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**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WASHINGTON**

MARCUS KIMM,

Plaintiff,

v.

AEROTEK, INC.,

Defendant.

NO. 2:17-CV-221-SAB

PLAINTIFF'S LR 56.1
STATEMENT OF FACTS
(SOF) AND COUNTER
STATEMENT OF FACTS
(CSOF)

Hearing Date: October 17,
2018

With oral argument

COMES NOW plaintiff Marcus Kimm by and through his attorneys and hereby submits his Statement of Facts (SOF) and Counter Statement of Facts (CSOF) pursuant to Local Rule 56.1(a).

The Declaration of Matthew Crotty, filed herewith, contains excerpts of Shannon Landmeier (Aerotek's Fed. R. Civ. P. 30(b)(6) designee), Lindsey Lee, Philip MacArthur, and Marcus Kimm as well as exhibits used in the Landmeier, Lee, and MacArthur depositions. Exhibit E to Mr. Crotty's Declaration contains, in

1 order, all of the Landmeier, Lee, and MacArthur exhibits that are referenced in this
2 pleading except KIMM000212, which is contained in Exhibit D of Mr. Crotty's
3 Declaration. Exhibit E to Mr. Crotty's Declaration is filed under seal because
4 Aerotek deemed many of the Exhibit E documents as "confidential."
5

6 The Declaration of Marcus Kimm which is cited in the below statement of
7 facts, is filed individually.

8 **PLAINTIFF'S STATEMENT OF FACTS (SOF) IN SUPPORT OF**
9 **PLAINTIFF'S OPPOSITION TO DEFENDANT'S MOTION FOR**
10 **SUMMARY JUDGMENT**

11 **A. Aerotek is a nation-wide billion dollar staffing company whose**
12 **Recruiters and Account Managers make commission if, and only if, they place**
13 **a contract employee with a customer.**

14 1. Aerotek, a subsidiary of Allegis Group, is a nationwide staffing
15 company that employs between 5,000-6000 internal employees, 112,000 contract
16 employees and whose annual revenue exceeds \$11,000,000,000. (**Crotty Decl. Ex.**
17 **A** *citing* Landmeier Dep. 8:19 – 24; 9:22 – 25; 10:1 – 22; 13:5-14)

18 2. Two of Aerotek's "internal employees" are Lindsey Lee, a Recruiter,
19 and Philip MacArthur, an Account Manager. (**Crotty Decl. at Ex. B** *citing* Lee Dep.
20 5:5-12; **Crotty Decl. at Ex. C** *citing* MacArthur Dep. 4:1-12; Landmeier Dep.
21 14:16-19) Both work in Spokane, Washington. *Id.*

1 3. Another one of Aerotek's employees is Shannon Landmeier, an
2 "Employee Relations Manager," who works in Minnesota. (Landmeier Dep. 4:7-
3 14; 13:15-16)

4 4. Harlan Kamm (more in him below) was a "contract employee" of
5 Aerotek. (Landmeier Dep. 14:20-22)

6 5. Marcus Kimm (more in him below) was a candidate who tried to be a
7 contract employee, employed by Aerotek, but working at an Aerotek customer
8 called Transtector (more on it below). (Landmeier Dep. 14:23-23; 15:1-2)

9 6. As of his June 12, 2018 deposition, Mr. MacArthur did not know
10 Shannon Landmeier. (MacArthur Dep. 9:20-21) As of her June 12, 2018,
11 deposition Lindsey Lee did not know Shannon Landmeier. (Lee Dep. 22:15-19)

12 7. During the 2017 timeframe Mr. MacArthur interacted with 5 to 10
13 potential applicants each week, reviewed approximately 50 resumes per week, and
14 managed about 50 customers. (MacArthur Dep. 8:25; 9:1 – 25)

15 8. As an Account Manager Mr. MacArthur is compensated at "salary plus
16 commission" meaning that Mr. MacArthur is "compensated commission-
17 wise...based on a certain level of the amount of people I put to work [and] we do
18 make a certain percentage off each individual. And when I get to certain levels, I
19 am paid a certain amount of commission." (MacArthur Dep 12:5 – 25 & Ex. 22
20 *citing* AEROTEK000629 - 635)

1 9. Account Managers like Mr. MacArthur get “guaranteed commission”
2 by obtaining a certain amount of “spread.” (MacArthur Dep. 18:15 – 25; 19:1) A
3 spread is the difference between what Aerotek pays a contract worker and what
4 Aerotek’s client, (e.g. Transtector, more on it below), pays Aerotek. *Id.* To that end,
5 Aerotek would make \$600 a week from Transtector “as long as we had an employee
6 to fill the contract. So if they are not working, we don’t make any money.”
7 (MacArthur Dep. 19:5-25; 50:1-14 & Ex. 23 *citing* AEROTEK000284) Of the \$600
8 a week Aerotek made, Mr. MacArthur had the potential to personally make money
9 off of that placement and did make money off of the Aerotek/Transtector contract
10 in 2017. (MacArthur Dep. 20:1 – 13)

11 10. As a Recruiter Ms. Lee receives a base pay and, provided certain
12 targets are met, a commission for each contractor that she puts to work at an Aerotek
13 customer as each candidate, or contractor, is worth a certain spread amount and if
14 Ms. Lee exceeds \$8,000.00 in “spread” each year then she is eligible for a
15 commission. (Lee Dep. 13:6-19; 18:3-10 & Ex. 2 *citing* AEROTEK000637-640)

16 11. Put differently, for a Recruiter to hit a certain spread amount and be
17 eligible for a commission the Recruiter must place a candidate with a customer with
18 that candidate actually working for the customer. (Lee Dep. 19:20-25: 20:1)

19 12. During the 2017 calendar year Lindsey Lee did not make a commission
20 because she did not meet the spread threshold. (MacArthur Dep. 21:10 – 16)

1 13. Each Wednesday Recruiters, including Lindsey Lee, receive emails
2 and web postings which let the Recruiter know how close he or she is to getting a
3 commission. (MacArthur Dep. 21:21 – 25; 22:1 – 6)

4 14. Aerotek tells its Recruiters and Account Managers to limit the use of
5 what the company calls “backfills.” (Lee Dep. 98:15-24 & Ex. 14 *citing* AEROTEK
6 00373)
7

8 15. A “back fill” happens when Aerotek sends “someone to a client and
9 they leave the job or get fired for not being the right fit, then we have to back fill
10 the position.” (MacArthur Dep. 16:2 – 7; Lee Dep. 98:18-24) A “back fill” could
11 occur for “attendance” purposes, such as when a worker leaves the employment of
12 an Aerotek customer (like Transtector (more on it below)) to go on military leave.
13 (Landmeier Dep. 106:3-10; 114:3-25; 115:1-18)
14
15

16 16. It costs Aerotek money to “back fill” a position. (MacArthur Dep. 16:8
17 – 9)

18 17. The message Aerotek’s regional manager sends to its Spokane-based
19 Recruiters, of which Lindsey Lee is one, is clear: “backfills suck.” (Lee Dep. 97:21-
20 25; 98:1-17 Ex 14 *citing* AEROTEK000373)
21

22 18. The process that Recruiters, like Lindsey Lee, follow when screening
23 a potential contract worker involve (a) a phone call with the potential contract
24 worker and, if the phone call goes well, (b) an in-person interview and, if the
25

1 interview goes well, then (c) Aerotek will conduct two reference checks.
2 (MacArthur Dep. 24:4 – 18; Lee Dep. 32:14 – 22 (implying more than one reference
3 check is completed)

4 19. Over 99% of the time reference checks are completed before the
5 applicant is presented to the client. (Lee Dep. 34:1 – 23)

6 20. The phone call the Recruiter conducts with the potential contract
7 worker centers around “pay, commute, shifts” with the goal of trying to “get to
8 know them as a candidate.” (Lee Dep. 28:24-25; 29:1-7; 112:22-25; 113:1-4)

9 21. Ms. Lee did not follow a script of written questions when screening
10 candidates (both via phone and in person) for the below-referenced Transtector RF
11 Technician position. (Lee Dep. 112:5-15)

