UNITED STATES DEPARTMENT OF LABOR

OFFICE OF ADMINISTRATIVE LAW JUDGES

COVINGTON DISTRICT OFFICE

Issue Date: 07 November 2023

In the Matter(s) of:

WESLEY A. HARDMAN, *Complainant*, v. **GEORGETOWN MORTGAGE, LLC,** *Respondent*.	**CASE NO.: 2018-CFP-3** **PATRICK M. ROSENOW** District Chief Administrative Law Judge

DECISION AND ORDER

This matter involves a complaint under the whistleblower protection provisions of the Consumer Financial Protection Act of 2010 (CFP)[1] and the regulations promulgated thereunder.[2] Complainant alleges that he was mistreated and ultimately fired by Respondent in retaliation for raising concerns about Respondent's racially disparate loan pricing.

Procedural Background

Complainant filed his complaint with the Occupational Safety and Health Administration (OSHA) on 20 Nov 17. OSHA dismissed the complaint on 31 Jan 18. Complainant filed objections and a request for de novo review before the Office of Administrative Law Judges (OALJ) on 1 Mar 18. The case was referred to OALJ and assigned to ALJ Kennington. On 8 May 18, he issued a scheduling order setting the hearing for 8 Nov 18. However, ALJ Kennington later retired and the case was reassigned to me in August 2108. The hearing was then continued twice, first to 7 Mar 19 and then to 16 May 19.

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1 12 U.S.C. § 5567.
2 29 C.F.R. Part 1985.

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On 16 May 19, I held a hearing at which the parties were afforded a full opportunity to call and cross-examine witnesses, offer exhibits, make arguments, and submit post-hearing briefs. During the hearing, questions arose about the existence and availability of certain emails. At the close of the hearing, the parties agreed to assess the technical issues involved in retrieving the emails and the legal issues related to disclosing and admitting them. If they could agree on the answers to those questions, they could file a joint motion and if they did not and needed a decision, they would submit their positions to me. They agreed that they could do that in the time it would take to prepare the transcript and I set no further deadlines. The transcript was made available on 8 Jul 19, but neither party filed anything in the interim or for the next 22 months, during the COVID epidemic.

Eventually, on 3 May 22, I contacted the parties, assuming they had likely resolved their differences, but noting I had not received any settlement documents to approve. The parties answered that the case had not settled, ultimately agreed to a briefing schedule, and filed their briefs.

My decision is based upon the entire record, which consists of the following:[3]

- Hearing testimony of Complainant, Deborah Byrd, Roy Jones, and Linda Preece
- Joint Exhibits (JX) 11-98, 101-106

STIPULATIONS

The parties stipulated that:

> Both Complainant and Respondent would fall under the coverage of the Act. Complainant was hired by Respondent on 12 Aug 14 as a regional manager and was subsequently promoted to the position of National Sales Manager on 16 Dec 14. On 1 Sep 15, his title was changed from National Sales Manager to Executive Vice President of Sales as part of a companywide effort to formalize all executive management titles. That gave him two titles, but his duties were the same. As the Executive Vice President of Sales, Mr. Hardman reported directly to Roy Jones, who was CEO and managing member for Respondent.
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> In March and May of 2017, Mr. Jones informed Complainant that his subordinates had made complaints about him and Complainant must change his behavior. Respondent terminated Complainant's employment on 30 Jun 17.

[3] I have reviewed and considered all testimony and exhibits admitted into the record. Reviewing authorities should not infer from my specific citations to some portions of witness testimony and items of evidence that I did not consider those things not specifically mentioned or cited. The parties were cautioned that exhibits (other than deposition transcripts) in excess of 20 pages are considered to be an en globo collection of records and would not be part of the evidentiary record until specific pages are cited either during the course of the trial or on brief. Tr 28.

During the time that Complainant worked for Respondent, he was properly paid all due and appropriate compensation.[4]

ISSUES FOR ADJUDICATION

Complainant alleges that:

In the Spring of 2017, branch manager Khai Nguyen complained to Dallas/Fort Worth ("DFW") Region Manager Alana Dorbandt and Complainant about the interest rates that his mortgage applicants were being charged. Complainant looked further into Nguyen's complaint and determined that Nguyen's applicants paid some of the highest rates in the company. Complainant also determined Nguyen's applicants were predominately Vietnamese. Respondent spent between $20,000.00 and $30,000.00 a year on advertising targeting DFW's Vietnamese community.

Complainant became concerned that the Vietnamese mortgage applicants were treated less favorably than non-Vietnamese applicants. He reviewed Respondent's "business review package" containing loan pricing showing the borrower's ethnicity. He concluded that even if Respondent's rate setting practice was facially neutral, it had an adverse and disparate impact on Nguyen's Vietnamese applicants.

In February 2017, he met with CEO Roy Jones, President Barbara Jones, and CFO Michael Jones and told them about his concerns regarding the disparate impact of loan pricing on Vietnamese customers. Roy Jones responded by observing that reducing pricing on any mortgage loans would make it harder to reach their target of six million in net profits. Roy Jones also said he would ask Compliance Manager Linda Preece to look into it.[5]

Nguyen continued to complain about the higher pricing and in March 2017, Complainant requested information regarding the loan pricing from different branches. Complainant raised the disparate loan pricing issue again with Roy and Michael Jones verbally and by email. Complainant was concerned about an audit. Since he was one of four people who knew what these numbers were, he wanted to able to show that he had taken action to make a change. He received no response from either Jones and was concerned because of the lengthy discussion they had the month before.

On 20 Mar 17, Barbra Jones told Complainant they were taking away some of his responsibilities and Roy Jones told him he would no longer supervise the Marketing Department. Complainant continued to communicate his concerns

[4] Tr. 29-31.

[5] Months later, when Complainant asked Preece about the issue of loan pricing at Nguyen's branches, Preece answered that it was the first she'd heard of it.

> about the pricing to Roy Jones by email in April and May of 2017. In May 2017, Roy Jones met with Nguyen and Respondent subsequently changed pricing in Nguyen's branches.
>
> In June of 2017, Roy Jones called Complainant to tell him he was fired, but refused to give a reason. Over the following weeks, Complainant continued to press for an explanation. On 26 Jul 17, Roy Jones sent Complainant an email saying he had decided to eliminate the National Sales Manager position.

Based on his factual allegations, Complainant argues that his complaints about disparate pricing constitute protected activity, which in turn contributed to his diminished job duties and ultimate termination. He seeks lost past earnings in the amount of $175,000 and future lost earnings in the amount of $600,000.

Respondent submits the evidence fails to establish any protected activity. It denies some of the alleged communications ever took place. It argues that the ones that did take place failed to communicate a reasonable belief about or refusal to participate in any violation within the coverage of the Act. Following that premise, it suggests that Respondent could not have been aware of any protected activity and there could have been no contribution to its decision to terminate him. Finally, it explains that Complainant's poor performance and deplorable behavior prompted his dismissal.

LEGAL STANDARDS

The CFP protects employees who perform tasks related to offering or providing a consumer financial product or service and are terminated or discriminated against because they engaged in protected activity related to violations of any provision of the Act, provision of law that is subject to the jurisdiction of the CFP Bureau, or any rule, order, standard, or prohibition prescribed by the Bureau. That protected activity includes providing to the employer information the employee reasonably believes related to such violations and objecting to or refusing to participate in any activity, policy, practice, or assigned task that the employee reasonably believes to be such a violation.[6]

The CFP Bureau's purpose is to enforce "Federal consumer financial law" for the purpose of ensuring access for consumers to markets for "consumer financial products and services," and ensuring that the markets are fair, transparent and competitive.[7] A consumer financial product or service includes extending credit and servicing loans and providing real estate settlement services.[8] "Federal consumer financial law" includes the provisions of Title X of the Dodd-Frank Act and the "enumerated consumer laws."[9] The

[6] 12 U.S.C. § 5567(a).
[7] 12 U.S.C. § 5511.
[8] 12 U.S.C. § 5481(5), (15).
[9] 12 U.S.C. § 5481(14).

Equal Credit Opportunity Act ("ECOA") prohibits discrimination with respect to any aspect of a credit transaction on the basis of race, color, or national origin.[10]

A successful whistleblower complainant must show he engaged in protected activity, his employer took adverse action against him, and his protected activity was a contributing factor in the adverse action. The specific decision maker need not have knowledge of the protected activity if he relies on others who do have knowledge.[11] A contributing factor is "any factor which, alone or in connection with other factors, tends to affect in any way the outcome of the decision."[12] It may be proven indirectly by circumstantial evidence such as:

> temporal proximity, indications of pretext, inconsistent application of an employer's policies, an employer's shifting explanations for its actions, antagonism or hostility toward a complainant's protected activity, the falsity of an employer's explanation for the adverse action taken, and a change in the employer's attitude toward the complainant after he or she engages in protected activity.[13]

An employer can escape liability even with a finding of contributing factor by showing clearly and convincingly that it would have taken the same unfavorable action absent the protected activity.[14]

DISCUSSION

Complainant bears the burden to prove more likely than not that he engaged in protected activity, Respondent took adverse action against him, and the protected activity was a contributing factor in the decision to take adverse action. There is no dispute as to Complainant's dismissal as an adverse action.

