaintiff's pre-termination position.²⁷

- Substantially equivalent employment and post-termination earning capacity²⁸ are not comparable concepts for measuring damages.²⁹ In a typical wrongful termination case, there is no change in the

²⁴ Raymond, 2005.

²⁵ Robert E. Hall. 1982. The Importance of Lifetime Jobs in the U.S. Economy. *American Economic Review* 72(4): 716-724; Robert E. Hall. 1995. Lost Jobs. *Brookings Papers on Economic Activity* 1: 221-273.

²⁶ Two positions are "substantially equivalent" if they afford "virtually identical promotional opportunities, compensation, job responsibilities, working conditions and status[.]" *Hutchins*, 2014 WL 3572045, at *20 (quoting *Hughes v. Mayoral*, 721 F. Supp. 2d 947, 967 (D. Haw. 2010)).

²⁷ Franz, *Calculating Economic Damage*, 1990.

²⁸ The definition of earning capacity in Black's Law Dictionary is as follows:

"Earning Capacity. Term refers to capability of worker to sell his labor or services in any market reasonably accessible to him, taking into consideration his general physical functional impairment resulting from his accident, any previous disability, his occupation, age at the time of injury, nature of injury and his wages prior to and after the injury. Sims v. Industrial Commission, 10 Ariz. App. 574, 460 P.2D.d 1003, 1006. The term does not necessarily mean the actual earnings that one who suffers an injury was making at the time the injuries were sustained, but refers to that which, by virtue of the training, the experience, and the business acumen possessed, an individual is capable of earning."

²⁹ Measuring pre-injury earnings in a personal injury matter and pre-termination earnings in a termination case share some similarities in methodologies. However, post-injury and post-termination earning projections are based on two different economic damage models that have different parameters.

Loss of earning capacity is a personal injury damage concept that refers to the economic harm a plaintiff suffers in an injury or death which results in a diminished capacity to earn wages. In a personal injury case, mitigating (post-injury) earnings are based on the injured person's transferrable skills and retraining to define a post-injury earning capacity. The "*focal point of the inquiry is not what the plaintiff actually would have earned, but the difference in his capacity to earn – before and after the injury*" *Clawson v. Walgreen Drug Co.*, 108 Utah 577, 162 P.2d, 759, 765 (Utah 1945).

Pre- and post-termination earning capacity is not relevant in a wrongful termination matter. If a college graduate with a degree in engineering was wrongfully terminated from his position as a restaurant waiter, lost earnings should be based on substantially equivalent positions as a waiter and not on the injured person's pre- or post-termination earning capacity as an engineer.

injured person's set of transferrable skills before and after termination and therefore, no change in earning capacity. In a wrongful termination, the injured person's pre- and post-termination earning capacity are not relevant. The issue in a wrongful termination case is not the loss of earning capacity but the diminished opportunity for the injured person to find substantially equivalent employment.

- In a wrongful termination, assuming reinstatement is not feasible, the make whole standard for lost earnings is based on the projected earnings for a replacement position that is substantially equivalent to plaintiff's pre-termination position.
- The replacement position would need to be one that the plaintiff holds or that he or she could reasonably be expected to obtain that is substantially equivalent to plaintiff's pre-termination position³⁰.
- It is a matter of law, not economics, to determine whether an alternative position qualifies as substantially equivalent employment.
- Franz³¹ discusses parameters for substantially equivalent employment:³²

The plaintiff needs to use reasonable standards in finding new employment that is substantially equivalent... However, a plaintiff is not required to seek and accept a job that:

- Pays significantly less
- Is in a different line of work
- Has less responsibility
- Requires heavier work
- Has longer hours of work
- Requires work during a different time of the day or work at a significantly different location

- The wrongfully discharged employee has an obligation to minimize the loss of earnings. If reinstatement to the pre-termination position is not feasible, then Plaintiff needs to use reasonable effort to obtain substantially equivalent new employment.^{33, 34}

"To get an offset for what could have been earned, the employer must prove that essentially equivalent employment was available and the reason that the plaintiff failed to obtain such a job was that he did not exercise reasonable diligence."³⁵

³⁰ Franz, Calculating Economic Damage, 1990.

³¹ Calculating the Economic Damages of Wrongful Termination" by Wolfgang W. Franz in *The Practical Lawyer* (Vol 36, No. 3):

³² Wage and Hour Division, Labor § 825.215 (a) *Equivalent position*. An equivalent position is one that is virtually identical to the employee's former position in terms of pay, benefits and working conditions, including privileges, perquisites and status. It must involve the same or substantially similar duties and responsibilities, which must entail substantially equivalent skill, effort, responsibility, and authority.

³³ G. Saperstein and B. Silverman. 1987. Wrongful Employment Termination Practice 35. *California Continuing Education of the Bar*. p. 81, 3.27; Franz, Calculating Economic Damage, 1990; and Wolfgang W. Franz, Ph.D. 1990. Wrongful Employment Termination and Resulting Economic Losses. *Journal of Forensic Economics* 2(2):31-47.

³⁴ Saperstein and Silverman, 1987, pgs. 81-83, 3.27.

³⁵ Franz, Calculating Economic Damages, 1990.

- The injured person in a wrongful termination is not required to apply for or accept a position that is not “virtually identical to the employee’s former position in terms of pay, benefits and working conditions, including privileges, perquisites and status. It must involve the same or substantially similar duties and responsibilities, which must entail substantially equivalent skill, effort, responsibility, and authority.”^{36, 37}
- Potential employment in an unrelated or inferior occupation is not relevant in a wrongful termination case.³⁸ The injured party in a wrongful termination case is not required to mitigate damages by applying for a different line of work merely because it may fit his or her post-termination transferable skill set.³⁹

“The employee’s rejection of or failure to seek other available employment of a different or inferior kind may not be resorted to in order to mitigate damages.”⁴⁰

- Many factors influence an injured person’s ability and likelihood to find post-termination substantially equivalent employment: age, race, gender, geographic location⁴¹, educational attainment, transferable skills, tenure, position, salary level, earning history, work hours, employee benefits, retirement benefits and the stigma caused by the termination.⁴² Therefore, it’s not

³⁶ Wage and Hour Division, Labor § 825.215 (a) *Equivalent position*.

³⁷ It would be self-serving for a defendant in a wrongful termination case to suggest that they did the injured person a favor by terminating them because it allows them the opportunity to increase their earnings and utilize their unrealized earning capacity in another occupation.

³⁸ *Hutchins*, 2014 WL 3572045, at *20 (quoting *Hughes v. Mayoral*, 721 F. Supp. 2d 947, 967 (D. Haw. 2010)). It is not sufficient merely that the two positions require the same general skill set. *E.g.*, *Hughes*, 721 F. Supp. 2d at 968 (finding issues of fact concerning positions’ substantial equivalency when the employer showed only that the positions required the same skill set but did not address “promotional opportunities, compensation, job responsibilities, working conditions, and status”).

³⁹ As a bright line rule, mitigation does not require the plaintiff to “go into another line of work, accept a demotion or take a demeaning position.” *Ford Motor Co. v. E.E.O.C.*, 458 U.S. 219, 231 (1982). However, the Ninth Circuit has held that the “reasonableness inquiry” of mitigation must be based on the “particular characteristics of the injured plaintiff.” *E.E.O.C. v. Pape Lift, Inc.*, 115 F.3d 676, 684 (9th Cir. 1997). Thus, the plaintiff’s individual characteristics will be considered in determining whether the plaintiff’s mitigation efforts were reasonable. *E.g.*, *Id.* at 685 (“Waters’ lack of aggressiveness in pursuing new work is common among older workers who are fired from long-term positions, and there is little question that this evidence was relevant to the reasonableness of Waters’ efforts”); *Cassella v. Mineral Park, Inc.*, No. CV-08-01196-PHX-MHM, 2010 WL 454992, at *7 (D. Ariz. Feb. 9, 2010) (considering plaintiff’s inability to use the Internet when determining whether his mitigation efforts were reasonable).

⁴⁰ *Symington v 20th Century-Fox Film Corp.* (1970) 3 C3d 176, 182, 89 CR 737, 740

⁴¹ There can be geographic consolidation among companies that limit a worker’s employment options. This phenomenon appears to hit workers hardest outside urban areas. A recent working paper by economists José Azar, Ioana Marinescu and Marshall I. Steinbaum examined job listings on CareerBuilder.com from 2010 through 2013 and found that a single employer accounted for an overwhelming majority of job listings for farm-equipment mechanics in a so-called commuting zone in any given quarter. Azar, Marinescu, and Steinbaum. 2017. *Labor Market Concentration*. NBER Working Paper No. 24147.

⁴² Labor markets are not perfectly competitive. If they were, then a wrongful termination would not alter the injured person’s productivity characteristics, and the worker would quickly find a substantially equivalent position that paid a wage comparable to the pre-termination position.

Workers may develop skills and knowledge which are only valuable to a specific employer and not universally valued in the labor marketplace. Less skilled jobs associated with lower educational attainment may place a premium on seniority to differentiate pay, benefits and working conditions. Changing employers may require

appropriate for an employer to claim an offset to damages merely by showing that hypothetical job openings may exist based on labor market statistics or want ads.

“Merely showing that comparable jobs were available in the community by using want ads or testimony of employment agents, however, is not enough. The employer must clearly establish that the plaintiff failed to use reasonable diligence to obtain such a job.”^{43 44}

SECTION 5: CONCLUSION

- I have reliably applied the wrongful termination economic loss model to the facts of this case.
- I have prepared a series of calculations estimating Mr. Erik Knudsen’s lost earnings as a result of the alleged wrongful termination or contract breach. Mr. Knudsen’s economic loss ranges from \$93,264 to \$215,779. Table 1 is a summary of Mr. Knudsen’s economic loss.
- The lower economic loss of \$93,264 measures damages based on Mr. Knudsen’s projected earnings at Hewlett Packard compared to his actual earnings at Simplot.
- According to this scenario, damages were not considered after May 7, 2017, when Mr. Knudsen began working at Micron. Mr. Knudsen’s earnings at Micron exceed his projected earnings at Hewlett Packard.
- The upper economic loss of \$215,779 measures damages based on the standard economic loss model comparing Mr. Knudsen’s job at termination (Simplot) to his actual post-termination earnings (Micron). Mr. Knudsen’s Micron compensation exceeds his Hewlett Packard compensation but is less than his projected Simplot earnings. Mr. Knudsen’s loss of earnings began at the time of termination and extends to [REDACTED] his assumed retirement date.
- No estimates of emotional distress or loss of enjoyment of life have been included in Mr. Knudsen’s economic loss.
- No assumption of liability is made or implied in the measurement of the economic loss.
- Proximate causation questions concerning economic damages are a legal issue in personal injury and wrongful termination cases. Economic causation is not an explicit element in the ordinary economic model for measuring damages in a wrongful termination case or a personal injury case.⁴⁵ The identified damages are assumed linked to the economic harm caused by the alleged wrongful acts, termination and breach of contract.

restarting the seniority ladder at lower pay and reduced benefits. Lori Gladstein Kletzer. 1989. Returns to Seniority after Permanent Job Loss. *American Economic Review* 79(3):536–43.

Other professions and careers reward transferable individual worker qualities with greater earning mobility subject to a more limited job marketplace, especially for higher-paying specialized positions; for example, you may be a great rocket scientist but will still need to find an employer who wants to hire you as a rocket scientist.

⁴³ Franz, Calculating Economic Damages, 1990.

⁴⁴ Defendant has the burden to show the availability of a specific position that is substantially equivalent to the pre-termination position, that a specific position was available and that the injured person failed to use reasonable diligence in obtaining the job.

⁴⁵ Economic causation is a common element in damage models for lost profits, business interruptions, securities cases and other commercial litigation. There is no mention of economic causation in Franz, 1990; Martin, 2013; or Lewis and Bowles, 2005.

- Testimony at trial is expected to show that Mr. Knudsen was ready and willing to perform the job responsibilities and duties of the position for which he applied and was hired as of August 31, 2016, the date of the alleged wrongful termination or contract breach, but for Simplot's alleged misconduct. Had he not been terminated and his contract breached, Mr. Knudsen had no plans or intentions to leave Simplot. Likewise, had Simplot not recruited and hired Mr. Knudsen for the packaging engineer position, Mr. Knudsen had no plans or intentions to leave Hewlett Packard.
- Mr. Knudsen had an earning loss following his termination and contract breach. It was assumed that there is a causal link between his termination and his earnings loss.
- If the trier of fact finds no liability on the part of the Defendant, then there are no economic losses for the Plaintiff attributable to the Defendant in this matter.
- If the trier of fact finds liability on the part of the Defendant, I have reviewed the available documents and calculations for purposes of measuring the economic loss to the Plaintiff as a result of the alleged wrongful termination and contract breach.

SECTION 6: LOST EARNINGS

- Mr. Knudsen received a bachelor's degree in textile material science in 1997 and a master's degree in packaging science in 2000. He began working for Hewlett Packard on or about May 11, 1999 at age [REDACTED]
- In 2014, he earned \$100,313 in base earnings at Hewlett Packard and a \$3,465 bonus. His year-end bonus ranged from 3.34% to 5.65% in the three years prior to leaving. He did not receive a year-end bonus from Hewlett Packard in 2015 because he joined Simplot in November 2015.
- Refer to Table 4 for a history of Mr. Knudsen's earnings.
- In addition to bonuses, Hewlett Packard offered a defined contribution (401k) retirement plan that provided matching contributions up to 5% of eligible earnings.
- The combined value of Mr. Knudsen's Hewlett Packard 2015 compensation, excluding insurance benefits, totaled \$111,280. Refer to Table 5 for additional information.
- In addition to his Hewlett Packard compensation, Mr. Knudsen received 160 hours (20 days) of paid time off and eleven holidays.
- Mr. Knudsen was with Hewlett Packard for 16.5 years until he made a career change to join Simplot on or about November 23, 2015.
- According to Simplot's October 30, 2015 offer letter, Mr. Knudsen's beginning gross salary was \$105,000. He was eligible for up to 11% of his earnings as an incentive bonus. His retirement consisted of a 401k defined contribution retirement plan with Simplot matching up to 3.5% of qualified earnings and a retirement savings plan contribution of 4.5% of salary.
- His Simplot paid-time-off totaled 240 hours compared to 248 hours at Hewlett Packard.
- Mr. Knudsen's 2016 earning capacity at Simplot totaled \$125,874 including bonus and retirement benefits.
- Mr. Knudsen was terminated on or about August 31, 2016, after working 0.8 years at Simplot. He was [REDACTED] years at termination.