12 22. One of the “red flags” that Recruiters and Account Managers look for
13 in candidates is whether the candidate had been consecutively working year after
14 year because a candidate’s multi-year absence from the workplace because of
15 “[j]ust not wanting to work” is “the biggest concern.” (MacArthur Dep. 24:19 – 25;
16 25:1 – 8; Lee Dep. 29:8-22)

17 23. Approximately 75% of candidates move from the internal interview
18 phase of the hiring process to the reference check phase. (Lee Dep. 33:6 – 10) And
19 if the candidate is qualified for the position that he or she is applying for then the
20 Recruiter call’s the potential candidate’s references. (Lee Dep. 33:11 – 18)

1 24. When Aerotek presents candidate to a client it provides the client the
2 candidate's resume as well as a short write up about the candidate. (Lee Dep. 36:3
3 – 6) The resume that Aerotek submits to the customer is placed on Aerotek
4 letterhead in order to ensure that the resume that Aerotek presents to the customer
5 best matches the customer's job description. (Lee Dep. 36:7 – 21)
6

7 25. Recruiters use a system called Recruiter Work Space (RWS) to track
8 their interactions with candidates and contractors. (Lee Dep 12:6-9; 38:17 – 19)
9

10 26. A recruiter is supposed to make an RWS entries each time it speaks
11 with a candidate. (Lee Dep 38:23 – 25)

12 27. Ms. Lee testified that she cannot make changes to the RWS system at
13 all. (Lee Dep 39:3 – 24)
14

15 28. Aerotek's corporate designee; however, testified that RWS notes from
16 candidate phone interviews can be edited. (Landmeier Dep. 84:20-25; 85:1-4;
17 162:19-25; 163:1-22)

18 29. Ms. Lee testified that it is never okay to mislead a candidate. (Lee Dep.
19 54:24 – 25) Ms. Lee testified that it is never okay to break a promise with a
20 candidate. (Lee Dep. 55:1 – 3)
21

22 **B. Aerotek has no system to prevent workplace discrimination and does**
23 **business in Washington but does not train its Washington-based Recruiters on**
24 **Washington's anti-discrimination law nor does it train its Recruiters/Account**
25 **Managers on USERRA.**

1 30. While Aerotek has a stated goal to ensure that a candidate’s protected
2 status (i.e. race, color, sex, creed, military obligation, etc.) is not taken into account
3 as part of the hiring process, it has no system (i.e. a checklist of rules designed to
4 ensure a certain result happens) to ensure that goal is met. (MacArthur Dep. 35:10
5 – 25; 36:1 – 23)
6

7 31. While Mr. MacArthur unequivocally testifies that no such system
8 exists, Ms. Lee claims such a system exists just that she “don’t know where [she
9 could] find it.” (Lee Dep. 42:21-25; 43:1-10; 45:9-19)
10

11 32. While Aerotek trains its internal employees (like Lee and MacArthur)
12 in the prevention of employment discrimination it has no means of ensuring that its
13 training is effective. (Landmeier Dep. 20:20-24; 21:1-3)
14

15 33. Although Lee and MacArthur work in the State of Washington,
16 Aerotek did not train them on the Washington Law Against Discrimination.
17 (Landmeier Dep. 22:13-20)
18

19 34. While Aerotek claims that Ms. Lee and Mr. MacArthur received
20 training on USERRA none of the documents upon which it bases that contention
21
22
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1 actually mention “USERRA.”¹ (Landmeier Dep. 23:1-7; 24:15-24; 25:1-9; 26:24-
2 25: 27:1-25; 28:8-11 & Exs. 35, 37)

3 35. Excluding a candidate for employment with an Aerotek customer
4 because of that candidate’s upcoming military deployment would violate Aerotek’s
5 EEO policy even if Aerotek’s contract with the customer was even just for a few
6 months. (Landmeier Dep. 29:18-25; 30:1- 16)

8 36. A candidate’s forthcoming birth of a child is never a criterion that
9 Aerotek considers in determining whether or not to place a potential candidate with
10 a customer. (Lee Dep. 30:20 – 25; 31:1 – 2) And a candidate’s upcoming military
11 deployment, pregnancy leave, or sick leave are never a factor in deciding whether
12 or not to present that candidate for employment with an Aerotek customer.
13 (Landmeier Dep. 38:10-19; Lee Dep. 30:24 – 25; 31:1)

16 37. Aerotek’s policies state, in part, that “labor and employment laws and
17 rules can be complex, and if you should have any questions about their applicability,
18 you should contact your supervisor, Human Resources Representative or the Legal
19 department.” (Lee Dep. 50:11 – 17)

22 ¹ The day before the company’s FRCP 30(b)(6) deposition Aerotek produced an
23 “internal employee” handbook that contains a one sentence summary of USERRA.
24 (Landmeier Dep. 176:25; 177:1-18)

1 38. Ms. Lee does not know who her Human Resources Representative is.
2 (Lee Dep. 50:18 – 19)

3 39. At no time has Ms. Lee ever asked anyone any questions about the
4 employment rights that military servicemembers have under the law. (Lee Dep.
5 50:20 – 23)

6
7 40. Ms. Lee has, however, read the USERRA poster that is posted at her
8 Aerotek worksite in Spokane, Washington. (Lee Dep. 51:12 – 24 & Exs. 6A, 6B)

9
10 **C. One of Aerotek’s customers is Transtector, a Hayden, Idaho based**
11 **company that (1) had numerous RF Technician position openings in the 2017**
12 **timeframe and (2) had never outright rejected any RF Technician candidate**
13 **Aerotek presented to it.**

14 41. Transtector hired Aerotek to recruit contract employees to work as RF
15 Technicians at its Hayden, Idaho facility. (MacArthur Dep. *citing* Ex. 23 *citing*
16 AEROTEK000428-431 & AEROTEK000284) Mr. MacArthur served as Aerotek’s
17 “Account Manager” for the Transtector account during 2017. (MacArthur Dep. 10:2
18 – 5) Transtector is no longer an Aerotek customer because, as of January 2018,
19 Aerotek filled all of its RF Technician positions. (MacArthur Dep. 10:2 – 23)

20 42. Aerotek’s contract with Transtector shields Aerotek from any financial
21 liability should Aerotek place, with Transtector, a candidate who does not work out.
22 (MacArthur Dep. 45:6 – 25; 46:1 – 3 & Ex. 23 *citing* AEROTEK000429 ¶12)

1 43. Aerotek would face no consequences for placing somebody at
2 Transtector who ultimately turned out to be a poor performer. (Lee Dep 64:15 – 21)

3 44. Mr. MacArthur does not know how many open RF Technician
4 positions existed at Transtector in March 2017. (MacArthur Dep. 11:2-4) Lindsey
5 Lee does not know how many open RF Technician positions existed at Transtector
6 during the April 2017 timeframe. (Lee Dep. 167:20-22) Similarly, Aerotek’s
7 corporate designee does not know how many open RF Technician positions existed
8 at Transtector in the April 2017 timeframe (Landmeier Dep. 60:16-23)
9
10

11 45. As of June 14, 2017, Transtector’s website reflected that at least one
12 RF Technician opening existed at Transtector’s Hayden, Idaho facility. (Kimm
13 Decl. ¶4)
14

15 46. Ms. Lee has a “very basic” understanding about what happens at the
16 Transtector facility and has no idea as to how Transtector trains its RF Technicians.
17 (Lee Dep. 56:25; 57:1 – 8; 19 – 23) Ms. Lee’s “very basic” understanding as to
18 what happens at the Transtector facility is based off of a single conversation she
19 had with Mr. MacArthur sometime in March 2017. (Lee Dep. 58:13 – 16; 58:23 –
20 25; 59:1; 59:17-25; 60:1-8; 61:20-22) Ms. Lee does not know what an RF
21 Technician does inside a factory setting as opposed to outside of a factory setting.
22 (Lee Dep. 65:10 – 14) Ms. Lee could not give an example of an RF Technician
23 making a “component level” repair. (Lee Dep. 68:24-25; 69:1)
24
25

1 47. Mr. MacArthur cannot accurately describe what RF Technicians do
2 each day at Transtector's Hayden, Idaho facility. (MacArthur Dep. 32:10 – 12) Mr.
3 MacArthur does not know how Transtector trains its RF Technicians. (MacArthur
4 Dep. 32:13 – 15)