Protected Activity

The parties have fundamental and irreconcilable factual disputes as to Complainant's alleged protected activities.[15] Respondent denies that some of the alleged communications ever took place at all and argues that, even if they did, they did not

[10] 15 U.S.C. § 1691(a).
[11] *See, e.g., Warren v. Custom Organics*, ARB No. 10-092, ALJ No. 09-STA-30 (Feb. 29, 2012).
[12] *Williams v. Domino's Pizza,* ARB No. 09-092 at 5, ALJ No. 09-STA-52 (ARB Jan. 31, 2011).
[13] *DeFrancesco v. Union R.R. Co.,* ARB No. 10-114, ALJ No. 09-FRS-09 (ARB Feb. 29, 2012). *See, e.g., Bobreski v. J. Givoo Consultants, Inc,* ARB No. 09-057 at 13, ALJ No. 08-ERA-03 (ARB Jun. 24, 2011).
[14] 12 U.S.C. § 5567(c)(3)(b).
[15] I note that while the parties have significant disagreements about what Complainant may have said about it, there is not a significant dispute over what Respondent was actually doing in terms of pricing at Nguyen's branch.

reflect any reasonable belief or concern about possible violations. A review of the evidence reveals the stark contradiction between the witnesses' accounts.
Complainant testified at hearing that:

> Khai Nguyen was one of the top two producers in the company and had the largest branch. His primary location was in the DFW area, but he had satellite locations in the New Orleans area, Houston, and Dallas. Nguyen reported to regional manager Alana Dorbandt, who reported to him. Nguyen complained many times about pricing, specifically on Veterans and FHA loans. Loan officers and branch managers always want better rates and their chatter was background noise that will probably never end. Nguyen's complaints were more than background noise and started to reach a fever pitch in late January or early February of 2017.
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> He looked at the corporate margin and branch margin spreadsheet and after a very quick review saw that the FHA and VA rate that Nguyen had at his branch was the highest in the company. Nguyen targeted his advertising to Vietnamese markets and he knew that the bulk of Nguyen's client base was Vietnamese. As a result, he believed the higher rates in that branch represented a disparate impact on Vietnamese. He has had extensive training on disparate impact and treatment issues. There is annual compliance training for every employee in the company. It was also a topic at various meetings and conventions.
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> The monthly detailed business review package for every branch contained a pricing analysis. He could see how see every loan was priced. There are multiple facts that affect the rate that a borrower gets. There was another branch with high costs, but that branch client base was not a protected class, so there was no disparate impact.
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> In February of 2017, he attended a profitability meeting with co-owners Roy and Barbara Jones and their CFO son, Michael. It was in the home office and lasted about six hours. Roy was on a mandate to make at least $6,000,000 in net profit. The goal was to get up to .600 percent of net profit as a percent of the loan value. The closest they got while he was there was .358.
>
> During the meeting, he told them he was very concerned about pricing and disparate impact and even said that disparate treatment was occurring. Roy Jones responded that Nguyen could discount his rate and the executive team had the responsibility to be aware of pricing practices and prevent disparate impact. He made it clear that they were going to make $6,000,000 or 60 basis points in net profit one way or the other. The Nguyen issue was a problem because addressing it would reduce the margin. Roy did say that he would ask Linda Preece, the compliance manager to look into it.
>
> He continued to get complaints from Nguyen and the other branch manager. The complaints were increasing in severity because their perception was that they

were losing business and nothing was changing. By Wednesday, 15 Mar 17, he had received 12 additional complaints and asked Dawn Montgomery, who was the head of secondary marketing, to send him the branch and corporate margin report, so he could see if there had been any changes. He got an email back from her with that information.[16] About two hours later, he sent an email to Roy and Michael to memorialize his concern and shine a brighter spotlight on the issue.[17] He took a picture of the email to cover himself. He didn't use the words disparate impact, regulatory, or violation. He knew that Roy and Michael would have referred back to their 30 to 45-minute discussion on this issue and was walking on eggshells. He did mention losing business to try and motivate Roy and Michael to fix it. Neither Michael Jones nor Roy Jones responded to his email and he had no further discussions with Roy Jones about his concerns over the loan pricing issues.

In May 2017 he was copied on an email from Alana Dorbandt reporting that Nguyen was still unhappy about pricing, she had met with him, and she was concerned he might quit.[18] He followed up with his own email to give Roy and Michael additional context, since Dorbandt wasn't privy to the corporate margin that drove the higher rates that Nguyen was complaining about.[19] It was the first time he specifically put his concerns about disparate impact in writing. Neither Roy nor Michael responded his email, but they responded to Dorbandt's. He did have a subsequent phone conversation with Roy, who told him that as the owner, he had to deal with this directly. He took Roy's words as an indication to get out of the way. He understands that Roy set up a meeting with Nguyen the following Wednesday to look at reducing the corporate margin.

On 22 May 17 they attended the Texas Mortgage Bankers Association Convention. He asked Preece if she was aware of the pricing issues that have been going on at Nguyen's branch and she said it was the first she had heard of it.

Roy Jones:

<u>Declared that</u>:[20]

Complainant never alerted him or Compliance Manager Linda Preece to any concerns or perceptions he claims to have had about potential regulatory violations.

<u>Testified at hearing that</u>:

[16] JX-95.
[17] JX-94.
[18] JX-98.
[19] JX-97.
[20] In a 29 May 18 statement.

In 2012, Nguyen and another manager came to him to complain about pricing. People complain about interest rates all the time.

Complainant never reported concerns regarding possible disparate impact to him. He does not recall any meeting he had with his son and Complainant in February of 2017. He would most certainly remember a conversation where someone raised serious regulatory issues. He has no recollection of speaking in reference to disparate impact or treatment. He has no recollection of any substantive face-to-face meeting with Complainant about the issue. Complainant never said he believed the company was violating the Equal Credit Opportunity Act, discriminating against Vietnamese borrowers, or discriminating against any type of borrower. Complainant never said anything about Nguyen's customer base being Vietnamese and paying more to advertise heavily to the Vietnamese community. Even if Complainant had told him that a branch marketing primarily to Vietnamese customers was charging higher rates than most of his other branches, it wouldn't indicate disparate impact to him, because they run software programs to identify those kinds of issues.

He gets two or three hundred emails a day and does not specifically recall Complainant sending him an email about the issue.[21] If he had seen the email where Complainant says he is worried about so much of Nguyen's business being Vietnamese, he might have been prompted to look into it, but he never saw that.

The first time he heard of the disparate impact issue was after they fired Complainant and he threatened to make a complaint to the Department of Labor or CFPB unless he was given $750,000 in severance pay.

Linda Preece at hearing testified that:

She is Respondent's Chief Compliance Officer and has worked in compliance for Respondent since 2012. They have a software program that analyzes pricing and identifies anomalies. Anomalies can be investigated by zip code and then zip codes can be related to demographic data. They can investigate possible disparate impact pricing. She doesn't recall the software identifying any unexplained issues with pricing in Nguyen's branch. She does not recall Complainant ever reporting concerns about discriminating against any borrowers.

There was one instance at a TMBA conference after dinner when Complainant said he had asked Roy to lower Nguyen's rates. That's all she recalls of the conversation. She didn't understand him to be reporting regulatory violations. She just thought it was odd for him to bring it up then. She really doesn't recall the conversation or whether Complainant asked her if Roy had mentioned the issue to her as the compliance officer. He never followed up on it or used the words disparate impact.

[21] JX-97.

Khai Nguyen:

> Declared that:[22]
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> He firmly disagrees with the accusation that Respondent engaged in unfair pricing against Vietnamese customers. Earlier this year, he raised concerns about loan pricing on Government Loan programs to Complainant, Michael Jones, and Roy Jones. His objective for doing so was to obtain better pricing for all customers. The loan pricing for these programs is conducted blindly and customers' race and ethnicity are not contemplated when setting rates.
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> Testified that:[23]
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> He raised concerns about loan pricing on government loan programs to Complainant, Michael Jones, and Roy Jones because he wanted better pricing on government loans. Even if his primary customer demographic is Vietnamese and his branch is required to charge a higher interest rate on loans that you make to your customers, it isn't fair to say that that negatively impacts his Vietnamese customers, because the pricing is the same for every race. Less than 10 percent of his loans are government loans and of that, probably less than 25 or 30 percent are Vietnamese. He remembers having a conversation that he wanted better pricing on conventional loan versus FHA loan because 25 percent of his borrowers were conventional borrowers. Complainant was not with Respondent when he made a deal to lower the conventional rate.

Dawn Montgomery declared that:[24]

> As far as she knows, Complainant did not use the technological aids he needed to track pricing and make decisions regarding current and potential branches. To her knowledge, he never used his login for their pricing engine (Optimal Blue). It would be difficult to make decisions about pricing or margins without being able to access and use that information. They never steered or overcharged the Vietnamese community for loans. The margins for branches are set when the branches are initially on-boarded, are based on the particular Metropolitan Statistical Area (MSA) and are very rarely modified or deviated from. Residential Mortgage Loan Officers must have approval to price loans below a particular threshold. No margins would have been changed on a loan-by-loan basis.

The threshold question is not whether Respondent was actually committing any violations, but whether Complainant had a reasonable basis to express his concern about the possibility that may have been happening. Again, the record is relatively clear as to

[22] In a 6 Apr 18 statement.
[23] At a 2 Oct 18 deposition.
[24] In a 24 Mar 18 statement.

Respondent's pricing decisions in and the demographics related to Nguyen's branch. Complainant argues that his understanding of the relative rates and relative demographics led him to have concerns about the possibility of disparate impact on the Vietnamese population in that area. Perhaps the most persuasive evidence on this point was Roy Jones' concession that if he had seen the email where Complainant says he is worried about so much of Nguyen's business being Vietnamese, he might have been prompted to look into it. Consequently, I find, to the extent that any communications were made about the issue, that they would qualify as protected activity.

However, Jones also added to his concession the caveat that he never saw the email, just as he never had any conversation with Complainant about the possibility of disparate impact violations. Indeed, Complainant's account of the issue is in almost direct contradiction to those of all the other witnesses.

The one thing the evidence does appear to clearly establish is that branch managers regularly asked for lower rates that they could offer to their customers. However, Complainant testified without hesitation that Nguyen's complaints were much more than background noise and reached fever pitch in January or February 2017. At the same time, Complainant testified that Nguyen specifically identified VA and FHA loans. Complainant never testified that Nguyen expressed any concerns about the impact pricing had on his Vietnamese customers. Nguyen agreed that he was seeking better rates in general but denied ever having any concerns about the relationship between rates and the race of his customers. Indeed, it appears that Complainant was the only one to consider the demographic's skew toward Vietnamese and possible disparate impact.