- Mr. Knudsen did not receive a 2016 incentive bonus from Simplot. He also was not eligible to receive the 4.5% retirement contribution which required three years of employment for vesting.
- Refer to Table 6 for additional information regarding Mr. Knudsen's projected Simplot earnings had he not been terminated.
- Mr. Knudsen was unemployed from September 1, 2016 to May 7, 2017.
- Based on his projected earnings at Hewlett Packard, Mr. Knudsen's lost earnings total \$80,140 for the period of unemployment from September 1, 2016 to May 7, 2017. Refer to Table 7 for additional information.
- Based on his projected earnings at Simplot, Mr. Knudsen's lost earnings total \$92,865 for the period of unemployment from September 1, 2016 to May 7, 2017. Refer to Table 8 for additional information.
- Simplot offered employees a comprehensive insurance benefit package that covered employees, spouses and children. The company also offered short and long-term disability coverage, life insurance, paid time off and premium retirement plan options.
- Mr. Knudsen has incurred a loss of value or an additional cost due to the loss of employee benefits. Mr. Knudsen's lost insurance benefits were valued at \$13,124 for nine months of unemployment.⁴⁶
- Mr. Knudsen's Micron compensation exceeds his Hewlett Packard compensation but is less than his projected Simplot earnings.
- Mr. Knudsen's Micron compensation for the period 5/8/2017 to 12/31/2018 is projected to be \$23,778 less than his pre-termination earning capacity at Simplot.
- Based on his projected earnings at Hewlett Packard, Mr. Knudsen's back lost earnings total \$93,264. Refer to Table 1 for additional information.
- Based on his actual and projected earnings at Micron, Mr. Knudsen's back lost earnings total \$129,767.
- Mr. Knudsen's difference between his Simplot earning capacity and his projected Micron earnings averages \$4,327/year for the 9-year period from 1/1/2019 to 12/31/2027. Refer to Table 11 for additional information. His front damages to [REDACTED] total \$86,012.
- Mr. Knudsen's front lost earnings are based on the same growth rates and factors as used to measure his back lost earnings.
- All front losses have been adjusted to present value as of December 31, 2018.

SECTION 7: PRESENT VALUE AND DISCOUNT RATES:

- To estimate the lump-sum worth of future economic losses, the projected stream of future earnings, expressed in future dollars, must be converted to a lump-sum amount in today's dollars. This is called present value.
- The present value of any given future amount is equal to the amount of money which must be invested today at a certain interest rate in order to yield that given value in the future.

⁴⁶ \$1,458/month, Idaho family health plan Kaiser Health

- The present value calculation in cases involving lost future earnings requires a projection of future earnings and a discount rate for each period considered.
- Future earnings are projected based on current earnings escalated each year by a wage growth rate.
- This stream of future earnings is then converted to present value using the appropriate discount rate.
- Inflation is the primary component in both wage growth rates and discount rate equations:

$$\text{Discount Rate} = \text{Inflation} + \text{Pure Rate of Interest} + \text{Risk Premiums}$$

$$\text{Wage Growth Rates} = \text{Inflation} + \text{Real Growth in Wages}$$

- Any long-term change in the rate of inflation will be reflected in a corresponding change in both the discount rate and the wage growth rate.
- Removing inflation from both equations isolates the critical relationship between real growth in wages and the pure rate of interest plus risk premium.

Discount Rate

- A wide variety of interest rates are available, depending upon the type of investment and the level of risk involved.
- The injured party is entitled to a risk-free stream of future earnings to replace lost wages.
- The appropriate discount rate should not require special skill or expertise, for where this is necessary, part of the return is earned by the investor and not the investment.
- The discount rate (interest rate) should not reflect the market premium for investors who are willing to accept some risk of default.
- The present-value amount to replace lost earnings should be placed in a safe investment offering a no-risk premium.
- The instrument closest to the ideal of a risk-free investment is a three-month U.S. Treasury Bill. Its interest rate includes minimum-risk premiums for default and unexpected inflation.
- Longer-term treasury bills have a risk premium for unanticipated inflation included in their interest rate. A 10-year or 30-year treasury bill has greater uncertainty (risk) of inflation than does a three-month treasury bill.
- The pure rate of interest can be calculated by subtracting the actual rate of inflation from the average historical yield on three-month U.S. Treasury Bills.
- For two reasons, the appropriate period to measure the pure rate of interest is from 1952 to the present.
- Interest rates prior to 1952 were set by the U.S. Treasury. In March 1951, the U.S. Treasury agreed to allow the Federal Reserve Board to pursue a separate monetary policy.
- Since 1952, Treasury bill interest rates have been determined by a free-market auction process.
- The second reason for choosing the period beginning in 1952 involves the relationship of interest rates and the business cycle.

- The U.S. economy displays a cyclical pattern between two business phases often called expansion and contraction, or growth and recession. A full swing from expansion to contraction is called a business cycle. Interest rates vary according to the phase in the business cycle.
- T-Bill yields rise and fall, and the economy tracks through a cycle of expansion and contraction. In 2006, just prior to the economy entering a recession, the three-month U.S. Treasury Bill yielded 5.0%. Currently, the three-month U.S. Treasury Bill yields 1.41%.⁴⁷
- A short-term analysis of interest rates will include a limited number of complete business cycles. The measurement of the pure interest rate would be distorted depending on what point during the cycle interest rates were measured.
- According to the National Bureau of Economic Research, since 1952, the U.S. economy has experienced nine complete economic cycles, a broad perspective on interest rates.
- Since 1952, the average relationship between three-month treasury bills and inflation indicates a 0.95% “pure” rate of interest over and above the average inflation rate. The “pure” rate of inflation is also referred to as the “time value of money.”
- The discount rate for future damages⁴⁸ is equal to the long-term inflation rate of 2.37% plus the 0.95% time value of money, or 3.32%.
- Based on current and short-term projected three-month U.S. Treasury Bill yields, future costs were discounted 2.15% in 2019, 2.88% in 2020 and 3.32% thereafter.⁴⁹

SECTION 8: APPENDICES

- Appendix A: Curriculum Vitae for Gary Couillard, CPA
- Appendix B: Compensation Statement
- Appendix C: Testimony History
- Appendix D: Supporting Documents

⁴⁷ U.S. Department of Treasury, 1/26/2018

⁴⁸ Projected Livingston Survey / Federal Reserve 3-month T Bill rates were used as discount rates for 2019 and 2020.

⁴⁹ Livingston Survey December 2017

SECTION 9: CERTIFICATION

I certify that to the best of my knowledge and belief:

- The statements of fact contained in this report are true and correct.
- The reported analyses and opinions are limited only by the reported assumptions and are my personal, unbiased professional conclusions.
- My analysis, opinions and conclusions were developed, and this report has been prepared, in accordance with the American Institute of Certified Public Accountants (AICPA) Standards for Consulting Services.
- I have no present or prospective interest in the property or companies that are the subject of this report, and I have no personal interest or bias with respect to the parties involved.
- This loss appraisal was independently and objectively prepared with the standard methodology, factors and inputs that I regularly rely upon in measuring economic losses. This approach is supported by professional surveys, publications and other research material generally relied upon.
- My compensation is not contingent on an action or event resulting from the analyses, opinions or conclusions in this report.



Digitally signed by Gary R. Couillard,
CPA
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email=Gary@GaryCouillard.com, c=US
Date: 2018.03.20 01:13:02 -04'00'

Gary R. Couillard, CPA

ADDENDUM
Analysis of the Economic Loss to
Mr. Erik C. Knudsen
Mr. Erik C. Knudsen, Plaintiff v. Simplot, Defendant

July 9, 2018

Prepared by Gary R. Couillard, CPA
Profile: GaryCouillard.com
(801) 824-5566

ADDENDUM
ECONOMIC LOSS APPRAISAL
Mr. Erik C. Knudsen, Plaintiff v. Simplot, Defendant

SECTION 1: ADDENDUM INTRODUCTION

- On March 19, 2018, I prepared an economic loss appraisal in this matter. Additional information is now available that requires that I supplement the earlier report.
- Mr. Knudsen was with Hewlett Packard for 16 years, his entire career, until he joined Simplot. He began working for Hewlett Packard after college and continued, fulltime and without interruption, until he left to join Simplot on or about November 23, 2015.
- Mr. Knudsen's 2016 earning capacity at Simplot totaled \$116,550 excluding retirement benefits.
- Mr. Knudsen was terminated on or about August 31, 2016, after working 0.8 years at Simplot. He was [REDACTED] years at termination.
- Mr. Knudsen was unemployed from September 1, 2016 to May 7, 2017.
- On May 8, 2017, Mr. Knudsen found employment as a packaging engineer for Micron at an annual salary of \$107,500.¹
- Recently, Mr. Knudsen was given notice that his Micron position will be down-sized. He will be laid off effective August 17, 2018 with ten weeks of severance pay.² His effective end-of-pay date is October 26, 2018.³
- Refer to Tables 8, 9 and 10 for the revised back pay calculation including the 10-week severance pay and a pro-rated annual bonus.
- It is expected that minor revisions to back losses will be necessary after actual Micron severance pay and annual bonus data is available. To the extent my investigation discloses additional pertinent information, I reserve the right pursuant to applicable rules to supplement this report





















¹ Micron offer letter, Michael Ziegler, May 3, 2017

² This situation is not uncommon for terminated workers who find alternative employment and restart their career at reduced pay or lower levels of seniority. Terminations beget subsequent terminations. A displaced worker may accept temporary employment or experiment with different job types that result in subsequent terminations. Also, a displaced worker may be subject to a new employer's reliance on a last-hired-first-fired separation standard. Robert E. Hall. 1982. The Importance of Lifetime Jobs in the U.S. Economy. *American Economic Review* 72(4): 716-724; Robert E. Hall. 1995. Lost Jobs. *Brookings Papers on Economic Activity* 1: 221-273.

³ August 17, 2018 + 10 weeks = October 26, 2018

- As a result of the Simplot termination, Mr. Knudsen has lost access to a large segment of the Treasure Valley engineering labor market.⁴ He left a career position at Hewlett Packard for the Simplot position. The termination ended his opportunities at Simplot. Now, he has been laid off at Micron.
- Had he not been terminated and his contract breached, Mr. Knudsen had no plans or intentions to leave Simplot. Likewise, had Simplot not recruited and hired Mr. Knudsen for the packaging engineer position, Mr. Knudsen had no plans or intentions to leave Hewlett Packard.
- His extended eight months of job search following termination at Simplot before finding a position at Micron is evidence of his reduced opportunities in the Treasure Valley packaging engineer labor market. Now with the loss of the Micron position, his local employment options as a packaging engineer appear even more limited⁵.

⁴ According to the Boise Valley Economic Partnership (BVEP) the regional development organization, Micron, Simplot and Hewlett Packard are among the ten largest employers in the Boise area.

	Rank	Name	Employment Range
	#1	St. Lukes Regional Medical Centers	7100-7500
	#2	Micron Technology	5900-6000
	#3	West Ada School District	4000-4100
	#4	Boise School District	3600-3700
	#5	Boise State University	3500-3600
	#6	St. Alphonsus Regional Medical Centers	3400-3500
	#7	Wal-Mart	2800-2900
	#8	City of Boise	1900-2000
	#9	Hewlett-Packard Co	1800-1900
	#10	J.R. Simplot Company	1800-1900
	#11	Albertsons	1800-1900
	#12	ADA County	1600-1700
	#13	Nampa School District	1500-1600
	#14	Department of Health & Welfare	1400-1500
	#15	Department of Corrections	1400-1500
	#16	Winco	1400-1500
	#17	Wells Fargo Bank	1400-1500
	#18	McDonalds	1300-1400
	#19	Veterans Administration Service	1200-1300
	#20	USPS	1000-1100

⁵ Reemployment in the future at HP and Micron is possible.

- Economic necessity could force Mr. Knudsen to relocate his family to accommodate his job search. However, it is my understanding that Mr. Knudsen prefers to stay in the Boise area. The Knudsens have two children ages 9 and 11.

SECTION 2: FRONT LOST EARNINGS

- Front lost earnings are the ongoing loss of earnings, continuing after the assumed present value date, which may be experienced by a plaintiff as a result of the wrongful termination.
- Front lost earnings are measured as the difference between projected earnings Mr. Knudsen would have earned at Simplot less his projected earnings from alternative employment in substantially equivalent employment⁶.
- The March 19, 2018 Economic Loss Appraisal was based on the assumption that Mr. Knudsen would continue employment at Micron for the remainder of his work life. Based on this conservative assumption of continued employment, Mr. Knudsen's economic loss was in the range from \$93,264 to \$215,779. The upper economic loss of \$215,779 was based on the standard economic loss model comparing Mr. Knudsen's job at termination (Simplot) to his actual post-termination earnings (Micron).
- Included in the \$215,779 total loss was \$86,012 for the future difference between his Simplot earning capacity and his projected Micron earnings to [REDACTED]
- With the pending loss of his Micron position, Mr. Knudsen's front lost earnings will increase.⁷
- Mr. Knudsen's front lost earnings are based on the same growth rates and factors as used to measure his back lost earnings.
- All front losses have been adjusted to present value as of December 31, 2018.
- Mr. Knudsen has begun his replacement job search.

⁶The March 19, 2018 Economic Loss Appraisal assumed that Mr. Knudsen had found substantially equivalent employment and would have continued employment at Micron for the remainder of his work life. The projected small difference in earnings at Micron was treated as a front loss.

⁷ There is also a small increase in back damages. Mr. Knudsen last day at Micron is August 17, 2018. He will receive ten weeks of severance pay. Effectively, Mr. Knudsen will be paid through October 26, 2018. His back damages will increase for the period October 27, 2018 to December 31, 2018 for the loss of earnings at Micron.

- Based on his past job search efforts, his lost opportunities with HP, Simplot and Micron, and his above average compensation⁸, it is unlikely that Mr. Knudsen will find a substantially equivalent position in the Treasure Valley packaging engineer labor market unless he is rehired by HP or Micron or he absorbs a significant earning reduction to obtain alternative employment.
- Front losses were calculated assuming that Mr. Knudsen will not be successful finding a substantially equivalent packaging engineer in the Treasure Valley area.
- Front losses total \$2,538,333 as shown on Table 11.
- Back losses range from \$90,746 to \$153,178.
- Refer to Table 1 for additional information.
- Table 12 is a projection of average senior packaging engineer earnings, based on 20-years experience at a 2018 earning level of \$107,000.
- If Mr. Knudsen were to accept a lower paying position (\$107,000/yr.) and restart his career by December 31, 2019, his front lost earnings total \$577,605. Refer to Table 13 for additional information.

⁸ Mr. Knudsen's projected 2018 earnings at Micron total \$120,852. The current national salary for Senior Packaging Engineers is \$85,537. Additional cash compensation averages \$7,035 for a total \$92,572 annual earnings. According to Payscale.com, earnings for senior packaging engineers with 20 years of experience average \$107,000/yr. including bonuses.

CERTIFICATION

I certify that to the best of my knowledge and belief:

- The statements of fact contained in this report are true and correct.
- The reported analyses and opinions are limited only by the reported assumptions and are my personal, unbiased professional conclusions.
- My analysis, opinions and conclusions were developed, and this report has been prepared, in accordance with the American Institute of Certified Public Accountants' (AICPA) Standards for Consulting Services.
- I have no present or prospective interest in the property or companies that are the subject of this report, and I have no personal interest or bias with respect to the parties involved.
- This loss appraisal was independently and objectively prepared with the standard methodology, factors and inputs that I regularly rely upon in measuring economic losses. This loss approach is supported by professional surveys, publications and other research material generally relied upon.
- My compensation is not contingent on an action or event resulting from the analyses, opinions or conclusions in this report.