5
6 48. Mr. MacArthur does know that if Aerotek placed a contract worker at
7 Transtector then Aerotek would make \$25 an hour every hour that the contract
8 worker worked for Transtector. (MacArthur Dep. 13:24 – 25; 14:1 – 5)

9
10 49. Mr. MacArthur states that the ability of an RF Technician to do work
11 “down to the component level” was a factor in whether Aerotek would send a
12 potential candidate to Transtector. (MacArthur Dep. 31:11 – 15) However, a review
13 of the RWS notes for Harlan Kamm and Paul Rokusek (more on them below) reveal
14 that none of the candidates that Aerotek presented to Transtector for employment
15 as RF Technicians (i.e. Harlan Kamm, Paul Rokusek) were asked any question
16 about whether they could do repair “down to the component level.” (Lee Dep. Ex.
17 12; MacArthur Dep. Ex. 27) The reference check that Ms. Lee conducted on one of
18 Mr. Kamm's references contains no reference to doing any type of work “down to
19 the component level.” (ECF No. 042-1, PG ID 543) Tellingly, while Mr. MacArthur
20 recalls that Transtector gave Aerotek certain questions to ask potential RF
21 Technician candidates, Mr. MacArthur does not remember what those questions
22 (which are not in writing) were. (MacArthur Dep. 44:4 – 17)

1 50. Transtector has never rejected a candidate for the RF Technician
2 position because that candidate did not have component level repair experience.
3 (MacArthur Dep. 44:20 – 25; 45:1)

4 51. Mr. MacArthur, Ms. Lee, and Aerotek’s corporate designee all agree
5 that Transtector was better qualified than Aerotek in determining whether a
6 candidate for an RF Technician position had the technical skills to perform RF
7 Technician work. (MacArthur Dep. 34:1 – 7; Lee Dep. 63:4-7; Landmeier Dep.
8 151:21-25; 152:1-9)

9 52. Transtector has never outright rejected (i.e. not allowed to start work)
10 a candidate that Aerotek presented. (Lee Dep. 65:3 – 7)

11 53. Five individuals (Paul Rokusek, Harlan Kamm, James Clark, Ryan
12 Jarrold, and Marcus Kimm) applied with Aerotek to work for Transtector as an RF
13 Technician during the March 2017 through January 2018 timeframe, Aerotek
14 presented four of those candidates (Rokusek, Kamm, Clark, and Jarrold) to
15 Transtector for consideration, and Transtector allowed all four people that Aerotek
16 presented to it to start work at Transtector. (MacArthur Dep. 87:25; 88:1-25; 89:1-
17 25; 90:1-25; 91:1-25; 92:1-26 & Exs. 26, 32, 33, 34 & Ex 37 *citing* Interrogatory
18 No. 12)

1 54. Of the above-referenced five individuals, Marcus Kimm was the only
2 applicant who was an actively serving member of the military reserves. *Id.* & Lee
3 Dep. Ex. 20.

4 55. Of the above-referenced individuals all, but Marcus Kimm, were given
5 the opportunity to start work at Transtector. *Id.* (Landmeier Dep. 70-74 *citing* Ex.
6 37)

7 56. In order to ensure that Transtector hires a candidate from Aerotek,
8 Aerotek customizes that candidate's resume and also sends, to Transtector, an email
9 that summarizes that candidate's qualities. (MacArthur Dep. 62:10-17 & Ex 26; Lee
10 Dep. Ex. 8C)

11 **D. Aerotek allows Paul Rokusek and Harlan Kamm the opportunity to**
12 **work for Transtector.**

13 57. Aerotek conducted an in-person interview with Mr. Rokusek on March
14 8, 2017. (MacArthur Dep. Ex. 27 *citing* AEROTEK000591-592)

15 58. There is no entry on Aerotek's RWS sheet regarding Mr. Rokusek that
16 confirms whether Aerotek specifically discussed or otherwise evaluated whether
17 Mr. Rokusek was technically qualified to work as an RF Technician for Transtector.
18 (Landmeier Dep. 121:17-25;122:1-25; 123:1-20 & Ex. 27)

19 59. After Aerotek interviewed Mr. Rokusek for the RF Technician
20 position it completed two reference checks *before* presenting Mr. Rokusek to
21

1 Transtector for consideration. (Landmeier Dep. 127:15-25 & Ex. 27 *citing*
2 AEROTEK000591-592; MacArthur Dep. 65:8-14)

3 60. Mr. Rokusek ended his employment with Transtector in late-March
4 2017. *Id. citing* AEROTEK000586-587.

5
6 61. After Mr. Rokusek was fired for poor performance at Transtector
7 Aerotek continued to proactively reach out to him to see if he was interested in other
8 jobs. (Landmeier Dep. 132:9-25; 133:1-25)

9
10 62. On October 18, 2017, Aerotek began the process of contacting Mr.
11 Rokusek to see if he was interested in working at Transtector as an RF Technician.
12 (Landmeier Dep. 135:5-25; 136:1-25; 137:1-9; MacArthur Dep. 70:3 – 25; 71:1 –
13 6 & Ex. 27)

14
15 63. On April 3, 2017, at 1:28 PM (EST) Lindsey Lee made an RWS entry
16 reflecting that Harlan Kamm was a “new candidate.” (Lee Dep Ex 12 *citing*
17 AEROTEK 000542) Ms. Lee’s notes of that entry reflect that Mr. Kamm “might be
18 a good fit for Alliance.” *Id.* Ms. Lee wrote that Mr. Kamm “might be a good fit
19 for Alliance” before her April 3, 2017, 4:00 PM (PST) interview with Marcus Kimm
20 and the resulting April 3, 2017, 4:33 PM (PST) and April 4, 2017, email
21 correspondence between Ms. Lee and Mr. Kimm when Mr. Kimm’s upcoming
22 military deployment was discussed. *See infra.*
23
24
25

1 64. On April 4, 2017, at 5:25 PM (EST) Ms. Lee conducted an internal
2 interview with Mr. Kamm and the RWS notes from that interview reflect that Ms.
3 Lee did not discuss Alliance with Mr. Kamm but instead “[w]ill send over to
4 Transtector” instead. (Lee Dep. Ex 12 *citing* AEROTEK 000541)

5
6 65. Ms. Lee does not recall why she suddenly ceased work on presenting
7 Mr. Kamm to Alliance and instead focused on presenting Mr. Kamm to Transtector.
8 (Lee Dep. 78:25; 79:1 – 20)

9
10 66. Mr. Kamm’s resume reflects that he had not worked, at all, in any job
11 since 2013. (Lee Dep. Ex. 8C) This is a “red flag”. *See supra* SOF ¶22.

12 67. Ms. Lee’s RWS notes regarding Mr. Kamm say “he felt he didn’t have
13 enough knowledge around the [Transtector] RF Technician” position.” (Lee Dep
14 84:2 – 11)

15
16 68. On April 5, 2017 Aerotek offered Harlan Kamm a conditional position
17 with Transtector. (Lee Dep 71:12 – 25; 72:1 – 16 & Ex. 9) In this instance
18 Transtector made the decision to conditionally offer Mr. Kamm employment before
19 Transtector even interviewed Mr. Kamm. (Lee Dep 72:25; 73:1 – 6)

20
21 69. On April 7, 2017 Ms. Lee sent Mr. Kamm an email that gave him some
22 talking points so he would perform well during his upcoming interview with
23 Transtector. (Lee Dep. 74:12 – 23; & Ex. 10)

1 70. Mr. Kamm’s first day of work at Transtector was April 11, 2017. (Lee
2 Dep. 85:11 – 15)

3 71. RWS entries are made in chronological order and the first RWS entry
4 regarding a reference check that Aerotek/Ms. Lee did on Mr. Kamm was April 13,
5 2017 – – – two days after he actually started work at Transtector. (Lee Dep. 86:5 –
6 7 *citing* Ex. 12 *citing* AEROTEK 000539)