Much more problematic is Complainant's recollection of a six-hour meeting during which he specifically communicated that he was very concerned Respondent was engaging in pricing which constituted disparate impact and even disparate treatment. Roy Jones testified he could not recall any such meeting, much less Complainant raising issues about disparate impact or disparate treatment. Jones added that he would most certainly recall any meeting in which Complainant would have done that. It is difficult to attribute that inconsistency to faulty memories or ambiguities.

The same is not necessarily true of Complainant's testimony about having sent emails in March and May 2017, since the record contains copies of those emails. That said, the emails are far less specific in terms of raising disparate impact. The March email mentions not only Nguyen, but another manager and notes they have significant complaints about their government loan pricing. There is nothing in the email that would even imply Complainant was raising concerns about racially disparate pricing practices. Complainant argues that Roy and Michael Jones would have understood what he meant because of their previous discussions in February. Complainant's May email is less ambiguous, since he specifically articulates his concerns that Nguyen's prices are high when much of his market is Vietnamese. Complainant does use the term disparity, but in terms of Nguyen comparing his FHA pricing with other managers. Roy Jones denies having read the email, explaining that he gets hundreds each day. However, to establish the element of protected activity, Complainant need only show that he made the communication, not that someone else received or understood it.

Given the lack of any corroboration of Complainant's testimony, the evidence is insufficient to establish by a preponderance of the evidence that there was a six-hour meeting during which Complainant specifically expressed his concerns about disparate pricing or treatment to the Joneses. While the evidence establishes by a preponderance of the evidence that Complainant sent the March email, it is far too ambiguous to constitute protected activity. However, the evidence is sufficient to establish by a preponderance of the evidence that Complainant engaged in protected activity by way of his May email.

Having established protected activity in May 2017, Complainant bears the burden of establishing that his protected activity was a contributing factor to his termination.

Contributing Factor

Complainant testified at hearing that:

> Roy wanted him to grow sales and to do it profitably. They did experiment in growing outside Texas and Colorado, but it was very expensive to grow in other markets. Roy's emphasis on growing outside the Texas and Colorado varied with the quarter. Their recruiter sourced Steven Hung who was hired as a California region manager. He had never known Hung, but they put him through the hiring process and as a team decided to hire him and enter the California market.
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> Roy wanted to make the same percentage of profit per loan in California, but California doesn't operate that way. He and Hung both told Roy they had to look at the dollar profit per loan and adjust their profit expectations. Roy wouldn't even go to California to see for himself. When he could see that there was absolutely no desire to lower the profit percentage per loan to be able to compete effectively in California, it was time to exit the market.
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> He recruited, in some part, three of Respondent's top four producers, but did not have unilateral authority to open a branch or hire a branch manager. Roy very specifically instructed Human Resources not to issue an offer letter without his signature.
>
> They hired Charlie Rogers to be to be the Vice President of Sales. He had been president of retail at another company with about $800,000,000 of responsibility. Rogers told him he joined Respondent in spite of Roy so they could work together. Rogers said he left Respondent because of some wide sweeping regulatory changes related to closing loans that resulted in the closing manager,

who was unable to deal with changes, resigning. The executive VP of operations almost threw her hands up in the air because she didn’t know what to do. They had to work together to bring loan production under control because they had branches around the company threatening to resign. Charlie could not believe how mismanaged that was and said the reason why the company was flat and losing money was Roy's mismanagement.

JX-20 does not show who he hired. The Department CPC’s are corporate positions and he did not manage the corporate team. So, that would be eight people that he had zero to do with. There were also people that were hired in the sale that were hired before he was the National Sales Manager. The conclusion about costs of his hires isn’t fair. There are many salespeople that are listed on this report that generated revenue for the company, but it simply looks at the expense without associating any revenue.

JX-73 is a branch reserves schedule summary that Respondent ordinarily produces and he used to review. It doesn't accurately capture the profitability of an individual branch because it doesn’t count for differential in loan types.

When he started and they began to increase sales in 2015, there was chaos because they overwhelmed the Operations Department, which had not grown sufficiently with sales. They were putting additional sales into the system, but hadn't hired extra processors, underwriters, and closers to manage that volume. That was the chaos and they lost some good people as a result of it. In his tenure, they grew sales and were profitable every year. After he left, sales got flat again. They barely made money and laid off dozens of people.

He reported directly to Roy and they had a good interpersonal and work relationship. They would communicate frequently and go out to dinner to talk about the company. He was promoted and given raises. Between 2015 and 2016, there was more than a $1,000,000 decrease in net profit. Roy told him he was extremely pleased with his performance. That continued through 2016. He oversaw the company leadership summit in December of 2016. In February 2017, Barbara Jones gave him a gift and a note about his work.[25]

All of that suddenly changed. On 20 Mar 17, Barbara emailed him that he had been relieved of threes areas of responsibility: the company roadshow, the president’s club trip, and the leadership summit. Shortly after that, Roy called to say they were taking away the Marketing Department. Roy gave no explanation other than to say he was CEO. The change in his relationship with Roy was like night and day. Sales and profitability were indisputable, but Roy started saying they had gotten some complaints that he was being harsh to people. He asked for specifics, so he could change, but Roy said he didn’t want to put people making the complaints at risk.

[25] JX-93.

On 29 Jun 17, Roy called him and told him they were going to fire him. He asked why, but Roy wouldn't tell him. He sent emails asking why and finally got an answer in mid-July.[26] Roy said he was eliminating the National Sales Manager position and assuming those duties himself, with the assistance of the Regional Manager. As far as he knows that never happened and Roy hired someone to replace him.

Roy Jones:

Declared that:[27]

He fired Complainant not because of his acting as a whistleblower for regulatory violations, but because of 1) numerous negative managerial and interpersonal behaviors that which resulted in an inability to work well with his superiors, peers, and subordinates; 2) frivolous waste of company resources and his failure to expand and grow business; and 3) personal issues that negatively impacted his job performance.

He hired Complainant as a Regional Manager over the Austin, Texas market in August 2014. Initially, Complainant presented himself to be motivated and collegial, appearing to possess the leadership skills necessary to be a National Sales Manager. He presented many interesting ideas about how to build business and seemed to be the type of individual who would work well with others and implement innovative approaches to business problems and get results.

However, he soon found out that none of his initial impressions of Complainant were accurate. Complainant exhibited no sense of urgency in responding to the requests of management and regularly disobeyed them. When he was hired, Complainant had agreed to leave his house in Dallas and move to the Austin area. However, he stayed in his Dallas home and began making excuses for not moving, saying he needed more time to prepare his home for sale. Despite months of noncompliance, he eventually promoted Complainant to National Sales Manager and agreed to let him continue to live in Dallas.

Complainant had extraordinarily negative relationships with his supervisors, peers, and subordinates. In some instances, employees requested not to work on specific matters, simply to avoid contact with him. Employees at all levels of the company repeatedly described him as condescending, demanding, and rude. Complainant's poor attitude and management style were constant topics of discussion between employees. There was also common consensus within the company that he was prejudiced against women and he made three women cry by

[26] JX-103.
[27] In a 29 May 18 statement.

berating them for minor issues. He was particularly hard on Alana Dorbandt, despite her favorable performance.

Executive managers did not enjoy interacting with Complainant because he was not a team player. Complainant often worked to undermine other Executive Managers including him, Selene Kellam, Michael Jones, and Matt Wilson. Complainant had a large ego and required others submit to his wishes. He often acted out of anger and made rash decisions. When confronted with his own shortcomings, he often became defensive and irrational. In November and December 2015, when they discussed the results of his failed attempt to expand business to California, Complainant claimed that he had never failed at anything.

Complainant often took credit for the successes of others, but deflected responsibility for his own failures onto someone or something else. He was a poor manager who often advocated for expensive and intensive training but did nothing to harness loan officers' newly learned skills upon their return. In total, they spent approximately $288,000 – $163,000 in hard costs, plus about $125,000 for travel, hotel, and food – to send various loan officers to training seminars recommended by Complainant. Complainant convinced them to spend $25,000 in order to send ten employees to a Sales Mastery conference. He assured the management team that he would follow up with the attendees to goal set and develop discipline in those loan officers' implementation behaviors. However, Complainant did not hold the employees accountable for adopting the ideas they developed on the trip and only held a couple of the conference calls that he promised. Complainant did the same thing after convincing them to spend $60,000 to send loan officers on a four-day intensive "boot camp" program. He did not hold the attendees accountable for adopting the principles that they learned at that camp.

Complainant did not properly vet employees before hiring them. In 2015 and 2016, he consistently hired loan officers, branch managers, receptionists, and other sales-related employees without requesting background information from previous employers, asking a reasonable amount of the interview questions, verifying employment histories, doing personality assessments, paying close attention to evidence of job hopping, or setting any standards for production. He made several questionable hiring decisions that cost the company in excess of $3.9 million.

In 2015, he hired Jack Laurent as a second regional manager with a salary more than $100,000 per year. They never received any tangible benefit from Laurent, who never hired a single loan officer or closed a loan of his own. Complainant did task Laurent to take over his responsibility of coaching the Boot Camp/Sales Mastery in what Complainant called "Georgetown University." It was a complete disaster and only six of the more than thirty employees who attended the conference signed up to participate in Complainant’s program. Of those six, two dropped out of the program. In the fall of 2016, he forced Complainant to terminate Laurent's employment.

Also in 2015, Complainant hired Stephen Hung to expand operations in California. He was apprehensive about Complainant hiring Hung, who had come to the company without any loan officers and hired brokers, even though the broker business is not compatible with their model. It soon became apparent that Hung was unable to deliver productive results he promised, but Complainant doubled down and assured them of his confidence in Hung, pressuring them to accept below-standard margins and commit to multi-year facilities leases. After at least six branches failed under Hung's leadership, he forced Complainant to terminate Hung.