Gary R. Couillard, CPA

**TABLE 1
ERIK KNUDSEN
ECONOMIC LOSS SUMMARY**

Damage Component	HP Comparison Present Value Economic Loss	Simplot Comparison Present Value Economic Loss
Unemployed Back Lost Earnings 9/1/2016 to 5/7/2017 Based on Pre- Termination HP Earnings Table #5	\$77,622	
Unemployed Back Lost Earnings 9/1/2016 to 5/7/2017 Based on Pre- Termination Simplot Earnings Table #6		\$91,475
Lost Benefits 9/1/2016 to 5/7/2017 Replacement Insurance - 9 months @ \$1,027/month	\$9,243	\$9,243
Back Lost Earnings 5/8/17 to 12/31/2018		\$48,578
Back Losses	\$86,865	\$149,296
Front Lost Earnings Alternative Employment 12/31/2019 @ \$107,000/yr. Tables 12 and 13		\$577,605
Front Lost Earnings 1/1/19 to [REDACTED] Table 11		\$2,538,333
Front Losses		\$2,538,333
Total Economic Loss	<u>\$86,865</u>	<u>\$2,687,629</u>

JAN 23 2019

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

PHIL McGRANE, Clerk
By TARA VILLEREA
DEPUTY

ERIK KNUDSEN,

Plaintiff,

vs.

**J.R. SIMPLOT COMPANY, a Nevada
corporation,**

Defendant.

Case No. CV01-17-13956

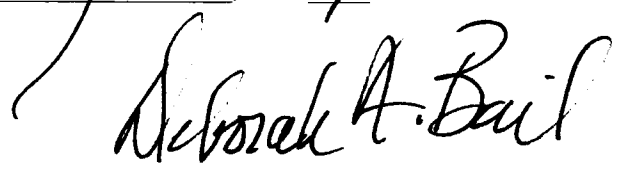
JUDGMENT

JUDGMENT IS ENTERED AS FOLLOWS:

1. Final judgment shall enter in favor of the Defendant and against the Plaintiff.
2. The Plaintiff's complaint is DISMISSED WITH PREJUDICE

IT IS SO ORDERED

DATED this 23rd day of January, 2019.



Deborah A. Bail
District Judge

CLERK'S CERTIFICATE OF SERVICE


I HEREBY CERTIFY that on this 23rd day of January, ~~2019~~ 2019, I served a true and correct copy of the foregoing JUDGMENT by delivering the same to each of the following attorneys of record, by the method indicated below, addressed as follows:

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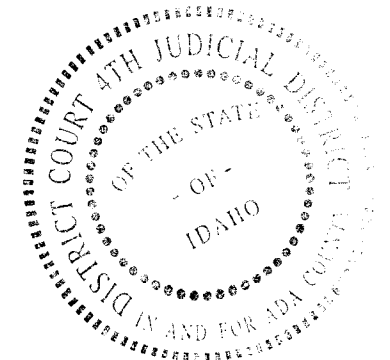
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Attorneys for Plaintiff

**IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA**

ERIK KNUDSEN,

Plaintiff,

vs.

**J.R. SIMPLOT COMPANY, a Nevada
corporation,**

Defendant.

**PLAINTIFF'S MOTION TO
RECONSIDER**

Case No: CV01-17-13956

Judge Deborah Bail

Plaintiff Erik Knudsen, by and through his undersigned counsel, and pursuant to Idaho Rules of Civil Procedure (IRCP) 11.2 hereby moves for reconsideration of the recent Judgment granting Defendant's *Motion for Summary Judgment* on the grounds and for the reasons set forth in the *Memorandum in Support of Motion for Reconsideration of Judgment in favor of Defendant's Motion for Summary Judgment* filed contemporaneously herewith.

DATED this 6th day of February, 2019.

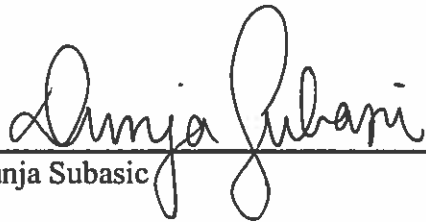


T. Guy Hallam, Jr.
Attorney for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that on February 6, 2019 a true and correct copy of the foregoing pleading was served on the following by electronic filing system:

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Attorneys for Plaintiff

**IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA**

ERIK KNUDSEN,

Plaintiff,

vs.

**J.R. SIMPLOT COMPANY, a Nevada
Corporation**

Defendant.

**MEMORANDUM IN SUPPORT OF
PLAINTIFF'S MOTION TO
RECONSIDER ORDER GRANTING
DEFENDANT'S MOTION FOR
SUMMARY JUDGMENT**

Case No: CV01-17-13956

Judge: Deborah A. Bail

COMES NOW Plaintiff Erik Knudsen ("Mr. Knudsen" or "Plaintiff"), by and through his undersigned counsel, and pursuant to Idaho Rule of Civil Procedure 11.2 hereby moves this honorable court for reconsideration of the recent judgment granting Defendant's *Motion for Summary Judgment* and submits this Memorandum in Support of Plaintiff's Motion to Reconsider on the grounds and for the reasons as follows.

/// /// ///

I. BACKGROUND FACTS¹ AND PROCEDURAL POSTURE

Defendant Simplot made a job offer to Erik Knudsen on October 30, 2015, for the position of Engineer 4, rather than the position of Senior Packaging Engineer to which Mr. Knudsen had applied and interviewed. Simplot solicited Knudsen based on his qualifications and experience as a Packaging Engineer. Despite his qualifications and their initial solicitation of him as a candidate, Simplot offered Mr. Knudsen a lesser position of Engineer 4 due to his lack of experience specifically in food packaging. Mr. Knudsen accepted the position and left a long-held career at HP in order to pursue it.

On his first day of work at Simplot, Mr. Knudsen was informed that he was only going to be working part-time as a Packaging Engineer and the rest of the time he would be employed as a “Startup Manager.” The Startup Manager position was for the “Grand Forks Project” for a plant in Grand Forks, North Dakota. Prior to his start date with Simplot, Mr. Knudsen was never made aware of the Grand Forks Project or that he would be serving as Startup Manager for the project in any capacity. The Grand Forks Project was a multi-million-dollar project that involved startup of entire packaging lines of equipment.

Mr. Knudsen had no experience starting up food packaging operations; Simplot never informed Mr. Knudsen, prior to his hire, that he would be performing such tasks. Mr. Knudsen subsequently complained to HR of the “bait and switch” situation that he was put in regarding the Startup Manager position. Simplot later disciplined Mr. Knudsen for complaining. Discipline included a performance improvement plan, then forced administrative leave, which culminated in his termination on or about September 1, 2016.

¹ These limited background facts are provided for the benefit of the Court in consideration of the instant *Motion to Reconsider*. A more robust and complete recitation of the factual background in the instant matter can be found in Plaintiff’s *Statement of Disputed Facts* and the *Memorandum in Opposition to Defendant’s Motion for Summary Judgment*.

Mr. Knudsen filed suit on July 27, 2017 alleging Fraud/Intentional Misrepresentation, Promissory Estoppel, Breach of the Covenant of Good Faith and Fair Dealing, and Negligent Infliction of Emotional Distress. On June 20, 2018, Defendant filed its *Motion for Summary Judgment*. Arguments were heard on September 5, 2018, and the Court granted summary judgment in favor of Simplot on November 13, 2018. The Court entered Judgment on January 23, 2019.

Mr. Knudsen hereby timely moves this Court for reconsideration of the previous grant of summary judgment.

II. LEGAL STANDARD

When deciding a motion to reconsider, “the district court must apply the same standard of review that the court applied when deciding the original order that is being reconsidered.” *Westby v. Shaefer*, 157 Idaho 616, 338 P.3d 1220, (2014) (quoting *Fragnella v. Petrovich*, 153 Idaho 266, 276, 281 P.3d 103, 113 (2012)). The summary judgment standard applies to a motion to reconsider the granting of a motion for summary judgment. *Fragnella v. Petrovich*, 153 Idaho 266, 276, 281 P.3d 103, 113 (2012). “On a motion for reconsideration, the court must consider any new admissible evidence or authority bearing on the correctness of an interlocutory order.” *Id.* See also *Path v. Heath*, 161 Idaho 50, 53 n.2, 383 P.3d 1220, 1223 n.2 (2016) (“The court must consider new evidence bearing on the correctness of a summary judgment order if the motion to reconsider is filed within fourteen days after a final judgment issues.”) (citing *Kepler-Fleenor v. Fremont Cnty.*, 152 Idaho 207, 210, 268 P.3d 1159, 1162 (2012)).

III. ARGUMENT

a. JOB DESCRIPTION FOR PACKAGING ENGINEER 4.

In the *Decision Re: Motion for Summary Judgment*, issued by the Court on November 12, 2018, the court relied on the job description for Senior Packaging Engineer to determine that the

duties were broad enough that a jury could conclude the Startup Manager position to be an extension of duties required of the Engineer 4 position. This Court noted in its *Decision Re: Motion for Summary Judgment* that the Senior Packaging Engineer “job description is very general.” See *Decision Re: Motion for Summary Judgment*, page 12 (see also *Decision Re: Motion for Summary Judgment*, at page 6, “The job description for the position was general and very broad.”).

However, this Court also noted “No specific job description of Engineer 4 is contained in this record”² and “No job description for Engineer 4 has been provided.”³ Based upon this Court’s comments related to the Engineer 4 job description, Plaintiff seeks reconsideration of the Court’s grant of Defendant’s *Motion for Summary Judgment* on the basis that this additional information is material to the matter at hand. Specifically, given the Court’s heavy reliance on a job description as the reason for its decision, the Engineer 4 job description should be part of the record and this Court’s reconsideration as to whether a genuine issue of material fact exists.

The job description for Engineer 4, herein attached to the *Affidavit of T. Guy Hallam Jr. in Support of Motion for Reconsideration*, as Exhibit A, provides a summary of the position which includes the following:

Supports production efforts of the company/group by providing technical leadership to plant operating and maintenance departments to work *or* manage medium projects...to develop new or existing equipment processes, and instrumentation.

(emphasis added). While the Engineer 4 job description suggests that managing projects may be a part of the job duties, inclusion of the word “or” clearly indicates that an Engineer 4 would not handle both “support production efforts ...” and manage medium projects. At a minimum, the Engineer 4 job description creates an issue of material fact as to whether a Simplot employee

² See *Decision Re: Motion for Summary Judgment*, at page 7.

³ See *Decision Re: Motion for Summary Judgment*, at page 12.

would be required to “support production efforts” or “manage medium projects.” Simplot’s argument on summary judgment that Mr. Knudsen was required to perform both as a packaging engineer *and* a Startup Manager is not supported by the Engineer 4 job description, as the position requirement provides a clear expectation that the Engineer 4 was only responsible for one of these components.

Additionally, a question of material fact remains in that the job descriptions of the two positions conflict. Specifically, Senior Packaging Engineer, the position that Simplot solicited Mr. Knudsen and for which he interviewed, and Engineer 4, contain different job duties. Further, the record before this Court reflects that, upon inquiry by Mr. Knudsen, Simplot Human Resources informed Knudsen that the main difference between the positions of Senior Packaging Engineer and Engineer 4 was that senior level engineers would have higher expectations and take on more important projects. *See Statement of Disputed Facts*, at ¶ 29; *Affidavit of T. Guy Hallam in Opposition to Defendant’s Motion for Summary Judgment*, at Exhibit B, Knudsen Deposition Testimony. A jury could find that the statements made by Simplot, through Human Resources, were misrepresentations of fact.⁴

Further, the Engineer 4 job description specifically describes “medium projects” as “typically \$1-5MM.” Thus, while there is some mention of the possibility that an Engineer 4 might manage a medium project, the Grand Forks project was much larger than a \$1-5 MM project. By their own standard, Grand Forks was a *large* project, which cost Simplot twenty-two million dollars. Based upon the job description, the Grand Forks Startup Project was beyond the capacity or expectation for an Engineer 4. The Engineer 4 job description highlights Simplot’s own

⁴ Among other misrepresentations and omissions previously identified in Plaintiff’s *Memorandum in Opposition to Defendant’s Motion for Summary Judgment*.

differentiation between medium and large projects.

As noted previously, the expectations and job duties set forth in the Engineer 4 job description and the Senior Packaging Engineer job description are quite different. A jury should decide which of these two job descriptions are applicable or were intended by the parties to apply to Mr. Knudsen's position, along with whether or not Mr. Knudsen was fraudulently misled regarding his job duties, job title, and amount of time he would spend on actual packaging engineer work. The statements made by Simplot Human Resources related to the difference between the positions, coupled with the other representations identified by Mr. Knudsen, and the size limitations for project-work contained in the Engineer 4 job description, create a question of fact for the jury. In light of these questions of fact, the instant *Motion to Reconsider* should be granted, judgment vacated, and Defendant's *Motion for Summary Judgment* DENIED.

b. ADDITIONAL QUESTIONS OF FACT REMAIN TO BE DECIDED BY THE JURY.

Additional questions of fact remain which must be decided by the trier of fact. For example, with regard to the issue of fraud, the Court determined that due to the ambiguity of the job description, there was no false misrepresentation because the Senior Packaging Engineer job description was a general job description. Specifically, the *Decision Re: Motion for Summary Judgment* states: "There is nothing in the position description which would indicate, one way or another that he would be acting as startup manager." See *Decision Re: Motion for Summary Judgment*, at page 12. The Idaho Supreme Court has previously established, "if the language...is ambiguous, ascertaining the parties' intent is a question of fact and may therefore only be settled by a trier of fact." *Porter v. Bassett*, 146 Idaho 399, 195 P.3d 1212 (2008) (citing *Neider v. Shaw* 138 Idaho 503, 508, 65 P.3d 525, 530 (2003)). In the instant case, which job description applied,

and whether or not the parties intended for Mr. Knudsen to act as a Startup Manager, should have been left to the jury to decide based upon all evidence in the record.

Additionally, with regard to the claim for breach of the covenant of good faith and fair dealing, the court determined that the obligation to execute the duties of the contract were not violated, once again due to the broadness or ambiguity of the job description. However, whether or not there was an obligation for Mr. Knudsen to act as startup manager was a question of fact for the jury to decide. The court in *Commercial Ventures, Inc. v. Rex M. & Lynn Lea Family Trust* provided:

When the language of a contract is clear and unambiguous, its interpretation and legal effect are questions of law. An unambiguous contract will be given its plain meaning. The purpose of interpreting a contract is to determine the intent of the contracting parties at the time the contract was entered. In determining the intent of the parties, this Court must view the contract as a whole. If a contract is found ambiguous, its interpretation is a question of fact. Whether a contract is ambiguous is a question of law. A contract is ambiguous if it is reasonably subject to conflicting interpretations.

Commercial Ventures, Inc. v. Rex M. & Lynn Lea Family Trust, 145 Idaho 208, 177 P.3d 955, (2008) (quoting *Bakker v. Thunder Spring-Wareham, LLC*, 141 Idaho 185, 190, 108 P.3d 332, 337 (2005)) (quoting *Lamprecht v. Jordan, LLC*, 139 Idaho 182, 185-86, 75 P.3d 743, 746-47 (2003)). Here again, the intent of the parties in entering into this employment agreement should be left to the trier of fact to decide. The court in its *Decision Re: Motion for Summary Judgment* determined that ambiguity existed based upon the broad job description for a Senior Packaging Engineer. The interpretation of this ambiguity was one the jury should have decided.