8 72. The RWS entry reflects that Mr. Kamm’s reference check contains a
9 “Last/Mod Date/Time” of April 13, 2017, of 11:32 AM EST and an “Activity Date”
10 of April 4, 2017, and Ms. Lee does not have an understanding as to why the
11 “modification” and “activity dates” differ because “typically there is only one date
12 listed.” (Lee Dep. 86:12 – 22 *citing* AEROTEK000539²) Ms. Lee cannot recall why
13 the time entries are different and could only “guess” that she actually completed a
14 reference check for Mr. Kamm on April 4, 2017. (Lee Dep 87:6 –25; 88:1 – 8; 89:13
15 – 24) Aerotek’s FRCP 30(b)(6) designee confirmed that it was likely that the
16 reference check “would have gotten entered [on April 4] but then it was likely
17 completed on 4-13.” (Landmeier Dep. 88:10-25; 89:1-6)
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23 ² The first page of Exhibit 12, AEROTEK000536, has the “last modified” and
24 “activity date” RWS columns.
25

1 73. Of the 24 entries on Mr. Kamm's RWS sheet the only entry with a
2 different "modification" and "activity" date is the April 13th modification of a task
3 that might have been started on April 4. (Landmeier Dep. 91:9-19 & Ex. 12)

4 74. As it relates to Mr. Kimm's RWS notes all of the "modification" and
5 "activity" dates are the same. (Landmeier Dep. 91:20-25; 92:1-2)

6 75. The vast majority of RWS entries have the same "modification" and
7 "activity" date. (Landmeier Dep. 93:21-25; 94:1-18 & Ex. 12, 15, 27)

8 76. Aerotek's expectation is that recruiters, like Lindsey Lee, make RWS
9 entries at or near the time the task is being conducted. (Landmeier Dep. 79:8-23)

10 77. Ms. Lee completed in another reference check on Mr. Kamm on April
11 17, 2017 – – – six days after Mr. Kamm started working at Transtector. (Lee Dep
12 87:14 – 25; 88:1 – 8)

13 78. The Harlan Kamm employee reference that Ms. Lee interviewed on
14 April 4th *or* April 13th was a co-worker (not supervisor) of Mr. Kamm and that co-
15 worker worked in an entirely different department than Mr. Kamm; moreover, the
16 interview sheet does not reflect that the reference was ever asked about Mr. Kamm's
17 ability to do "repair down to the component level." (ECF 042-1 PG ID 534)

18 79. Mr. Kamm worked as an Aerotek employee (but physically working
19 at Transtector) for approximately four months before Transtector hired him in a
20 full-time capacity. (Lee Dep 92:24 – 25; 93:1 – 6; 95:2-6)

1 **E. Mr. Kimm applies, through Aerotek, for an RF Technician position with**
2 **Transtector.**

3 80. Neither Mr. MacArthur nor Ms. Lee have reason to question Mr.
4 Kimm's honesty. (MacArthur Dep 79:8-10; Lee Dep. 105:25; 106:1-3)

5 81. During the March 2017 timeframe Ms. Lee began searching Aerotek's
6 database for potential candidates to fill the Transtector RF Technician position. (Lee
7 Dep. 106:4-14; 108:25; 109:1-5)

8 82. Ms. Lee located between 20 and 50 candidates and made
9 approximately 20 calls in searching for Transtector RF Technician candidates. (Lee
10 Dep. 107:24-25; 108:1-8) It took Ms. Lee about a week to do this search. (Lee Dep.
11 109:6-10)

12 83. Mr. Kimm was one of the 20 individuals Ms. Lee called and before
13 calling Mr. Kimm Ms. Lee had (a) looked at the RF Technician job description (b)
14 spoken with Mr. MacArthur, and (c) looked at Mr. Kimm's resume during her
15 phone call with Mr. Kimm. (Lee Dep. 108:9-24)

16 84. Although she does not use a written set of interview questions, Ms.
17 Lee recalls discussing logistics, pay, shifts, candidate expectations, and questions
18 regarding leadership with both Mr. Kimm and Mr. Kamm. (Lee Dep. 112:22-25;
19 113:1-4) Ms. Lee did not discuss "component repair" or any other technical attribute
20 associated with the RF Technician position with Mr. Kimm or Mr. Kamm. *Id.*

1 85. On March 31, 2017, Ms. Lee contacted Mr. Kimm and during that call
2 Mr. Kimm told Ms. Lee that he was only interested in a temporary position;
3 however, Mr. Kimm, about an hour and forty-five minutes later, changed his mind
4 and contacted Ms. Lee to set up an in-person interview. (Lee Dep. at 141:4-17;
5 142:19-25; 143:1-5 & Ex. 15G *citing* AEROTEK 000175-176)
6

7 86. Ms. Lee had a five-minute phone call with Mr. Kimm on March 31,
8 2017 where Ms. Lee told Mr. Kimm that “the skills [he] had on his resume matched
9 the position they had” and that she (Lee) had looked at his (Kimm’s) resume before
10 calling. (Crotty Decl. at **Exhibit D** *citing* Kimm Dep. 62:20-25; 63:3-16)
11

12 87. While Ms. Lee and Mr. Kimm dispute what was specifically discussed
13 during their five-minute March 31, 2017, phone call, it is clear that the full impact
14 (i.e. the time significance) of Mr. Kimm’s deployment did not become apparent to
15 Ms. Lee until April 3, 2017. *See infra*.
16

17 88. Ms. Lee claims to have entered her recollection of what happened
18 during the March 31, 2017 call into the RWS system. (Lee Dep. 120:2-16; Ex. 15A
19 *citing* AEROTEK00003) There is no way to tell when or what edits were made to
20 Ms. Lee’s March 31, 2017 RWS entry regarding her communication with Mr.
21 Kimm. (Landmeier Dep: 86:4-25; 87:1 – 20)
22
23
24
25

1 89. Ms. Lee did not see any “red flags” on Mr. Kimm’s resume nor did
2 any “red flags” come up during her in person interview with Mr. Kimm. (Lee Dep.
3 113:14-22)

4 90. Ms. Lee conducted an in-person interview with Mr. Kimm on April 3,
5 2017, at 4 PM PST. (Lee Dep. 114:1-6; 144:3-7) Ms. Lee does not recall any
6 question she asked of Mr. Kimm during her April 3, 2017, in person interview of
7 him. (Lee Dep. 114:9-11)
8

9 91. At no time before the April 3, 2017, interview did Ms. Lee tell Mr.
10 Kimm that he needed to bring employee reference contact information to the
11 interview. (Kimm Decl. ¶3)
12

13 92. During the April 3, 2017 interview Mr. Kimm discussed, among other
14 things, his upcoming military deployment. (Lee Dep. 114:12-19) Ms. Lee also
15 asked Mr. Kimm about his experience and “broad” questions regarding the RF
16 Technician position. (Kimm Dep. 84:18-23)
17

18 93. Ms. Lee’s demeanor during the April 3, 2017, interview changed from
19 “bubbly” and “excited to...go over the position” with Mr. Kimm to “withdrawn”
20 and not as “interactive” once Mr. Kimm mentioned his upcoming military
21 deployment. (Kimm Dep. 106:12-25; 107:1-24) In fact, once Mr. Kimm mentioned
22 his deployment to Ms. Lee the interview skidded to a halt. (Kimm Dep. 25:20-25;
23 26:1-4; 83:12-23)
24
25

1 94. The interview ended at approximately 4:30 PM on April 3, 2017, and
2 at 4:31 PM (PST) Ms. Lee marked “Y” for “yes” so as to allow Mr. Kimm to
3 proceed through the hiring process. (Lee Dep. 120:22-24; Ex. 15A *citing*
4 AEROTEK00003) But, at 4:33 PM PST Ms. Lee emailed Mr. Kimm about his
5 deployment. (Lee Dep. 145:1-23 & Ex. 16 *citing* AEROTEK00188) Ms. Lee asked
6 Mr. Kimm that question because she was “trying to recall the information from the
7 interview.” *Id.* This was the only information that Ms. Lee can recall trying to
8 “recall from the interview.” *Id.*
9

10
11 95. On April 3, 2017 at 4:42 PM Mr. Kimm responded to Ms. Lee’s email
12 stating that he had “a deployment mid-July” (Lee Dep. 145:24 – 25; 146:1 – 3)

13 96. After reading that Mr. Kimm had “a deployment mid-July” Ms. Lee
14 (a) “spoke with Phil [MacArthur] just in regards to the position,” (b) had that
15 conversation with Mr. MacArthur on April 3, 2017, and (c) had the conversation
16 with Mr. MacArthur, in person, to show Mr. MacArthur Mr. Kimm’s resume. (Lee
17 Dep. 146:4 – 19)
18