In March 2016, Complainant recommended Jeremy Smith, his former employee at Chase, for the vacancy left by Hung's departure. He decided to hire Smith based on Complainant's overwhelming confidence in Smith’s ability to improve the state of operations in California. However, Smith also proved to be unsuccessful and under his supervision, one loan officer committed mortgage fraud and was promptly terminated. Even after these failures, Complainant continued to implore him to hire other former co-workers from Chase in order to make the business in California work. However, he eventually made the decision to stop pouring money into California.

Complainant lacked the ability to follow through on his ideas and was notorious almost immediately for starting a large number of initiatives but not finishing them. He was often more interested in developing catchy names for potential programs than he was in obtaining substantive growth and accomplishing goals. He was unconcerned with wasting the company's resources on ideas he chose to abandon and they spent valuable time and money acquiring various items to help his dreams come to fruition.

In October 2014, Complainant wanted to release a series of weekly videos that shared tactics loan officers could use in order to grow business. He approved the request and purchased $15,000 worth of video equipment, even tasking Marketing Manager Tom McGuire to shoot each video. Complainant only produced about four of these videos before he stopped making them. He said he might produce them in the near future, but never did.

Complainant was incredibly impatient with his assistants, none of whom worked for him for very long. He asked the company to hire an assistant he found in Dallas, and they did. After two or three months, Complainant was unhappy with the assistant's performance and terminated her employment. They then hired a new assistant, whom Complainant also fired shortly thereafter. To remedy the issue, they transferred a long-standing, highly capable employee, Janet Decker, to be Complainant's assistant. That worked for a short period of time, but then Complainant became difficult to work with and Decker requested that she be transferred.

Complainant was also largely responsible for the failure of an unsuccessful campaign to drive loan officers' adoption of a Client Relationship Management (CRM) software system. He asked them to purchase five licenses for a fairly new software system so that he could test it with five loan officers before fully implementing the system company-wide. Although the system worked well, Complainant never pushed for its adoption by other loan officers in the company. Instead, he began advocating for a different CRM system. The failed endeavor wasted a lot of valuable time and money. When the company decided to establish a company-wide adoption of a single software, the program floundered under Complainant, who committed them to beta test yet another program, despite marketing imploring him not to do so.

In March 2017, Complainant wasted thousands of dollars organizing a "road show," in which he traveled to visit employees in Dallas, Austin, Houston, and San Antonio in order to train them on the third program. Branch employees were pulled out of the field for the training and the software did not work. The road show wasted the time and energy of the sales force, branch support staff, and marketing department. It also upset a lot of loan officers who were disappointed in the failure to address long standing software issues and cost the company credibility. At that point, he removed Complainant from the project. Within thirty days, the marketing team found another system that had more features and cost half the price of the one Complainant sourced.

National expansion of operations was a large part of Complainant's duties, but he failed to pursue business in new states and abandoned efforts to improve existing operations in states outside of Texas. He failed to establish operations in any of the eight other states in they were licensed at the time: Wyoming, Utah, Arizona, Washington, New Mexico, Alabama, Georgia, and Florida. With the exception of his failed attempts to develop in California, Complainant neglected to attempt to develop any new regions or hire regional managers in any new areas, despite repeated and specific requests. He was unable to maintain the existing business they had in other states and even failed to follow up on business leads which he had previously bragged about being able to leverage. He had indicated that he had many promising relationships in Chicago but failed to track those leads. Their footprint actually shrank under Complainant’s leadership. He was unable to maintain the existing business they had in other states and claimed that he could not make Oklahoma or Louisiana successful. They limited business in Louisiana and abandoned Oklahoma entirely.

Complainant failed to recruit any successful employees or branches during his tenure. Any positive personnel growth during that time came almost exclusively from existing branches that were with them prior to the start of Complainant’s employment. The only successful branches which joined during his tenure were those led by Denise Donoghue and Leslie McGivern. Complainant was not instrumental in bringing on either branch. Complainant similarly failed to meet any of his sales projections. In 2015, he projected that the company would close

$725 million in sales, but the company closed $640 million. In 2016, he projected that the company would close between $950 million-$1.25 billion in sales, but the company closed only $711 million. In 2017, he projected that the company would close $1 billion in sales, but the company closed only $884 million.

Complainant often failed to show up for work or attend important meetings. Others were frequently unable to find or contact him, especially on Mondays. Toward the end of his employment, he often neglected to attend conference calls that he had personally set. One Monday morning, he failed to appear to conduct several meetings and did not respond to any of their attempts to reach him by phone, email, or text. When they visited his home and he did not answer the door, they became concerned and asked the police to go to his residence to conduct a wellness check. He then left Complainant's parents a voicemail, telling them that they could not find their son. Hours later, Complainant explained that he had a serious personal problem with his girlfriend that kept him from fulfilling his work duties that day.

Complainant routinely abused his power and company resources for personal gain. He ordered employees to spend countless work hours crediting and correcting points for his personal traveler loyalty accounts. He misused company resources when traveling for work, often spending excessive amounts on travel, accommodations, and entertainment. On one occasion, he submitted a request for reimbursement of a bill for $1,220 at a bar but did not provide any details of who he was entertaining for business purposes or what he purchased. When confronted about the bills, he responded that it was a personal expenditure for which he would not continue to request reimbursement. He also had a habit of booking his travel arrangements at the last minute, which forced the company to pay much higher airline and lodging costs. Complainant often stayed at the most expensive hotels in the area, spent excessive amounts on meals, and drove premium rental cars. He repeatedly asked Complainant to control his costs, but to no avail. Finally, he had to force Complainant to put his expenditures on a personal credit card instead of a company credit card. Complainant pleaded to be allowed to use the company card because his personal credit cards were maxed out.

The mismanagement of Complainant's personal credit was a huge cause for concern. Mortgage industry regulators monitor the creditworthiness of loan originators and require that originators maintain good credit and pay their obligations on time. Complainant's creditworthiness prompted persistent internal concerns about compliance with industry standards, as his credit cards were often declined, he was routinely 90 to 120 days behind in payments on his home, and several of his creditors frequently contacted the company regarding past-due payments.

Complainant's personal troubles reflected poorly on the company and tarnished its professional reputation. Around July 2016, Complainant was arrested for possession of illegal drugs on his boat on a lake in the Dallas area. That news

circulated around the company and throughout the mortgage industry. It was hugely embarrassing and damaged the company's reputation.
The true reasons for his decision to fire Complainant were his unwillingness to work with the managers and staff employees with a genuine spirit of teamwork, his frivolous waste of company resources, and his personal issues, which interfered with his productivity at work. His only regret is that he did not fire Complainant much sooner.

Testified at hearing that:

His initial impressions of Complainant were very good. Complainant is very articulate and a bright man who comes across very well. He brought some very good ideas with him. He hired Complainant to be a regional manager: recruit and hire, train, manage the P&Ls, help the branches to be successful and increase volume and income. When he promoted Complainant to National Sales Manager, it was more of the same, but on a larger scale and working through regional managers.

Complainant shared responsibility for profits. They had set basis point goals for profitability and a component of his compensation was based upon profitability. It was more heavily weighted towards bringing loans in. They hoped to equal the peer average of about 60 basis points.

A big part of what Complainant tried to do was recruiting, particularly in the California market. Complainant was fond of the California market and wanted Respondent to establish a presence there. He was also responsible for growing the company's geographic footprint, duplicating what they had accomplished in Texas. They hoped to grow into Arizona, Utah, Wyoming, Colorado, New Mexico, Oklahoma, Louisiana, Alabama, and Florida, but Complainant was unable to do any of that. Since his departure, they have expanded in the Colorado and Alabama market. They are now in 25 states and have branches in Kansas, Ohio, and Tennessee.

Unfortunately, they were not hiring individuals that were going to be successful. They established metrics to try to address that. He has a list of the employees that were hired in the sales division during Complainant’s time.[28] It shows that a majority of those hires were ultimately fired.

Complainant was successful at hiring people in California but was not successful in establishing profitable branches. Once they observed the failure and the losses for about a year to a year and a half in that market, he wanted to move out of that market and told Complainant so. But Complainant was adamant that they needed to give it one more chance. He went along but told Complainant to be very careful and try to spend as little money as possible. That second attempt was in 2016 in

[28] CX-20.

Central and Northern California. They ended up being even less successful in that market, but Complainant still wanted to hire one additional individual. The failure in California was a significant factor in the decision to terminate Complainant. He had made a number of bad hires, particularly in branch managers and regional managers, He also continued to want to push and advocate California to the exclusion of all the other markets that were much, much easier to do business in. As a result, they lost millions of dollars.

Another document shows a summary of branch performance by net profit.[29] It shows a lot of Complainant's branches lost money. The company still turned a profit because of the existing branches that were profitable. Even as national manager, Complainant didn't have unilateral authority to decide to open branches in whatever state. He would have to pitch it to the executive committee.

When he made Complainant the national manager, he did not have enough information come in about bad financial results or bad employment hires. He was not aware of some of Complainant's weaknesses or challenges in interpersonal relationships. The compensation increases were negotiated in early to mid-2015 such that they were to be triggered annually in 2016 and 2017. Complainant had come in and said he had been offered more money to move, so they increased his compensation. When they did that, he was still very optimistic about what they could get done and hadn't seen the negative impact associated with some of Complainant's decisions. After that, even with the problems, he kept his word to Complainant.

People began coming to him and reporting problems in terms of communication with Complainant. They said he was demanding and a fair number of women complained that he was condescending to them. He talked to Complainant about it several times. The first time was sometime in the middle of 2015.