IV. CONCLUSION

For the reasons set forth herein, the Plaintiff respectfully requests that his *Motion to Reconsider* be granted, that the Court reconsider its earlier *Decision Re: Motion for Summary Judgment*, and Defendant's Motion for Summary Judgment be denied.

DATED this 6th day of February, 2019.

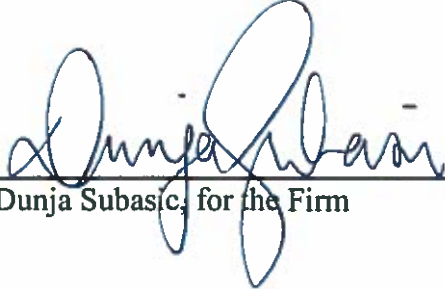
STRINDBERG & SCHOLNICK, LLC

Erika Birch
T. Guy Hallam
Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that on February 6, 2019 a true and correct copy of the foregoing pleading was served on the following via electronic filing system:

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Attorneys for Plaintiff

**IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA**

ERIK KNUDSEN,

Plaintiff,

vs.

J.R. SIMPLOT COMPANY, a Nevada
corporation,

Defendant.

**AFFIDAVIT OF T. GUY HALLAM IN
SUPPORT OF MOTION FOR
RECONSIDERATION**

Case No. CV01-17-13956

Judge: Deborah A. Bail

I, T. Guy Hallam, Jr., hereby being first duly sworn upon oath, declare and state the following based on my personal knowledge:

1. I am an attorney at Strindberg & Scholnick, LLC, attorneys of record for Plaintiff Erik Knudsen in the above litigation.
2. Attached hereto is a true and correct copy of Exhibit A cited to by Plaintiff in his *Memorandum in Support of Plaintiff's Motion to Reconsider Order Granting Defendant's Motion for Summary Judgment* filed with the Court.

**AFFIDAVIT OF T. GUY HALLAM IN SUPPORT OF
MOTION FOR RECONSIDERATION**

3. Exhibit A is the job description for the position of Engineer 4 at Defendant, J.R. Simplot Company, produced by Defendant as part of discovery in this matter.
4. I swear under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

FURTHER your Affiant sayeth naught.

DATED this 6th day of February, 2019.

STRINDBERG & SCHOLNICK, LLC

T. Guy Hallam, Jr.
Attorneys for Plaintiff

SUBSCRIBED AND SWORN TO before me this 6 day of February, 2019



Dunja Subasic
Notary Public in and for the State of Idaho
Residing at: BOISE, ID
My Commission Expires: 01/29/24

CERTIFICATE OF SERVICE

I hereby certify that on February 6, 2019 a true and correct copy of the foregoing pleading was served on the following via electronic filing system:

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Dunja Subasic

EXHIBIT A

Engineer 4 HQ FG Eng - 8477

Summary:

Supports production efforts of the company/group by providing technical leadership to plant operating and maintenance departments to work or manage medium projects (typically \$1-\$5 MM or support large projects) to develop new or existing equipment, processes, and instrumentation.

Education:

BACHELORS Bachelor's Degree from 4 year college or university

Other:

Five plus years related experience and/or training. Knowledge: Manages multiple small to medium projects or one large project. Fully competent professional recognized a technical expert within the group. Operates with considerable latitude for unreviewed action or decision. Reviews progress with management. Skills: Possesses the ability to contribute significantly to the solution of applied problems. Excellent interpersonal, and written and verbal communications skills. Excellent project management skills that allow the incumbent to coordinate project activities at all employee levels with other operating or engineering units to facilitate project completion. The ability to effectively determine when a project should be brought to its logical conclusion for both the needs of the company and the project. Distinguishing Features: Well developed leadership qualities. Acts as a mentor to peers and subordinates. Supervises project staff. Certificates: May have passed EIT and/or PE. Disclaimer - These statements are intended describe the general nature and level of work being performed by people assigned to this classification. They are not intended to be construed as an exhaustive list of all responsibilities, duties and skills required of personnel so classified.

Responsibilities:

Assesses and aligns with key stakeholders the feasibility and soundness of proposed engineering evaluation tests, products, or equipment solutions.
Responsible for preparing and gaining alignment on engineering proposals, feasibility studies and vendor/construction packages.
Supports and participates teams in establishing the appropriate designs, engineering and execution processes.
May support the development of new or modified components, products, manufacturing processes, materials and equipment.
Leads and is accountable for the development and evaluation of plans and success criteria to ensure that project and/or system performance meets business objectives for a variety of projects and activities that are usually carried out by others.
Contributes to the communication of project updates to senior management and key stakeholders.

Competencies:

BUILDS NETWORKS	Builds Networks: Effectively building formal and informal relationship networks inside and outside the organization	Accomplished: Works through formal and informal channels to build broad-based relationships and support; understands the organizational matrix and connects the right people to accomplish goals; tunes in to others' perspectives and what is important to them.
BUILDSEFFECTIVETEAMS	Builds Effective Teams: Building strong-identity teams that apply their diverse skills and perspectives to achieve common goals	Skilled: Forms teams with appropriate and diverse mix of styles, perspectives, and experience; establishes common objectives and a shared mindset; creates a feeling of belonging and strong team morale; shares wins and rewards team efforts; fosters open dialogue and collaboration among the team.
BUSINESS INSIGHT	Business Insight: Applying knowledge of business and the marketplace to advance the organization's goals	Accomplished: Has an in-depth understanding of how businesses work and make money; is the first to spot possible future policies, practices, and trends in the organization, with the competition, and in the marketplace; consistently applies a business driver and marketplace focus when prioritizing actions.
COURAGE	Courage: Stepping up to address difficult issues, saying what needs to be said	Skilled: Readily tackles tough assignments; faces difficult issues and supports others who do the same; provides direct and actionable feedback; is willing to champion an idea or position despite dissent or political risk.
DRIVES RESULTS	Drives Results: Consistently achieving results, even under tough circumstances	Accomplished: Sets aggressive goals and has high standards; is consistently one of the top performers; pursues everything with energy, drive, and the need to finish; persists in the face of challenges and setbacks; always keeps the end in sight; puts in extra effort to meet deadlines.
ENSUREACCOUNTABILITY	Ensures Accountability: Holding self and others accountable to meet commitments	Accomplished: Assumes responsibility for the outcomes of others; promotes a sense of urgency and establishes and enforces individual accountability in the team; works with people to establish explicit performance standards; is completely on top of what is going on and knows where things stand; provides balanced feedback at the most critical times.
INTERPERSONAL SAVVY	Interpersonal Savvy: Relating openly and comfortably with diverse groups of people	Skilled: Relates comfortably with people across levels, functions, culture, and geography; acts with diplomacy and tact; builds rapport in an open, friendly, and accepting way; builds constructive relationships with people both similar and different to self; picks up on interpersonal and group dynamics.
MANAGES AMBIGUITY	Manages Ambiguity: Operating effectively, even when things are not certain or the way forward is not clear	Accomplished: Is energized when faced with ambiguity and uncertainty; makes significant progress and remains calm and composed, even when things are uncertain; manages the risk that comes with moving forward when the outcome isn't certain; adapts quickly to changing conditions.

MANAGES COMPLEXITY	Manages Complexity: Making sense of complex, high quantity, and sometimes contradictory information to effectively solve problems	Skilled: Asks the right questions to accurately analyze situations; acquires data from multiple and diverse sources when solving problems; uncovers root causes to difficult problems; evaluates pros and cons, risks and benefits of different solution options.
OPTIMIZESWORKPROCES	Optimizes Work Processes: Knowing the most effective and efficient processes to get things done, with a focus on continuous improvement	Skilled: Identifies and creates the processes necessary to get work done; separates and combines activities into efficient workflow; designs processes and procedures that allow managing from a distance; seeks ways to improve processes, from small tweaks to complete reengineering.
PLANS AND ALIGNS	Plans and Aligns: Planning and prioritizing work to meet commitments aligned with organizational goals	Skilled: Sets objectives to align with broader organizational goals; breaks down objectives into appropriate initiatives and actions; stages activities with relevant milestones and schedules; anticipates and adjusts effective contingency plans.
RESOURCEFULNESS	Resourcefulness: Securing and deploying resources effectively and efficiently	Skilled: Marshals resources (people, funding, material, support) to get things done; orchestrates multiple activities simultaneously to accomplish a goal; gets the most out of limited resources; applies knowledge of internal structures, processes, and culture to resourcing efforts.

Skills:

ANALYTICAL THINKING	Analytical Thinking: Knowledge of techniques and tools that promote effective analysis and the ability to determine the root cause of organizational problems and create alternative solutions that resolve the problems in the best interest of the business.	Extensive Experience: Chooses among a diverse set of analytical tools according to the nature of the situation; Identifies many possible causes for a problem based on prior experience and current research; Quantifies the costs, benefits, risks and chances for success before recommending a course of action; Seeks discrepancies and inconsistencies in available information; explains variances; Organizes and prioritizes the sequence of steps to be taken to remedy the situation; Approaches a complex problem by breaking it down into its component parts.
BUSINESSPROCESSDESIGN	BusinessProcessDesign: Knowledge of business process design techniques that encourage a critical, fresh look at key processes and focus on optimizing organizational performance; ability to apply this knowledge appropriately to diverse situations.	Working Experience: Carries out business process design tasks with some supervision and coaching; Analyzes a process and associated business logic and offers recommendations based on analysis; Examines, interprets, and explains work-flow materials and documentation; Documents common obstacles and barriers for effective implementation; Uses a variety of business process design tools and techniques.
COACHING	Coaching: Knowledge of coaching concepts and methods; ability to encourage, motivate, and guide individuals or teams in learning and improving effectiveness.	Working Experience: Coaches others to improve their skills; Obtains or enhances feedback skills; Observes skill practice; offers constructive feedback; Offers suggestions for performance or process improvement in own unit; Creates skill-practice opportunities for subject of coaching.

INDUSTRY KNOWLEDGE	Industry Knowledge: Knowledge of the organization's industry group, trends, directions, major issues, regulatory considerations, and trendsetters; ability to apply this knowledge appropriately to diverse situations.	Extensive Experience: Educates others on own organization in terms of the industry - its market position, niche (if any), etc ; Explains the development of industry segments - trends, consequences, key issues; Assesses how regulatory and reporting requirements apply to own organization; Discusses industry-specific cycles and associated considerations; Raises coworkers' awareness of industry standards, practices and guidelines; Compares and contrasts the latest developments and emerging issues in the industry.
KNOWLDG-MFG INDUSTRY	Knowldg-MFG Industry: Knowledge of organization's and industry's manufacturing technologies, processes, innovations, issues and initiatives.	Working Experience: Describes own experiences related to working in manufacturing. Identifies key competitors for a specific type of product or manufacturing process. Identifies and speaks to major operational issues and considerations. Describes the impact of regulation on different types of products and facilities. Cites examples of seasonal variations and manufacturing considerations.
KNOWLDG-MFG OPERATNS	Knowldg-MFG Operatns: Knowledge of the day-to-day operations of a manufacturing plant or facility.	Extensive Experience: Describes working experiences with large or multiple manufacturing facilities. Explains the relationships and interdependencies of major production functions. Measures daily and weekly volumes and associated operational requirements. Employs tools and techniques for anticipating demand and assuring capacity. Describes key issues and considerations associated with accreditation and audits. Discusses key industry benchmarks and relates to own organization.
MANUFACTURING EQUIP	Manufacturing Equip: Knowledge of the electrical, mechanical and logistics equipment used in manufacturing, including its safe usage, maintenance and storage.	Extensive Experience: Plans, tests and implements changes to manufacturing infrastructure and environment. Analyzes equipment history; monitors machine performance; evaluates planned upgrades. Participates in evaluation and selection of new equipment. Ensures that personnel are qualified to operate equipment effectively and safely. Monitors methods and requirements for equipment environment to ensure protection against damage. Provides leadership on coordination and integration of multi-vendor equipment environments.
MFG ENGINEERING	MFG Engineering: Knowledge and associated ability to apply technical, scientific and mathematical knowledge to design and implement materials, structures, machines, devices, systems and processes that safely realize a desired objective or invention.	Extensive Experience: Possesses engineering degree or equivalent knowledge and shares engineering experience in diverse environments. Provides insights into most components of engineering as related to manufacturing. Describes key benefits, drawbacks and rationale for engineering standards, policies and practices. Discusses key engineering issues and considerations relative to manufacturing operations. Explains manufacturing industry and organizational best engineering practices and their rationale. Describes engineering experience regarding relationships, inter-dependencies and integration.
MFG PROCESSES	MFG Processes: Knowledge of the existing and planned approaches and methods for manufacturing products or product components.	Working Experience: Describes hands-on knowledge of a specific manufacturing process. Explains tools, techniques and documents used for process monitoring and control. Explains relevant documentation, standards, policies and practices. Describes associated phases, activities, deliverables and processes. Explains key phase and task dependencies and considerations.

MFG SAFETY

MFG Safety: Knowledge of methods, accepted practices, considerations and regulatory requirements associated with safety and protection of workers, environment and site.

Working Experience: Identifies personal protective equipment required or recommended for manufacturing staff. Describes own experience working with safety practices and equipment. Explains first aid response and accident reporting procedures. Discusses procedures for identifying and reporting safety violations. Determines appropriate action to take when unsafe conditions are encountered.

OPERATIONALFUNCTIONS

OperationalFunctions: Knowledge of major functional processes and associated operating requirements; ability to apply this knowledge appropriately to diverse situations.

Working Experience: Carries out responsibilities that contribute to role of own department within the organization; Seeks guidance when assigned goals conflict with departmental goals or overall strategy; Assesses situations based on awareness of the goals and operating issues of own department; Works to resolve obstacles related to goals of own department; Documents regulatory and reporting requirements.

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Attorneys for Plaintiff

**IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA**

ERIK KNUDSEN,

Plaintiff,

vs.

**J.R. SIMPLOT COMPANY, a Nevada
corporation,**

Defendant.

**PLAINTIFF'S MOTION TO STRIKE
DEFENDANT'S AMENDED
MEMORANDUM AND AFFIDAVIT OF
COSTS AND ATTORNEYS' FEES**

Case No: CV01-17-13956

Judge Deborah Bail

Plaintiff Erik Knudsen, by and through his undersigned counsel, hereby respectfully submits this motion pursuant to Idaho Rules of Civil Procedure (IRCP) 12(f) to disallow Defendant's *Amended Memorandum and Affidavit of Costs and Attorney's Fees* filed on January 18, 2019. In support of this motion, Mr. Knudsen states as follows:

I. PROCEDURAL HISTORY

The Court rendered its *Decision Re: Motion for Summary Judgment* on November 13, 2018. Defendant subsequently filed its *Memorandum and Affidavit of Costs and Attorneys' Fees*

**1 | PLAINTIFF'S MOTION TO STRIKE DEFENDANT'S AMENDED
MEMORANDUM AND AFFIDAVIT OF COSTS AND ATTORNEYS'
FEES**

on December 18, 2018, seeking an award for \$142,920.40 for costs and fees. On January 9, 2019, Plaintiff submitted his *Objection to Defendant's Request for Costs and Attorney's Fees*.