19 97. Ms. Lee testified that she also “mentioned” Mr. Kimm’s deployment
20 to Mr. MacArthur during their alleged (see below) April 3, 2017, meeting. (Lee Dep
21 146:22 – 25; 147:1 – 3)
22

23 98. However, Mr. MacArthur was on vacation - - and out of the office - -
24 on April 3, 2017 and Aerotek has provided no verifiable testimony that Ms. Lee and
25

1 Mr MacArthur spoke, at all, regarding Mr. Kimm during that time. (Landmeier Dep.
2 156:11-25; 157:1-13; 161:2-20)

3 99. On April 3, 2017 at 4:44 PM Ms. Lee wrote Mr. Kimm “okay, this
4 position would be longer-term, hoping for someone to stick around full time.” (Lee
5 Dep 148:6 – 12) Ms. Lee was referring to the RF Technician position at Transtector
6 when she wrote those words to Mr. Kimm. (Lee Dep 148:13 – 16) The reason that
7 Mr. Kimm was not going to be able to “stick around full time” was because of his
8 mid-July deployment. (Lee Dep 148:21 – 25; 149:1)

9
10
11 100. When asked what Ms. Lee meant when she wrote “hoping for someone
12 to stick around full time” Ms. Lee testified “I don’t remember my mind set at that
13 time, but just someone to be there full time is what I said.” (Lee Dep. 148:17 – 20)
14 & Ex. 16) And when asked why Ms. Lee wrote “hoping for someone to stick around
15 full time” Ms. Lee responded “I don’t remember what I was thinking at the time.”
16 Lee Dep. 149:2 – 5) Ms. Lee concedes that it was her, as opposed to Transtector,
17 who was “hoping for someone to stick around full time.” (Lee Dep. 149:21 – 24)

18
19
20 101. Ms. Landmeier (Aerotek’s FRCP 30(b)(6) designee) could not
21 definitively answer whether Ms. Lee’s April 3, 2017, 4:44 PM response to Mr.
22 Kimm was consistent with Aerotek’s EEO policy or consistent with Ms. Lee’s EEO
23 training. (Landmeier Dep. 32:3-24)

1 102. On April 3, 2017 at 4:47 PM Mr. Kimm informed Ms. Lee “I would
2 come back as soon as I come back from deployment. I’m looking for a full career,
3 not something temporary.” (Lee Dep. 150:1 – 8) Ms. Lee, who does not remember
4 how she felt when she read Mr. Kimm’s email, asked Mr. Kimm how long he
5 anticipated the deployment being and then promised to get Mr. Kimm’s “resume
6 over to them tomorrow.” (Lee Dep. 150:13 – 23) By tomorrow Ms. Lee meant April
7 4, 2017. *Id.* Ms. Lee never sent Mr. Kimm’s resume to Transtector nor did she tell
8 anyone to send Mr. Kimm’s resume to Transtector. *See infra* SOF ¶109.
9

10
11 103. Mr. MacArthur testified that he made the determination that Marcus
12 Kimm was not qualified for the RF Technician position and that he made the
13 determination “the day that Lindsey interviewed him, and I saw his resume because
14 she brought his resume to me. She liked him, but I had to make the decision. I didn’t
15 think he had the experience for Transtector.” (MacArthur Dep. 80:16 – 20)
16

17 104. The “day that Lindsey interviewed” Mr. Kimm was April 3, 2017. (Lee
18 Dep. Ex. 15A *citing* AEROTEK000003; ECF No. 042, PG ID 383 *citing* Defense
19 Fact No. 24)
20

21 105. It was physically impossible for Ms. Lee to have “brought [Kimm’s]
22 resume” to Mr. MacArthur because Mr. MacArthur was on vacation - - and not in
23 the office - - on April 3, 2017. (Landmeier Dep. 156:11-25; 157:1-13; 161:17-20)
24
25

1 106. Aerotek has not produced any phone record, email, text message or
2 any other written means of communication showing that Ms. Lee and Mr.
3 MacArthur communicated (in person, via phone, or in writing) about Mr. Kimm on
4 April 3, 2017.
5

6 107. Mr. MacArthur testified (a) that there was never a plan to send both
7 Mr. Kimm and Mr. Kamm’s resumes to Transtector so Transtector could decide
8 who was better qualified for the RF Technician position but (b) if Aerotek received
9 Mr. Kimm’s references in time “and checked them and they said that [Kimm] could
10 do the work down to the component level, there was a chance that we would have
11 sent” Mr. Kimm’s application information to Transtector.” (MacArthur Dep. 81:12-
12 24)
13

14 108. And as it relates to Aerotek’s alleged plan to send Mr. Kimm’s
15 application information to Transtector, Ms. Lee testimony did not include the “there
16 was a chance” qualifier but instead indicated had Mr. Kimm submitted his
17 references (within the 24 hour April 3 – April 4 timeframe) then Transtector would
18 decide on who was the most qualified. (Lee Dep. 125:20-25)
19

20 109. Ms. Lee did not submit Mr. Kimm’s resume to Transtector on April 4,
21 2017 nor did she instruct her supervisor, Phil MacArthur, to do so. (Lee Dep. 150:24
22 – 25; 151:1 – 23)
23
24
25

1 110. On April 4, 2017 of 11:53 AM Ms. Lee, responding to Mr. Kimm’s
2 email that he would return from deployment in mid-to-late January, wrote “[O]kay.
3 They are hoping for a candidate that would be there to fulfill the whole 6-month
4 contract a hire. I will keep you in mind for other opportunities that may be before
5 you leave. But, please get in contact when you get back, so we can discuss options
6 then.” (Lee Dep. 152:19 – 25; 153:1 – 5 & Ex. 16) Ms. Lee does not remember why
7 she wrote the above-referenced email to Mr. Kimm. (Lee Dep. 153:17 – 19)
8 Although Ms. Lee in her email meant “they” to mean Transtector, she never spoke
9 to anybody at Transtector regarding Mr. Kimm. (Lee Dep. 153:3 – 9) Mr. Kimm’s
10 military deployment was a reason why Ms. Lee told Mr. Kimm that “they” were
11 hoping for “a candidate that would be there to fulfill the whole six month contract
12 to hire” because Ms. Lee “wanted to make sure that it was a best fit for [Kimm] and
13 the company.” (Lee Dep. 169:22-25; 170:1-4)
14
15
16

17 111. Ms. Landmeier (Aerotek’s 30(b)(6) designee) could not definitively
18 answer whether Ms. Lee’s April 4, 2017, 11:53 AM response to Mr. Kimm was
19 consistent with Aerotek’s EEO policy or Ms. Lee’s EEO training. (Landmeier Dep.
20 34:5-25; 35:1-25)
21

22 112. Ms. Landmeier (Aerotek’s 30(b)(6) designee) agreed that Ms. Lee
23 would “absolutely” and “definitely” need some retraining on Aerotek’s EEO policy
24
25

1 given Ms. Lee’s April 3, 2017 and April 4, 2017, email exchanges with Mr. Kimm.
2 (Landmeier Dep. 38:20-25; 39:1-19)

3 113. Following her April 4, 2017 11:53 AM email to Mr. Kimm Ms. Lee
4 testified that she “probably talked to Phil [MacArthur]” in person. (Lee Dep. 155:23
5 – 25; 156:1 – 2)

6
7 114. Mr. MacArthur was on vacation on April 4, 2017. (Landmeier Dep.
8 156:11-25; 157:1-13; 161:17-20)

9
10 115. Ms. Lee testified to having more than two conversations regarding
11 Marcus Kimm and his deployment with Mr. MacArthur during the April 3 and April
12 4, 2017 timeframe. (Lee Dep 156:3 – 21)

13
14 116. Mr. MacArthur testified that he did not recall having any conversation
15 about Mr. Kimm’s military deployments “at the time of [Kimm’s] application,” i.e.
16 during the April 3-4, 2017 timeframe. (MacArthur Dep. 87:17-20 & Depo.
17 Correction Sheet; MacArthur Dep. 94:2-12 & Depo Correction Sheet)