In late 2015 they we were in the process of hiring or had just hired a gentleman with a significantly expensive compensation package. He sent an email telling Complainant there was something wrong with the compensation, it was not what they had agreed to, and he should fix it. Within minutes, he got a two-page email that was extremely defensive denying any responsibility. That disappointed and frustrated him so he sent back a note telling Complainant he was tired of those kinds of emails, which were a complete waste of time. He told Complainant he needed to stay focused on his job and not write a book, defending himself. Complainant reacted very strongly and a few days later told him he seriously considered quitting over it.

He didn't think he really clicked that there might be something going on with Complainant in interpersonal relationships until an executive manager retreat. It came to light that there was some conflict between Complainant and IT manager

[29] JX-73.

Matt Wilson. After a 20 or 25-minute discussion the two seemed to have reconciled their differences. Some period of time later that he realized that the problem hadn't resolved itself but was escalating. He found himself in that situation and in other situations ending up playing referee between Complainant and other managers.

The other managers begged off of having retreats because they could not spend another eight hours going through the petty arguing and the thick atmosphere with Complainant. They said they couldn’t have any kind of healthy conflict with him. He thinks they quit doing them in early 2016.

Matt Wilson had developed a very good software program going into to the leadership summit in the spring of 2016. Complainant pulled that information out of the slides for the summit and went back to the old software. That really frustrated Wilson, who wrote an email to Complainant about the tremendous challenges between Complainant and other members of the executive staff. It became quite contentious and Complainant demanded that they fire Wilson. He told Complainant that was not going to happen, since Wilson was doing a great job and was very well liked by branches and his executive management team.

Complainant indicated he felt like Dawn Montgomery was not working with him and didn't respect him. He asked her about it and she said nothing could be further from the truth. She said she does respond to Complainant when he wants things, but he doesn't have an interest in learning the technology and is not responsive. Complainant came back afterwards and said they had a good discussion and everything was fine. But when he circled back around with Dawn, she said they didn't accomplish anything there and Complainant was condescending.

In the early part of 2017, Denise Donoghue came to him with some frustrations and concerns about Complainant micromanaging her. He convinced her to wait and see if it got better, but a couple of months went by and she said it was just crazy. So, he reassigned her. Ms. Byrd is Donoghue's sister and Donoghue actually was instrumental, along with Mr. Hardman, in getting Byrd to come work for Respondent.

They have a President's Club trip for top producers, but Complainant was too lavish and that really rubbed his wife Barbara, who is also the president of the company, the wrong way. She said she would take over planning them. They would give each winner of the President's Club a handwritten note of thanks and acknowledgement from him or Barbara. There was enough for all the winners with one left over for Complainant. Barbara said there was a card here for Complainant, but she was not going to fill it out. He convinced her to do it, because if they didn’t, Complainant would have his feelings hurt, be angry and sullen, and ruin the event.

He counseled Complainant many times about his relationships with his fellow employees. He would like to think that he’s fairly good at mentoring and coaching people. After two and a half years of working closely with Complainant, he concluded that it just simply was not possible for Complainant. He couldn’t mentor Complainant to work and play well with others. It had come to the point that it was sufficiently disruptive that he had had enough.

He had many employees report bad treatment and believed Complainant could not change. That and the chaotic mess created by the personnel that Complainant had hired convinced him to fire Complainant. Nothing related to concerns about Nguyen's pricing played any role in that decision. Conversations and complaining about pricing are a normal occurrence.

He refused to tell Complainant the reason for his termination, because he never does that when he fires people. Once you get to firing someone, there’s no point in discussing it and it only leads to excuses and arguments from the fired employee. After he fired Complainant, he acted as National Sales Manager for about 14 months. Eventually, he hired a new person to fill that position.

Barbara Jones:

Declared that:[30]

She worked closely with Complainant for three years. When traveling for work, Complainant expected the company to provide him with additional luxuries that other employees and even the Executive Management team did not receive. He often made expenditures that were not company-related or approved while he was away on business. When he attended conventions, he frequently requested room upgrades once he arrived at the hotel, rented luxury SUVs instead of standard sedans, and would never provide receipts to the accounting department upon his return. On a few occasions, she personally witnessed him opting to stay in ritzier accommodations than more senior members of the executive staff. She was so outraged by his behavior that she asked the company's Chief Financial Officer to investigate his travel expenditures.

He had poor communication skills and his time management skills were abysmal. He would routinely tum in branch expense approvals late. He often missed appointments and meetings without notice or excuse. One time, they were unable to reach him and did not know where he was for two days.

Complainant had a reputation among executive staff as someone who harshly mistreated mid-level managers and other employees. He was argumentative, unkind, notoriously difficult to work with, unreliable, often non-responsive to employees' contact attempts, and often unduly critical of employees. He

[30] In a 26 Mar 18 statement.

personally conspired against particular staff members. During the period of his employment, she worried that employees would leave the company because of the way he treated them. Roy Jones had to admonish him for mistreating employees and setting unrealistic deadlines and expectations for others to meet. "In [insert month/year],"[31] Jones provided him with an ultimatum to either treat employees with respect and dignity and become more of a team player or leave the organization. Complainant agreed to be kinder, but not long after the discussion, Jones heard more complaints from employees, so she relieved Complainant of his duties. After Complainant left the company, she was surprised by how many employees said that they were happy that they no longer had to work with him.

Testified that:[32]

She did not personally interact with him on a regular basis, but rather observed him at Executive Management meetings or events. She did not personally observe him interacting with other employees over the period of his employment. She and he never had any problems, they didn't talk much, and she doesn't think he ever sat in her office once. He would come by and stand in the doorway and they'd chat for a second, but she really didn't have day-to-day interactions with him. Executive managers and employees would come and tell her things. They included Michael Jones, Matt Wilson, Selen Kallam, and Joe Wright.

Complainant would wait until the very end to get things to them or would want things redone right then and they'd be there until 2:00 or 3:00 in the morning trying to get things done. She believed he wanted Alana Dorbandt to be fired. That was shocking because for all the years until he came to work for them, nobody had anything to say except positive things about her. She also thinks he probably pushed really hard to get rid of Lilly Hernandez, who had been with them about eight years. She probably at times wasn't doing the job that they had expected her to do, but was moved into a position of social media, which she didn't know that much about and was trying very hard to learn and understand. She thinks he just got a little bit impatient with her. Shawn Lucas would come walking past her and be red and shaking and say Complainant just always makes him feel like he's doing a horrible job. Annette Lehey would come to her and complain she couldn't meet the cutoff for payroll, because she hadn't heard from Complainant. He also would expect marketing to produce materials in an unreasonable amount of time.

Complainant would go dark and missing for a day or two at a time. People would be calling looking for him. His regional manager would call and say he had missed a call. His assistant would ask if she had heard from him. One time, he didn't show up for a meeting and they actually had the police go with Dorbandt to

[31] In the original signed document.
[32] At an 8 Feb 19 deposition.

do a well check to make sure nothing had happened to him. Roy talked with him about what happened.

The week before they left for an event, the coordinator asked if she and Roy would be willing to give up their villa because they needed it for one of the winners of the president's club and Complainant said he wouldn't give up his room. Eventually, she asked the Chief Financial Officer, Michael Jones, to investigate Complainant’s travel expenditures. Michael told her Complainant was running expenses through the company that weren't business related. Complainant started these behaviors when he became the National Sales Manager.

She gave him a thank you card at a major executive gathering. She told Roy she didn't really want to do the card. Roy asked her why she wouldn’t say something nice to Complainant, since he was there on the trip. She didn't feel that way, but told Roy she would say something nice. She did not mean the things she wrote.

She thought Complainant had good regional managers and people that worked with him to helped Respondent grow. It wasn’t all him. He had a definite hand in the California growth, but they don't have any branches in California anymore. They lost a lot of money out there. Their geographic reach pretty much stayed the same while he was National Sales Manager. Some of their growth had a lot to do with having historically low rates. The also had hired a great marketing manager and graphics person and had branch growth through the regional managers. Complainant did have a part in all of that just like everybody else, maybe five percent.

She frequently expressed to Roy her concerns about whether they should keep Complainant on the payroll. They did increase his salary between 2015 and 2016 by over $150,000, during a time when he was acting egregiously toward employees. She has no explanation for that. She believes that Roy really felt that he could work with Complainant and groom him to grow and understand he can't be so hard and short with these people. Every time she'd ask Roy, he'd tell her to let him worry about Complainant, since he hired him.

Khai Nguyen:

Declared that:[33]

Complainant was dishonest, uncomfortable to work with, extremely condescending, and unprofessional. On several occasions, he witnessed Complainant treat other employees poorly. During a meeting in his office, Complainant spoke to Alana Dorbandt in a very condescending tone and rudely interrupted her several times with invalid points and gross mischaracterizations of their conversation.

[33] In a 6 Apr 18 statement.

He also witnessed Complainant take credit for other employees' work on a few occasions. During a company mixer in 2017, Complainant bragged that he recruited Gracie Morrow and took full credit for her decision to join the company. However, Morrow told him that her two recruiting meetings with Complainant had been unproductive and that she joined Respondent for several other reasons.

Testified that:[34]

Complainant was very respectful to him but condescending toward other employees and looked down on people. There was an undertone or something that he didn't feel comfortable with. He once spoke to Janet Decker on the phone and she indicated she was very uncomfortable and wasn't very happy to work with Complainant. Sometimes he thinks that Complainant just wanted to look good in front of people and look like he was doing something to help, but in reality that was not the case.

Michael Jones declared that:[35]

Complainant protected his "image" at all costs and often downplayed his failures. The Executive Management team experienced friction when discussing issues that put Complainant and the sales team in a negative light. Often, he would deemphasize the part that he played in a disappointing event or shift blame to other employees. He was extremely hostile and argumentative, especially toward those who disagreed with his ideas. Various members of the Executive Management team felt that they had to be defensive and ready for a confrontation when walking into a meeting with him.