In reply, Defendant subsequently filed its *Amended Memorandum And Affidavit of Costs and Attorneys' Fees* on January 18, 2019. Final judgment was issued in this matter on January 23, 2019. Plaintiff now timely files this *Motion to Strike Defendant's Amended Memorandum And Affidavit of Costs and Attorneys' Fees*, as Defendant's subsequent "amended" filing is not appropriate, is not timely, and is not supported by Idaho law. Defendant does not get "two bites" at the same attorney fee apple, as the defects in its initial *Memorandum and Affidavit of Costs and Attorneys' Fees* cannot be cured through an "amended" or supplemental filing.

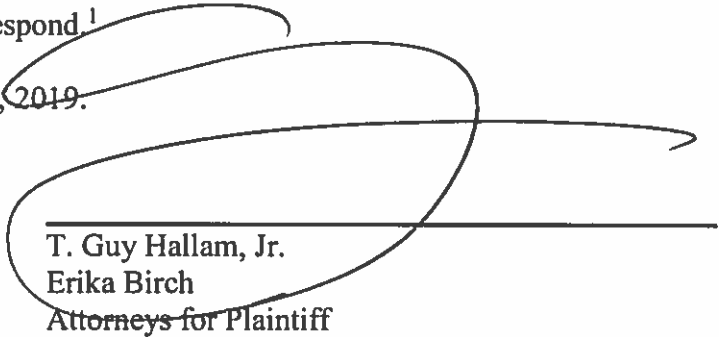
II. ARGUMENT

IRCP 12(f) provides: "The court may strike from a pleading an insufficient defense or any redundant, immaterial, impertinent, or scandalous matter."

On January 9, 2019, Mr. Knudsen filed his *Objection to Defendant's Motion for Costs and Attorneys' Fees*, correctly pointing the court to the fact that Defendant's motion was defective in a number of specific ways. For example, Defendant's *Memorandum and Affidavit of Costs and Attorneys' Fees* did not properly meet the standards required by Idaho law – to provide "reasoned argument, supported by case law as necessary, explaining why that statutory or contractual provision entitles the party to an award of attorney fees..." *Bream v. Benscoter*, 139 Idaho 364, 369, 79 P.3d 723, 728 (2003). Additionally, the Defendant failed to provide any argument, discussion, or other analysis of the mandatory factors in Idaho Rule of Civil Procedure 54. The defects in Defendant's initial *Memorandum and Affidavit of Costs and Attorneys' Fees* were substantial and not curable by a reply filing.

Defendant's *Amended Memorandum And Affidavit of Costs and Attorneys' Fees* is an attempt to circumvent the standards and procedure for requesting said costs and fees. The Idaho Rules of Civil Procedure, and Idaho law, do not support Defendant's filing. Idaho law does allow a *Reply* to be filed, but the *Amended Memorandum And Affidavit of Costs and Attorneys' Fees* is a completely new, revised, attorney fee request. Defendant's attempt to cure the original defective pleading is without basis and is untimely. Considering the *Amended Memorandum And Affidavit of Costs and Attorneys' Fees* would be impertinent and an error of law, and further leaves no opportunity for Mr. Knudsen to further respond.¹

DATED this 6th day of February, 2019.



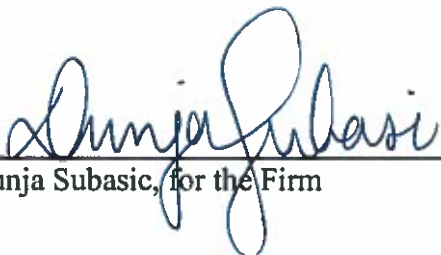
T. Guy Hallam, Jr.
Erika Birch
Attorneys for Plaintiff

¹ Should the court, in its discretion, be inclined to consider the Defendant's *Amended Memorandum And Affidavit of Costs and Attorneys' Fees*, Mr. Knudsen requests the opportunity to file a further objection.

CERTIFICATE OF SERVICE

I hereby certify that on February 6, 2019 a true and correct copy of the foregoing pleading was served on the following via electronic filing system:

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IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

ERIK KNUDSEN,

Plaintiff,

vs.

**J.R. SIMPLOT COMPANY, a Nevada
corporation,**

Defendant.

Case No. CV01-17-13956

**DEFENDANT'S OPPOSITION TO
PLAINTIFF'S MOTION TO
RECONSIDER ORDER GRANTING
DEFENDANT'S MOTION FOR
SUMMARY JUDGMENT**

COMES NOW, Defendant J.R. Simplot Company ("Simplot"), by and through its counsel of record, Anderson, Julian & Hull, LLP, and hereby submits Defendant's Opposition to Plaintiff's Motion to Reconsider Order Granting Defendant's Motion for Summary Judgment. Plaintiff has provided no new evidence or authority bearing on the correctness of a summary judgment order, and Plaintiff's motion should be denied.

**DEFENDANT'S OPPOSITION TO PLAINTIFF'S MOTION TO RECONSIDER ORDER
GRANTING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT - 1**

000693

I. BACKGROUND

Plaintiff Erik Knudsen (“Knudsen”) filed a complaint against Simplot asserting that he had been fraudulently induced into accepting a job at Simplot because he was later assigned a startup duty, which he contends was not disclosed in the Job Posting or interview process. This Court granted summary judgment in favor of Simplot on the grounds that there was nothing misrepresented during the interview and that the Job Posting was broad enough to cover the assigned task of startup manager. (Mem. Dec. 14.) Moreover, Simplot did not owe a duty to disclose every potential job duty that Knudsen may be assigned. (*Id.* at 16.) This Court also granted summary judgment on the breach of the covenant of good faith and fair dealing claim on the basis that there was no agreement between the parties that would preclude Knudsen from acting as a startup manager on a project, and the covenant does not create terms which do not otherwise exist in contract. (*Id.* at 18.) Finally, this Court granted summary judgment on the promissory estoppel claim on the grounds that Knudsen failed to set forth any promise upon which he could or did rely. (*Id.* at 19.)

Knudsen brings this Motion to Reconsider Order Granting Defendant’s Motion for Summary Judgment (“Motion to Reconsider”), claiming that Exhibit A to the Affidavit of Guy Hallam, which Knudsen refers to as a “job description,” raises an issue of fact because it varies from the Job Posting to which Knudsen responded. Exhibit A is an internal Simplot document called a Position Profile. (Aff. of Laura Nessen ¶ 2.) The Position Profile is not a job description for any particular advertised job; rather, it contains a set of potential responsibilities, duties and skills that may be used in creating a job posting. (*Id.*) The Position Profile included as Exhibit A was never provided to Knudsen and was not even used in creating his Job Posting because the job was originally advertised as an Engineer 5 position and the Position Profile is for

an Engineer 4 position. (*Id.* at ¶¶ 5-6.) The Position Profile contains a specific disclaimer that it is not intended to be construed as an exhaustive list of all potential duties but is a general description.

The Position Profile was provided by Simplot in response to Plaintiff's Second Set of Discovery to Defendant on May 30, 2018. (Aff. Andrea J. Fontaine ¶ 2.) Knudsen did not depose any Simplot employee concerning the Position Profile or otherwise submit additional discovery concerning the document. (Fontaine Aff. ¶ 3.) Depositions for Simplot employees were scheduled after disclosing the Position Profile, including depositions of two HR representatives. (*Id.*) If Knudsen had performed any additional discovery concerning the Position Profile, he would have learned that it was never provided to Knudsen prior to the time of hire and has no relevance concerning the pertinent facts of this case. Knudsen did not submit the Position Profile in his response to Defendant's Motion for Summary Judgment, despite the fact that the Position Profile had been submitted several months prior to Knudsen's response. (Fontaine Aff. ¶ 4.)

Knudsen has not set forth any evidence that Knudsen actually viewed the Position Profile before accepting the job at Simplot. Because the claims raised by Knudsen require that there be a representation upon which Knudsen relied when he accepted the job, and the Position Profile was undisputedly *not* provided to Knudsen prior to hiring, the document is entirely irrelevant and does not justify a motion for reconsideration.

II. STANDARD FOR MOTION TO RECONSIDER

“When deciding [a] motion for reconsideration, the district court must apply the same standard of review that the court applied when deciding the original order that is being reconsidered.” *Fragnella v. Petrovich*, 153 Idaho 266, 276, 281 P.3d 103, 113 (2012). On a

motion for reconsideration of an order granting summary judgment, therefore, the district court must “determine whether the evidence presented a genuine issue of material fact to defeat summary judgment.” *Id.* A mere scintilla of evidence or only slight doubt as to the facts is not sufficient to create a genuine issue for purposes of summary judgment. *Samuel v. Hepworth, Nungester & Lezamiz, Inc.*, 134 Idaho 84, 996 P.2d 303 (2000). The court considers only that material contained in affidavits and depositions which is based on personal knowledge and which would be admissible at trial. *Harris v. State, Dep’t of Health & Welfare*, 123 Idaho 295, 298, 847 P.2d 1156, 1159 (1992). Summary judgment is appropriate where a non-moving party fails to make a showing sufficient to establish the existence of an element essential to its case when it bears the burden of proof. *Id.*

On a motion for reconsideration, the court must consider any new admissible evidence or authority bearing on the correctness of the order granting summary judgment. *Id.*; *see also Coeur d’Alene Mining Co. v. First Nat’l Bank of N. Idaho*, 118 Idaho 812, 823, 800 P.2d 1026, 1037 (1990). However, “if a trial court’s conclusions were correct on the previous record, and it does not thereafter receive any information that would change its previous ruling, there is no basis for it to overturn its initial decision.” *Johnson v. Lambros*, 143 Idaho 468, 473, 147 P.3d 100, 105 (2006). “[W]hen summary judgment could be prevented only by the presentation of new evidence raising a factual issue for trial, evidence that does not rise to that standard will not require that an order for summary judgment be vacated.” *Id.*

III. LAW & ANALYSIS

A. The Position Profile Has No Bearing On the Correctness of the Order Granting Summary Judgment.

Knudsen was not aware of the Engineer 4 Position Profile when he accepted the job, thus, there could be no reliance on any representations contained therein. Knudsen's "new" evidence, which is not new at all but simply an item irrelevant to either party's summary judgment briefing, does not establish the existence of reliance, which is critical to the claims contained in Knudsen's Complaint.

1. **The Engineer 4 Job Description Was Never Communicated or Relied Upon and the Essential Elements of Fraud Are Not Established.**

Knudsen contends that because an internal Position Profile for Engineer 4 varied from the Job Posting, there exists an issue of fact concerning his fraud claim. This argument entirely ignores the elements of a fraud claim. As explained by this Court, in order to state a cause of action for fraud or intentional misrepresentation, the party asserting it must show, *inter alia*, a statement or a representation of fact and reliance by the hearer. (Mem. Dec. 12.) (*citing Apr. Beguesse, Inc. v. Rammell*, 156 Idaho 500, 509, 328 P.3d 480, 489 (2014)). Moreover, all elements of fraud must be found to exist, and the fact that the Engineer 4 Position Profile was never communicated to Knudsen at the time of hire is fatal to Knudsen's fraud claim. In other words, the "new evidence" does not create an issue of fact where it does not support an essential element of Knudsen's claim for fraud.

Knudsen has established no fact indicating that Simplot's internal Position Profile was shared with Knudsen. In fact, Simplot can establish that the Position Profile was never shared with Knudsen, nor would any Position Profile be shared with a job applicant at Simplot. (Ness Aff. ¶¶ 4-5.) The only information shared with Knudsen was the Job Posting. (*Id.* ¶ 5.) The Position Profile for Engineer 4 would not have been used to create the Job Posting to which Knudsen responded because Knudsen's job was originally intended to be for an Engineer 5. (*Id.*

¶ 6.) In other words, Knudsen has established no relevance of the Position Profile where it was never shared with Knudsen and did not even form the basis for the Job Posting to which Knudsen responded.

Rather, Knudsen focuses on this Court's determination that there was only a "general and very broad" job description that was ever provided to Knudsen. However, this Court did not refer to the single, general job description as a defect in the record but as evidence that Knudsen was never told, "one way or another that he would be acting as a startup manager." (Mem. Dec. 12.) This Court's emphasis was properly on the representations actually made to Knudsen, which are the only representations upon which he could rely. Knudsen cannot rely on a document that he never saw when he accepted the job in order to establish fraudulent inducement, and the Motion to Reconsider should be denied.

2. **The Language of the Position Profile Does Not Create An Issue of Fact.**

Knudsen has entirely misread the language of the "Summary" of the Position Profile. The word "or" does not indicate an alternative between supporting production efforts or managing medium projects. Rather, the word "or" is used as a conjunction between the phrase "to work or manage." (Nessen Aff. ¶ 7.) An Engineer 4 may be asked to support production efforts *and* to work *or* manage medium projects. (*Id.*) The hiring manager drafting the Job Posting would grammatically modify the language in the Summary of the Position Profile; the hiring manager is not limited to selecting one or the other. (*Id.* ¶ 8.)

The Position Profile goes on to highlight several capabilities related to project management, including "Excellent project management skills that allow the incumbent to coordinate project activities at all employee levels with other operating or engineering units to

facilitate project completion,” and “Leads and is accountable for the development and evaluation of plans and success criteria to ensure that project and/or system performance meets business objectives for a variety of projects and activities that are usually carried out by others.” (Hallam Aff. Ex. A.) The Position Profile would encapsulate not only the duties included in the Job Posting but the duties that Knudsen was actually asked to perform, including startup manager.

Critically, under the section of the Position Profile entitled “Other,” the following disclaimer is clearly set forth:

Disclaimer - These statements are intended [to] describe the general nature and level of work being performed by people assigned to this classification. They are not intended to be construed as an exhaustive list of all responsibilities, duties and skills required of personnel so classified.

(Hallam Aff. Ex. A.) There could be nothing fraudulent about asking Knudsen to work on the startup for a \$20 million dollar project when any specific responsibilities included in the Position Profile are conspicuously disclaimed. Even if Knudsen had access to this document at the time of hiring, which Simplot disputes, there could be nothing fraudulent about this Position Profile with respect to the job duties Knudsen was asked to perform or the job duties included in the Job Posting where the Position Profile specifically disclaims reliance as an exhaustive list of all responsibilities and skills required of the employee.

Finally, any alleged difference between the language of the Position Profile and the Job Posting does not create an issue of fact for the jury. There is no question as to which job description applies. The Job Posting is the only document provided to Knudsen at the time of hire and the Position Profile was never disclosed to Knudsen or relied upon as an exhaustive job description. The answer to the question of which “job description” should apply has already been answered by virtue of the fact that Knudsen pled this matter as a fraud claim, which

necessitates a representation and which necessarily excludes the Position Profile as a basis for fraud.

Nothing about Knudsen's argument concerning the Engineer 4 Position Profile sounds in fraudulent inducement. Again, as argued in Simplot's Amended Memorandum of Costs, Knudsen is attempting to use Simplot's job descriptions as a basis for a breach of contract, seeking damages for the fact that Knudsen was assigned a job duty allegedly outside the scope of what he contends the job should be. However, Knudsen did not plead a breach of contract claim, nor could he, and he has failed to establish the essential elements of fraud. Because the Engineer 4 Position Profile does not bear on the Court's correctness in granting summary judgment on Knudsen's fraud claim, the Motion to Reconsider should be denied.