18
19 117. On April 4, 2017 at 12:05 PM Mr. Kimm wrote Ms. Lee “[a]m I not
20 being considered because of the deployment in July?” (Lee Dep. 154:20 – 25)
21 Although that question called for a simple yes or no answer, Ms Lee testified that
22 she did not want to provide a written answer to that question. (Lee Dep. 156:22 –
23 25; 157:1 – 6) Instead of providing a written response to Mr. Kimm’s email Ms.
24 Lee claims to have left a voicemail with Mr. Kimm but has no recollection of what
25

1 she said on that voicemail. (Lee Dep 157:7 – 11) Mr. Kimm’s phone records do not
2 reflect that Ms. Lee left him a voicemail on that date. (Kimm Dep. 90:24-25; 91:6-
3 7 & KIMM000212)

4 118. On April 4, 2017 at 1:42 PM Mr. Kimm wrote to Ms. Lee “[i]f I didn’t
5 have the deployment, what I still be considered?” (Lee Dep. 157:21 – 25 & Ex. 16)
6 Again Ms. Lee declined to answer that “yes” or “no” question. (Lee Dep. 158:3 –
7 8)
8

9 119. On April 4, 2017 1:50 PM Ms. Lee wrote Mr. Kamm: “can you please
10 send over 2 professional references? I am working on updating your resume and
11 sending it here [sic] soon.” (Lee Dep 159:1 – 5 & Ex. 17) On April 4, 2017 at 4:56
12 PM Ms. Lee wrote to Mr. Kimm “if you can please send those references tonight, I
13 will call them tomorrow & submit your resume!” (Lee Dep 160:12 – 25 & Ex 18).
14
15

16 120. Within 13 minutes of Ms. Lee’s April 4, 2017, 4:56 PM email Mr.
17 Kimm provided the two references. (Lee Dep. 160:23 – 25) On April 4, 2017, 5:18
18 PM Ms. Lee acknowledged receipt of Mr. Kimm’s two references. (Lee Dep.
19 161:20 – 22)
20

21 121. Although Ms. Lee told Mr. Kimm that she would call the references
22 she did not do so. (Lee Dep. 162:1 – 13) Ms. Lee agrees that her telling Mr. Kimm
23 that she would call the references but subsequently not doing so “was a little
24 misleading.” *Id.*
25

1 122. Mr. Kimm was never told that if he failed to supply his references to
2 Aerotek by a date certain then he would forfeit his opportunity to compete for the
3 RF Technician position. (MacArthur Dep. 82:19-25; 86:15-25; Kimm Decl. ¶2)

4 123. When asked whether screening Mr. Kimm out of the RF Technician
5 applicant pool because of Mr. Kimm's alleged failure to provide reference
6 information on time was consistent with being an equal opportunity employer Mr.
7 MacArthur testified: "I don't know." (MacArthur Dep. 87:10-17)

8 124. There was nothing that physically prevented Aerotek from sending Mr.
9 Kimm's resume to Transtector in the April 2017 timeframe. (MacArthur Dep. 81:5
10 – 11; Lee Dep. 167:23-25; 168:1-3; Landmeier Dep. 61:23-25; 62:1-25; 63:1-10)

11 125. Ms. Lee testified that she had at least one conversation with Mr.
12 MacArthur regarding the emails she was exchanging with Mr. Kimm, including the
13 emails referencing Mr. Kimm's deployment. (Lee Dep. 125:2-9)

14 126. Mr. MacArthur denied having any conversations with Ms. Lee
15 regarding the emails she was exchanging with Mr. Kimm at the time Mr. Kimm
16 was applying for work. (MacArthur Dep. 87:21-23 & Depo Correction Sheet)

17 127. On August 4, 2017, after Mr. Kimm filed this instant lawsuit, Aerotek
18 forwarded Mr. Kimm's resume to Transtector and, although not requested by
19 Transtector, Mr. MacArthur also wrote "the problem that we saw this [sic] Marcus's
20 experiences while he did RF work, it was field repair and not repair on equipment
21
22
23
24
25

1 down of the component level. Where Harlan had done that work what are your
2 thoughts?” (MacArthur Dep. 79:11 – 25; 83:17 – 25 & Ex. 31) Mr. MacArthur’s
3 representation to Transtector was inaccurate because Mr. Kimm had done repair on
4 equipment at the system and component level. (Kimm Dep. 80:15-20)
5

6 128. Mr. MacArthur does “not recall” why he, *sua sponte*, decided to not
7 only send Transtector Mr. Kimm’s resume but also, out of the blue, mention Harlan
8 Kamm and compare Mr. Kamm’s qualifications to Mr. Kimm’s qualifications.
9 (MacArthur Dep 85:1 – 2) It is also odd that Mr. MacArthur could recall either
10 candidate’s qualifications given the volume of resumes/interviews Mr. MacArthur
11 was doing in the 2017 timeframe. *See supra* SOF ¶7. Ms. Lee also has no
12 recollection as to why Aerotek sent this email to Transtector. (Lee Dep. 165:21-25;
13 166:1-12 & Ex. 20)
14
15

16 **F. Other inconsistencies Aerotek has exhibited regarding Mr. Kimm.**

17 129. On April 17, 2017, Ms. Lee emailed Mr. Kimm to tell him that while
18 his (Kimm’s) “resume was great!” he (Kimm) was not selected for the RF
19 Technician position because she “had another candidate with more years’
20 experience within a manufacturing setting”. (Lee Dep. Ex. 19 *citing*
21 AEROTEK000210)
22

23 130. However, Ms. Lee does not know the difference between what an RF
24 Technician does inside or outside of a factory setting. *See* SOF ¶ 46.
25

1 131. Aerotek has a code that its employees, like its Recruiters, must follow
2 if they find themselves in a situation where they are unsure about whether a decision
3 or action they take is appropriate. (Lee Dep. Ex. 4 *citing* AEROTEK000451) The
4 above-referenced code of conduct asks, in part, “am I being respectful, honest and
5 fair?” *Id.*
6

7 132. That rule applies in instances where AEROTEK recruiters interact
8 with job applicants or candidates. (Lee Dep. 49:21 – 24)
9

10 133. At deposition Lindsey Lee testified that she could not think of a single
11 instance in which she had been dishonest with a job applicant. (Lee Dep. 49:25;
12 50:1 – 2)
13

14 134. Yet Ms. Lee agrees that at least one of her emails to Mr. Kimm was
15 misleading. (Lee Dep. 162:3-13)
16

17 135. Ms. Lee also agrees that her written representation to Mr. Kimm that
18 she (Lee) would be sending Mr. Kimm’s resume to Aerotek was misleading. (Lee
19 Dep. 164:6-8)
20

21 136. It is Lindsey Lee, as well as other Aerotek Recruiters’ practices, to
22 recruit for more than just one position. (Lee Dep. 142:7 – 11 & Ex. 15G; Landmeier
23 Dep. 54:8-12) However, Ms. Lee deviated from that practice by not recruiting Mr.
24 Kimm for more than one position as Mr. Kimm’s RWS notes reflect that the *only*
25

1 position Ms. Lee recruited Mr. Kimm for was the Transtector RF position. (Lee
2 Dep. 142:12-18; Landmeier Dep. 137:2-9; 138:9-25; 139:1-3)

3 137. The RWS notes for Harlan Kamm and Paul Rokusek (the only other
4 RWS notes that have been produced in this case) reflect that Aerotek, as consistent
5 with its practice, recruited those individuals for multiple positions; however, the
6 RWS notes for Marcus Kimm reflect that once he informed Aerotek of his military
7 deployment Aerotek did not recruit him for any other position and, as of April 17,
8 2017, ceased recruiting him for any other position at all. (Landmeier Dep. 54:8-25;
9 55:1-25; 56:1-17; & Ex. 12 (Kamm RWS notes), Ex. 15A (Kimm RWS notes), Ex.
10 27 (Rokusek RWS notes)).