He went to great lengths to berate and derail the efforts of IT VP Matt Wilson, after Wilson provided constructive feedback on concerns he foresaw with an event that Complainant had planned. He made clear that he saw the feedback as an "attack on his character." Other team members and employees consistently had to actively employ conflict resolution strategies in interacting with him, particularly when not in agreement with one of his ideas. The Executive Management team dedicated countless hours to e-mails, phone calls, and meetings between him and other employees with whom he had disputes.

He failed to achieve the goals for which he was hired. Although he was hired to aggressively increase the sales of the organization, he failed to do so every year. Origination volume did increase, but the methods utilized to increase volume vastly undermined the integrity of the organization and much of the sales growth that did occur had little to do with his direct actions. During Complainant's first full year, sales increased by approximately $180 million; however, many of those sales were either terminated or lost.

[34] At a 2 Oct 18 deposition.
[35] In a 26 Mar 18 statement.

He hired and subsequently mismanaged numerous employees who were unfit for the job, costing the company millions of dollars. The reckless hiring was clearly an attempt to artificially inflate the sales channel, and thereby increase his own salary. The company wasted millions of dollars on salaries as a result of his poor hiring practices. As a result, in 2016, they ended the year with only 100 additional units of production, which was a dismal failure. In 2017, they fell well short of production goals because Complainant and his team failed to make key hires.

He often spent the company's money on luxuries for himself or his team. He insisted on upgrading flights and hotels whenever he traveled-even though the owners of the company and the other executive managers never did so. During the three years when he acted as sales manager, hundreds of thousands of dollars were wasted in unnecessary event expenses, upgrades, and unnecessary decorations. Extensive time was spent planning these activities instead of focusing on programs which would increase sales. He also placed personal expenses on the company credit card after repeated requests to not do so. They spent hours determining what charges on his card were legitimate business expenses and which were personal.

He wanted to exercise authority over others' work, even if the processes he created to oversee others' activities did not make sense or were inefficient. He had poor management skills and, in many cases, his involvement actually increased branch expenditures or allowed excessive rates.

He requested and was granted authority to approve branch expenses and allow rate discounting at the branches. The new approval method required employees to go through additional layers of management to authorize any and all expenses. As a result, the new policy accomplished the opposite of its intended function and yearly expenses increased. He was constantly afraid that branches would leave the company if he denied or limited their expenses too harshly, so he approved many unnecessary expenses. He also repeatedly approved rate concessions for branches, regardless of the reason they were looking to make the concession. The company’s branches hemorrhaged cash as a result of his poor business and financial decisions.

Respondent suffered financially during Complainant’s time at the company and is performing much better since his departure. They are now poised to post their most profitable year since 2014, which was the year before he was promoted to Vice President of Sales.

Matt Wilson declared that:[36]

[36] In a 26 Mar 18 statement.

> Complainant is notoriously dismissive of others' ideas, completely incapable of considering any idea that is not his own, difficult to work and get along with, the only person at Respondent he ever had trouble working with, not very good at accepting feedback, a poor manager, largely unable to cooperate with others, but also a master manipulator and showman, who initially appeared to be a "successful" and effective employee.
> Any employee who voiced any sort of criticism or concern about Complainant’s policies—or who did not pursue projects in the precise way that he preferred was labeled insubordinate. Complainant was a negative person whose criticism was so piercing that he found himself preoccupied with self-doubt and anxiety and eventually stopped sharing thoughts in meetings. Complainant had no concern for others and publicly and unjustifiably criticized others to the point that they openly cried. Complainant fired at least two employees who did not deserve to be terminated. The employees he did not fire considered leaving the company, simply so that they did not have to work with him anymore. If Complainant were still working at the company today, he would probably quit.

Alana Dorbandt declared that:[37]

> Complainant did not meet expectations during his time as National Sales Manager. His primary responsibility was to grow operations by hiring Regional Managers and establishing branches in states where they had no Regional Managers or were not currently licensed. However, during his tenure as National Sales Manager, he obtained licenses for Georgetown in only three states: Alabama, Florida, and Georgia. He neither established any physical branches in any of those states, nor hired Regional Managers for those states. Part of his duties as National Sales Manager were to oversee the management of individual Branch Managers, but he failed to interact with managers in her region. There were two branch managers who he never personally visited and two others that he only visited once, despite their respective statuses as a longtime employee and a top producer within the company.
>
> His management style is best described as antagonistic and he frequently used fear, threats, ultimatums, and intimidation tactics. He was not an effective personnel manager and often hired candidates who were ill-prepared or unfit. She is aware of at least fourteen employees he hired who are no longer with the company. That was due in part to his failure to thoroughly communicate job expectations or to provide adequate support and training.
>
> He constantly micromanaged and once reprimanded her for contacting Roy Jones without first getting his permission or copying him on her emails. He insisted that all future communications with Jones be filtered through him, despite Jones' open-door policy and their years-long working relationship. He regularly took credit for the successes of others. For example, he took credit for hiring a loan

[37] In a 28 Mar 18 statement.

officer, Deborah Byrd, despite the fact that he had no GTM recruiting meetings with her. He claimed he brought the state of Colorado on board, but Regional Manager Sherry Duhon was actually responsible for onboarding Colorado several years prior to his arrival.

He voiced opinions in the workplace that might be construed as prejudiced or offensive and once discouraged her from attending a networking event planned by the National Association of Minority Mortgage Bankers of America because he did not deem the organization to be a "prominent" enough group in their industry. He once referred to her as highly emotional, even though she never raised her voice at him, cried, used profanity, or displayed insubordinate behavior. On another occasion, he told her that her job was in jeopardy because she did not wish to have a Facebook account.

He was very difficult to reach by phone or email and often nonresponsive to employees' attempts to contact him via email and phone. He would often miss meetings without providing notice to other attendees.

Lily Hernandez declared that:[38]

Complainant was unwilling to compromise his ideas or collaborate with others. It was difficult for members of the marketing team to become inspired or to bring new ideas to the table, because he was unwilling to listen to ideas that were not his own. Raising a disagreement with him put a target on your back. He created a stressful atmosphere in the office, played favorites, belittled their entire team, and regularly berated them in front of each other. He was difficult to work with, constantly found fault with others, made veiled threats, pitted people against each other, and was incredibly condescending, unkind, and at times, abusive. He was unconcerned about others' feelings or how his behavior was perceived by his coworkers. His feelings of superiority about his position at the company made him appear very arrogant and he often reminded people that he was the number two guy in charge.

He had unrealistic expectations of others and regularly assigned tasks with unattainable deadlines, finding fault with most projects that were submitted to him. If he disliked an employee's work on an assignment, he would make them feel small by saying things like he thought he had made himself very clear. When working on projects for him, she often felt that she was being set up for failure and that he was looking for reasons to her go. He rarely celebrated the successes of others, but regularly punished others for his own shortcomings. He never acknowledged the hard work of other employees, and he routinely took credit for others' efforts. Conversely, he punished those who drew attention to his failures.

[38] In a 28 Mar 18 statement.

He fired a team member when she didn't meet his expectations for learning a very complex system. Shortly after she pointed out that he had never provided her with the appropriate direction she needed to complete the assignment, she was terminated. He had a particularly low opinion of the women in the workplace. He often made time to meet with her male counterparts, but he was always very dismissive of her and female co-workers. He openly and routinely questioned her work ethic and often made comments hinting that she was in danger of losing her job. His constant criticism wore on her and at one point, he made her cry in front of some of her peers.

It was difficult to reach him by phone or email. He often demanded immediate action on assignments or informed employees that he wanted to discuss projects right away, but he rarely returned those employees' calls and was slow to respond to emails.

Selene Kallam declared that:[39]

Complainant had a reputation for not following through on the concepts that he pitched. He was not very good at quality control and often insisted that programs be rolled out to sales without testing. That forced the company to revise or pull back content after it was delivered. The events that he hosted were largely regarded as failures and were plagued by negative feedback. He was not willing to collaborate and only wanted things done his way. This made other executive managers uncomfortable working with him. She never believed that he was a very trustworthy person. He often stretched the truth or withheld information. Sometimes, she would find that the information he communicated to the Executive Management team was taken out of context, blown out of proportion, or misrepresentative of actual events. His dishonesty held the Executive Management Team back in many ways. Many employees tried their best to avoid working with him because of his lack of accountability, trustworthiness, and communication skills. She learned very quickly that she had to manage around him and to avoid starting an argument or working with him directly, she took on various tasks and duties that he neglected.

Complainant never acclimated to the company's preferred level of communication and his lack of communication often caused difficulties for other employees and resulted in delays in execution. She scheduled weekly calls with him so that they would have a consistent channel of communication. However, he very rarely showed up for those calls and often provided no notification of his anticipated absences.

He often either skipped or declined to attend meetings at which his attendance was requested. When they hired a Quality and Efficiency and scheduled weekly Q&E meetings, he declined nine out of 16 and of the seven meetings he accepted,

[39] In a 26 Mar 18 statement.

he only actually attended two. They discontinued the meeting because of his lack of participation and support.

He did not take accountability for his mistakes and often shifted the blame onto others whenever his shortcomings were discussed. For instance, when she expressed her concerns about his lack of communication to Roy Jones, Complainant accused her of not returning phone calls, emails, and texts.

Janet Decker declared that:[40]

Between November 2015 and April 2017, she worked as Complainant's Executive Assistant. He was a demanding boss, domineering, a difficult person to work with, aggressive, and sometimes threatening, By the time that she began working for him, he had fired two executive assistants within the preceding twelve-month period. He was inconsiderate of other employees and many employees, herself included, felt uncomfortable around him. He had combative relationships with, among others, the Executive Management team, several of his Regional Managers, and many employees in the Operations Department.

He became extremely defensive and combative upon learning that he had been left out of discussions or management decisions. For example, when he discovered that the CEO and President had consulted her rather than him about a trip for the company's top producers, he was offended and proclaimed that he was done with helping make company decisions. He also specifically asked her not to have conversations with the CEO and President about planning.