3. **Generalized Statements in a Job Posting Are Not "Ambiguities" Establishing An Issue of Fact For a Fraud Claim.**

Knudsen contends that this Court determined the Job Posting was "ambiguous." This is a misstatement of the Court's decision. This Court determined that the Job Posting was "very general" and that there was nothing to mislead "him in any way about the role he was being hired to fulfill." (Mem. Dec. 13.) Determining that a communication is very general and broad and therefore does not constitute a basis for fraud is much different than determining that a term is "ambiguous" and thus subject to a contracts analysis. Indeed, the full quote of the text cited by Knudsen reads as follows: "[I]f the language *of the deed* is ambiguous, ascertaining the parties' intent is a question of fact and may therefore only be settled by a trier of fact." *Porter v. Bassett*, 146 Idaho 399, 195 P.3d 1212 (2008) (emphasis added). Knudsen cannot replace the words "of the deed" with an ellipsis and then attempt to use it as a basis for establishing an issue of fact for a fraud case. Such an omission is, quite frankly, misleading.

In any event, the Position Profile was never communicated to Knudsen and was never intended to be used as a basis for an employment agreement. Likewise, the Job Posting is not subject to a contracts analysis and was not intended to form the basis of the employment agreement. Even if the Job Posting did create terms giving rise to an implied covenant of good faith and fair dealing, which Simplot specifically refutes, this Court already determined that the generalized, broad language of the Job Posting did not preclude a packaging engineer from acting as a startup manager. In other words, the fact that a Job Posting is general does not mean that it is ambiguous, and Knudsen's contract analysis has no bearing on the correctness of this Court's decision to grant summary judgment in favor of Simplot.

4. **Knudsen Does Not Contest This Court's Decision to Grant Summary Judgment on his Promissory Estoppel Claim.**

Knudsen appears to concede that this Court correctly entered summary judgment on his promissory estoppel claim.¹ Even if he does not concede this claim, he has presented no new evidence or authority indicating that he was promised that his job would never include a startup manager assignment. This Court correctly determined that the Job Posting did not include a promise, one way or the other, about the possibility of being asked to serve as a startup manager on a project and that the general terms of the Job Posting could certainly include such a task. (Mem. Dec. 19.) The Position Profile was never provided to Knudsen and thus could not include any promise inducing Knudsen to take the job. Even if the Position Profile had been provided, it includes a conspicuous disclaimer. And even without the disclaimer, the Position Profile includes significant project management duties that would certainly include a startup assignment.

¹ Likewise, Knudsen makes no mention of his negligent infliction of emotional distress claim, which is presumably not subject to Knudsen's Motion to Reconsider.

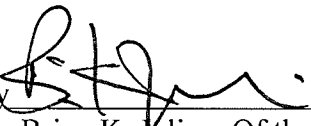
Knudsen can raise no issue of fact bearing on the correctness of this Court's decision to grant summary judgment on Knudsen's promissory estoppel claim.

IV. CONCLUSION

Based on the foregoing, Simplot respectfully requests that this Court deny Knudsen's Motion to Reconsider.

DATED this 6th day of March, 2019.

ANDERSON, JULIAN & HULL LLP

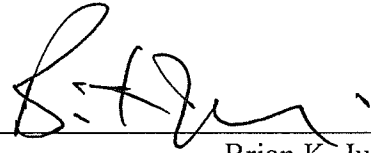
By  _____
Brian K. Julian, Of the Firm
Attorneys for Defendant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 6th day of March, 2019, I served a true and correct copy of the foregoing **DEFENDANT'S OPPOSITION TO PLAINTIFF'S MOTION TO RECONSIDER ORDER GRANTING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT** by delivering the same to each of the following attorneys of record, by the method indicated below, addressed as follows:

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Attorneys for Plaintiff

- U.S. Mail, postage prepaid
- Hand-Delivered
- Overnight Mail
- Facsimile
- E-Mail
- iCourt/e-File



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Attorneys for Defendant

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

ERIK KNUDSEN,

Plaintiff,

vs.

**J.R. SIMPLOT COMPANY, a Nevada
corporation,**

Defendant.

Case No. CV01-17-13956

**DEFENDANT'S RESPONSE TO
PLAINTIFF'S MOTION TO
STRIKE DEFENDANT'S
AMENDED MEMORANDUM AND
AFFIDAVIT OF COSTS AND
ATTORNEYS' FEES**

COMES NOW, Defendant J.R. Simplot Company, by and through its counsel of record, Anderson, Julian & Hull, LLP, and hereby responds to Plaintiff's Motion to Strike Defendant's Amended Memorandum and Affidavit of Costs and Attorneys' Fees. Because Rule 12(f) does not apply to any matter other than a pleading and because there is nothing in the Idaho Rules of

**DEFENDANT'S RESPONSE TO PLAINTIFF'S MOTION TO STRIKE DEFENDANT'S
AMENDED MEMORANDUM AND AFFIDAVIT OF COSTS AND ATTORNEYS' FEES**

Civil Procedure preventing a party from filing an amended memorandum of costs, Plaintiff's motion to strike should be denied.

I. BACKGROUND

This Court entered summary judgment in favor of Simplot on November 12, 2018, with respect to all four claims in Plaintiff Erik Knudsen's Complaint. On December 18, 2018, Simplot submitted a Memorandum and Affidavit of Costs and Attorneys' Fees. On January 9, 2019, Knudsen filed an Objection to Defendant's Request for Costs and Attorney's Fees. On January 18, 2019, Simplot submitted an Amended Memorandum and Affidavit of Costs and Fees ("Amended Memorandum of Costs"), modifying a discretionary cost, as indicated in Knudsen's objection, and providing further support for discretionary costs and attorney's fees. On January 23, 2019, this Court entered a final Judgment. On February 6, 2019, which is 19 days after Simplot filed its Amended Memorandum and Affidavit of Costs, Knudsen filed the present Motion to Strike Defendant's Amended Memorandum and Affidavit of Costs and Attorney's Fees ("Motion to Strike"). Because Simplot's Amended Memorandum of Costs is not subject to a motion to strike and because Knudsen failed to object within 14 days of Simplot serving the Amended Memorandum of Costs, the Motion to Strike should be denied, and Knudsen should be deemed to have waived any objection to the Amended Memorandum of Costs.

II. Law & Analysis

An amended memorandum of costs is not subject to a motion to strike. Rule 12(f) provides that "[t]he court may strike from a pleading an insufficient defense or any redundant, immaterial, impertinent, or scandalous matter." By its plain language Rule 12(f) allows this Court only to strike a pleading, and a memorandum of costs is not a pleading. *See, e.g. Sokoli v.*

DEFENDANT'S RESPONSE TO PLAINTIFF'S MOTION TO STRIKE DEFENDANT'S AMENDED MEMORANDUM AND AFFIDAVIT OF COSTS AND ATTORNEYS' FEES

J & M Sanitation, Inc., 2015 WL 7720466 (D. Idaho Nov. 27, 2015) (holding that a motion to strike a motion is not permitted under analogous Federal Rule of Civil Procedure 12(f) and determining that the motion to strike a non-pleading filing is more appropriately categorized as an objection). Thus, Knudsen's Motion to Strike is more appropriately deemed an objection to Defendant's Memorandum of Costs.

Objections to costs are appropriately analyzed under Rule 54(d)(5). Pursuant to Rule 54(d)(5), a party must file "a motion to disallow part or all of the costs" within 14 days of service of a memorandum of costs. "Failure to timely object to the items in the memorandum of costs constitutes a waiver of all objections to the costs claimed." I.R.C.P. 54(d)(5). Notably, the rules are silent as to the inability of a party to file an amended memorandum of costs, and Knudsen's Motion to Strike includes no authority prohibiting such an amendment. Indeed, even a cursory review of cases on Westlaw reveals a host of amended memoranda of costs that were not struck down simply because it was an amended filing so long as it was timely under rule 54(d)(4), i.e., within 14 days after entry of judgment. Simplot filed its Amended Memorandum of Costs prior to this Court issuing a Judgment, and it is therefore timely.

The end result is that Simplot has properly submitted an Amended Memorandum of Costs, and Knudsen failed to timely object. Even if the Motion to Strike could be construed as a motion to disallow costs under Rule 54(d)(5), it was not filed within 14 days of the service of the Amended Memorandum of Costs. The Motion to Strike was not filed until February 6, 2019, which is five days past the deadline under Rule 54(d)(5). Under this Rule, Knudsen has waived all of his objections to the Amended Memorandum of Costs.

DEFENDANT'S RESPONSE TO PLAINTIFF'S MOTION TO STRIKE DEFENDANT'S AMENDED MEMORANDUM AND AFFIDAVIT OF COSTS AND ATTORNEYS' FEES

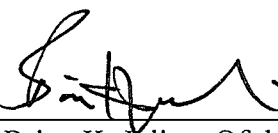
Knudsen contends that Simplot's Amended Memorandum of Costs does not allow Knudsen an opportunity to further respond. However, there is no reason why Knudsen could not have timely filed an objection to the amended costs under Rule 54(d)(5). There is no rule prohibiting an amended memorandum of costs and there is no rule prohibiting a party from submitting an objection to the amended memorandum of costs. From a policy perspective, it makes little sense to disregard an amended memorandum of costs that remediates issues pointed out by an opposing party. Simplot simply provided the Court with a more substantial analysis and accurate itemization of costs claimed and did so within the timeframe indicated in Rule 54(d)(4). This Court should not strike Simplot's timely filed Amended Memorandum of Costs and should deem waived Knudsen's objections to the Amended Memorandum of Costs.

III. CONCLUSION

Based on the foregoing, Simplot respectfully requests that this Court deny Knudsen's Motion to Strike and to grant the costs and attorney's fees set forth in the Amended Memorandum of Costs, to which Knudsen has not objected.

DATED this 6th day of March, 2019.

ANDERSON, JULIAN & HULL LLP

By 

Brian K. Julian, Of the Firm
Attorneys for Defendant

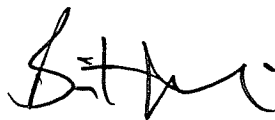
**DEFENDANT'S RESPONSE TO PLAINTIFF'S MOTION TO STRIKE DEFENDANT'S
AMENDED MEMORANDUM AND AFFIDAVIT OF COSTS AND ATTORNEYS' FEES**

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 6th day of March, 2019, I served a true and correct copy of the foregoing **DEFENDANT'S RESPONSE TO PLAINTIFF'S MOTION TO STRIKE DEFENDANT'S AMENDED MEMORANDUM AND AFFIDAVIT OF COSTS AND ATTORNEYS' FEES** by delivering the same to each of the following attorneys of record, by the method indicated below, addressed as follows:

Erika Birch
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Attorneys for Plaintiff

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- E-Mail
- iCourt/e-File



Brian K. Julian

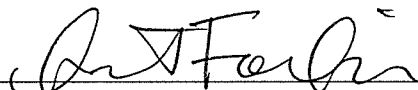
DEFENDANT'S RESPONSE TO PLAINTIFF'S MOTION TO STRIKE DEFENDANT'S AMENDED MEMORANDUM AND AFFIDAVIT OF COSTS AND ATTORNEYS' FEES

("Simplot") in the above-entitled action. The information contained herein is of your affiant's own personal knowledge.

2. The document attached as Exhibit A to the Affidavit of T. Guy Hallam in Support of Motion for Reconsideration is a Position Profile that was provided by Simplot in response to Plaintiff's Second Set of Discovery to Defendant on May 30, 2018.
3. Counsel for Plaintiff Erik Knudsen did not depose any Simplot employee concerning the Position Profile that was produced or otherwise submit additional discovery concerning the Position Profile, despite the fact that depositions for Simplot employees were scheduled subsequent to May 30, 2018, including two HR representatives.
4. Knudsen did not submit the Position Profile in his response to Defendant's Motion for Summary Judgment, despite the fact that the Position Profile had been submitted several months prior to Knudsen's response.

DATED this 6th day of March, 2019.

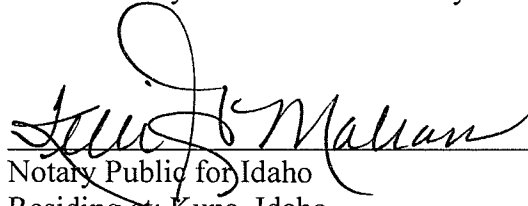
ANDERSON, JULIAN & HULL LLP

By 
 Andrea J. Fontaine, Of the Firm
 Attorneys for Defendant

STATE OF IDAHO)
) ss:
 County of Ada)

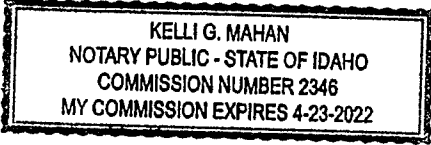
I, Kelli G. Mahan, a Notary Public, do hereby certify that on this 6th day of March, 2019, personally appeared before me ANDREA J. FONTAINE, who, being by me first duly sworn, declared that she signed the foregoing document, and that the statements contained therein are true.

IN WITNESS WHEREOF, I have hereunto set by hand and affixed my official seal the day and year first above written.



Notary Public for Idaho

Residing at: Kuna, Idaho
My Commission Expires: April 23, 2022

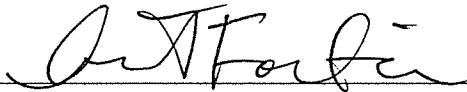


CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 10th day of March, 2019, I served a true and correct copy of the foregoing AFFIDAVIT OF ANDREA J. FONTAINE by delivering the same to each of the following attorneys of record, by the method indicated below, addressed as follows:

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Attorneys for Plaintiff

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| <input type="checkbox"/> | Overnight Mail |
| <input type="checkbox"/> | Facsimile |
| <input type="checkbox"/> | E-Mail |
| <input checked="" type="checkbox"/> | iCourt/e-File |



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Attorneys for Defendant

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

ERIK KNUDSEN,

Plaintiff,

vs.

**J.R. SIMPLOT COMPANY, a Nevada
corporation,**

Defendant.

Case No. CV01-17-13956

AFFIDAVIT OF LAURA NESSEN

STATE OF IDAHO)
) ss:
County of Ada)

Laura Nessen, having been first duly sworn upon oath, deposes and says:

1. I am currently a HR Process Lead for Simplot. I have held this position since Feb 2019. Prior to that, I was an HR Support & Transactions Manager and HR Manager and served in that capacity since 2015. I was involved in the hiring of Erik Knudsen, and I am

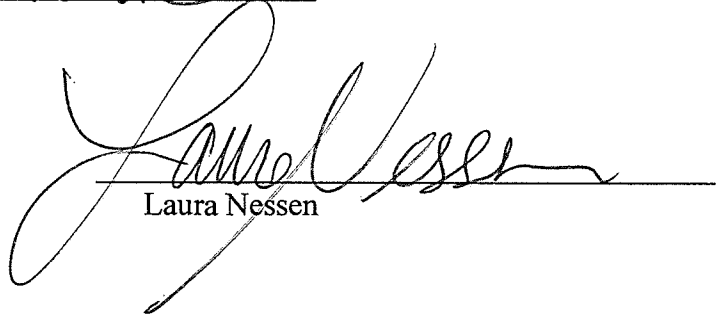
personally familiar with the allegations contained in the Complaint and, specifically, with the document identified as Exhibit A to the Affidavit of Guy Hallam.