11
12
13 138. Plaintiff's Interrogatory No. 1 to Aerotek provides:

14 Identify (a) the name of each individual involved in deciding whether to
15 consider Mr. Kimm for employment with Transtector, (b) the date a decision
16 was made to not offer Mr. Kimm employment with Transtector, and (c) the
17 information said individual(s) relied on in deciding not to offer Mr. Kimm
18 employment with the Transtector. (Landmeier Dep. 43:24-25; 44:1-8 & Ex.
36)

19 139. Aerotek's substantive response to Interrogatory No. 1 is:

20 (a) Lindsey Lee; Phillip MacArthur.
21 (b) April 11, 2017.
22 (c) By the time that Plaintiff confirmed he was interested in the position with
23 Transtector for which Ms. Lee originally contacted Plaintiff, and provided
24 Aerotek with the necessary information that would enable Aerotek to submit
25 Plaintiff as a candidate to Transtector, Transtector had already confirmed its
interest in a more qualified candidate whom Aerotek had previously
presented to Transtector for the position. (Landmeier Dep. 44:14-25; 45:1-8)

1 140. On February 9, 2018, Ms. Landmeier verified Aerotek's answer to
2 Interrogatory No. 1 and, in doing so, stated that Aerotek's response to Interrogatory
3 No. 1 was "based upon facts compiled by employees and/or business records."
4 (Landmeier Dep. 42:14-25; 43:1-13)
5

6 141. Ms. Landmeier's "verification" is inaccurate because she did not speak
7 to any employee or look at any document in answering Interrogatory No. 1.
8 (Landmeier Dep. 45:17-25; 46:1-13) Ms. Landmeier does not know who wrote the
9 company's response to Interrogatory No. 1 and refused to answer whether she made
10 any edits to the Interrogatory No. 1 response when she received it. (Landmeier Dep.
11 46:14-25; 47:1-5) Indeed, Ms. Lee and Mr. MacArthur (the only two Aerotek
12 witnesses who actually knew what happened vis-à-vis Mr. Kimm) do not even know
13 Ms. Landmeier. *See supra* SOF ¶6.
14
15

16 142. In fact Ms. Landmeier did not even consider Mr. Lee's April 3, 2017
17 and April 4, 2017 emails with Mr. Kimm in answering Interrogatory No. 1 because
18 the first time she saw those emails was on July 13, 2018 at Aerotek's 30(b)(6)
19 deposition - - - 154 days AFTER she signed the Interrogatory No. 1 verification
20 page. (Landmeier Dep. 39:20-25; 40:1-7)
21

22 143. Aerotek's testimony regarding its affirmative defense that "Aerotek's
23 actions with respect to Plaintiff were at all time based on legitimate, non-
24 discriminatory reasons" is based off of testimony from Ms. Landmeier that consists
25

1 of Ms. Landmeier reading (a) words off of a piece of paper (b) that she (Landmeier)
2 did not write. (Landmeier Dep. 140:24-25; 141:1-25; 142:1-25; 143:1- 25) Aerotek
3 did not talk to any non-lawyer or review any document in presenting the testimony
4 upon which it bases its affirmative defense. (Landmeier Dep. 144:1-10) Aerotek
5 ignored the April 3 – April 4, 2017 emails between Ms. Lee and Mr. Kimm in
6 presenting the testimony upon which it supports its affirmative defense. (Landmeier
7 Dep. 144:11-25; 145:1-25; 146:5-25; 147:1-25; 148:1-12 & ECF No. 31 PG ID 162,
8 ¶8)
9

10
11 144. Another one of Aerotek’s affirmative defenses (Defense No. 10, ECF
12 No. 31 PG ID 162, ¶10) is that “Aerotek’s business model is based off of quickly
13 providing the best and most qualified candidates” to Aerotek’s clients yet Aerotek
14 cannot point to a single written policy upon which Aerotek’s alleged “business
15 model” is written. (Landmeier Dep. 149:19-25; 150:1-9) The Aerotek employee
16 (Landmeier) who provided the testimony regarding this alleged “business model”
17 based her testimony off of a piece of paper she read and Ms. Landmeier did not
18 know who wrote the paper nor did show know what, if any, Aerotek employees
19 and/or documents were consulted in providing this assertion about the company’s
20 “business model.” (Landmeier Dep. 150:10-23)
21
22

23 **PLAINTIFF’S COUNTER STATEMENT OF FACTS (CSOF)**
24
25

1 1. Contrary to Defendant’s Fact No. 2, while Aerotek professes that it is
2 an equal opportunity employer, it has no system in place to ensure that it actually
3 achieves that goal and it further admits that Ms. Lee’s April 3 and 4th email
4 exchanges with Mr. Kimm regarding his military deployment “definitely”
5 necessitate Ms. Lee being retrained in Aerotek’s EEO policies; yet, Aerotek has no
6 plan to re-train Ms. Lee. *See supra*. SOF ¶¶30-31, 112. (Landmeier Dep. 39:20-25;
7 40:1-7)
8

9 2. Contrary to Defendant’s Fact No. 3, Aerotek does not effectively train
10 its Recruiters and Account managers on USERRA or Washington’s anti-
11 discrimination laws. *See supra* SOF ¶¶33-34.
12

13 3. The evidence upon which Defendant bases Fact No. 4
14 (AEROTEK001740) was produced (along with 304 pages of other documents) on
15 July 12, 2018 at approximately 4PM - - - one month after the June 12, 2018,
16 depositions of Ms. Lee and Mr. MacArthur - - - and less than one day before the 8
17 AM July 13, 2018 FRCP 30b6 deposition of Aerotek. (Crotty Decl. ¶8) Had Aerotek
18 timely (i.e. more than one day before the FRCP 30(b)(6) deposition) produced the
19 document Mr. Kimm’s counsel would have listed Aerotek’s “Military Friendly”
20 designation as a FRCP 30(b)(6) deposition topic. *Id.* Given Aerotek’s 11th hour
21 production of this document Mr. Kimm respectfully moves to have it stricken.
22
23
24
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1 4. Contrary to Defendant's Fact No. 9, which states that Transtector
2 terminated Mr. Rokusek from the position because he "couldn't troubleshoot or
3 repair circuit boards down to the component level", Mr. MacArthur testified at one
4 point of his deposition that he never spoke with anybody at Transtector about Mr.
5 Rokusek's workplace performance yet, later in his deposition, testified to
6 discussions with Jim Zipperer (of Transtector) regarding Mr. Rokusek's workplace
7 performance. (MacArthur Dep. 69:4 – 7)
8

9 5. Contrary to Defendant's Fact No. 10 while Mr. Zipperer told Mr.
10 MacArthur that he was frustrated regarding Aerotek's sending Mr. Rokusek to
11 Transtector, it is also true that Aerotek was not penalized in any way when
12 Transtector made the decision to terminate Mr. Rokusek's employment.
13 (MacArthur Dep. 73:16 – 20) Additionally, Mr. MacArthur's deposition testimony
14 that Transtector was supposedly frustrated regarding the placement of Mr. Rokusek
15 is called into doubt when, in October 2017 Aerotek begin the process contacting
16 Mr. Rokusek to see if he was interested in working at Transtector as an RF
17 technician. *See supra* SOF ¶62.
18
19
20

21 6. Contrary to Defendant's Fact No. 17, it is Mr. Kimm's testimony that
22 he did not expressly mention his upcoming National Guard deployment during the
23 March 31st telephone call. (ECF No. 42-1, PG ID 506)
24
25

1 7. Contrary to Defendant’s Facts Nos. 19 & 20, while Ms. Lee made an
2 RWS entry there is no way to tell when and to what extent that RWS entry was
3 edited. *See supra* SOF ¶28.

4 8. Contrary to Defendant’s Fact No. 22, Ms. Lee was not “fully aware”
5 of the extent of Mr. Kimm’s deployment because once Mr. Kimm informed her of
6 the deployment’s length the in-person interview “skidded to a halt”, Ms. Lee’s body
7 language changed, and, most significantly Ms. Lee sent Mr. Kimm emails
8 specifically asking about the deployment details. *See supra* SOF ¶93, 99, 110.
9

10 9. Contrary to Defendant’s Fact No. 23, Ms. Lee originally considered
11 Mr. Kamm for employment with Alliance – not Transtector – but only decided to
12 put Mr. Kamm with Transtector AFTER she interviewed (in person) and exchanged
13 emails with Mr. Kimm and learned about the full effect of Mr. Kimm’s deployment.
14
15 *See supra* SOF ¶63-65.
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17 10. Contrary to Defendant’s Fact No. 25, Mr. Kimm, as is his right under
18 the rules, timely submitted a deposition correction sheet regarding that testimony.
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20 11. Contrary to Defendant’s Fact No. 26, while Ms. Lee didn’t say
21 anything negative about Mr. Kimm’s deployment her body language told a different
22 (more negative) story. *See supra.* SOF ¶93.
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1 12. Contrary to Defendant’s Fact No. 28, Ms. Lee did not recall what her
2 state of mind was when she sent those emails nor did she recall why she sent those
3 emails to Mr. Kimm regarding Mr. Kimm’s deployment. *See supra* SOF ¶100, 110.