Aggressive behavior seemed to pervade his professional and personal life. For example, when he was not selected to serve on a committee of the Texas Mortgage Bankers Association, he emailed the president of that organization and insinuated that his inclusion on (or exclusion from) a committee would influence Respondent's sponsorship levels at the Association's upcoming events. That incident caused the company great embarrassment.

He acted superior to others and lorded his Executive Vice President title over her and other employees. He did not respond well to being challenged and preferred an authoritarian management style over consensus building. He did not appreciate anyone disagreeing with his way and it was common knowledge in the office that you did not want to get on his bad side.

His lack of communication was a point of frustration for many employees. It was always difficult to get in touch with him by phone or email. His team was often irritated when they needed immediate action or answers from him, but he could not be reached. He rarely answered his emails in a timely fashion-if he answered them, at all.

[40] In a 26 Mar 18 statement.

> He travelled often, almost always upgraded his flights and hotel stays, and ate at the finest restaurants at the company's expense. He often went to his destination early or extended his stay for his own personal enjoyment. He often booked extravagant accommodations for himself whenever he travelled for work and obsessed over maximizing his personal hotel "points" benefits. Even though the hotel points he earned were accrued for company-related travel, he wanted to maximize these points for his personal enjoyment. In instances when he believed that his hotel point balance was incorrect, he ordered her to contact the appropriate parties in order to make sure he was awarded the correct number of points. These tasks wasted hours of company time. He occasionally wrote angry emails to particular hotels, threatening to write negative reviews and/or take his business to another hotel if he was not awarded the points that he believed he deserved.
>
> He often misused company funds and he was dishonest about the nature of certain purchases he made on company credit. His credit card statements contained hundreds and sometimes thousands of dollars in personal expenses, and he routinely did not provide receipts to substantiate supposed "corporate" expenses. It seemed clear to her that he put personal expenses on his company credit card on a regular basis. His personal financial issues seemed to plague him in the workplace. She often fielded calls from companies calling to collect payments on personal debt. He told her and a company accountant that his identity had been stolen, and that he had only put personal expenses on his corporate credit card because his personal credit card could possibly have been compromised by this security breach.

Mitzi Hutchens declared that:[41]

> Complainant was extremely condescending, even to those who did not report to him. He was extremely demanding and bossy and regularly acted as if he had the upper hand. He also exhibited prejudice against women and regularly acted out against women in management positions. He made a habit of breaking the chain of command and unilaterally decided to hire individuals for her division. He believes that his ideas provide the only and best way to accomplish goals and he has previously publicly contradicted the decisions of other managers. When a builder made misrepresentations about the terms of a construction contract between the builder and a borrower, he completely ignored the decision that her division made to sever the relationship with the builder. Instead, he met with the builder and another sales representative without informing her or anyone on her team.

Brian Beatty declared that:[42]

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[41] In a 26 Mar 18 statement.
[42] In a 27 Mar 18 statement.

Complainant's poor attitude and management style was a general topic of discussion between employees at all levels of the company. Although his initial experiences with Complainant were generally positive, he developed an understanding that Complainant was difficult to work with. He understands that several employees considered resigning due to Complainant's hostile behavior. Complainant routinely spoke to others in a condescending manner. One employee told him that she felt bullied by the way Complainant interacted with her and had considered leaving the company.

Employees were not comfortable working with Complainant, who had a reputation for being overly demanding of others and having unrealistic expectations about their job performance. Other employees said he demeaned them and asked them to do things that they were uncomfortable with.

Although Complainant initially had interesting ideas about how to grow the company, he had very poor implementation skills. He introduced a plan to recruit new loan officers, but not a single loan officer was hired for his branch office during the time Complainant oversaw the company's recruiting efforts. He also initiated a company-wide rollout of a Customer Relationship Management (CRM) software program, which was predicted to increase the company's future production volume. However, the CRM program experienced delays, which caused problems for branch managers who had already started pitching the CRM to realtor partners as an added incentive to work with Respondent. They later learned that the software company had not been properly vetted and could not provide the type of functionality they needed. Complainant was pulled off of the project shortly after the vetting issue was discovered.

Complainant exhibited a general lack of urgency when performing important responsibilities. He was tasked with leasing new office space and took days or weeks to respond to emails from others who were working to secure the lease. Complainant was also pulled off that project. Complainant was rarely physically present in the office.

Deborah Byrd testified at hearing that:

She started working for Respondent in April 2017 and stayed there about a year and a half. Alana Dorbandt was her regional manager and Complainant the national sales manager. She had maybe a couple of months of overlap with Complainant. She already knew him because her sister, Denise Donoghue, had worked for him at Chase Mortgage about 10 years ago and she had worked for him at Sente Mortgage. Donoghue now works for Respondent. She has never seen Complainant treat anyone harshly or in a demeaning way. She never saw him waste company resources.

> She occasionally interacted with Roy Jones, maybe twice a month. A couple of times Jones told her he thought Complainant was a bad employee. She can't recall the exact dates. Jones called her on a Sunday to give a statement against Complainant in regard to anything she had witnessed with his behavior with employees or his character. Jones asked if she would be willing to put that in a statement and really help the company family. He mentioned that the company had the best attorneys and was going to fight this battle.
>
> Jones added that everyone else was willing to give a statement, even her sister. It turned out that her sister did not give a statement, even though Jones called her on maternity leave and asked her to do so. Jones did not give her a statement or tell her what to say, but she understood he expected it to be negative toward Complainant. He told her to think about it and he would follow up with her on a Wednesday. When he followed up by email, she told him she couldn't say something that wasn't true.
>
> She was fired after that. She had started working at her current job before she was fired. They told her she was fired because she had sent emails to Efinity Mortgage, which happened to be where Complainant went after he was fired from Respondent. Her emails were not to him, but to a production partner who she didn't even know. She was basically referring a customer to see if Efinity could help them, because Respondent was unable to provide services. They typically do that, with the client's permission, which she had.
>
> She was asked about the emails and was told by her regional and branch manager that regardless of what she said and whatever the truth was, they had orders to fire her. She had never been told that sending an email to Efinity was wrong or could get her fired. They said they had no option and had direct orders from Roy to fire her that day. They knew that she sent the emails to Efinity Mortgage in the first place because Roy Jones had his IT team stalk Efinity Mortgage. Jones' hatred of Complainant and Efinity Mortgage was common knowledge.

Chrystal Estrada declared that:[43]

> She worked with Complainant often. He was difficult to contact and less responsive to staff than to executive management. He would often not respond to her at all. He was harsh, domineering, and vindictive. He could not capably complete urgent 1asks, did not seem concerned with helping Respondent solve pressing issues, and often exaggerated his contributions. He failed to follow through on his promise to get a license quickly approved for over a month. His dishonesty and procrastination forced them to pay salary to an employee who was unable to do their job.

[43] In a 26 Mar 18 statement.

Complainant tried to embarrass or belittle her in front of her colleagues and wanted to control every aspect of her work. He tried to exert power over her whenever he could and would not let her contact loan officers about their licensing, when that was her job.

Donna Fisher declared that:[44]

She worked in close quarters with Complainant, as they both served on the Executive Management Team. He was very concerned about his own image and often worried about what others thought or said about him. If he was not invited to certain calls or meetings, he assumed that he was being talked about and pressed other employees for details about what was said.

He viewed the slightest disagreement with his ideas as a personal attack on his professional abilities. He resented the questioning of his authority, had difficulty admitting mistakes, and often made excuses or blamed others. He regularly boasted about his industry experience when he felt slighted and occasionally expressed his desire for the CEO to get out the way and let him do his job.

He had unreasonably high expectations of others and little tolerance for mistakes. He was highly critical of other managers and occasionally demonstrated aggressive posturing behaviors with company partners. He occasionally pushed boundaries when interacting with industry partners or important vendors. He made unreasonable demands, was argumentative, and even issued veiled threats. He acted superior to mid-level management and other staff members. He was not comfortable socially interacting with those he deemed beneath him and was perceived by most to be aloof, uncaring, condescending, and egotistical. He often took undue credit for ideas and projects with no acknowledgement or appreciation to those who actually conceived the concept or worked on the project.

At times, he was completely consumed with personal matters. He obsessed over his personal frequent flier miles and hotel rewards points. Staff wasted an unbelievable amount of time straightening out his personal accounts and dealing with personal creditors that were calling to collect payment.

He also periodically went off the grid with no communication or explanation, often missing calls or appointments. There were many occasions on which he was unresponsive. One time in particular, they became worried and sent a Regional Manager and the police to his home. He later apologized, claiming that "his girlfriend was having a meltdown."

Toward the end of his tenure, Complainant expressed great displeasure with being removed from several projects. However, he continuously refused to acknowledge

[44] In a 26 Mar 18 statement.

any personal failures. Instead, he claimed that Respondent had treated him more disrespectfully than any other company.

Kristi France declared that:[45]

> Complainant was a very poor communicator and frequently was unavailable without notice. He routinely left her out of important conversations about process and procedure changes and avoided answering her emails or phone calls for days and weeks on end. He often attempted to undermine other employees' authority and regularly ignored the chain of command, directly ordering members of her team to work on projects or change procedures without consulting her first. He was notoriously callous to employees who reported to him directly. When she was asked if she would be willing to report to him, she declined and threatened to quit.
>
> He spent excessive amounts of company money. He stayed in the most expensive hotels, rented high-end SUVs instead of more affordable cars, and bought very expensive meals and drinks on the company's dime. They had to implement a new travel policy because of his actions. The policy angered him greatly, because it required employees to stay within a specified budget while travelling for work.
>
> Over the three years he worked with the company, he was not able to accomplish any of the goals that he was hired to achieve. They hired him based on his supposed ability to recruit top origination talent. However, almost every loan originator he hired during his tenure was a poor performer in the aggregate and the cost of onboarding these originators outweighed any profits from the small number of loans they produced. Although he hired several recruiters, most of them never recruited a single loan originator.