2. Exhibit A is an internal Simplot document known as a “position profile.” A position profile is not a job description for any particular advertised job posting; rather, it contains a set of potential responsibilities, duties and skills that may be used in creating a job posting.
3. When a hiring manager creates a job posting, he or she may use a position profile as a reference tool for populating a job posting and to create consistency among personnel similarly classified. The job posting will be more detailed than the position profile and/or specifically tailored to the job that the hiring manager is seeking to fill.
4. A position profile is never provided to a job applicant. A position profile is an internal document that is only available to Simplot employees.
5. In the case of Erik Knudsen, the Engineer 4 Position Profile (“Position Profile”) was never provided to Knudsen at the time of hire. The Job Posting for Senior Packaging Engineer (“Job Posting”) was the only document provided to Knudsen containing the general job duties anticipated for the position.
6. The Position Profile for Engineer 4 would not have been used to create the Job Posting to which Knudsen responded. The Job Posting to which Knudsen responded was intended to be for the purpose of recruiting an Engineer 5. The Position Profile is for an Engineer 4 and is thus not applicable to the Job Posting at issue, though there may be some overlap in the scope of anticipated responsibilities, duties and skills.
7. In the “Summary” section of the Position Profile, the template language, which is not intended to be communicated to job applicants, omits two commas. The correct reading of the Summary is as follows:

Supports production efforts of the company/group by providing technical leadership to plant operating and maintenance departments, to work or manage medium projects (typically \$1-\$5 MM or support large projects), to develop new or existing equipment, process, and instrumentation.

8. The items listed in the Summary of the Position Profile are not intended to be construed in the alternate or to be exclusive of one another.
9. The Position Profile includes a specific disclaimer that statements contained therein “are intended to describe the general nature and level of work being performed by people assigned to the classification. They are not intended to be construed as an exhaustive list of all responsibilities, duties, and skills required of personnel so classified.”
10. The Position Profile’s reference to managing medium projects in the \$1 to \$5 million dollar range is a guideline only. Furthermore, acting as a “start-up manager” is not the same as managing a project. Start-up duties are limited in scope and duration and are more appropriately classified as supporting larger projects.

DATED this 4th day of March, 2019.

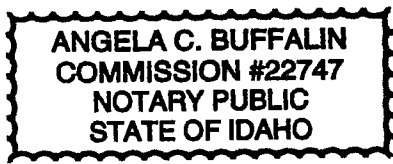


Laura Nessen

STATE OF IDAHO)
) ss:
County of Ada)

I, Angela C. Buffalin, a Notary Public, do hereby certify that on this 4th day of March, 2019, personally appeared before me Laura Nessen, who, being by me first duly sworn, declared that she signed the foregoing document, and that the statements contained therein are true.

IN WITNESS WHEREOF, I have hereunto set by hand and affixed my official seal the day and year first above written.



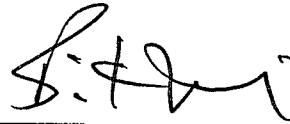
Angela C. Buffalin
Notary Public for Idaho
Residing at: Boise, Idaho
My Commission Expires: 6/18/2024

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 6th day of March, 2019, I served a true and correct copy of the foregoing AFFIDAVIT OF LAURA NESSEN by delivering the same to each of the following attorneys of record, by the method indicated below, addressed as follows:

Erika Birch
T. Guy Hallam
Grant Burgoyne
STRINDBERG & SCHOLNICK, LLC
1516 W. Hays St.
Boise, ID 83702
T: (208) 336-1788
F: (208) 278-3708
E: erika@idahojobjustice.com
guy@idahojobjustice.com
grant@idahojobjustice.com
Attorneys for Plaintiff

- U.S. Mail, postage prepaid
- Hand-Delivered
- Overnight Mail
- Facsimile
- E-Mail
- iCourt/e-File



Brian K. Julian

MAR 27 2019

PHIL McGRANE, Clerk
By TARA VILLEREAL
DEPUTY

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

ERIK KNUDSEN,

Plaintiff,

vs.

**J.R. SIMPLOT COMPANY, a Nevada
corporation,**

Defendant.

Case No. CV01-17-13956

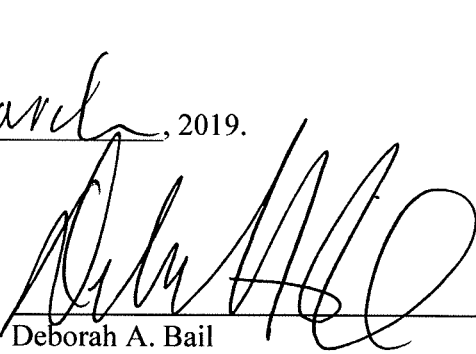
AMENDED JUDGMENT

JUDGMENT IS ENTERED AS FOLLOWS:

1. Final judgment shall enter in favor of the Defendant and against the Plaintiff.
2. The Defendant is hereby awarded costs as a matter of right in the amount of \$4,543.40.
3. The Plaintiff's complaint is DISMISSED WITH PREJUDICE.

IT IS SO ORDERED.

DATED this 26th day of March, 2019.


Deborah A. Bail
District Judge

CLERK'S CERTIFICATE OF SERVICE

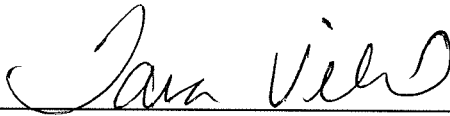
I HEREBY CERTIFY that on this 27th day of March, 2019, I served a true and correct copy of the foregoing AMENDED JUDGMENT by delivering the same to each of the following attorneys of record, by the method indicated below, addressed as follows:

Erika Birch
T. Guy Hallam
Grant Burgoyne
STRINDBERG & SCHOLNICK, LLC
1516 W. Hays St.
Boise, ID 83702
T: (208) 336-1788
F: (208) 278-3708
E: erika@idahojobjustice.com
guy@idahojobjustice.com
grant@idahojobjustice.com
Attorneys for Plaintiff

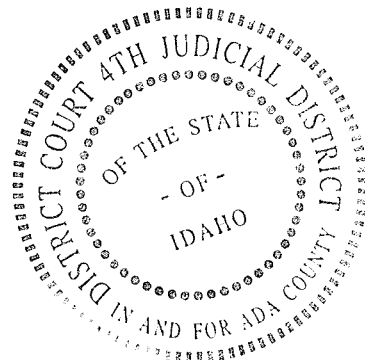
- U.S. Mail, postage prepaid
- Hand-Delivered
- Overnight Mail
- Facsimile
- E-Mail
- iCourt/e-File

Brian K. Julian
Andrea J. Fontaine
ANDERSON, JULIAN & HULL LLP
C. W. Moore Plaza
250 South Fifth Street, Suite 700
Post Office Box 7426
Boise, Idaho 83707-7426
T: (208) 344-5800
F: (208) 344-5510
E: bjulian@ajhlaw.com
ajfontaine@ajhlaw.com
iCourt/e-File: service@ajhlaw.com
Attorneys for Defendant

- U.S. Mail, postage prepaid
- Hand-Delivered
- Overnight Mail
- Facsimile
- E-Mail
- iCourt/e-File



Clerk



Erika Birch (Bar No.7831)
T. Guy Hallam (Bar No. 6101)
Lourdes A. Matsumoto (Bar No. 9920)
STRINDBERG & SCHOLNICK, LLC
1516 W. HAYS ST.
BOISE, ID 83702
(t) 208.336.1788
(f) 208.287-3708
erika@idahojobjustice.com
guy@idahojobjustice.com
lourdes@idahojobjustice.com

Attorneys for Plaintiff/Appellant

**IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA**

ERIK KNUDSEN,

Appellant,

vs.

**J.R. SIMPLOT COMPANY, a Nevada
Corporation,**

Respondent.

NOTICE OF APPEAL

Case No: CV01-17-13956

Judge Deborah Bail

TO: THE ABOVE NAMED RESPONDENT, J.R. SIMPLOT COMPANY, AND THE PARTY'S ATTORNEYS OF RECORD, BRIAN K. JULIAN AND ANDREA FONTAINE, AND THE CLERK OF THE ABOVE-ENTITLED COURT.

NOTICE IS HEREBY GIVEN THAT:

1. The above-named Appellant, Erik Knudsen, appeals against the above-named Respondent, J.R. Simplot Company, to the Idaho Supreme Court from the following Decisions and Orders entered in the above-referenced action, the Honorable Deborah Bail presiding:
 - a. Decision Re: Motion for Summary Judgment, issued on November 13, 2018;
 - b. Judgment, entered on January 23, 2019;

c. Decision Re: Plaintiff's Motion to Reconsider, given by the Court orally from the bench on March 13, 2019; and

d. Amended Judgment, entered on March 27, 2019

A copy of the written orders and judgments being appealed are attached to this Notice; the transcript of the Court's oral ruling on Plaintiff's Motion to Reconsider has been requested.

2. Name of Appellant: Erik Knudsen

Counsel for Appellant: Erika Birch (Bar No.7831)
T. Guy Hallam (Bar No. 6101)
Lourdes A. Matsumoto (Bar No. 9920)

STRINDBERG & SCHOLNICK, LLC
1516 W. HAYS ST.
BOISE, ID 83702

(t) 208.336.1788
(f) 208.287-3708

erika@idahojobjustice.com
guy@idahojobjustice.com
lourdes@idahojobjustice.com

Name of Respondent: J.R. Simplot Company

Counsel for Respondent: Brian K. Julian
Andrea Fontaine

ANDERSON, JULIAN, & HULL, LLP
250 S. 5th Street, Ste. 700
P.O. Box 7426
BOISE ID 83707-7426

(t) 208.344.5800
(f) 208.344.5510

bjulian@ajhlaw.com
ajfontaine@ajhlaw.com

3. Appellant has a right to appeal to the Idaho Supreme Court. The Judgment and Orders described in paragraph 1 above are appealable orders under and pursuant to Rule 11(a)(1)

and 11(a)(7) of the Idaho Appellate Rules.

4. Appellant provides the following preliminary statement on appeal, related to issues which the Appellant intends to assert in the appeal. This preliminary statement, however, provides only preliminary issues and shall in no way prevent the Appellant from asserting other issues on appeal. Thus, the preliminary issues on appeal are:

- a. The district court correctly held that a cause of action for fraudulent hiring exists in Idaho. Likewise, the district court correctly held an omission of information can constitute fraud if a duty to disclose exists. However, the district court erred by holding that there was no genuine issue as to any material fact with respect to Plaintiff's fraud claim and granting Defendant summary judgment.
 - i. Did the district court impermissibly find facts in Defendant's favor in concluding that the Startup Manager was a job duty as opposed to separate position?
 - ii. In so concluding, did the district court err that Defendant had no duty to disclose its intention of placing Plaintiff in a Startup Manager position?
 - iii. Did the district court err in concluding that there was no fraud in the inducement with regard to Defendant's hiring of Plaintiff as an Engineer?
- b. Did the district court err in granting Defendant summary judgment on Plaintiff's breach of covenant of good faith and fair dealing claim?
 - i. Did the district court incorrectly find that Defendant did not breach the

implied covenant of good faith and fair dealing even though it hired Plaintiff as a full-time Packing Engineer and then subsequently disclosed that he would only be performing that position part-time?

ii. Did the district court improperly fail to consider Plaintiff's termination as a breach of the covenant based on Defendant's anti-retaliation policy for making reports of possible illegal conduct?

c. Did the district court err in determining that there was no viable cause of action for promissory estoppel?

i. By impermissibly finding that the Startup Manager was an assignment part and parcel of Plaintiff's Engineering position as opposed to an entirely separate position, did the district court err in failing to find a promise had been breached?

d. Did the district court err in determining that Defendant did not breach a legal duty to Plaintiff by impermissibly finding that the Startup Manager was simply a task within Plaintiff's Engineering position in dismissing Plaintiff's negligent infliction of emotional distress claim?

e. Is Plaintiff/Appellant entitled to attorney fees and costs on appeal?

5. A *Protective Order* was entered by the District Court on April 13, 2018.

However, none of the submissions to the record were filed under seal.

6. The Appellant requests the reporter's transcript for the following hearings:

a. The Appellant requests the preparation of the following portions of the reporter's transcript in electronic format:

09/05/18 Defendant's Motion for Summary Judgment

03/13/19 Plaintiff's Motion to Reconsider

7. The Appellant requests the following documents to be included in the clerk's record:

07/27/17	Complaint
09/11/17	Answer
11/29/17	Amended Notice of Trial Setting and Order Governing Further Proceedings
05/17/18	Rule 29 Stipulation Re: Out of State Witness
06/20/18	Defendant's Motion for Summary Judgment and Supporting Affidavit
06/27/18	Defendant's Memorandum and Affidavits in Support of Defendant's Motion for Summary Judgment
07/27/18	Unopposed Request for Status Conference
08/22/18	Plaintiff's Memorandum in Opposition to Defendant's Motion for Summary Judgment, with Supporting Statement of Facts, Affidavit, and Exhibits
08/29/18	Defendant's Reply to Plaintiff's Opposition to Summary Judgment
11/13/18	Decision Re: Motion for Summary Judgment
01/23/19	Judgment
02/06/19	Plaintiff's Motion to Reconsider, and Supporting Memorandum and Affidavit with attachments
03/06/19	Defendant's Opposition to Plaintiff's Motion to Reconsider, with Supporting Affidavit
03/27/19	Amended Judgment

8. I certify that:

- a. A copy of this notice of appeal has been served on each reporter of whom a transcript has been requested as named below:

- i. Reporter Roxanne Patchell for the hearing regarding Defendant's Motion for Summary Judgment, on September 5, 2018; and
 - ii. Reporter Tiffany Fisher for the hearing regarding Plaintiff's Motion to Reconsider, on March 13, 2019.
- b. Roxanne Patchell is on vacation out of office until May 20, 2019, and will be able to provide an estimate for her transcript upon her return. Payment for her estimate will be made immediately thereafter.
 - c. A check has been delivered to Tiffany Fisher at the Ada County Courthouse, located at 200 W. Front St., Boise, ID 83702 for her estimated fee for preparation of the transcript.
 - d. The initial payment of \$100.00 for preparation of the clerk's record has been paid. Any remaining balance will be paid upon the receipt of an invoice.
 - e. The appellate filing fee has been paid.
 - f. Service has been made upon all parties required to be served pursuant to Rule 20.

DATED this 7th day of May, 2019.

/s/ Erika Birch
Erika Birch
T. Guy Hallam, Jr.
Lourdes Matsumoto
Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that on May 7, 2019, a true and correct copy of the foregoing pleading was served on the following via electronic mail and the electronic filing system:

Brian K. Julian
Andrea Fontaine
ANDERSON, JULIAN & HULL, LLP
250 S. 5th Street, Ste. 700
P.O. Box 7426
Boise, Idaho 83707-7426
bjulian@ajhlaw.com
ajfontaine@ajhlaw.com

Tiffany Fisher
Roxanne Patchell
Court Reporters
Ada County Courthouse
200 W Front St.
Boise, ID 83702
rpatchell@adacounty.id.gov
tfisher@adaweb.net

/s/ Dunja Subasic

Dunja Subasic

Brian K. Julian, ISB No. 2360
Andrea J. Fontaine, ISB No. 7175
ANDERSON, JULIAN & HULL LLP
C. W. Moore Plaza
250 South Fifth Street, Suite 700
Post Office Box 7426
Boise, Idaho 83707-7426
Telephone: (208) 344-5800
Facsimile: (208) 344-5510
E-Mail: bjulian@ajhlaw.com
ajfontaine@ajhlaw.com
iCourt/e-File: service@ajhlaw.com

Attorneys for Respondent/Cross-Appellant

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

ERIK KNUDSEN,

Appellant/Cross-Respondent,

vs.