4 13. Contrary to Defendant’s Fact No. 30, Ms. Lee does not recall why she
5 wrote the April 4, 2017 11:53 AM email. *See supra* SOF ¶110.

6 14. Contrary to Defendant’s Fact No. 37, Mr. Kimm was not told that he
7 needed to bring reference information to the in-person interview. *See supra* SOF
8 ¶122.

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11 15. Contrary to Defendant’s Fact No. 38, which states that “Miss Lee
12 called one of Harlan Kamm’s employment references...on April 4, 2017” Aerotek’s
13 RWS notes, which are in chronological order, show that on April 4, 2017 at 5:35
14 PM (EST) Lindsey Lee conducted and in person internal interview of Mr. Kamm.
15 (ECF No. 042-1 PG ID 518 *citing* Aerotek 000541) On April 4, 2017, at 7:25 PM
16 (EST) Ms. Lee submitted Mr. Kamm’s information to Transtector. *Id.* On April 5,
17 2017, at 2:43 PM (EST) Transtector accepted Aerotek’s offer to have Mr. Kamm
18 hired as a contract worker. *Id.* The RWS notes reflect that Mr. Kamm’s reference
19 checks were not completed until April 13, 2017 and April 17, 2017. (ECF No. 042-
20 1 PG ID 516 *citing* AEROTEK000539) Also, RWS entries are supposed to be made
21 at the time of the task being complete yet that was not done in this instance. (SOF
22 ¶71-76)
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1 16. Contrary to Defendant’s Fact No. 39, the “favorable reference” that
2 Mr. Eisele gave on either on April 4, 2017 *or* on April 13, 2017 (*compare* ECF No.
3 42-1, PG ID 534 *with* ECF No. 042-1 PG ID 516) was from one of Mr. Kamm’s
4 peers (Eisele) who didn’t even work in the same group as Mr. Kamm, i.e. Kamm
5 “was a Lab Tech at Itron. Merv [Eisele] was in a development group.” (ECF No.
6 42-1, PG ID 534) Although Aerotek makes much about the importance of “repair
7 down to the component level” as a key requirement for the RF Technician position,
8 the notes from Mr. Eisele’s reference check reveal that no such question about
9 “repair down to the component level” was asked.
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12 17. Contrary to Defense Fact No. 40, Mr. MacArthur’s testimony
13 regarding his decision to present Mr. Kamm to Transtector and not Mr. Kimm lacks
14 credibility for, among other reasons, he testified to reviewing Mr. Kimm’s resume
15 when Ms. Lee brought it to him on the day of Mr. Kimm’s in-person interview
16 (April 3rd) yet Mr. MacArthur was out of the office on vacation that day. *See supra*
17 SOF ¶103-105.
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20 18. Contrary to Defense Fact No. 42, Defendant’s “Kamm was more
21 qualified” defense fails because, *inter alia*, Aerotek’s own records make clear that
22 Aerotek gave minimal attention to the RF Technician technical skills as part of the
23 interview process. *See supra* SOF ¶20, 58, 78, 84. *See also infra*. ¶19.
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1 19. Contrary to Defense Fact No. 43, Mr. Kimm is a graduate from ITT
2 Technical Institute as well as a seven-month Air Force radio frequency transmission
3 school - - - an accredited electronic technical school for which Mr. Kimm has a
4 certification. (Kimm Dep. 27:21 – 23; 28 – 7; 100:21-25; 101:1-5; 102:2-16)
5
6 Additionally, while Mr. Kimm agreed that he did not have certain qualifications
7 when he was deposed Aerotek points to no document or testimony that Mr. Kimm,
8 Mr. Kamm, or Mr. Rokusek (or any other person Aerotek presented to Transtector
9 for employment as and RF Technician) were asked those exact same questions
10 during their interview. *See supra* CSOF 18. Further, unlike Harlan Kamm who had
11 not even been in the workforce for the past four years, Mr. Kimm had spent July
12 2015 through February 2017 working as an RF Technician with the Air National
13 Guard. (Kimm Dep. 50:3-21; 51:21-25; 52:1)
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16 20. Contrary to Defendant’s Fact No. 44, Ms. Lee and Mr. MacArthur’s
17 versions of what was discussed vis-à-vis Mr. Kimm and presenting Mr. Kimm to
18 Transtector differs. *See supra*. SOF ¶107-108.
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20 21. Contrary to Defendant’s Fact No. 45, Mr. Kimm was never told that
21 he needed to provide employment references by a time certain or risk losing the
22 opportunity to compete for the job; moreover, Mr. MacArthur testified that he
23 “didn’t know” whether its screening out of Mr. Kimm because of Mr. Kimm’s non-
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1 provision of references was consistent with being an equal opportunity employer.

2 *See supra.* SOF ¶122-123.

3 22. Contrary to Defendant’s Fact No. 49 which states, in part, “the
4 recruiter will pause the recruiting process with respect to any other potential
5 candidates.” Aerotek’s corporate designee stated that this practice of “pausing” the
6 recruiting process is not written in any Aerotek policy. (Landmeier Dep. 61:20 –
7 22) Nor is there any written policy that memorializes the “speed to market” policy
8 Aerotek uses to base its defense. (Landmeier Dep. 150:2-9)

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11 23. Contrary to Defendant’s Fact No. 51, the Defendant’s contention that
12 it did not present Mr. Kamm to Transtector as a candidate because “Transtector
13 expressed interest in Mr. Kamm...before Ms. Lee could even check plaintiff’s
14 references,” is the fourth reason that Aerotek has given as to why Mr. Kimm was
15 not presented to Transtector: First, (April 3, 2017) Ms. Lee told Mr. Kimm that
16 Transtector was looking for someone who “could stick around” a little bit - - -
17 meaning Kimm was out of the running because of his deployment. Second (April
18 4, 2017) Ms. Lee told Mr. Kimm that he was out of the running because “they” were
19 looking for someone who could be there to fill the whole six-month contract. Third,
20 (April 17, 2017) Ms. Lee told Mr. Kimm that while his resume was “great!” Kimm
21 did not get hired because Mr. Kamm allegedly had more experience in a
22 manufacturing setting (even though Ms. Lee could not explain the difference
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1 between at what an RF Technician did in or out of the manufacturing setting).
2 Fourth, (February 9, 2018) Aerotek, via Ms. Landmeier’s Interrogatory No. 1
3 response, manufactured the “Kimm didn’t get the references in on time” defense
4 and in making up that defense it ignored the April 3rd and April 4th emails, did not
5 speak to a single percipient witness, nor review a single document. *See supra* SOF
6 ¶¶99, 110, 117, 129-130, 138-139.
7

8 24. Contrary to Defendant’s Fact No. 53 while it is true that Mr. Kimm
9 has not applied for any jobs at Aerotek after April 2017 it is also true that Mr. Kimm
10 testified that the reason was “because not only did they violate my military rights I
11 have, and they are not going to hire anyone who is suing them.” (Kimm Dep. 25:20
12 – 25; 26:1 – 25; 27:1 – 8) Indeed, after Mr. Kimm filed the lawsuit (which was
13 originally against both Transtector and Aerotek) Aerotek, on August 4, 2017 out of
14 the blue (and without recording this interaction in its RWS system which is contrary
15 to its policy) contacted Transtector and, in essence, give Transtector reasons
16 justifying its non-presentation of Mr. Kimm to Transtector even though Transtector
17 never asked for such an explanation. *See supra* SOF ¶¶127-128.
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DATED this August 7, 2018.

s/ Matt Crotty

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CERTIFICATE OF SERVICE

I certify that I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to those attorneys of record registered on the CM/ECF system. All other parties, if any, shall be served in accordance with the Federal Rules of Civil Procedure.

Dated this August 7, 2018.

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