Sunni Lazo declared that:[46]

> Complainant had perpetual difficulty managing his work schedule effectively. She had a standing weekly meeting with him and he was always running late or didn't show up for the meeting at all. Most of the time, when he missed a meeting, he never reached out to her to reschedule or offer any kind of excuse as to why he was absent. She realized immediately that he was unable to manage his daily schedule. His erratic way of conducting business routinely forced other to work around his hours and to change or cancel work travel plans at a moment's notice and at considerable expense to the company. It was difficult for employees to reach him by email, phone, and text. He consistently micromanaged his reporting employees on issues of low importance. He would often return assignments to employees, forcing them to make numerous non-material adjustments to documents and often failed to discuss the content of completed assignments with the employees who submitted them.

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[45] In a 26 Mar 18 statement.
[46] In a 26 Mar 18 statement.

Shawn Lucas declared that:[47]

> He has known Complainant very well, personally and professionally, for over 20 years. Complainant has been his direct manager at J.P. Morgan Chase from August 2007 to December 2008 and at Respondent from November 2015 to June 2017. Outside of work, he considered Complainant to be one of his closest friends. They knew each other's family, confided in each other, and were present for various important events in the other's life.
>
> Complainant has never been good at taking criticism. He does not appreciate anyone challenging his authority and anyone who critiques him becomes an immediate threat. Once someone became an "enemy," he worked hard to create doubt about their abilities. He would openly criticize other's decisions to diminish that person's credibility and reduce their influence and control. He believes that Complainant attempted to implement that strategy in his interactions with Alana Dorbandt, Matt Wilson, and Michael Jones.
>
> Complainant preferred to be in absolute control of everything and everyone. He always wanted to be the main decision maker and first point of contact on projects. They had difficult conversations whenever Complainant found out that he had spoken with anyone else at the corporate office. He had to do that often because Complainant was regularly unavailable.
>
> Complainant rarely ever accepted or implemented others' ideas and believed that his way was always the best. He was difficult to contact on most occasions and didn't answer emails, text messages, or phone calls in a timely manner. Sometimes, it took days for him to respond to time-sensitive items. Instead of claiming ownership for problems caused by his late responses, he would provide feedback on what could have done differently. Even though he was largely absent as a manager, he had extremely high expectations, but often gave little to no direction when tasking assignments and would get angry if a project did not net hugely positive results. He routinely rescheduled or missed meetings.
>
> Complainant failed to realize the recruiting goals that the company set for him to achieve, in part because he never provided his employees with guidance on how to achieve particular objectives. He never modelled what a successful recruiting process would look like and they never collaborated on calls, lists, or how to identify talent. Complainant was the reason why he was not satisfied with his job.

Dawn Montgomery declared that:[48]

[47] In a 24 Sep 18 statement.
[48] In a 24 Mar 18 statement.

> Her business relationship with Complainant began to deteriorate when he was promoted to National Sales Manager, and it dissolved even further after he was appointed to the Executive Management team as Executive Vice President of Sales. After his promotion, he began to exhibit chauvinistic and elitist behaviors in the workplace. It was apparent that he had a hard time accepting any information that she provided him and disregarded any opinions about pricing. She believes that he had difficulty with these things because she is a woman, and because he thought that it was no longer her place to question his directives in his new capacity as an Executive Manager.
>
> Complainant did not respond well to questioning or criticism and perceived such conduct as others checking his authority. Whenever he told her to set margins in a particular way, she told him that she would ask her boss, the CFO, for approval and get back to him. On one such occasion he became upset and insisted that he was authorized to make these decisions. She told him that she did not work for him would let him know when the CFO made a final decision. That prompted Complainant to complain to Roy Jones about her. Roy decided she had done the right thing and told her he would talk to Complainant about his behavior.
>
> Complainant had unreasonable expectations of others and became angry and vindictive when employees could not immediately fulfill his requests or finish assignments at a moment’s notice. He asked her to help him refresh some pricing on a chart and she told him that she would work on it and send it to him as soon as she could. He became frustrated, said he would figure out another solution, and disparagingly commented that he didn’t know why he thought she would help him.
>
> Complainant was very difficult to contact, never answered the phone, and almost never responded to emails. He was also very confrontational and came into her office just to ask if she had a problem with him. Their working relationship eventually became so strained that she just began to pretend that he was not around. She believes that he tried to get her fired and had reached out to his Regional Managers to ask whether they had ever had problems with her. He also emailed the CFO, urging him that they needed to discuss her insubordination.

Joe Wright declared that:[49]

> Complainant was a micromanager and felt that his personal creativity needed to be inserted into every marketing project. He constantly usurped the Marketing Manager's authority and would often go over the Marketing Manager's head to speak directly with marketing staff about implementing his ideas. He had a hard time taking criticism or validating the ideas of others and whenever the marketing team would disagree with his creative vision, he would boast about his experience in marketing. His opinion was given complete authority and there was never any

[49] In a 26 Mar 18 statement.

> room for negotiation. He was also condescending and patronizing to the Marketing team, often making sly and sarcastic remarks about the quality of their work. He made others uneasy and stressed out and at least three employees in their office have cried due to the professional stress that he caused them. He never owned his mistakes and always deflected responsibility for his failures on someone or something else. He never took ownership of the huge debacle he caused by not properly vetting potential CRM software vendors.
>
> Complainant was inconsiderate of others' time and workload and was consistently late delivering crucial content that the marketing team needed to complete important projects. He often waited until the very last minute to provide the team with information, forcing others to rush to perform their own tasks. He expected employees to prioritize his projects above all else, even if that meant that people needed to stay late to complete a job.

Roy Jones insists that he fired Complainant because of Complainant’s ineffectiveness in his job, inability to work with or lead others, waste of company resources, and personal problems. Moreover, he maintains that he was unaware of Complainant’s protected activity, having never actually read the May 2017 email. Complainant denies he had any such problems and argues the timing between his protected activity and his termination provides strong circumstantial evidence that Jones was fully aware of his protected activity. Complainant maintains that Jones’ proffered justifications for the termination are unsubstantiated pretext to cover what was actually a retaliation against a whistleblower.

Probably the most material and probative evidence about Complainant’s job performance and the progress of the company under his watch comes from the two individuals most intimately involved with those topics, Complainant and Roy Jones. A review of their testimony discloses back-and-forth of accusations that the other does not understand the business and is misinterpreting the data. Complainant repeatedly points out in instances with a poor outcome that Roy Jones and the rest of the executive committee were endorsing or approving his decisions.

Complainant offers virtually no evidence to corroborate his interpretation of the data or testimony that Jones didn’t understand the business, e.g., the differential market expectations that must be applied in California. On the other hand, the declarations submitted by other employees were essentially unanimous in describing Complainant’s failure to meet production expectations.

In that regard, I note that the record contains many declarations submitted by employees. Those declarations were executed in the same time frame and appear to have been prepared at the request of the Joneses in the defense of this claim. Indeed, one such declaration retained the “[insert month/year here]” prompt. At the same time, I credit Deborah Byrd’s testimony that she was strongly encouraged to join the team and complete a declaration. However, she conceded that she was not told what to say, notwithstanding her understanding that it should be negative. Her testimony that she was fired after refusing to do so would be more compelling in terms of impeaching all of the other declarations had she not already obtained employment at the same firm as Complainant. The evidence strongly indicates that the Joneses did in fact circle the family wagons in defense against Complainant's accusations and expected their loyal employees to join in that defense. They may have manifested anger toward Complainant or anyone perceived to be supporting him. That would be a rational reaction from their point of view that, having retained him far longer than appropriate in the face of repeated poor performance and abusive behavior, they were now the subject of a lawsuit after refusing to pay his demand for a large severance package.

However, given the highly consistent statements across all of the declarations and the absence of any indication that any employee was told what to say, those circumstances do not substantially deprive the declarations of credibility. That is particularly true since Complainant appears to have been almost universally disliked and the declarants appear to have needed very little encouragement to say negative things about him. That even was the case with Shawn Lucas, who considered Complainant to be a close friend.

Moreover, the declarations are consistent with the documentary evidence, such as Complainant's emails to hotels complaining about points or threatening a banking association unless he was given higher status. The lone voice to the contrary was that of Deborah Byrd, who had only a couple of months overlap with Complainant at Respondent, although she worked with him for a much longer period at a previous employer. Even at that, her testimony is not entirely inconsistent with that of the rest of the evidence, which indicated that Complainant's problematic behavior began in earnest with his promotions.

Consequently, the weight of the probative and credible evidence paints a picture of Complainant as an underperformer, very difficult to work with or for, preoccupied with using company travel resources for personal benefits, and plagued by personal problems that significantly reduced his productivity and tainted the company image.

That begs the obvious question raised by even a cursory review of the record and asked by Complainant's Counsel: if he was that bad, why did Respondent not only keep him on the payroll, but give him raises and promote him. Barbara Jones testified she wanted him off the payroll, but her husband refused to do so, saying Complainant was his hire and his problem. Roy Jones credibly explained that the raises and promotion were early in Complainant's tenure. The weight of the evidence indicates Jones felt responsible for hiring Complainant; was reluctant to accept he had made a mistake in that hire; and, most importantly, believed his leadership and mentorship skills could turn Complainant around. Eventually, even he had to concede his hire was a failure.

Equally probative is the fact that Barbara Jones informed Complainant they were significantly reducing his responsibilities in March 2017. That was months before Complainant's email finally mentioning the largely Vietnamese customer base and using the term disparate. That timing is consistent with Roy Jones' testimony and I find it more likely than not that he either did not read the May email or if he did read it, he did not make the connections Complainant expected him to make.

In short, I find the evidence fails to establish that Complainant's protected activity was more likely than not a contributing factor in the decision to take any adverse action against him.

The complaint is dismissed.

So ORDERED in Covington, Louisiana, on November 7, 2023.

PATRICK M. ROSENOW
District Chief Administrative Law Judge