**J.R. SIMPLOT COMPANY, a Nevada
corporation,**

Respondent/Cross-Appellant.

Case No. CV01-17-13956

NOTICE OF CROSS-APPEAL

Judge Deborah Bail

TO: THE ABOVE NAMED APPELLANT/CROSS-RESPONDENT, ERIK
KNUDSEN, AND THE PARTY'S ATTORNEYS OF RECORD, STRINDBERG &
SCHOLNICK, LLC, AND THE CLERK OF THE ABOVE-ENTITLED COURT.

NOTICE IS HEREBY GIVEN THAT:

1. The above named cross-appellant J.R. Simplot Company (“Simplot”) appeals against the above named cross-respondent to the Idaho Supreme Court from the Decision Re: Defendant’s Amended Memorandum and Affidavit of Costs and Attorney’s Fees, entered in the above entitled action on the 13th day of March, 2019, and the Amended Judgment, entered in the above entitled action on the 27th day of March, 2019, Honorable Judge Bail presiding.

2. The party has a right to cross-appeal to the Idaho Supreme Court, and the judgments or orders described in paragraph 1 above are appealable orders under and pursuant to Rule 11(a)(7) of the Idaho Appellate Rules.

3. A preliminary statement on appeal which the cross-appellant then intends to assert in the appeal; provided, any such list of issues on appeal shall not prevent the cross-appellant from asserting other issues on appeal. The preliminary issues on appeal are:

a) Whether the district court erred by determining that Simplot was not entitled to attorney’s fees under Idaho Code § 12-120(3).

i. Whether the district court erred by holding that Idaho Code § 12-120(3) did not permit attorney’s fees on the grounds that the complaint included a tort claim without considering that the gravamen of the Complaint was based on a commercial transaction.

ii. Whether the district court erred by failing to award attorney’s fees to Simplot, the prevailing party, despite the fact that Plaintiff pled for recovery of his attorney’s fees under Idaho Code § 12-120(3) and thus likewise asserted that fees were warranted under the statute.

- b) Whether the district court erred by failing to apportion attorney’s fees for claims that did not involve tortious conduct and which satisfied the commercial transaction requirement of Idaho Code § 12-120(3), including Plaintiff’s claims for breach of the covenant of good faith and fair dealing and promissory estoppel.
- c) Whether Plaintiff waived his objection to Simplot’s Amended Memorandum and Affidavit of Costs and Attorneys’ Fees under Idaho Rule of Civil Procedure 54(d) by failing to file a timely objection to the amended memorandum.
- d) Whether Simplot is entitled to attorney fees on appeal.

4. Is additional reporter's transcript requested? No.

5. The cross-appellant requests the following documents be included in the clerk's record in addition to those automatically included under Rule 28, I.A.R. and those designated by the appellant in the initial notice of appeal:

- 12/18/2018 Memorandum and Affidavit of Costs and Attorneys’ Fees
- 1/9/2019 Plaintiff’s Objection to Defendant’s Request for Costs and Attorney’s Fees
- 1/18/2019 Amended Memorandum and Affidavit of Costs and Attorneys’ Fees

6. The cross-appellant requests the following documents, charts, or pictures offered or admitted as exhibits to be copied and sent to the Supreme Court in addition to those requested in the original notice of appeal.

N/A

7. I certify:

(a) That a copy of this notice of cross-appeal and any request for additional transcript have been served on the reporter.

(b) That the clerk of the district court or administrative agency has been paid the estimated fee for preparation of the reporter's transcript and any additional documents requested in the cross-appeal.

(c) That service has been made upon all parties required to be served pursuant to Rule 20.

DATED this 24th day of May, 2019.

ANDERSON, JULIAN & HULL LLP

By 
Brian K. Julian, Of the Firm
Attorneys for Respondent/Cross-Appellant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 24th day of May, 2019, I served a true and correct copy of the foregoing NOTICE OF CROSS-APPEAL by delivering the same to each of the following, by the method indicated below, addressed as follows:

Erika Birch
T. Guy Hallam
Lourdes A. Matsumoto
STRINDBERG & SCHOLNICK, LLC
1516 W. Hays St.
Boise, ID 83702
T: (208) 336-1788
F: (208) 278-3708
E: erika@idahojobjustice.com
guy@idahojobjustice.com
lourdes@idahojobjustice.com
Attorneys for Appellant/Cross-Respondent

- U.S. Mail, postage prepaid
- Hand-Delivered
- Overnight Mail
- Facsimile
- E-Mail
- iCourt/e-File

Tiffany Fisher
Roxanne Patchell
Court Reporters
Ada County Courthouse
200 W Front St.
Boise, ID 83702
E: rpatchell@adacounty.id.gov
E: tfisher@adaweb.net

- U.S. Mail, postage prepaid
- Hand-Delivered
- Overnight Mail
- Facsimile
- E-Mail
- iCourt/e-File



Brian K. Julian

TO: Clerk of the Court
Idaho Supreme Court
451 West State Street
Boise, Idaho 83720
(208) 334-2616

Filed: 06/18/2019 07:58:43
Fourth Judicial District, Ada County
Phil McGrane, Clerk of the Court
By: Deputy Clerk - Wegener, Kelle

IN THE SUPREME COURT OF THE STATE OF IDAHO

----- x Docket No. 47020
ERIK KNUDSEN, :
 :
 Plaintiff-Appellant, :
 :
 vs. :
 :
 JR SIMPLOT COMPANY, a Nevada :
 Corporation, :
 :
 Defendant-Respondent. :
----- x

NOTICE OF TRANSCRIPT OF 23 PAGES LODGED

Appealed from the District Court of the Fourth Judicial District of the State of Idaho, in and for the County of Ada, Honorable Deborah Bail, District Court Judge.

This transcript contains:

03-13-19 Motion to Reconsider Hearing

DATE: June 14, 2019

Tiffany Fisher, Official Court Reporter
Official Court Reporter,
Judge Melissa Moody
Ada County Courthouse
Idaho Certified Shorthand Reporter No. 979
Registered Professional Reporter

Erika Birch (Bar No.7831)
T. Guy Hallam (Bar No. 6101)
Lourdes A. Matsumoto (Bar No. 9920)
STRINDBERG & SCHOLNICK, LLC
1516 W. HAYS ST.
BOISE, ID 83702
(t) 208.336.1788
(f) 208.287-3708
erika@idahojobjustice.com
guy@idahojobjustice.com
lourdes@idahojobjustice.com

Attorneys for Plaintiff/Appellant

**IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA**

ERIK KNUDSEN,

Appellant,

vs.

**J.R. SIMPLOT COMPANY, a Nevada
Corporation,**

Respondent.

AMENDED NOTICE OF APPEAL

Case No: CV01-17-13956

Judge Deborah Bail

TO: THE ABOVE-NAMED RESPONDENT, J.R. SIMPLOT COMPANY, AND THE PARTY'S ATTORNEYS OF RECORD, BRIAN K. JULIAN AND ANDREA FONTAINE, AND THE CLERK OF THE ABOVE-ENTITLED COURT.

NOTICE IS HEREBY GIVEN THAT:

1. The above-named Appellant/Cross-Respondent, Erik Knudsen, hereby provides this Amended Notice of Appeal against the above-named Respondent/Cross-Appellant, J.R. Simplot Company, to the Idaho Supreme Court from the Decisions and Orders previously identified in the original Notice of Appeal.

2. Appellant/Cross-Respondent provides the following preliminary statement as part of this Amended Notice of Appeal, related to additional issues which the Appellant/Cross-Respondent intends to address in the appeal. The preliminary issues on appeal, which were identified in the original Notice of Appeal, are incorporated herein by reference. On May 24, 2019 Defendant filed a *Notice of Cross Appeal* raising the District Court’s decision not to award attorneys fees. Thus, in order to adequately respond to the Cross Appeal, Appellant/Cross-Respondent adds the following issues on appeal in addition to those outlined by Cross-Appellant in its *Notice of Cross Appeal*:

- f. Whether Simplot Adequately Supported its Motion for Attorneys’ Fees and Costs.
- g. Whether Simplot’s Amended Memorandum and Affidavit of Costs and Attorneys’ Fees was an appropriate filing and whether it was timely.

3. As part of this Amended Notice of Appeal, the Appellant/Cross-Respondent hereby modifies the original request for the Clerk’s record. As such, the Appellant/Cross-Respondent hereby requests the following documents to be included in the clerk’s record in addition to those automatically included under Rule 28, I.A.R.:

- 07/27/17 Complaint
- 09/11/17 Answer
- 11/29/17 Amended Notice of Trial Setting and Order Governing Further Proceedings
- 05/17/18 Rule 29 Stipulation Re: Out of State Witness
- 06/20/18 Defendant’s Motion for Summary Judgment and Supporting Affidavit
- 06/27/18 Defendant’s Memorandum and Affidavits in Support of Defendant’s Motion for Summary Judgment
- 07/27/18 Unopposed Request for Status Conference

08/22/18 Plaintiff's Memorandum in Opposition to Defendant's Motion for Summary Judgment, with Supporting Statement of Facts, Affidavit, and Exhibits

08/29/18 Defendant's Reply to Plaintiff's Opposition to Summary Judgment

11/13/18 Decision Re: Motion for Summary Judgment

01/23/19 Judgment

02/06/19 Plaintiff's Motion to Reconsider, and Supporting Memorandum and Affidavit with attachments

02/06/19 Plaintiff's Motion to Strike Defendant's Amended Memorandum and Affidavit of Costs and Attorneys' Fees

03/06/19 Defendant's Opposition to Plaintiff's Motion to Reconsider, with Supporting Affidavit

03/06/19 Defendant's Response to Plaintiff's Motion to Strike Defendant's Amended Memorandum and Affidavit of Costs and Attorneys' Fees

03/27/19 Amended Judgment

4. I certify that:

- a. A copy of this notice of appeal has been served on each reporter of whom a transcript has been requested as named below:
 - i. Reporter Roxanne Patchell for the hearing regarding Defendant's Motion for Summary Judgment, on September 5, 2018; and
 - ii. Reporter Tiffany Fisher for the hearing regarding Plaintiff's Motion to Reconsider, on March 13, 2019.
- b. Each Court Reporter has been paid for the preparation of transcripts.
- c. The initial payment of \$100.00 for preparation of the clerk's record has been paid. Any remaining balance will be paid upon the receipt of an invoice.

- d. The appellate filing fee was paid with the filing of the original Notice of Appeal on May 7, 2019.
- e. Service has been made upon all parties required to be served pursuant to Rule 20.

DATED this 30th day of July, 2019.

/s/ Erika Birch
Erika Birch
T. Guy Hallam, Jr.
Lourdes Matsumoto
Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that on July 30, 2019, a true and correct copy of the foregoing pleading was served on the following via electronic mail and the electronic filing system:

Brian K. Julian
Andrea Fontaine
ANDERSON, JULIAN & HULL, LLP
250 S. 5th Street, Ste. 700
P.O. Box 7426
Boise, Idaho 83707-7426
bjulian@ajhlaw.com
ajfontaine@ajhlaw.com

Tiffany Fisher
Roxanne Patchell
Court Reporters
Ada County Courthouse
200 W Front St.
Boise, ID 83702
rpatchell@adacounty.id.gov
tfisher@adaweb.net

/s/ Dunja Subasic

Dunja Subasic

TO: Idaho Supreme Court/Court of Appeals
Post Office Box 83720
Boise, Idaho 83720-0101
Email: Sctfilings@idcourts.net

ERIK KNUDSEN,)
)
Appellant,) DOCKET NO. 47020
)
vs.)
)
J.R. SIMPLOT COMPANY, a)
Nevada Corporation)
)
Respondent,)
_____)

NOTICE OF TRANSCRIPT LODGED

Notice is hereby given that on September 18, 2019,
I lodged one transcript of 34 pages in length for the
above-referenced appeal with the District Court Clerk of
the County of Ada in the Fourth Judicial District.

Appeal transcript consisting of the following
hearing: Motion for Summary Judgment, September 5, 2018.

Roxanne K. Patchell, RPR, CSR
Idaho CSR Number 733
California CSR Number 12057

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

ERIK KNUDSEN,

Plaintiff-Appellant-
Cross Respondent,

vs.

J.R. SIMPLOT COMPANY, a Nevada
corporation,

Defendant-Respondent-
Cross Appellant.

Supreme Court Case No. 47020

CERTIFICATE OF EXHIBITS

I, PHIL McGRANE, Clerk of the District Court of the Fourth Judicial District of the State of Idaho in and for the County of Ada, do hereby certify:

There were no exhibits offered for identification or admitted into evidence during the course of this action.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the said Court this 20th day of September, 2019.

PHIL McGRANE
Clerk of the District Court

[Signature]
Deputy Clerk



IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

ERIK KNUDSEN,

Plaintiff-Appellant-
Cross Respondent,

vs.

J.R. SIMPLOT COMPANY, a Nevada
corporation,

Defendant-Respondent-
Cross Appellant.

Supreme Court Case No. 47020

CERTIFICATE OF SERVICE

I, PHIL McGRANE, the undersigned authority, do hereby certify that I have personally served or mailed, by either United States Mail or Interdepartmental Mail, one copy of the following:

CLERK'S RECORD AND REPORTER'S TRANSCRIPT

to each of the Attorneys of Record in this cause as follows:

ERIKA BIRCH

ATTORNEY FOR APPELLANT

BOISE, IDAHO

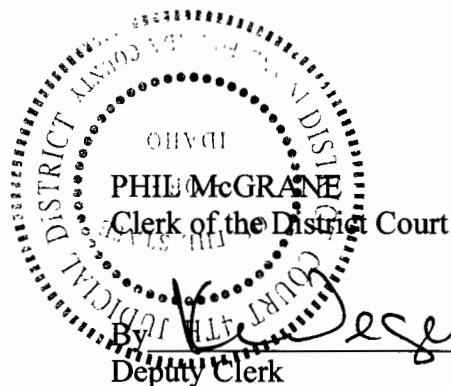
BRIAN K. JULIAN

ATTORNEY FOR RESPONDENT

BOISE, IDAHO

Date of Service: _____

SEP 20 2019



IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

ERIK KNUDSEN,

Plaintiff-Appellant-
Cross Respondent,

vs.

J.R. SIMPLOT COMPANY, a Nevada
corporation,


Defendant-Respondent-
Cross Appellant.

Supreme Court Case No. 47020

CERTIFICATE TO RECORD

I, PHIL McGRANE, Clerk of the District Court of the Fourth Judicial District of the State of Idaho, in and for the County of Ada, do hereby certify that the above and foregoing record in the above-entitled cause was compiled under my direction and is a true and correct record of the pleadings and documents that are automatically required under Rule 28 of the Idaho Appellate Rules, as well as those requested by Counsel.

I FURTHER CERTIFY, that the Notice of Appeal was filed in the District Court on the 7th day of May, 2019.


PHIL McGRANE
Clerk of the District Court
By Phil McGrane
Deputy Clerk